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HOUSE OF COMMONS
Standing Committee on
Banking and Commerce

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1st Session, 26th Parliament
1963

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HOUSE OF COMMONS

First Session—Twenty-sixth Parliament

1963

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: EDMUND ASSELIN, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 1

FRIDAY, JULY 26, 1963

Respecting

Bill C-5, An Act to amend the Bankruptcy Act (Primary Products under Processing)

WITNESSES:

Mr. Eugene Whelan, M.P.; Mr. K. A. Standing, Secretary-Manager, The Ontario Soya-Bean Growers' Marketing Board; Mr. S. T. Paton, Vice-President, The Canadian Bankers' Association and General Manager of the Toronto-Dominion Bank; Mr. C. B. Clark, General Manager, The Royal Bank of Canada.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1963

29382-9—1

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: Edmund Asselin, Esq.

Vice-Chairman: Maurice J. Moreau, Esq.

and Messrs.

Addison,
Aiken,
Armstrong,
Asselin (*Richmond-Wolfe*),
Basford,
Bell,
Boulanger,
Cameron (*Nanaimo-Cowichan-The Islands*)
Chaplin,
Chrétien,
Côté (*Chicoutimi*),
Douglas,
Émard,
Flemming,
Gelber,
Grafftey,
Gray,
Grégoire,
Habel,
Hahn,
Hamilton,
Jewett (Miss),
Kelly,
Kindt,
Klein,
Lloyd,
Macaluso,
McLean,
Monteith,
More,
Morison,
Muir (*Lisgar*),
Nesbitt,
Nowlan,
Nugent,
Olson,
Otto,
Pascoe,
Pilon,
Ryan,
Rynard,
Sauvé,
Scott,
Skoreyko,
Tardif,
Thomas,
Thompson,
Vincent—50.

Dorothy F. Ballantine,
Clerk of the Committee.

ORDERS OF REFERENCE

THURSDAY, June 6, 1963.

Ordered,—That Bill C-5, An Act to amend the Bankruptcy Act (Primary Products under Processing), be referred to the Standing Committee on Banking and Commerce.

FRIDAY, July 5, 1963.

Ordered,—That the Standing Committee on Banking and Commerce be empowered to print such papers and evidence as may be ordered by the Committee, and that Standing Order 66 be suspended in relation thereto; and that the quorum of the said Committee be reduced from 15 to 12 Members, and that Standing Order 65(1)(d) be suspended in relation thereto.

THURSDAY, July 11, 1963.

Ordered,—That the Standing Committee on Banking and Commerce be authorized to sit while the House is sitting.

Attest.

LÉON-J. RAYMOND,
Clerk of the House.

29382-9—1½

MINUTES OF PROCEEDINGS

FRIDAY, July 26, 1963.
(5)

The Standing Committee on Banking and Commerce met at 9.00 a.m. this day. The Chairman, Mr. Edmund Asselin (*Notre Dame de Grace*), presided.

Members present: Messrs. Aiken, Asselin (*Notre Dame de Grace*), Asselin (*Richmond-Wolfe*), Basford, Cameron (*Nanaimo-Cowichan-The Islands*), Côté (*Chicoutimi*), Gelber, Gray, Habel, Kelly, Klein, Macaluso, Moreau, More, Nesbitt, Olson, Otto, Pascoe, Pilon, Rynard, Thomas.—(21).

In attendance: Mr. Eugene Whelan, M.P.; Mr. K. A. Standing, Secretary-Manager, The Ontario Soya-Bean Growers' Marketing Board; Mr. S. T. Paton, Vice-President of the Canadian Bankers' Association and General Manager of the Toronto-Dominion Bank; Mr. C. B. Clark, Assistant General Manager, The Royal Bank of Canada; Mr. C. F. H. Carson, Q.C., Associate General Counsel; Mr. Hugh L. Robson, Secretary, the Canadian Bankers' Association.

Also in attendance and interpreting: Two Parliamentary Interpreters.

The members proceeded to consideration of Bill C-5, An Act to amend the Bankruptcy Act (Primary Products under Processing). At the Chairman's request, the Clerk read the Order of Reference.

On motion of Mr. Klein, seconded by Mr. Otto,

Resolved—That the Committee cause to be printed 1,000 copies in English and 1,000 copies in French of the Minutes of Proceedings and Evidence relating to Bill C-5.

On Clause 1

The Chairman introduced the witnesses. Mr. Paton read the brief of The Canadian Bankers' Association and was questioned, assisted by Mr. Clark.

On a point of order, Mr. Thomas interrupted the questioning to suggest that the members might be in a better position to understand the provisions of the Bill if Mr. Whelan were permitted to explain the background and the circumstances which prompted him to introduce the Bill in the House. After discussion, it was agreed that Mr. Whelan should be permitted to present his brief, followed by presentation of the brief of the Ontario Soya-Bean Growers' Marketing Board. Questioning of The Canadian Bankers' Association representatives would then be resumed, followed by questioning of the other witnesses.

Mr. Whelan then presented a brief outlining the position of the producers and giving the historical background of the Bill.

Mr. Standing presented the brief of the Ontario Soya-Bean Growers' Marketing Board.

The members resumed questioning Mr. Paton, who was assisted by Mr. Clark.

At 11:00 a.m. the members adjourned to attend the sitting of the House, after agreeing to re-convene at 1.30 p.m. this day.

AFTERNOON SITTING

(6)

The Standing Committee on Banking and Commerce resumed at 1.30 o'clock p.m., the Chairman, Mr. Edmund Asselin, presiding.

Members present: Messrs. Aiken, Asselin (*Notre Dame de Grace*), Asselin (*Richmond-Wolfe*), Basford, Boulanger, Cameron (*Nanaimo-Cowichan-The Islands*), Côté (*Chicoutimi*), Gelber, Gray, Habel, Jewett (Miss), Kelly, Klein, Lloyd, Macaluso, Moreau, More, Nesbitt, Olson, Otto, Pilon, Thomas.—(22).

In attendance: The same persons as were present at the morning sitting of the Committee.

The members resumed questioning of Mr. Paton of The Canadian Bankers' Association who was assisted by Mr. Clark. On completion of the questioning, the Chairman thanked the representatives of The Canadian Bankers' Association, who then withdrew.

Mr. Standing was questioned concerning the brief of the Ontario Soya-Bean Growers' Marketing Board, was thanked, and withdrew.

In reply to a question pertaining to hardships arising under provisions of Section 88 of the Bank Act, Mr. Whelan was permitted to read into the record a letter from the British Columbia Federation of Agriculture concerning the effect on some producers of the bankruptcy of a certain packing firm.

The Chairman informed the members that a number of organizations had expressed the wish to present their views to the Committee on Bill C-5, but it would obviously not be possible to hear them all before the summer adjournment. He said that the Sub-Committee on Agenda and Procedure would meet next week to determine the order in which these organizations would be heard.

At 4.45 p.m., the Committee adjourned to the call of the Chair.

Dorothy F. Ballantine,
Clerk of the Committee.

EVIDENCE

FRIDAY, July 26, 1963

The CHAIRMAN: Gentlemen, I will call this meeting to order. I see a quorum.

The bill before us this morning is Bill C-5 and I would ask the clerk to read the order of reference; Miss Ballantine.

The CLERK: Order of reference dated Thursday, June 6, 1963.

Ordered:

That Bill C-5, an act to amend the Bankruptcy Act (Primary Products under Processing), be referred to the standing committee on banking and commerce.

The CHAIRMAN: As this is a public bill, the Minutes of Proceedings and Evidence will be printed. The Committee has authority from the House of Commons to print such papers and evidence as may be ordered by the committee. I think we now require a motion determining the specific number of copies to be printed. For the information of committee members I understand that the number normally is 750 in English and 250 in French but possibly in view of the wide interest that has been displayed in regard to this bill it might be well to increase the number slightly, to perhaps 1,000 in English and 350 in French.

Mr. OTTO: Mr. Chairman, I would amend that suggestion and move that there be printed 1,000 in English and the same number in French.

The CHAIRMAN: Are you making a specific motion? I think that the experience of the past has been that fewer French copies are required. Because of the lesser requirement I do not think there is any real reason for printing the same number in French.

Mr. KLEIN: The difference in cost of printing 300 as compared to 1,000 is very slight.

The CHAIRMAN: That may be so, but one must always remember that it is the taxpayers' money with which we are dealing. In any case, I will entertain any motion you wish to submit.

Mr. OTTO: Mr. Chairman, before the motion is put, I should like to find out why we are meeting here in this room with several air conditioned rooms being available in the other building.

The CHAIRMAN: You are now dealing with another subject. At this moment we are discussing the number of copies to be printed.

Mr. OTTO: Mr. Chairman, I suggest that we determine why we are sitting here rather than in the west block before I second the motion.

The CHAIRMAN: I do not wish to call you to order on this point. I have no objection to answering your question. This room was chosen by the staff of the private bills committee branch because this room is the easiest in which to handle the witnesses and a larger crowd than we have here at the present time.

Mr. GRAY: Mr. Chairman, with all due respect to that decision, I do not think that is the case.

The CHAIRMAN: In any event that is the reason this room was chosen. A suggestion was made late yesterday that we change the selected room to one situated in the west block, but at that time it was decided that such a change would add confusion. However, I am perfectly prepared to take full responsibility for the decision to sit in this room this morning and I apologize to all members of this committee for any undue discomfort they may be subjected to at this time.

Mr. OTTO: Mr. Chairman, in seconding the motion to print 1,000 copies in French instead of 350, I should like to state that there is very little difference in cost involved.

The CHAIRMAN: Normally we print 750 copies in English and 250 copies in French. The suggestion is that we increase the number of copies printed in both languages.

Mr. OTTO: I would suggest that the cost of printing 1,000 is identical to that of printing 350 or 250 copies. I am quite sure that members of this committee realize that once the type is set the cost is almost identical. I see no reason for opposing the motion and I second the motion.

The CHAIRMAN: It has been moved and seconded that we print 1,000 copies in each language of the proceedings and evidence of this committee. Does anyone wish to discuss this motion?

Mr. NESBITT: Mr. Chairman, I support your observation. Over the years it has been found that extra copies printed in the French language are not used. Being of Scottish background, I firmly believe that we should not waste time or money by printing a number of unused copies. I realize that it is very nice to have things done on the basis of a 50-50 split, but the experience of past committees indicates that if extra copies are required they are available. Practice and experience do show that the proposed extra number of copies will not be used.

Mr. OTTO: Mr. Chairman, it was not my desire in seconding the motion that we print 1,000 copies in each language to effect a 50-50 split. I do not really care whether there are any copies printed in French. I seconded the motion because the difference in cost of printing 350 as compared to that of printing 1,000 or 1,500 is minimal. Surely this problem does not warrant further discussion.

The CHAIRMAN: Is there any further discussion in regard to this motion? Are you ready for the question?

Some hon. MEMBERS: Agreed.

The CHAIRMAN: Is it agreed?

Motion agreed to.

The CHAIRMAN: We are very pleased this morning to welcome to this committee meeting several representatives of important organizations in this country. I understand that we will have with us Mr. Kenneth Standing of the Ontario soya-bean marketing board; Mr. John Brown of the Ontario fruit and vegetable marketing board; Mr. Jack Howard of the vegetable marketing board and Mr. Keith Mathie, of the tender fruit and vegetable board.

We are also pleased to welcome representatives of The Canadian Bankers' Association; Mr. S. T. Paton, vice president, Canadian Bankers' Association, and general manager, The Toronto-Dominion bank; Mr. C. B. Clark, assistant general manager, The Royal Bank of Canada; C. F. H. Carson, Q.C., associate general counsel and Mr. Hugh L. Robson, secretary of The Canadian Bankers' Association.

Mr. Whelan, the member for Essex South, who introduced the bill in the house, is also present and will be available for questioning by the members.

With the permission of this committee I would suggest that The Canadian Bankers' Association make their presentation at this time. I understand the brief they intend to present to the committee has been circulated only in the English language but that copies printed in French are now available. If any member desires to have a copy printed in French the clerk of this committee has them available here at the present moment.

After the presentation of the various briefs I suggest we then ask members of the committee to put their questions.

Might I suggest at the present moment that we sit tentatively this morning until 12 o'clock? If at that time it appears that by sitting another half an hour, or even an hour, we can terminate the meeting, then we could do so. If not, we could adjourn until, say, two o'clock or even 1:30 and continue this afternoon onwards. Would this be agreeable? I understand it is.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Mr. Chairman, did we get authority to sit at the same time as the house sits?

The CHAIRMAN: Yes.

Mr. AIKEN: This means that we are not going to adjourn when the house opens?

The CHAIRMAN: That is correct, if this meets with the wishes of the committee.

Mr. AIKEN: It is the first time, to my knowledge, that this has ever been done.

The CHAIRMAN: This committee has a number of "firsts". A few days ago we called a meeting at 1:30—it is the first time it occurred. It is the first time that we had a bill such as Mr. Whelan sent to the committee. If the committee wishes, we can adjourn for a short time at 11 o'clock. I would like to hear opinion on this.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I am trying to recall an occasion when the committee sat at the same time as the house.

The CHAIRMAN: I believe the steering committee decided that we would sit right through.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): We did. The only thing I was trying to recall is that some years ago, when the committee had a very heavy program, we were sitting while the house was sitting, but we could start the meeting after Orders of the Day. I do not think we convened the meeting before Orders of the Day. Whether that is possible in the present circumstances I do not know. The Orders of the Day are a long time ahead of us.

Mr. OLSON: I think we should adjourn for thirty or forty-five minutes from 11 o'clock on if it appears that we can finish up within an hour after we come back.

The CHAIRMAN: All right. Supposing we leave that decision until about a quarter to eleven? We will see what progress we have made and whether we are going to have to have two sessions a day or not. I think we must think about this in fairness to the people who have come a long distance to make their depositions. I will call clause 1 and ask the representatives of the Canadian Bankers' Association to present their brief on clause 1—*Primary products revert to producers.* Shall clause 1 carry? Mr. Paton of The Canadian Bankers' Association will present the brief. However, the other gentlemen who are here with him will be also available for questioning following the presentation by Mr. Paton.

Mr. S. T. PATON (*Vice President, The Canadian Bankers' Association and General Manager, The Toronto-Dominion Bank*): Mr. Chairman, ladies and gentlemen, my colleagues and I are very pleased this morning to be in attendance before this committee, and it might be proper for me to identify them

first so you will know subsequently who will be carrying the ball for The Canadian Bankers' Association. On my right is Mr. Clark, next to Mr. Clark is Mr. Carson, and on the end is Mr. Robson. I am here in my official capacity as vice president of The Canadian Bankers' Association.

As you no doubt are aware, The Canadian Bankers' Association consists of eight chartered banks in Canada, and they are represented by their respective general managers. You have before you copies of a brief outlining the association's thoughts on Bill C-5. This brief was prepared somewhat precipitately and we could perhaps have done a better job if we had more time, but I think we indicate in the brief that we have quite strong views against the enactment of this bill. We feel its ramifications are very far reaching and it needs very careful consideration. If it meets with your wish, Mr. Chairman, I shall proceed to read the brief through to you, and following that, and after further representations, we will be pleased to elaborate on it and endeavour to answer any questions which may occur to members of the committee.

The CHAIRMAN: Please proceed in whatever manner you wish.

Mr. PATON: The notes attached to Bill C-5 explain that the bill is designed to secure additional protection for primary producers of the products of agriculture, the forests, fisheries, quarries and mines when processors to whom they supply their products go into bankruptcy. This would be accomplished by exempting such products, whether improved or unimproved, from the assets in bankruptcy and providing that they be vested in the court for sale. Distribution of the proceeds realized by the court from their sale would be in priority of payment as follows:

(i) Administration costs.

(ii) Wages and salaries owing to employees of the bankrupt processor in respect of the preceding three months' work.

(iii) Claims of the producers of the products proved to satisfaction of the court.

(iv) The trustees of the estate of the bankrupt, subject to any right or interest that a bank incorporated under the Bank Act or the industrial development bank would otherwise have under the Bank Act or the Industrial Development Bank Act, as the case may be.

Section 51A which Bill C-5 proposes to add to the Bankruptcy Act and which is in sweeping terms, provides that all "products", and so on, for which producers have not been paid at the date of the bankruptcy of a wholesale purchaser or shipper of, or dealer in, such products and who has them in his possession, are to be vested in the court in trust for purposes of sale. Proceeds of the sale are to be applied in accordance with the prescribed formula.

If enacted, this provision would have far-reaching effects on the granting of credit for the purpose of financing the processing industry in that it would undermine the basic concept of section 88 and the procedures related thereto upon which a significant proportion of the Canadian industry depends for its finances through the banking system. This is not to say that the banks attach greater importance to the support of processors than they do to the protection of primary producers since the latter also borrow under the provisions of the same section of the Bank Act and depend upon it in similar degree. Banks lend to the producers whom Bill C-5 seeks to protect or the security of potential returns from crops, dairy herds, logging, fishing and all forms of basic production and the financial failure of a processor which reacts in loss to related producers accordingly endangers the safety of other advances made by banks to the producers concerned. It cannot, therefore, be advanced as a general hypothesis that the exercise of the permissive rights of the lender to realize

upon his security works at one level to the disadvantage of borrowers at another level although in this area as in all other areas of normal financial risk specific examples of misfortune can be cited.

The number of small processors experiencing bankruptcy is modest in relation to the total number engaged in the industry and accordingly the number of primary producers who might be expected ultimately to require the benefit of the protection envisioned by Bill C-5 would be commensurately small. The possibility of a future claim for an undetermined amount against the security available to the processor in the form of primary products would, however, undermine the value of section 88 security and such security would have to be heavily discounted. The processors' access to bank financing would be curtailed, as would the scope of his operations. His ability to finance his raw material requirements and the size of his work force would also shrink. Thus, the price of a blanket protection against what in the normal course would only be a nominal risk to the individual producer would far outweigh any benefit of significance to the producing sector as a whole and the latter would, of course, have to bear its share of the price because of the possible dislocation in the requirements for raw material in the industry for which it produces. Moreover, the chain of events described herein would clearly be more likely to affect the smaller producers, whoelsalers, processors, and so on, as a group because individuals and concerns in a strong financial position not entirely dependent upon section 88 would still continue to obtain bank credit to the extent they required. The proposed legislation would, therefore, work to the benefit of the larger and better financed processing firms at the expense of the smaller and less well financed. This could only mean the gradual weakening of some proportion of the country's potential to manufacture and process its primary products.

The provisions of Bill C-5 are limited to primary products and would therefore immediately affect only that sector of Canadian production and the processing, shipping, wholesaling, etc. industry related to it but once the primary producers received protection in the form suggested, it would not be long before others who supply ingredients, packaging and other components to the finished product would, with justification, demand similar protection. Nor would it be long before other levels of production would feel the need for protection in some form or another. The manufacturer of secondary products would expect to retain an interest in the finished product of the final processor in the event that the latter went into bankruptcy. In the end the practical value of security under Section 88 would disappear. This does not seem to be in the best interests of the national economy.

Section 88 is the means by which seasonal inventories are carried. The canner, the fish packer, the lumberman, the cheesemaker, all depend on bank credit to carry or cure their product until absorbed by the market. Any legislation which weakens the effectiveness of section 88 security would reduce the amount of credit which is normally available for this purpose. Accordingly, alternate methods of financing would have to be found, probably at increased cost, which in the end could only react to the detriment of the producer.

Furthermore, while the bill makes provision for unpaid wages in its priorities, it overlooks the fact entirely that a large part of bank loans have been used since the commencement of the production season to pay prime producers, at least in part, as well as other suppliers and also to pay several expenses which would be first charges in any case—in particular, wages. The unsold inventories, therefore, have a large cost content paid by the bank which should not be relegated to a secondary position.

Bill C-5 seeks to protect a minority who would benefit from its provisions at the expense of undermining legislation which was designed with wisdom to facilitate production of every kind and which because successive amendments

have kept it viable has played a major role in evolving the nation's present level of productive activity. The proof of this can be found in the volume of financing presently being carried out to-day under the provisions of section 88 of the Bank Act, currently running at approximately one billion dollars.

The effect of the bill, if enacted, would be to amend section 88 of the Bank Act, since the exemptions proposed relate specifically to security available to the banks under that section. The Bankruptcy Act, broadly speaking is of general effect and is not directed to special classes of business whereas the principle implied in Bill C-5 follows the precedent presently embodied in subsection (5) of section 88 of the Bank Act. In our view it would be inappropriate to change the provisions or effect of the latter by means of other legislation particularly at a time when the Bank Act is under exhaustive review.

It was recognized by the senate banking and commerce committee when considering the 1949 revision of the Bankruptcy Act, that the principle enunciated in section 169 (previously 189) should be maintained; that is to say, that the effect of security as a matter of banking, even in relation to bankruptcy law, should be as stated in the Bank Act.

The proposal for court sale in the event of bankruptcy is clearly impracticable. Not only would the procedure be expensive but it would not be suited to the disposal of perishable goods such as fruit and vegetables for which the time available for processing is limited. Nor would sale by the court allow for the procedure in which funds are occasionally made available to complete processing—even after bankruptcy—where such a course appears warranted for attainment of the best liquidation results.

The purpose of Bill C-5 is recognized and appreciated but it will be clear from the foregoing that the approach to the problem should be found through the application of less disruptive measures. Having in mind that the instances commonly recognized as prompting proposals for legislation of this type concern farm products, it may be noted that with a view to protecting primary producers there are excellent and active growers' associations in almost all communities. Since the problem is to find a more reliable way to judge the financial responsibility of a processor, these organizations could request and obtain financial information which would enable them to analyze and advise members as to the credit-worthiness of individual processors who purchase on credit. This would be a much more direct approach to the problem, enabling growers' organizations to take an active part in the protection of their members' interests and would not curtail the sources of credit available to those engaged in the important economic function of bringing the growers' crops to market.

An hon. member has made the statement that it is very difficult, if not impossible, for a supplier to ascertain if the processor has a section 88 loan, (*Hansard*, page 746). The fact is, of course, that every person, upon payment of a fee of twenty-five cents is entitled to have access to and to inspect the registration book at the office of the Bank of Canada in the province where the processor has his place of business and where a notice of intention to give section 88 security must be registered. The Bank Act further provides—section 88, paragraph 4(i)—that any person desiring to ascertain whether a notice of intention given by a processor remains registered may inquire by sending a prepaid telegram or a letter to the agent of the Bank of Canada. If the letter is accompanied by a fee of fifty cents it is the duty of the agent to reply to the inquirer stating the name of the Bank mentioned in the notice of intention.

Some of the smaller processors with proven eligibility who have been assisted under government-sponsored lending programmes designed to assist

small business might be affected. For example, a loan granted by a chartered bank under the provisions of the Small Businesses Loans Act or a loan made by the Industrial Development Bank to assist with financing of machinery, etc. might fail to serve the purpose if the borrower's operating requirements in the way of additional advances from a chartered bank under section 88 of the Bank Act were unavailable.

The CHAIRMAN: Thank you, Mr. Paton. Now, if any members of the committee have any questions they would like to address to Mr. Paton, they may do so. Mr. Gray?

Mr. GRAY: Mr. Chairman, Mr. Paton in his very interesting brief at page two, paragraph three, says:

> "The number of small processors experiencing bankruptcy is modest in relation to the total number engaged in the industry and accordingly the number of primary producers who might be expected ultimately to require the benefit of the protection envisioned by Bill C-5 would be commensurately small."

In view of this statement, why does he suggest that there would be a great shrinkage in the total volume of section 88 loans which he goes on to refer to as a possibility in the rest of that paragraph?

Mr. PATON: I would suggest that our reason for making that statement is that basically section 88 security must be free and clear to the banks to enable them to finance industry in a country such as we have, where such a large percentage of our industry is seasonal. If there is any blight or inhibition of that security as a result of legislation superseding the Bank Act, we would not feel as free to lend our depositors' money in the full expectation that we would get it back.

Mr. GRAY: Mr. Paton, do you not rate different types of loan applications in different industries according to your loss experience?

Mr. PATON: No sir; we do not break it down. We judge loan applications in relation to the worth of the individual application. We may perhaps relate our total involvement in a specific industry and keep our eye on the total we have out; but it is not related to our experience in loss.

Mr. GRAY: Are you suggesting that you do not, over all, take into account the relationship of the loss you have in a particular field?

Mr. PATON: You mean so far as continued participation in that field is concerned?

Mr. GRAY: Yes.

Mr. PATON: I would hold to my answer; yes.

Mr. C. B. CLARK (*Assistant General Manager, Royal Bank of Canada*): All I can add would be that if a certain industry were in fact showing a heavy loss record we would certainly in good management have to scrutinize with great care the individual applications in that industry; but the fact that we had a high loss record in a particular field of finance would not in itself influence us to turn down an individual application from that fragment of the economy. The answer is, as Mr. Paton said, no.

Mr. GRAY: Perhaps you can enlighten me further, but I find it difficult to see why, if there are very few people who would go bankrupt and a relatively small number of people to take advantage of this bill, you suggest your banking industry would contemplate a drastic reduction, as you say in your brief, which would amount to $1 billion in loans.

Mr. PATON: Perhaps our concern is mainly that while this specific bill only refers to a primary producer, this would be followed naturally by similar requests from other participants in the manufacture of that product; for

example, the supplier of cans and sugar and those in other parts of the participation in processing of the primary item. They would have equal rights in applying for similar legislation.

Mr. GRAY: Is not an important distinction that many of the suppliers you mention are people who supply a number of different customers; whereas farmers in many instances supply all their crop to just one customer?

Mr. PATON: Yes, this is correct. As we mention in our brief, we appreciate the purpose of the bill, but we feel that this can be very readily amended by bringing into participation the marketing and growers associations who can obtain financial information from different sources.

Mr. GRAY: Would your banks supply this information to producers and growers associations?

Mr. PATON: As you know, banks have to work under an atmosphere of confidence and secrecy wherein this information is strictly in confidence between the bank and the customer.

Mr. GRAY: What better sources of such information are there available to the growers association; what are the other sources of information available to the growers, if you carry out this alternative protection you have proposed in your brief?

Mr. PATON: First of all perhaps, as stated in paragraph 11, there is access to information. There is no secrecy about section 88 being in existence on the part of any producer, manufacturer or wholesaler. The notice of intention must be registered at the local Bank of Canada office.

Mr. GRAY: Does your association make a practice of informing your farm customers of their opportunity to do this?

Mr. PATON: Not specifically, no.

Mr. GRAY: Do you plan to do this?

Mr. PATON: We could consider this. Section 88 has been in the Bank Act since the nineteenth century—1859; it is not new. I suppose we have taken it as read and assumed that people are aware of it. I would not expect that the individual farmer would know, but I would expect that his associations would be well aware of it.

Mr. GRAY: In paragraph 10 you say:

> Since the problem is to find a more reliable way to judge the financial responsibility of a processor, these organizations could request and obtain financial information which would enable them to analyse and advise members as to the credit-worthiness of individual processors who purchase on credit.

Mr. PATON: To start with, if they were representing a substantial number of growers, they would have full authority to go to the processor and demand a financial statement. This is number one.

Mr. GRAY: Are the producers' associations sufficiently widespread throughout the industry to cover all the people who might be involved?

Mr. PATON: Speaking of Ontario, I would say yes; they certainly are in Ontario.

Mr. THOMAS: Mr. Chairman, I would like to rise on what really is a point of procedure. These questions and answers are very interesting, but I happen to know some of the circumstances which underlie this bill and the reasons for it. I feel that we might be further ahead in the committee if we heard the whole story before we get down to these detailed questions. At the present moment we are questioning the bankers in respect of section 88, and so on. But if some of the other members had the full background of this bill and information as to what it seeks to do, we might be better off. We could

possibly have the member for Essex South present his brief and then we would know what he is aiming at and why he has brought in the bill. I do not know what is in his brief, but it might contain the circumstances which inspired him to bring in the bill. I believe that a thorough knowledge of all these things would be the best way for us to have an understanding of these questions.

The CHAIRMAN: The steering committee discussed this but not at any great length. It was my intention to have the producers' associations present their brief first, but none of them are here. They expect to be here by ten o'clock. There was some question concerning the propriety of having the sponsor make the first presentation. However, if it meets with the wishes of the committee, we might suspend the questioning of the representatives of the Canadian Bankers' Association and hear the sponsor, Mr. Whelan, who is with us. After his presentation we could then proceed with the questioning of the representatives of the bankers' association, if you feel this is the way you would like to proceed.

Mr. BASFORD: Mr. Chairman, surely we are not going to bring in someone to make a presentation and send him away without asking questions. I certainly have some questions I would like to direct to the representative of the bankers' association, and others. As I understand it, it is our intention to stand this matter over until the fall and during the summer recess more thought can be given to this after the questions have been asked.

Mr. AIKEN: I agree with Mr. Thomas' suggestion, because we should obtain in a preliminary way the complete points of view and then go into the detailed questioning. However, since it will be only ten minutes until the producers arrive, perhaps we could continue to clear up some of these points until they arrive, and at that time have them present their brief and resume the questioning of the representatives of The Canadian Bankers' Association. I think in that way we will get a clearer picture.

The CHAIRMAN: Gentlemen, may I hear your views on the suggestion of Mr. Thomas that Mr. Whelan be invited at this time to proceed with his brief?

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Mr. Chairman, I would like to support Mr. Thomas' view because I have read Mr. Whelan's brief; and while I do not presume to say he is speaking with authority on behalf of the producers it does set out their position clearly as well as giving the historical background. I would think it advisable to have Mr. Whelan present his brief now; it is quite comprehensive, and perhaps after he has done this questioning could at that time be resumed.

The CHAIRMAN: Is that procedure agreeable to the members of this committee?

Mr. GRAY: I am quite satisfied with that, Mr. Chairman; however, it would be, I hope, without prejudice to completing my line of questioning?

The CHAIRMAN: Yes, of course.

Gentlemen, we have set aside the whole day. The steering committee planned to deal with all the people who have come here as witnesses to present their briefs this morning and if necessary we will sit late into the evening.

Mr. Whelan, would you like to present your brief at this time?

It is agreed that following the presentation of Mr. Whelan's brief, outlining the position of the producers, we will resume questioning of the Canadian Bankers' Association. It that agreed?

Some hon. MEMBERS: Agreed.

Mr. WHELAN: Mr. Chairman and members of the committee, this brief which I have is rather lengthy and I will try to go over it as quickly as I can.

As a member of the committee I raised hell yesterday because we were not in an air conditioned room this morning and I still do not know why we are here?

The CHAIRMAN: Order, please.

Mr. WHELAN: I do propose to urge the adoption of Bill C-5 upon you. Owing to our parliamentary procedure, a private member's public bill contains both grievance and remedy. It is the only means by which a private member may bring a public grievance before you. The bill has achieved that purpose. Today we petitioners are here to present our grievance; the respondents, if any, are here to oppose it; and you and your committee, Mr. Chairman, are here to deliberate upon the grievance and, in your wisdom, to recommend to the House of Commons for or against a remedy. This is the democratic way—the right of a minority to petition; the right of a minority to oppose; and the right of the majority to decide. In the broad Canadian view—and this is the view of the petitioners—whatever way the crumpet crumbles, everybody wins.

Other petitioners are here today to give you case histories: to sketch in bare words the personal tragedies that have oppressed and burdened the primary producer and his family when section 88 of the Bank Act combines with the bankruptcy of a processor to inflict upon the producer a financial wound whose gravity is indicated in personal terms of living: so that he, his wife and children may, without fault of their own, be reduced from living in the 20th century to existence in the colonial 19th—a transposition in time, without a matching reduction in cultural needs, that is the ultimate cruelty.

Section 88 of the Bank Act is 102 years old. It is older than Canada is old by six years. It is an 1861 amendment to an 1859 statute of the province of Upper Canada that had been entitled "An Act Granting Additional Facilities in Commercial Transactions" and was later re-titled "An Act Respecting Incorporated Banks".

There is no doubt that section 88 (and section 86—the warehouse receipt provision) were good for the colony of the province of Canada and for the colonial confederation of the British North America colonies that became the colonial Dominion of Canada. Section 88 was good for agriculture and the other primary industries; it was good for processing and the other secondary industries; it was good for banking and commerce: and it was good for the production, manufacture and marketing of the products of the colonial Dominion of Canada—and because it was good it helped to so strengthen the colonial Dominion of Canada economically and, therefore, politically that she climbed to the position Canada holds today: an independent nation with one of the highest gross national production records and one of the highest standards of living in the world today—1963. But 1963 is not 1861, and the infant economy that struggled to survive then is not the highly complex and highly industrialized economy of today.

I have made a rough checklist of the salient economic facts of 1861. I then sought the equivalent of these facts in our economic life today. My purpose was to determine whether the reason for the enactment of section 88 holds good today.

Here is my 1861 list:

(1) In 1861, primary industry of whatever kind was based upon the self-contained, self-sufficient and self-sustaining family unit with little or no employment of outside labour. Like some of the manufacturers of today, the 1861 primary producer produced a number of products (on the farm, he might have a small woodlot—cows, chickens, turkeys, pigs—vegetables, grains, hay, and a few fruits). A failure in one product in a season was undoubtedly a set-back: but it was not a disaster.

(2) There was a scattered population with small towns and no large markets either domestically or abroad except for a few products that were exported such as timber, grain and salt fish. The towns people who provided services and bought their necessities were few as compared to the self-sustaining rural family units.

(3) The impact of the earlier canals and, since 1845, the railways, was just beginning to make itself felt. Road networks were only at their beginnings.

(4) There was no mass production either in primary food products or in processed primary food products. Farm machinery had yet to take its great leap forward. Food processing was in its infancy. Canning was only perfected in 1860. Frozen foods and quick-frozen foods were three-quarters of a century away.

(5) Immigration to help develop the colonies by over-producing the primary products so as to create a demand for processors, for transportation to get excess products to domestic and export markets, for specialization of product, for machinery to increase the volume of product: immigration, to itself swell the consumer demand and to provide a built-in population growth: immigration on a massive scale was yet to come.

(6) The production surge of the industrial revolution had not yet made itself strongly felt in the colonies which were still basically primary producers and not industrialized.

(7) Investment. There was little investment in the hinterlands of the British North American colonies. Money was in the hands of the members of the family compacts in each province who lived only in the larger towns. This group acquired fortunes mainly by a monopoly of the highly-paid government and administrative offices and through contracts for supplies to the large British army and naval forces stationed in the colonies. They had no interest in risking their fortunes to develop the rural areas. There were wealthy merchantile families in every province but they invested in the sure thing that returned high and immediate profits—mostly of a consumable or non-productive nature—breweries, distilleries; the export of unfinished timber and rough grain, the import of sugar, rum, molasses, spices, luxury goods for sale in town; shipbuilding for the export-import trade. There were some town factories for the manufacture of goods but, even here, the colonial investors preferred the high, quick and non-risk profits of the import trade.

The greatest source of investment money in the 19th century was the London money market. But in the first half of that century, both the British government and the British investor wrote off the North American colonies as a dead loss to agricultural investment. They knew of these colonies only as a source of the mass production of furs, timber and fish and as a consumer market for the products of their own industries with which they wanted no competition. For agricultural investment they preferred their tropical colonies, such as the West Indies, whose climate allowed of the mass plantation crop. It was the British railroad investor—driven out of Great Britain about 1845 by the highest mileage cost of building railroads in the world (the Parliamentary fees and the legal costs to incorporate a railroad company by private bill amounted to £4,000 a mile—the cost of laying each mile of track) it was the British railroad investor who discovered the investment possibilities of the British North American colonies. How he rejoiced to find that the legislature of Canada would incorporate a railroad company at less than the cost to the legislature for printing and handling costs in order to attract British capital. This was the beginning of the solution to the transportation problem: a solution that was to open up the agricultural areas and to connect these areas with the town markets. At that stage, the British investor did not go further but he had served his purpose for the times as they then were.

(8) Governments. There could be no help from the governments of the provinces by way of subsidies, tax depreciation and write-off, guarantee, insurance, grub-staking, price ceilings, price floors, and the other 57 varieties of financial assistance that governments gladly give to aid the production of primary products in our time. Each province had gone through rebellion or near-rebellion to establish responsible government and was suffering the consequences. They were free, bled white by the past patronage of the family compacts, and bad credit risks with nowhere to peddle their securities to raise money wherewith to provide aids and services to increase the gross provincial product. Several of the American states had defaulted on their securities which had been sold in England. In 1843, we find the Scottish essayist Sydney Smith publicly petitioning Congress to repay him the money he had invested in so wealthy a state as Pennsylvania which had taken his money, built roads and canals with it for the public good, and then defaulted on the debt. To the British investor, the pleas of the poorer governments in his own British Colonies to invest in their public purposes rang a bell on an off-key note. For the first—but not the only time—the Yankee had proved himself smarter in the money mart than his Canadian cousin.

The governments of the colonies had only two resources—vast lands, seas and forests ready for the development of all types of primary products; and people, not enough people but enough for a start.

(9) The economic climate. In 1847 a sharp economic depression settled over the colonies of British North America and lasted for several years. The effects were aggravated by the loss of the imperial preference on grain and timber which was withdrawn by the British government on the repeal of the British corn laws.

(10) Banks. The banks in the colonies had followed the English system of establishing themselves—and the money market they created—in the towns and cities. They awaited the stimulus that would spur them to create a banking system that is uniquely Canadian: and which was born of and adapted to the needs and the growth of a land such as Canada. But in the 1850's, the banks were proceeding very cautiously in regard to the extension of credit and the opening of branches. At this time, however, there was a sharp growth in agriculture and commercial settlements and a consequent demand by local entrepreneurs for local bank service to extend credit to them for risk capital in local development. The government, too, decided to intervene in the banking problem to encourage banks to establish branches. As a result, the government of the province of Canada legislated to enact a banking law that was applicable to all banks. And then, to quote Jamieson's *Chartered Banking in Canada,* 1953, at page 11:

> An event of more than ordinary significance was the passing of an act in 1859 entitled 'an act granting additional facilities in commercial transactions'. It was the first step towards what are known as the 'pledge' or 'section 88' provisions of the present Bank Act. The extent to which these provisions have assisted agriculture, industry and commerce in producing, manufacturing and marketing the various products of the country is one of the most outstanding of the distinctive features of Canadian banking. It is worth noting that the principal aim of the legislation was not to make things easier for the banks but to provide for a need felt by the business community. Parliamentary records show, too, that the same motive was behind subsequent steps in the development of this feature of the Canadian banking system.

In 1861 the act was amended so that the principle and the main provisions of sections 86 and 88 of today's Bank Act were incorporated in the Canadian banking system where they have since remained.

The effect was to merge the primary producer, the processor and the banker into one effective productive unit and minimize the necessity for an outside investor. In large part, the primary producer replaced him. It was a self-starting economy. The producer produced and turned his product over to the processor who obtained credit from the bank for his processing necessities on the security of the unpaid for primary product. In return, the producer got a market for surplus production and cash above his bare needs, the processor got profits and capital for expansion, and the bank got a good return on its investment. In the process, Canada was developed. Nobody took much of a risk. If the processor went bankrupt, he was protected from his creditors and could start again; the bank had its blanket security; and the producer lost only the surplus above his living needs on what he produced from his mixed operation. The man who stood to loose most was the processor's factory hand who had no savings to fall back on in the event of the processor's bankruptcy. So, by common consent, he was protected against the operation of section 88 by a prior lien on the insolvent processor's assets to the extent of three months' wages.

Mr. Chairman and members of the committee, I pay tribute to the contribution that section 88 has made to the development of Canada. Let us look at Canada in 1963 in the light of the purpose of the legislature of the province of Canada of 1861 when it hopefully enacted section 88 "to assist agriculture, industry and commerce in producing, manufacturing and marketing the various products of the country."

(1) We have large one-crop farms and other forms of one-product primary production on a scale undreamed of by our 1861 predecessors in government;

(2) We have large domestic markets that are concentrated in cities of millions of people and other large urban areas;

(3) We are one of the largest exporting nations of primary products—if not the largest—in the world.

(4) For our population, we have one of the highest gross national products and standards of living in the world;

(5) We are among the leaders of the world in our highly developed land, water, rail and air freight facilities: we have grain elevators, warehouse facilities, refrigerated transport, and all the necessaries incidental to a great freight transportation system;

We have the most modern of mass processing plants of every kind and specialized food processing skills and technologies;

(7) We have one of the strongest—if not the strongest—banking systems in the world with branches available to Canadians in every corner of the world;

(8) And, politically, we are a nation; with a strong central government—and I do not mean this in a partizan sense—that is respected among the nations of the world.

Yes, Mr. Chairman, section 88 has done its bit.

But, Mr. Chairman, today we have a public opinion that the public interest is best served if private enterprise that operates in the public interest is protected against fortuitous disasters not the fault of the private enterpriser. More and more this public opinion is expressed in the statutes of the parliament of Canada.

I would like to say at this time that I may not be able to recognize some of these words but I do recognize the unfairness of section 88.

It expresses the Canadian credo—the maximum freedom of private enterprise with the minimum of unforseeable private risk. Some of these statutes in which the public protects the private enterpriser by way of guarantee or

insurance (often through the medium of the credit facilities of the banking system) are listed here: The Farm Improvement Loans Act, R.S. c. 110; The Veterans' Business and Professional Loans Act, R.S., c. 278; The Prairie Grain Producers's Interim Financing Act, 1951 Acts, c. 20; The Home Improvement Guarantee Act, 1937, c. 11 (now National Housing Act).

The Canadian Wheat Board Act, R.S., c. 44; The Export Credits Insurance Act, R.S., c. 105; Prairie Farm Assistance Act, R.S., c. 213; Farm Credit Act, 1959 Acts, c. 43; Fisheries Improvement Loans Act, 1955 Acts, c. 46; Prairie Grain Loans Act, 1960 Acts, c. 1; Small Businesses Loans Act, 1960-61 Acts, c. 5; Fishermen's Indemnity Plan; Marine and Aviation War Risks Act, R.S., c. 328; (This does not refer to Canadian wars but is passed "For the purpose of securing that ships and aircraft are not laid up and that commerce is not interrupted by reason of lack of insurance facilities . . . " The Emergency Gold Mining Assistance Act, R.S., c. 95.

The government guarantees all these things.

There are other statutes of this nature as well as the provisions in our taxing statutes which permit depreciation write-off and exemption of resources exploration expenses, which are familiar to most of us. I do not mention the welfare statutes under which the government guarantees, in some measure, against the risks of living.

In other words, the government today is either assuming or underwriting, in whole or in part, that risk (the disaster without fault) which, in a younger Canada, the primary producer assumed.

In the light of this politico-economic philosophy, section 88—insofar as it affects primary producers on a processor's bankruptcy—is colonial thinking.

Mr. Chairman, I respectfully submit:

(1) Today, a large-scale one-crop primary producer can be financially crippled for years under section 88. This, as explained, was not the intention of the 1861 legislature of the province of Canada, as witness its protection of the processor's employees; I might mention here that with the increasing replacement of the family unit in primary production by hired employees, these employees are not protected as to any back wages owing them by a primary producer on a processor's bankruptcy.

(2) Under our political thinking, a primary producer is in the same case and is entitled to at least as much protection as is an exporter of processed or other goods under the Exports Credits Insurance Act;

I think you all understand that act.

(3) The purpose of section 88 is spent. The bankers' own textbook—Jamieson's *Chartered Banking in Canada* which is required reading in the fellows' course sponsored by the Canadian Bankers' Association and conducted by Queen's University—states that the principal aim of section 88 is not to make things easier for the banks but to provide for a need felt by the business community. Mr. Chairman and members of the committee, it is for the bankers to prove that the need of the business community in 1963 is served by the ruin of a primary producer.

I might mention, in a very broad way, certain remedies that can be considered:

(1) The primary producer might insure privately against the bankruptcy of the processor. For the public, this is the most expensive method because the cost of the tremendous over-insurance to guard aganst the occasional bankruptcy would be passed on to the consumer. Again, it would not protect the primary producer who is financially unable to insure; and finally, unless a general average rate were struck on the basis of statistics, the insurance com-

panies would not obtain an accurate assessment of the risk if insurance were only taken in doubtful cases. Neither the processor nor his banker would reveal the financial infirmities of the processor;

(2) The primary producer might be protected by some method along the lines of Bill C-5. This would throw the risk on the banks who might withdraw on a risk venture and so injure the local primary producer and the local processor to the harm of the public interest in production. In such cases, however, the industrial development bank might, as a matter of government policy, take up the slack and finance the processor;

(3) The government might indemnify either the banks or the primary producer against risk on a guarantee or insurance basis. This would involve a study of past experience of the effect of section 88 upon primary producers and the probabilities of the processor's bankruptcy. Statistics—or "mortality tables"—for the calculations to devise a plan can be obtained from the superintendent of bankruptcy, the inspector of banks, the bureau of statistics, and other governmental agencies, as well as from the banks themselves. This method takes the burden of undeserved risk off the primary producer—does not place it on the banks—and is at one with the Canadian credo above set out: the preservation of private enterprise directed to a public good (in this case, a joint enterprise by the primary producer, the processor and the bank) by means of public indemnification against private loss.

The CHAIRMAN: Thank you, Mr. Whelan. As previously agreed I think we will now continue with the questioning of the representatives of the Canadian Bankers' Association, or would it be the wish of the committee to hear all the briefs before we continue with the questioning?

Mr. THOMAS: That would by my suggestion, Mr. Chairman.

The CHAIRMAN: I have one other question on an unrelated subject, that is the question of accommodation. Miss Ballantine informs me that we can have no room in the west block this morning owing to the federal-provincial conference. However, there will be a room available this afternoon. Would you like me to make arrangements so that we may sit there this afternoon? Although this room is closer to the house, yet the committee is master of its own destiny.

Mr. GRAY: Mr. Chairman, I understood that because of the meeting of the provincial conference it was unlikely that any matter would come up that would cause embarrassment to certain ministers who might be occupied elsewhere and who might not at that time be present in the house. Therefore, it it unlikely that we would be called upon to rush up there to do our duty.

Mr. AIKEN: There might not be a quorum if half of the members are at the provincial conference and the rest are down here.

The CHAIRMAN: Would you like me to make arrangements to meet this afternoon in the west block, or would you prefer to remain here in view of the remarks that were made? We will instruct the clerk of the committee to make arrangements for us to sit in room 371.

Mr. NESBITT: 371, unless I am mistaken, is not air-conditioned.

The CHAIRMAN: I think every room in the west block is air-conditioned. In any case it is apparently the only one available.

Mr. OLSON: I respectfully suggest it is no more comfortable than this room. I spent a day in there yesterday.

The CHAIRMAN: Shall we forgo the pleasures of moving?

Mr. AIKEN: Let us stay here.

M. CÔTÉ (*Chicoutimi*): Monsieur le président, est-ce qu'on pourrait avoir la traduction en français du mémoire que vient de nous lire M. Whelan?

Le PRÉSIDENT: M. Whelan ne l'a pas produit en français.

M. CÔTÉ (*Chicoutimi*): C'est un document très intéressant.

Le PRÉSIDENT: On pourrait demander au secrétariat de le traduire et, lorsqu'il sera disponible, d'en transmettre des copies. Mr. Whelan, did you prepare French copies?

Mr. WHELAN: Not having the facilities of the Canadian Bankers' Association at my fingertips or any such large organization, I was unable to get it translated at this time in French, but I will do so as soon as possible.

The CHAIRMAN: Mr. Côté has asked for a translated copy, and we will instruct the clerk to see that it is produced for the record. I understand this meets with the approval of the committee. Mr. Whelan will try to make equal facilities available.

Is Mr. Ken Standing of the Ontario soya-bean growers marketing board here? I wonder, Mr. Standing, if you could come forward and present your brief. Would it be the wish of the committee that copies of Mr. Standing's brief also be translated into French? It is agreed.

Mr. K. A. STANDING (*Secretary-Manager, Ontario Soya-Bean Growers Marketing Board*): Mr. Chairman, members of the committee, I was asked by the member sponsoring this amendment to appear before the committee. Since 1949 we had one of these growers organizations organized, which was referred to this morning, in the name of the Ontario soya-bean growers marketing board, and my brief is sponsored by them. I would not want to leave any erroneous impressions, and one of my other sponsors may not appreciate his name being in here, but the Ontario wheat producers marketing board were also organized, although nine years later than the soya-bean board. They were also involved in the problems of grain marketing through people who had advanced money. When they went bankrupt they paid the bank, not the producer. We have had a great deal of experience since 1949 as a growers organization because we took it upon ourselves to represent the growers, in the case of the soya-beans for instance. In the first three bankruptcies I can remember we represented some 40,000 producers of soya-beans in trying to establish their rights to a claim for the return of the product, rather than the common creditor as the present Bankruptcy Act sets them out to be.

I prepared this review of the situation based mainly on one particular case which did get into the courts for a hearing and on which there is established evidence and on which we think a real precedent has been set in settling the estate. In the province of Ontario there are some 30,000 farmers who produce grains of various kinds: wheat, corn, soya-beans, oats and barley being the major ones. These producers sell through something like 600 country elevators, which are more or less financed in order to be in a position to receive the farmers' grain and move it into market.

Under the marketing plans that are in existence here in which soya-beans and wheat are included, we have certain privileges referred to this morning, and also the right to establish financial responsibility. This is a provincial matter, but the province of Ontario has not yet found a way to establish financial responsibility. People who buy products from farmers and others have recently cast this responsibility on us producer organizations to see if we know a way.

According to correspondence we have had with various institutions, financial and otherwise, we are not able to rely on any known source for proof of financial responsibility among these people. We have even gone to the extent of establishing among our producers, at their own expense, a type of unsatisfied judgment fund. I have been prevailed upon to undertake this. I do not think it is fair to the producer in establishing a much better credit rating for people who gc to the bank to borrow money.

I shall follow my brief now closely. The brief says that the proposed amendments to the Bankruptcy Act suggested by Bill C-5 are essential to grain producers in eastern Canada. The very next clause hit me suddenly when I was preparing the material. I did not think of it at first, but I suddenly realized that we are regarded as grain producers and that everyone in Ottawa will immediately think of us as being "western Canada", and that the country elevators are all bonded and they all come under the Canada Grain Act, and that there is real protection for the producers. So I set out this paragraph.

At the very outset it is necessary to point out that the Canadian wheat board does not regulate the handling or sale of grains in eastern Canada. These (eastern Canada) grains are marketed through private and co-operative country elevators who receive the grain for outright purchase, or for storage followed by purchase.

When grains are purchased, funds for payment to producers are made available under section 88 of the Bank Act.

When grains are received for storage they are mingled with grains of the same type and grade and are said to lose their identity.

This is our key problem.

This loss of identity precludes a primary producer from recovering his stored grain in the case of a bankruptcy as was the ruling of Judge J. D. McCallum in the case of the bankruptcy of McClean Grain Limited, St. Thomas, Ontario, where he ruled that:—"I am bound by the privy council decision in the South Australia case which has been followed for many years. All the evidence herein points to a sale and not a bailment".

I will make further reference to this.

In this particular case some 67 farmers appeared before his Honour Judge McCallum to lay claim to the grain which they had delivered to the bankrupt and for which they had either held storage tickets or had not yet received payment.

These producers at the suggestion of our solicitors did not file claims as creditors in the ordinary sense, in order to make a case for the return of produce which they had delivered. (There are in all, 110 claimants claiming in value $184,000.00 worth of grain). In fact there was a great deal of pressure put on them to make claims as creditors. And in the findings of the judge it states that a certain number of people did file as common creditors, which disallowed them from any claim otherwise. Some of our producers were so irate they suggested there must be collusion here, because we put on a very strong campaign to stop these people from making claims as common creditors.

There was $186,000 at stake, and our board could have been in great difficulty if this had gone against the people who had been filing as common creditors in the ordinary sense in sufficient time.

Judge McCallum's ruling in this case was based on the case of South Australian Insurance Company vs Randall 1869 and resulted in appeals being launched by the farmers jointly and several others who claimed that their grain should be returned to them. In other words, after Judge McCallum's decision was brought down, we proceeded to appeal.

During the proceedings in this case, the farmer creditors registered a claim that the Bank did not have adequate security under Section 88 of the Bank Act, but the Bank did have sufficient other security that its claims against the estate were met without attaching the grain in the estate, and the question of the Bank having adequate security under Section 88 was never disputed. I should have put there "unfortunately", I think we would probably have run out of money.

The appellants to Judge McCallum's ruling eventually requested a special distribution of the assets of the company by way of setting apart and giving

preference to the primary producers. To the best of my knowledge this request was granted by the Bankruptcy Court and settlement of the estate on this basis is pending.

We felt that we had made a sufficiently strong case, if this grain was not part of the estate and was not owned by the estate, and if we were persuasive enough to have the solicitors for the various parties agree to the different distribution. The preference was that the producers who had grain who could prove that they had delivered grain to the elevator for which they had not been paid, were really in effect holders of a bailment. In other words, their grain was in store and it was identifiable. But I will point out to you later that it was not. I talked to our solicitor yesterday and he said that he had been paid in this estate. The bankruptcy occurred in May of 1957, and the solicitor was paid this week for his part in the hearing, up to this bankruptcy of the producers, and that we are supposed to be paid this month.

Several grain dealers bankruptcies have occurred since the inauguration of the Ontario soya-bean growers' marketing board in 1949.

In most of these instances the dealer operated under section 88 of the Bank Act and the lending bank took as security grain held by the dealer but not necessarily paid for, at least this must be assumed, since the bank loan under section 88 could not be satisfied by the sale of grain for which primary producers had received full payment. Grain which had only been partially paid for was also sold to satisfy the loan. Our board made audits of all of these bankruptcies.

In one of these cases, the primary producers received no remuneration, the Banks security under section 88 was satisfied by the sale of a first mortgage on the property other than grain. It takes security besides grain. In no case has the primary producer been able to recover his grain even though he had just delivered it the day that assignment was made.

In other words, there was no question about it being there and that it might have been identifiable.

In summation, it may be well to look at present law as it applies to ownership of grain.

At common law, grain remains as part of real property on which it is grown until it is mixed and can no longer be distinguished as the grain grown in that particular land.

Mr. Nesbitt: Mr. Chairman, on a point of clarification which I think would be helpful, I was wondering about this last statement which starts with the words: "At common law, grain remains as part of real property on which it is grown until it is mixed and can no longer be distinguished as the grain grown on that particular land." I wonder if that is not a little ambiguous. I think those who happen to be members of the legal profession here will probably agree that there is a slight ambiguity here. It means that after it is cut it becomes a chattel, and while it is still identifiable in bags or something, it can be followed. But once it is mixed, it ceases to be identifiable. I thought I would clarify the point at this time. I am sorry to have interrupted.

Mr. Standing: It appears that, so long as the grain belonging to a particular owner is kept segregated, he may store it with a bailee and preserve his title to it. However, this whole position changes at common law as soon as this grain is mixed. It is no longer part of the realty and it can no longer be subject of bailment.

In decision in South Australian Insurance Company vs Randall, 1869, 3 P.C. —Appeals, the headnote at page 101 reads as follows:

> A bailment on trust implies that there is reserved to the bailor the right to claim redelivery of the property deposited in bailment. Whereever there is a delivery of property on a contract or an equivalent in

> money or some other commodity, and not for the return of the identical subject matter in its original or an altered form, there is a transfer of property for value—it is a sale and not a bailment.

If the grain were like the Cadillac car and had a serial number on it, this number could be recorded; but this is not the case.

Over 400 dealers in grain in the province of Ontario receive grain from primary producers in order to condition and sell said grain in the normal grain trade channels. In order to finance the grain in the interim between purchase and sale, dealers borrow money under section 88 of the Bank Act, to pay producers. If producers are not paid, then attachment by the bank of the said grain is not necessary. This is the very strongest point, I think, in the brief. In the case of bankruptcy, the bank has no claim on such grain and then the matter in dispute is the identification of each primary producers' grain, which is not possible because it has been mixed or mingled with other similar grain.

The fact is that the loan under section 88 is supposed to be made on something owned by the dealer or bankrupt. If this grain was a bailment, it would not be owned by the bankrupt; there would be a prior claim.

Since 1954 there have been five grain dealers who have been forced into dissolution involving over 200 primary producers all of whom became common creditors, although in every instance grain, either in store or unsold, was the major portion if not all of the claims of the producers.

As far as we can ascertain in each of these cases, the companies in question folded on the bank's refusing to grant further credit under section 88 and the inability of the dealer to pay off the bank loan, even though it was made on the strength of grain owned by the dealer.

All of which is respectfully submitted.

The CHAIRMAN: Thank you, Mr. Standing. I wonder if the other primary producing board representative is here yet? Apparently not. In that case we will continue with our questioning of Mr. Paton and his associates from The Canadian Bankers' Association. In this connection, might I say that Mr. Gray will continue with his line of questioning. Then, the names I have of those who follow Mr. Gray are Mr. Nesbitt, Mr. Otto, Mr. Klein and Mr. Basford. I would suggest that any other members who desire to address questions to any of the witnesses should catch my eye, and the secretary or myself will note their names. Thank you very much, Mr. Standing.

Mr. GRAY: Mr. Paton, I notice in your brief you refer to the fact that there is already some priority for wages existing in the bankruptcy legislation and also in section 88 itself. I would also gather that there are other priorities of distribution under the Bankruptcy Act for various indebtedness of a bankrupt to municipalities, governments and so on. Has the existence of these priorities cut down the operation of lending under section 88?

Mr. PATON: No. I would say the answer to that would be no. They have been in existence with section 88 all the way through, and they have had no limiting effect on the amounts advanced.

Mr. GRAY: Are they not widespread throughout Canada in the type of thing proposed by this bill?

Mr. PATON: There would not be a charge against the relative inventory to the same extent that would be envisaged if this bill passed and spread in all the ramifications with which we are greatly concerned. Bill C-5 as presently constituted, and if it were passed, would expand very largely in application, and then it would become a real detriment.

Mr. GRAY: I was very interested in one of your answers to the effect that each loan application is considered separately and, I assume, on its individual merits, and so on.

Mr. PATON: Yes.

Mr. GRAY: If that is the case, why would there be a blanketing? Would you not be a party to what you have just elucidated?

Mr. PATON: Our submission was prepared rather precipitately and perhaps our use of language was not the best. By "blanket" I would think we meant substantial.

Mr. GRAY: Is that not about the same thing?

Mr. PATON: I think I should go back to my original statement; that is, we consider every loan application individually. We submitted a brief to the Royal Commission on Banking and Finance in which we covered section 88, and the statistics as of November, 1961, showed that the banks as a group had some 34,000 section 88 loans out, of which 27,000 were direct to farmers.

Mr. GRAY: How many in which the processor was the bankrupt?

Mr. PATON: Very, very few in number.

Mr. GRAY: Are you suggesting you would prejudice possible loan applications to processors because of the very few processors who go bankrupt?

Mr. PATON: What I am trying to stress is that our application of section 88 is widespread throughout the country, coast to coast in all industries and in each case is related specifically to the application made and the worth of the individual whether he be a farmer, wholesaler, dealer or whatever. We do not apply a blanket approach.

Mr. GRAY: What would happen if this bill went through?

Mr. PATON: The eligibility for getting these loans under section 88 would be severely affected so you would have an over-all limitation of credit in individual cases multiplied by a very large number.

Mr. GRAY: Would you look at the fact that somebody had a large number of employees who might have a claim for wages under the bankruptcy legislation in deciding whether or not you would give credit under section 88?

Mr. PATON: This is not part of the consideration we give to the individual loan. We know that this preference is there when we make the loan. If we have to realize under our section 88 security, we recognize this will take priority to our own claim.

Mr. GRAY: I gather from an answer to a previous question that this has not cut down on your loans?

Mr. PATON: That is right. This is not new; it has been part and parcel of section 88 certainly for the time I have been banking.

Mr. GRAY: If this bill went through, could you not study your priority? Would it affect the volume of your loans?

Mr. PATON: Well, at the risk of being repetitive, it is doubtful if we could. Our concern is the ramifications of this bill; in other words, how far will it spread?

Mr. GRAY: I have one final question; you say your total volume alone is $1 billion.

Mr. PATON: This is from statistical data.

Mr. GRAY: What interest has the banking industry in Canada earned from that?

Mr. PATON: Not exceeding 6 per cent; it varies according to the interest rate charged. It might be 5½ per cent or 5¾ per cent. However, there are many loans government-sponsored under Section 88, the specific legislation which Mr. Whelan mentioned.

Mr. GRAY: Well, could you estimate an amount?

Mr. PATON: You mean the interest rate?

Mr. GRAY: I wanted you to estimate the total income—and I realize you are unable to give an exact figure.

Mr. PATON: Well, it would average less than 6 per cent on these specific loans. Six per cent would be the maximum, so that would be the maximum return.

Mr. GRAY: $50 million or $60 million?

Mr. PATON: Well, I am not very good at figures.

Mr. GRAY: Perhaps Mr. Whelan can compute it for you.

Mr. PATON: Now, mind you, that is the gross return.

Mr. GRAY: Actually, it is a very considerable amount.

Mr. PATON: That is the gross total.

Mr. GRAY: And you have small losses.

Mr. PATON: My colleagues advise me this would be $6 million gross income for all the banks in Canada.

Mr. KLEIN: Is that under all provisions of Section 88 or just processing?

Mr. PATON: All provisions of Section 88.

Mr. GRAY: But you are limited, are you not, under the present law as to the nature of loans made, and there are only certain kinds made under the banking legislation?

Mr. PATON: I would rather put it the reverse way; there are certain types of loans we are precluded from making.

Mr. GRAY: But Section 88 loans make up an important part of your business.

Mr. PATON: That $1 billion figure represents 18 per cent of the total loans outstanding.

Mr. GRAY: Are you suggesting in your brief you would substantially reduce the income from this important type of loan because of what you have said is the very small risk of loss from this type of added protection?

Mr. PATON: I will answer by saying that in an expanding economy we always have found very satisfactory areas in which to lend our money and we probably would get an alternative source if we found it was impossible to get the protection that we required under Section 88, remembering at all times that we are trustees of our depositors' money and when we lend money we have to get it back to pay our depositors. This is our function.

Mr. GRAY: You have not run into much of a problem so far under Section 88—

Mr. MACALUSO: None at all.

Mr. GRAY: —in connection with processors or producers?

Mr. PATON: That is correct.

Mr. GRAY: Would you have had greater losses if you did not have priority or, to put it another way, if this type of legislation was in effect, in view of your own statement in the brief as to the small risk of loss?

Mr. PATON: We would not be so far extended in this type of financing; in other words, this $1 billion figure would not be of that size. To some extent, we are dealing in the abstract and cannot give you any figures, but the risk we would be prepared to take would be less.

Mr. GRAY: My Financial expert, Mr. Whelan, keeps telling me the amount is $60 million.

Mr. WHELAN: If $6 million is the amount, I would like to borrow some at that rate.

Mr. CLARK: I have spoken to Mr. Paton to see if we could correct that figure.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Perhaps that is the trouble with the banks—

The CHAIRMAN: It just shows that they are human as well.

M. CÔTÉ (*Chicoutimi*): Est-ce que, réellement, les banquiers prennent beaucoup de risques?

Le PRÉSIDENT: Je regrette, mais M. Gray a la parole. Si vous voulez bien nous laisser votre nom, on vous appellera lorsque votre tour sera venu. Have you finished your line of questioning Mr. Gray?

Mr. GRAY: I hope the suggestion as to what might happen if a bill of this type goes through is not couched in the form of a threat by the banking industry?

Mr. PATON: I am sorry but I did not get your name?

Mr. GRAY: I knew you would ask me; Gray.

Mr. PATON: I assure you that there is no thought of a threat. As a matter of fact, we are concerned with the primary producers because of the 27,000 odd loans, and I would say we certainly would be only too willing to co-operate as much as possible.

Mr. GRAY: The phraseology used in paragraph No. 3 led me to ask that question.

Mr. OLSON: Mr. Chairman, we agreed sometime ago that we would discuss the question of adjournment at a quarter to eleven and it is now past that time.

The CHAIRMAN: Have you finished, Mr. Gray?

Mr. GRAY: I just wanted to suggest to the witness that the phraseology used in paragraph 3 unfortunately led me to the suspicion, which I hope is wrong, that there may be some implied threat from the banking industry?

Mr. PATON: That is something that is farthest from our minds, I can assure you.

Mr. OLSON: This will be reassuring to the various processors and organizations concerned.

Mr. PATON: I think my colleague, Mr. Clark, would like to say a word at this time.

Mr. CLARK: Mr. Gray, in respect of what you say about paragraph No. 3 and the question of a threat, this is a question rather of presenting to you the fact that there is need on behalf of any banker to protect his loan, particularly if he is using the assets of depositors in his lending operation. And, in connection with the volume of loans being reduced to small processors and to processors generally, I am sure you would not advocate it or would anyone that a banker should become loose in his credit extensions. That, I take it, is accepted as a fact.

What would happen here would be this, I think: if Section 88 were not available other forms of security designed to do the same thing might well be developed because, after all, the general intention of the legislation was for the benefit of the community as a whole and not for the banker. If you take this system and dilute it, then I think it is fair to say that some other means would have to be found for protecting the money so lent. I just wanted to add that point. This is not a threat at all but a question of extension of credit.

The CHAIRMAN: Gentlemen, as was pointed out to Mr. Olson, we decided to discuss whether we should adjourn at 10.45 until after Orders of the Day or continue to sit until perhaps 12 o'clock. It is my feeling that we will require at least another hour or two to complete our considerations of this bill. With your permission I would suggest that in view of certain remarks made by

several members we continue our sitting until 12 o'clock or perhaps 1 o'clock in an attempt to complete our consideration without the necessity of meeting again this afternoon. I make this suggestion simply on the basis that we are handy to the House of Commons chamber and if the main bell rings we are all very quickly available.

The decision is, of course, up to the members of this committee, but I do remind you that we have permission from the house to sit while the house is in session.

Mr. NESBITT: Mr. Chairman, I should like to suggest that we have made good progress this morning. We have heard the briefs to be presented and have proceeded to some extent to ask questions in regard to those briefs. Mr. Gray has asked a number of very cogent questions, the answers to which have obviated the necessity of a number of other members asking similar questions.

I would suggest that perhaps we adjourn at this time until after Orders of the Day, which today probably will not take too long in view of the absence of a number of gentlemen—perhaps no more than three quarters of an hour—at which time we can return to this room and continue with our questioning. By following this procedure we can perhaps complete our questioning of the gentlemen from the bankers association, followed by our questioning of Mr. Whelan and our questioning of those gentlemen representing the other organizations.

Mr. OLSON: Mr. Chairman, I should like to suggest one other alternative procedure. Perhaps it would be more convenient to those gentlemen who have appeared before us this morning to adjourn now until after lunch. It is quite obvious that we are not going to be able to complete our considerations without the necessity of meeting again this afternoon. Perhaps rather than adjourning after Orders of the Day and then adjourning again for lunch it would be more convenient to adjourn now and meet again at 1 o'clock.

The CHAIRMAN: Gentlemen, we have now had three suggestions put forward. What is the general feeling of the members of this committee?

Mr. NESBITT: I would suggest that we adjourn until 1.30, following Mr. Olson's suggestion.

The CHAIRMAN: Is it agreed that we adjourn at this time until 1.30 this afternoon?

Mr. OLSON: Mr. Chairman, I should very much like to hear from these gentlemen who have come to this meeting today. It seems that we should accommodate their convenience as well as our own.

The CHAIRMAN: Mr. Paton, I wonder if you and your representatives could return this afternoon at 1.30 p.m.?

Mr. PATON: Yes.

The CHAIRMAN: Will that be inconvenient for you?

Mr. PATON: No. We have planned to spend the day here and have arranged for a flight out of Ottawa at 6 this evening.

Mr. AIKEN: I think most of us present have made similar arrangements.

The CHAIRMAN: Mr. Standing, would this be convenient to you?

Mr. STANDING: That would be convenient, Mr. Chairman.

Mr. MACALUSO: Mr. Chairman, it is my understanding that Mr. Whelan must leave and will not be available this afternoon.

Mr. NESBITT: We are able to ask Mr. Whelan questions at any time.

Mr. MOREAU: Mr. Chairman, perhaps we might extend an invitation to our guests to join us, at least in the gallery, during Orders of the Day.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I think that would be very bad for the prestige of democracy, Mr. Chairman.

The CHAIRMAN: We will adjourn now until 1.30 this afternoon and will meet again in this room.

AFTERNOON SITTING

FRIDAY, July 26, 1963.

The CHAIRMAN: As there is a quorum present I will call the committee to order. We will continue where we left off this morning. Mr. Paton and his associates of The Canadian Bankers' Association will answer questions that the committee may wish to address to them. In this connection I have a list here which I propose to go by of those members who have indicated to me that they wish to address some questions to Mr. Paton. The first is Mr. Nesbitt. Those who wish to ask any questions please indicate their desire to me.

Mr. NESBITT: Mr. Chairman, there are two questions I would like to ask Mr. Paton. One of my questions I would also like to address to other witnesses. I presume that Mr. Paton is familiar with the terms of the provincial mechanics' lien act in Ontario and similar acts in other provinces. In the mechanics' lien act there are certain provisions for the protection of suppliers of material when buildings are being erected. This is very analogous to what is purported to be attained by the bill now before us. I was wondering if Mr. Paton could let us know whether when the mechanics' lien act was introduced in the various provinces The Canadian Bankers' Association raised any objections. This may not be a very fair question because he might not have this information at his fingertips. Secondly—while the terms of bill C-5 are of course not completely identical, there is yet a distinct analogy—does he think that under the circumstances, and in view of the fact that the mechanics' lien act is established and has been accepted for years, the terms of this bill are inconsistent and unreasonable in view of the general acceptance of the principles of the mechanics' lien act?

Mr. PATON: I think, Mr. Nesbitt, my answer to that would be that the mechanics' lien act relates to the value of the material; for instance the steel which is placed in a building under construction. The proposal here purports to give the primary producer preference on the finished goods or the processed goods as well as the raw material. This preference would be much wider than the similar preference under the mechanics' lien act. Here is a rough estimate. I would think the value of a finished product would include say 25 per cent of raw material. This is my answer off-the-cuff but it is something that I would like to delve into more closely. I am not fully familiar with the ramifications of the mechanics' lien act, but offhand I would say that there is a vast difference from that point of view.

Mr. NESBITT: I would agree there is a distinct difference in the administration, but the principle in the mechanics' lien act is that suppliers of materials to builders are given preference and protection; whereas in this case suppliers of raw materials to wholesalers or processors are likewise to be given some sort of preference or priority—although of course they are different.

That leads to my second question. I may anticipate your answer but I would like to ask this question of other witnesses as well. In the proposed terms of bill C-5 it says:

> —products of agriculture, products of the forest, products of the quarry and mine, or products of the sea, lakes and rivers, with every accession thereto of labour, materials, art or science, in the possession of a wholesale purchaser or shipper of, or dealer in such products—

Now, what is your view, Mr. Paton, with respect to the ease of administering these proposed provisions of the legislation, either in the courts or indeed out of court, with respect to being able to distinguish where the products supplied end and where the processes applied thereto begin, and also to ascertain the amount of cost, inasmuch as various cost accounting systems, all being very accurate, are sometimes different? I suggest that there would be some difficulty in establishing, in a finished product such as a can of tomatoes for example, the extent of the value of the tomatoes in the can when one has added certain curing processes, the material in the cans and so on. I would like your general view on that.

Mr. PATON: I have not gone through this exercise myself, but I would expect it would be not too difficult to arrive at a pretty accurate division of the component parts of any finished can of goods or any thousand feet of lumber, or what have you. Speaking about canning in particular, there are a number of contributing suppliers to a can of goods: there is the label and the printing, there is the sugar, the supplier of the actual can, there is the overhead of the processor, his rent, and all other overhead charges, and there is the cost of the raw material; the amount of money he pays the grower. There would be relatively little difficulty, assuming that the processor has kept reasonable records, in establishing the cost of each contributing component of a finished product. I feel sure of that.

Mr. NESBITT: There is one more question I intended to ask. To a degree it was answered by Mr. Whelan when he was presenting his brief. I am speaking now of the number of bankruptcies in the last five years in Canada and the number of persons who might have been adversely affected by the existing laws. Have you any information on that?

Mr. PATON: We endeavoured to find out and we went back three years and inquired of the banks if they could provide us with this information. To the best of our knowledge these have been very few and far between. In several of the banks, including my own and Mr. Clark's, we have not been involved in any bankruptcies of canners. One of the banks was involved in one, which they mentioned, but this is the only one they could recall. In effect, we had specific advice of one only in the last three years. I think that same average would pertain to the last five years.

The CHAIRMAN: For the information of the committee I have before me the names of Messrs. Klein, Basford, Cameron, Thomas, Moreau and Cote.

Mr. OTTO: Mr. Paton, I would like to direct these questions to you in a practical sense rather than in a legal sense. In the first page of your brief, in the bottom paragraph you say:

> Banks lend to the producers whom bill C-5 seek to protect on the security of potential returns from crops,—

From your practical experience is it the custom of the bank to lend to a producer or to the farmer on his crop and then, for the same branch of the bank, also to lend to the processor on the same crop, or would the bank then be rather leery about lending to the processor because of the bank loan to the farmer?

Mr. PATON: That situation could well pertain but it is not absolutely essential. In a competitive banking location, one bank may have a canning account and the other might have to give loans to farmers, but irrespective of which bank had which account the bank would have the double responsibility of financing it from seed to finished crop. It is then, out of the hands of the farmer, into the hands of the processor to process it to a finished article.

Mr. OTTO: My question is this: when you make a loan to a producer, will your bank wait until that loan is paid off before it will make a loan to the processors?

Mr. PATON: Not necessarily so, with this proviso, that every loan we make to a producer is based on his general worth and probably against the specific security of his crop as he puts it in. Likewise, our loan to the processor is based on his commensurate worth, and on the specific security of the purchased crop. In the majority of cases our loans to the processors are for the specific purpose of paying out, at least in part—and in many cases entirely—of the gross amount due to the primary producer who, in turn, pays back his bank advance. So in the normal operation of this business it is reasonable to say that the bulk of the funds we supply to the processors go toward (a) paying off a producer, and (b) paying for the cans and the other costs of the processor. Does that answer confuse the issue?

Mr. OTTO: No. I think what you are trying to say is that although you will lend to a processor and a producer, the effect is really to cover that crop, because you insist that the processor pay off the producer.

Mr. PATON: Not insist; if we approve a loan on a crop to a processor, we know his operation and we do not police the funds that we pay out to him. We operate under a normal bank loan basis in that we give him his line of credit and he issues his cheques and pays off his people. We at no time endeavour to police the distribution of those funds under normal banking operations and conditions.

Mr. OTTO: I was not quite clear as to Mr. Gray's question and I do not know if the answers were specific enough. Let me put it this way: in your banking business you are in the business of lending money. Do you anticipate certain losses in your business of lending money? In your planning, do you believe that you are taking a gamble in certain ways?

Mr. PATON: We know that we have to lend money with some risk, and we know that losses are inevitable.

Mr. OTTO: You bargain for a certain amount of losses?

Mr. PATON: It is the wording that bothers me. We know that we will have losses. It is not a question of anticipating; we know that we will have losses, because we know there is nothing sure in this world, and we are not lending against government of Canada bonds.

Mr. OTTO: That is why you are being paid interest, because you are gambling to a certain extent.

Mr. PATON: No, I would say that is part of the cost of our doing business, and it is included therein.

Mr. OTTO: You said also that although the producer has a certain amount of investment in these things, so also has the person who supplies the cans and who supplies the labels. I refer to page two, paragraph four, where you say:

> —it would not be long before others who supply ingredients, packaging and other components to the finished product would, with justification, demand similar protection".

From your knowledge of this business, do these manufacturers of cans, labels, glues, or whatever is required anticipate that they will have certain loss accounts in their financial set-ups?

Mr. PATON: I think so; that is a reasonable assumption.

Mr. OTTO: Do you think that a farmer, after he takes a gamble on the weather, the climate, the rain, expects that in his business operations he might lose, or does he consider that his gamble is over once he supplies the crops to the producer?

You understand there are marketing boards, and from your knowledge of those marketing boards, when they negotiate a price, do they anticipate that there will be a certain number of losses, or do they fail to consider losses,

and just go and negotiate a price on the crop? I am trying to get from you this; you have admitted that in your business you expect losses, and you bargain accordingly, by way of a certain amount. Would the canners, the producers, the papermakers, the label manufacturers also consider this when they set their prices? From your knowledge does the producer also consider this in his price, can you answer that?

Mr. PATON: I would suppose there are others around here who are a little closer to growing crops who could answer it. My own feeling—and I spent many years in prairie banking, and know exactly what the problems are for the farmer, who has to face all the vicissitudes of the weather, and whatever that word comprises—is that I would think that the farmer should, with his knowledge of life, and the knowledge that nothing is certain in this world —anticipate that at sometime or another, this could conceivably happen. I would think, further, that the farmer who is in business for himself, the same as many small retailers and many a man in the professions,—even a lawyer— must anticipate at some time his receivables will not be 100 per cent collectible, and that perhaps it would be expecting too much to exempt the farmer from that same type of thing.

Mr. OTTO: From what has been said here one gathers that the mechanics' lien law was originally meant to protect the labourer. For example, a labourer will take on a job; but once he has produced and supplied his labour, he does not gamble any further; in other words he expects to be paid and for that reason there are mechanics' lien laws and regulations made to protect him and to guarantee his wages to him.

I think this committee should be informed whether the farmer or the producer as such really expects to be protected? The farmer not only gambles on his crop and the weather, but he gambles when he goes into farming; and when he sets his prices, he is able to add an odd additional 10 per cent to the price in the event of bad debts. Can you tell us from your own information whether a marketing board that sets the price takes this into consideration?

Mr. PATON: I am afraid I cannot answer that question. I think probably a representative of the marketing board would be better able to answer it. I do not know from my own knowledge what they consider as included in the price that they set, or how they set the price. Perhaps one of the other representatives here could answer that better.

Mr. OTTO: From what you said there is no doubt that the bank bargains for possible losses; but the fellow who supplies the cans, and the manufacturer of these other items enter into the picture. However, we shall be getting information about the farmer later on. I have just one more question in connection with your statement.

Mr. PATON: We are a little upset about the word "bargaining".

Mr. OTTO: If I go into the practice of law I know that I will have a certain number of uncollectible accounts, so I set my fees accordingly. But if I were unable to do that—let us say that I am a doctor, and the government says you can charge only so much—then I would expect to have all my accounts paid. But we will leave that and get an answer later on. You said that banks consider themselves as trustees on behalf of their depositors?

Mr. PATON: I said that verbally this morning, yes sir.

Mr. OTTO: I would like to explore this further, because I think that the committee should consider this one problem in itself: if a bank is a trustee, are you saying that all profits made by a bank then are the property of the depositors, save and except for administrative costs?

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Mr. PATON: May I withdraw the word "trustee". You said earlier that you were not going to take the legal meaning of various words used but that your questions would be along the practical side.

Mr. KLEIN: That is practical.

Mr. GRAY: I did not think there was that big a distinction.

Mr. PATON: Our primary responsibility is toward the depositor. He entrusts his money to us on a voluntary basis and we in turn lend it out. We have a responsibility to our shareholders, but our primary responsibility is to the depositor so that we will be in a position to return his money to him. That is what I meant by "trustee".

Mr. CLARK: A debtor and creditor relationship.

Mr. OTTO: You feel very, very responsible to your depositors.

Mr. PATON: I hope we always do.

Mr. OTTO: Is it not your position that you have said to your depositors, "You let us have your money and we will pay you a certain amount of interest; we will guarantee you do not lose". But, it is the bank that guarantees to the depositors that they will not lose.

Mr. PATON: We guarantee them—again the use of words is perhaps unfortunate—because we have a record in this country of having a very good banking system. We do not have a specific guarantee. There are passbooks, for example. The fact of security or the knowledge that they will get this money when they need it is considerable in Canada, and if you refer to that as a guarantee, that is the position.

Mr. OTTO: You use their money at your own discretion.

Mr. PATON: And pay them back in accordance with our discretion; yes.

Mr. OTTO: So you do not expect the law or any government agency to give your depositors the protection of a trust. You do not in actual fact guarantee the depositors by a legal responsibility as trustees.

Mr. PATON: Oh no. The use of the word "trustee" perhaps was unfortunate.

Mr. OTTO: In paragraph 7 on page 3 you state that "Bill C-5 seeks to protect a minority who would benefit from its provisions at the expense of undermining legislation which was designed with wisdom to facilitate production of every kind". Are you saying by this that there is a minority that must suffer for the benefit of everyone? In other words, if one farmer loses his crop and his livelihood, this is good because 1,700 or 1,800 other people have been able to make a living.

Mr. PATON: We are certainly not saying that.

Mr. OTTO: It is recognized that even one producer should be protected.

Mr. PATON: We recognize this in doing business, whether you be producer, canner, or buyer, or even a school teacher, you are not 100 per cent sure. Therefore, there has to be some element of risk in practically everything that is done in business. At the very best we must all work together to minimize that risk and eliminate it as far as possible; but to obtain 100 per cent perfection would be impossible.

Mr. OTTO: You have said a minority. If you had said a minority in the same class—but we have just discussed this and you said you were not sure whether the producer is in the same class as the processor or manufacturer because the processor or manufacturer assumes a certain risk. You said you were not sure, but we will have evidence at a later time to show that the producer is not in that class and does not expect that risk.

Mr. PATON: I would not want to give the impression that I think the producer has not or should not have any risk. I am not in a position to give

you an answer to the question whether a producer does consider that risk, because I am not a producer; I cannot tell you how the other fellow thinks, nor can I tell you how the marketing board thinks when they set a price. That is why I think it could best be obtained from other people.

Mr. OTTO: Under the federal provisions when your bank makes a loan to a processor and the bank follows the regular procedure of guarantors and so on, in the event that the bank takes advantage of section 88 and sells the goods is there any provision under your banking regulations by which that guarantor can be held liable to, say, the producer or any one of the claimants in this whole field? In other words, if the bank has made a seizure and paid off its account and holds a guarantor—

Mr. CLARK: If the bank realized on its security.

Mr. OTTO: —is there any machinery available for that guarantor to be the guarantor of the producer or those who take the loss?

Mr. PATON: Unless the guarantor specifically guarantees a producer, there is no machinery that would permit the bank, after it has obtained payment, to subrogate its rights in favour of the producer because there is a guarantor.

Mr. OTTO: Is it true in any of the banks that there is a hesitancy—a policy—by the bank to keep away from courts and suing the guarantor? Is that a policy followed by the banks?

Mr. PATON: Now, I will have to speak for my own bank, but I think there is a similar policy throughout. We lend our money to a company. Primarily we look for the return of our money from that company's assets. Our normal procedure would be to obtain as full recovery as possible from the company's assets, and then go to the guarantor. From a legal angle I might point out it is not incumbent upon the banks to do this, but this I would say would be the normal procedure to recover a loan about which we were in doubt.

Mr. OTTO: Let us suppose there is a bank loan to the processor of, say, $50,000; the bank also has a guarantor. You are saying, then, that the bank would be much more likely to seize the goods, to liquidate its loan from the goods in inventory than leave the goods for distribution among the creditors and proceed against the guarantor.

Mr. PATON: In answer to Mr. Nesbitt's question I pointed out there was only one of these to our knowledge in the last three years among all the banks. I would not answer the question because the procedure has not come up; we have not been faced with it.

Mr. OTTO: You are speaking of a formal bankruptcy?

Mr. PATON: Yes.

Mr. OTTO: Are you also saying there have been no settlements before bankruptcy where producers have lost and there was no bankruptcy? For every bankruptcy there are 10 or 15 instances of settlement where producers have lost.

Mr. PATON: If you are speaking of the canning industry, I can quite definitely say I have no knowledge of the matter but I am ready to admit there have been such instances.

Mr. CLARK: If I might interject, Mr. Otto, the loan is made in the first instance to the operating entity to facilitate the carrying on of its business. The guarantee is just what the word implies, it guarantees the loan and repayment of the loan if things go wrong. That being so, in the event of difficulty the first step would be to call your loan, that is, the customer is called upon to repay the loan, which is the proper course. Then the bank would call upon the guarantor to take up the residue. I would say it is a

straight case of the borrower taking care of his own obligation to the maximum of his ability, and then when that is done the bank looks to other sources for recovery of the balance.

Mr. OTTO: What you are saying, in effect, is that the bank will follow this business procedure and liquidate the inventory regardless of others; whereas what I am saying is that the statement says this bill would have a tendency to decrease the number of loans. If there is a guarantor in every loan, and usually there is—

Mr. CLARK: I would not agree with that.

Mr. PATON: That is the very point. Rather seldom is there a guarantor of the substantial nature you have indicated, behind such loans. I was acting upon your hypothesis that there was one.

Mr. CLARK: May I say one more thing in the hope of contributing something to your first question. You asked if we might make loans to a processor at the same time that we are lending to a producer whose goods would be bought by that processor. To illustrate, there are occasions in which a bank makes a loan to a processor who makes an advance, in turn, on account to the producer to enable him to get his crop off or complete his fishing operation, logging, or whatever it is, prior to there being any goods in the hands of the processor at all. In other words, it is an advance position. I would like to emphasize that we do, in fact, lend at one and the same time to both of them.

Mr. OTTO: I have another question.

Mr. CARSON: Mr. Clark was not finished.

Mr. CLARK: I might say that one of the reasons processors get into trouble in connection with lumbering operations and so forth is that through no fault of the processor but rather by an act of God, bad weather and so on the producer is not able to deliver the goods he expected to provide for the advance made by the processor and that brings grief to the processor.

Mr. WHELAN: And they sue him too.

Mr. OTTO: I do not think you understand. Let us take a farmer who has gone to the bank and has informed them he has a $75,000 crop of tomatoes and wants a loan in the amount of $50,000. The bank says, "yes, here you are". Then the processor comes in and says, "I am going to get this crop in, in fact, I am getting it in; I have the crop in now, please give me $50,000 on it". Will you say, "yes, here is your $50,000" or will you say, "here is your $50,000 provided that you pay the former's $50,000"?

Mr. CLARK: We do not follow in detail what a processor does in paying out money we lend him. But, is is true, in a community where there is say only one bank and only one canning company, we would certainly lend to the canning company at the same time that we are lending money to the producer and in that way work to the satisfaction of both. We do not say, "no, we won't give you a loan because we lent money to others".

Mr. OTTO: Thank you very much.

Mr. PATON: If I could revert to one question regarding the risk the grower takes, there is a form of financing of which you possibly are not aware. In some situations we have a line of credit to processors which is supported in part by notes of various amounts from growers who are responsible, and anxious to keep the canning company in operation and are prepared to go on the note themselves to carry that operation through. That is one way in which they work together. These people are willing to sign accommodation notes for which they receive no value, and they are taking a risk. We work very closely with them.

The CHAIRMAN: Do you have a question, Mr. Klein?

Mr. KLEIN: I believe you said in your verbal representations this morning that Section 88 contributed in part to the high level of our economy.

Mr. PATON: Yes.

Mr. KLEIN: Would you tell me whether the United States of America has legislation similar to what we have under Section 88?

Mr. PATON: Under Section 88, no. However, they do have a form of banking legislation or banking security which is well developed in the United States, and which is known as warehousing and field warehousing.

Mr. KLEIN: We have that as well under Section 86?

Mr. PATON: Yes, under Section 86 but they have developed it to a higher degree, particularly in respect of the field warehousing, where lending companies or banks put a man into the operation which they are financing. They put this man right in the warehouse or shop and segregate certain finished inventory under lock and key, and that inventory can only be disbursed upon the authority of this field warehouseman.

Mr. KLEIN: Does it belong to the bank if that company goes into bankruptcy?

Mr. PATON: Yes. This security belongs to the bank during the financing. That is a costly way of financing because there is an intermediary in the picture and he has to be paid. Section 88 security is not comparable to it and it is less costly.

Mr. KLEIN: Would that apply to the primary producers in the United States as it does here?

Mr. PATON: I hardly see where it could. Where the seed goes into the ground and comes up in the fall there is no security they take down there, to my knowledge, on that crop at that stage, whereas we take it on the growing crop.

Mr. KLEIN: Would you say the elimination of section 88 would make banks more competitive?

Mr. PATON: No, I do not think it is possible for banks to become more competitive.

Mr. KLEIN: Are banks competitive today?

Mr. PATON: They are, sir, most competitive.

Mr. KLEIN: I beg your pardon?

Mr. PATON: I am just trying to think of a word that is not too strong.

Mr. OTTO: You may use strong words.

Mr. PATON: They are completely competitive in every phase and form.

Mr. KLEIN: Do you mean that I could go shopping and that one bank would tell me I could get so much credit and another could do better?

Mr. PATON: You could do so. There is nothing to prevent you from doing that.

Mr. KLEIN: Do banks follow that kind of procedure?

Mr. PATON: Yes, this is how banks operate and I would not wish you to think otherwise. This involves a matter of banking judgment. If you came to me I might say that I could give you $200,000 but you might talk Mr. Clark into giving you $300,000. You might probably be foolish to go to Mr. Clark; nevertheless, this is a matter of judgment.

Mr. CLAKE: If you were my client I would hope that you spoke to me, sir, before you spoke to Mr. Paton.

Mr. KLEIN: Could you tell me generally, particularly in respect of these industries, at what stage the bank would insist upon section 88? At what stage in your dealings with a client would you insist on section 88? You do not ask for the application of section 88 immediately the client comes in for the first time in respect of every industry, do you?

Mr. PATON: We will probably read through section 88 of the act before this committee solves this particular problem, but section 88 very clearly indicates that which a bank lends against. We cannot lend against shoes in a retailer's store, for example.

Mr. KLEIN: I am not asking the questions in that context. I am asking the question in respect of industries in regard to which section 88 could be applied. At what stage do you apply section 88 in connection with your own clients?

Mr. PATON: It is applied at the initiation of the account.

Mr. KLEIN: In every case is that so?

Mr. PATON: It is so in every case where we feel it is required to justify the line of credit requested. For example, all kinds of companies are not under section 88.

Mr. KLEIN: I am speaking in general terms.

Mr. PATON: As a general policy, section 88 is applied at the outset of the account in setting up the line of credit requested if we feel this security is necessary. If the stated position of the company does not warrant lending the credit requested without that security, then it is applied at the outset.

Mr. KLEIN: Would you exercise greater control over your clients as a result of having obtained the application of section 88?

Mr. PATON: Yes, sir. We receive at regular intervals, perhaps monthly, statements of the inventory carried, which is set forth on a specific form, and I think all banks use the same form, showing the inventory raw, in process and finished, as well as charges due against it such as unpaid wages. We receive that each month or perhaps quarterly, depending upon the account.

Mr. KLEIN: So that actually this is based on a matter of fact, and even though a person is insolvent it is actually beneficial to the bank that the person continue to obtain credit, perhaps not from the bank but from his suppliers?

Mr. PATON: When you say "insolvent", you mean an act of insolvency, on the part of a debtor?

Mr. KLEIN: I am referring to one who is in a position of insolvency.

Mr. PATON: I would say, Mr. Klein, that in any position of such a nature the banks; primary purpose is to work the situation out to the best possible advantage of all creditors, of which they themselves are the prime ones from their own points of view.

Mr. KLEIN: Under the Bankruptcy Act, if a trader knows he is insolvent it is a criminal offence for him to continue to obtain credit, yet a bank knowing of the inventory and with closer control over the client than ordinarily, would be aware that this person is insolvent yet permits him to obtain credit without advising some agency of this man's insolvency.

Mr. PATON: What is your definition of "insolvency"?

Mr. KLEIN: My definition of insolvency would be that position occupied by an individual unable to meet his current liabilities.

The CHAIRMAN: Most members of parliament are insolvent.

Mr. CAMERON: (*Nanaimo-Cowichan-The Islands*): We cannot get credit.

Mr. KLEIN: I would not suggest that this situation is prevalent but I am aware of certain cases where a certain relationship developed between a bank manager and his client and the bank manager over-extended the credit to the individual, giving misleading information to the public in order to reduce his own mistake vis-a-vis this bank. How do you prevent that?

Mr. PATON: This is a point which I well appreciate, Mr. Klein. Let me answer your question in this manner. I think if any bank in Canada was aware of any of their employees following this practice the bank would take summary

action in respect of that individual. I can assure you the bank would not in any way, shape or form be party to such a practice or follow such a policy. There are some 5,600 branch banks in Canada managed by 5,600 people, and one must expect to find that problems in this field will arise. Certainly such a practice does not follow the policy of any of our banks and summary action would be taken if such a practice came to our attention.

Mr. KLEIN: Mr. Paton, I gained the impression both from your representation and your brief that you are not opposed so much to this bill per se, but you are opposed to it because it will dent the armour of section 88. Am I correct in that impression?

Mr. PATON: No, I do not think that is a fair summation of our approach to the problem. We feel that the bill as such, and as we have read it, is quite discriminatory in relation to the primary producer vis-a-vis the other people we have been referring to who contribute to the completion of this particular inventory about which we have been talking. We feel that the passage of this legislation would automatically bring about requests for similar legislation by others, as well as requests for certain preferences, and we feel this unquestionably would completely undermine section 88 as bankable security, and therefore would inhibit banks in the manner in which they can finance the country.

Mr. KLEIN: You do feel that the passage of this legislation would undermine section 88?

Mr. PATON: We say so in our brief, yes.

Mr. KLEIN: Surely you will admit that the position of the primary producer is vastly different from the position occupied by the packager, for example, of whom you speak in your brief? The packager supplies different industries across the country at all times of the year; whereas, the primary producer only grows his crops once a year and if he loses his crop one year he does not recover it until the next, or perhaps not at all. Surely you cannot compare the positions of the primary producer and the individual kindred industry with respect to processing?

Mr. PATON: My reaction to that statement, Mr. Klein, would be that the primary producer has one creditor, namely the processor; whereas, the packager has 500 creditors across the country.

Mr. KLEIN: The packager also has 500 employees; whereas, the producer has no employees.

Mr. PATON: That is not necessarily accurate. The packager may be a man who is dependent upon his business as strongly as the producer is dependent upon his business. He may be running an operation employing three or four people, all of whom may be members of his family. I do not think you should rule out the fact that there are many, many small operators in the sense that their particular venture is small, but I would say that the primary producer must be doubly careful as to who his single creditor is to be. We are very glad to be as helpful as we can in solving the problem, but the marketing and licensing boards which license these processors—and I think the licence has to be renewed annually—should be very careful how they handle that prerogative. Marketing boards should endeavour to take every step to ensure as much safety to the producer as possible. I do not think this is impossible at all.

Mr. KLEIN: May I ask just two more questions?

Mr. PATON: My colleague, Mr. Clark, would like to add something.

Mr. CLARK: May I say a word at this time, Mr. Chairman?

In developing your line of questioning, sir, the emphasis seems to be placed chiefly upon the producer's interest so far as section 88 is concerned. Section 88 was placed in the act, as I understand, and remains there, for the

general benefit of everyone in financing the handling of Canada's natural products. That is why it was put in, and that is why it is there still. Section 88 enables the producer to sell his products through a processor as a consequence of the credit that can be safely made available by the banking system to the processor who could not otherwise get that credit. Now, in terms of attitude toward this, I would like to put on the record what was said by the Inspector General of Banks at a hearing before the Royal Commission on Banking and Finance which commission is now in the course of preparing its report.

The Inspector General said:

> Sections 86 to 90 of the act are unique and permit the banks to take and register with the Bank of Canada security that would otherwise be subject to the laws of the province in which it is located. These sections have a long and interesting background in Canadian banking and there have been numerous amendments as the list of eligible security has been broadened from time to time. A brief history of these is submitted as an appendix on pages A.53 to A.56. There is no doubt that these powers have enabled the banks to be of assistance in the past to many borrowers who would not be eligible for loans otherwise.

No, the point I want to get on record is that section 88 has enabled many small industries, processors, manufacturers and so forth, to operate with the use of bank credit in a way that they could not otherwise have done. They could have obtained credit in the form of an investment from other sources but ones of the purposes of section 88, is to provide a facility whereby bank funds may safely be lent for seasonal use.

I am speaking on this subject at some length but it seems to me to be a basic issue. Mr. Gray, if I may refer to your useful question of this morning about the possibility that a number of borrowers may not be able to get credit, without the security now available under section 88. This quotation from the Inspector General's evidence bears out our statement that Bill C-5 would probably result in the reduction of that type of loan. When Mr. Abbott was Minister of Finance during the last revision of the Bank Act he made the point on his evidence—and I take this a little out of context—that "I know from previous experience going back over many years that banks do not particularly care to lend under clause 88". In that sense he is bearing out the fact that it is not an easy and convenient method of operation but it is one that does contribute to the general public.

Mr. KLEIN: May I ask you, Mr. Paton, what procedure do you adopt when you are disposing of inventory under section 88 after a bankruptcy? How do you dispose of it? Is it a competitive price? Probably you do not have the personnel to be able to advise you as to what price you should get for that item. How do you decide as to the price at which you are going to sell the inventory?

Mr. PATON: I understand you are speaking of section 88 in general, which might well include clothing, fur coats, or anything else. We have certain rights under section 88, and this is not something that I examined carefully before coming here, but we can go in and take possession, with certain limitations. In other words, we should have to be careful that a sacrificial price is not accepted. Perhaps Mr. Carson and correct me on this if I am wrong but we have title to these goods and we can go in and take possession after notifying the borrower under section 88. We have the right to dispose of these goods. We may find, when we step in, that perhaps 30 or 35 per cent of the times we are conscious of the importance of getting the best price for these goods. We may find when we step in, that perhaps 30 or 35 per cent of the inventory is in process. We will expend additional funds to complete these

goods so as to put them into a finished condition and thereby turn them over to receivables. We endeavour to make it as painless as possible, assuming the time has come when there is no alternative but to safeguard our interest.

Mr. KLEIN: Do you consult with the debtor and get his advice as to what price you should obtain for inventory?

Mr. PATON: Yes, but we might not accept what he tells us.

Mr. KLEIN: Do you ask him to bring you buyers?

Mr. PATON: Yes.

Mr. KLEIN: There could be abuses there, could there not?

Mr. PATON: Not unless we were party to them.

Mr. KLEIN: No, I am not saying that.

Mr. PATON: And we would not be party to them because we would be conscious of the comparative price which we could get for similar goods elsewhere. We have an excellent ability to move around and to know whether this price is a reasonable price.

Mr. KLEIN: A figure was mentioned this morning of a gross of $60 million being earned under section 88 by the banks. Could you give an indication of what percentage of losses you have under section 88?

Mr. PATON: I could not. I am sorry but I could not.

The CHAIRMAN: Is there anyone with you who might be able to answer this question?

Mr. CLARK: I do not think we could possibly give such an answer. There is the figure of 6 per cent, but that is not necessarily the income from section 88 alone. Perhaps we could correct the record. It is likely to be less than that because the prime rate is 5¾ per cent. In the section 88 category there is classified, grain loans, and so on. I do not want it to be recorded that we do in fact earn $60 million on a billion dollars' worth of loans. We do know that that is a calculation using the maximum interest stipulated in the Bank Act, namely 6 per cent. Of course the 6 per cent on that calculation is a lot of money.

Mr. KLEIN: I am not so much interested whether the figure is $60 million or less, but I would like to know the comparative percentage of loss.

Mr. CLARK: You would have to pay considerable interest to acquire the funds loaned.

Mr. KLEIN: I am not interested in the net, I am only interested in knowing, when you are distributing a million dollars' worth of money on credit what losses you sustain under section 88?

Mr. PATON: That is not a figure that would be available. This figure is closely guarded by each bank so it would not be available to the whole banking system. It is an item that we are constantly watching.

Mr. KLEIN: I have one last question. Would you agree to make it obligatory for a person in business who is under section 88 to have printed on his stationery and on his order forms the statement of being under section 88?

Mr. PATON: I would say that it would be an invasion of an individual's right to privacy so far as his finances are concerned, and I would not favor it.

Mr. KLEIN: You know with respect to the provisions under the law if you have an incorporated company or a limited liability company you must make it known to the public. Would not an extension of section 88 amount to that as well?

Mr. PATON: Not any more than giving a mortgage on your house. Your mortgage is registered, and section 88 is registered. I think what is needed is light and knowledge that section 88 is recorded and can be looked at by simply sending an inquiry to the Bank of Canada.

Mr. BASFORD: Mr. Chairman, I have a few questions. I would like to go back to Mr. Nesbitt's question about the mechanics lien act. Under most mechanics lien acts, such as in Ontario—and I am sure about British Columbia—the money payable under a contract is impressed in a trust. I would like to know what the effect of the imposition of this trust has had in the financing of that contract?

Mr. PATON: I would say that it has had an effect; it is a piece of legislation that the banks—and I speak frankly—are not particularly attracted to. We feel that it requires a much greater measure of control, and that it is beyond our power to control it, if you follow me, while section 88 is different. I think it would be fair to say yes, that it has affected the extension of bank credit to the smaller contractor.

Mr. BASFORD: To what extent has your involvement with the financing of these contracts been decreased?

Mr. PATON: That is a relative question because we do not know. I do not think it is a figure I could probably easily get, or that any of the banks could get. It is inherent in our approach to these credits, when the applications are being made, and if the contract proceeds are under the mechanics' lien act, then that is something we must consider in respect of this particular contractor.

Mr. BASFORD: I would like to hear some fairly specific discussion of the effects of this legislation as it affects logging, lumbering and the fishing industries with which, I trust, you are familiar?

Mr. PATON: Yes, we are. It is a very important part of our section 88 operations.

Mr. BASFORD: What effect does this have in your opinion on these industries?

Mr. PATON: I am sorry but I am having a little trouble.

Mr. BASFORD: I would like to know what effect this legislation would have on those three industries?

Mr. PATON: I would say that if this bill were to be passed and become legislation it would have an equally detrimental effect on the amount of credit available to these industries, similarly to the canning industry, which we more or less concentrated upon this morning; it would have a definite effect.

Mr. BASFORD: You are possibly familiar with the situation in British Columbia where the fishing companies—and I do not want to discuss figures—are indebted to the banks for the purchase of last year's catch. What effect would this legislation have on that line of credit?

Mr. PATON: Bill C-5 as presently drafted would give preference to the fishermen in this case as the primary producers; they would be getting the same preference as the primary producer on the farm, and the effect would be the same. It would have a definite effect in perhaps limiting the amount of credit available to the fishing industry, as in the case of the canning industry.

Mr. BASFORD: Are there problems in these industries which require this sort of legislation?

Mr. PATON: I am not able to answer that. Do you mean have there been specific losses in recent times? Is that your point?

Mr. BASFORD: Is there a problem among the primary producers in logging, lumbering, and the fishing industry requiring the protection of this legislation?

Mr. PATON: Your primary fisherman's loan is for cash to pay his wages, etc and in many cases your manufacturer advances substantially to the logger to enable him (*a*) to pay his labour, and (*b*) to pay for the cost of operating his machinery or whatever equipment he needs, and, so far as I know, there have been no pressures put on for legislation of this kind to be put through. There

are more frequently cases of bankruptcy and insolvency in these industries than there have been in canning but I do not have the figures to support that statement.

Mr. BASFORD: Does your association maintain a research department?

Mr. PATON: We maintain a research department in the association, and each of the banks has an individual research department; they have research facilities.

Mr. BASFORD: I would hope that by next fall we might be given a little more research material with respect to paragraph 3 of your brief.

The CHAIRMAN: If you will permit me to say so at this stage, I was visited a few days ago by Mr. Robson, representing The Canadian Bankers' Association, who said that this brief was being prepared in haste for this meeting, and that they would appreciate having an opportunity to do more work on it and to be able to continue with it in the fall and to present further evidence. I assured him that this probably would be the case and if the committee approved they would be free to do so.

Mr. BASFORD: I would like some more details on your statement in paragraph 3 if that could be made available.

Mr. PATON: Yes, we will take it upon ourselves to produce it.

Mr. BASFORD: That is all I have.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Mr. Paton, I would like also to refer to section 3 of your brief somewhat along the same lines as Mr. Basford's questions. I notice that contained in this paragraph there is what amounts to a heavily underlined warning that passage of this bill would in some way make it much harder for smaller producers and wholesalers to obtain bank credit. I think before we can take that warning with any seriousness we need to be given some figures on your losses, despite what you said just now that it was a private concern of each bank and would not be available. But we will have to have those figures.

I am in some doubt at this time, as to what you mean by smaller processors, and I would like to have from you a rough definition. In what sort of range would you call a smaller processor?

Mr. PATON: In general I would say that a smaller processor is one who requires to obtain section 88 security before he can get a line of credit adequate enough to permit him to carry on; and in addition to section 88 security, he would give an assignment of his receivables. There are many canning companies and processors who are financially strong enough to warrant whatever line of credit they need to process their year's pack without giving section 88 security.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Do I understand from your definition of a smaller processor that it is one who has not sufficient assets to warrant a bank loan apart from his equity—or it is not really an equity—his possible equity in the produce that he will usually process?

Mr. PATON: Mr. Cameron, our lending to any processor is against his current assets. We do not lend, and at the present time are precluded from lending against his fixed assets by way of direct mortgage security. Our line of credit is a line of credit that should start out, and peak, and pay off as the seasons develop. It is a current line of credit against current assets.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I do not quite understand what you are telling me. In the first place you are telling me that your definition of a small processor is one who has no assets, really, except the expectation of getting possession of certain produce. This, I suppose, would be expressed in the form of contracts with producers.

Mr. PATON: No. I would not say he had no assets.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): No assets from the point of view of being credit-worthy for a bank loan.

Mr. PATON: Creditworthiness for a bank operating loan is directly tied in with inventory and receipts. Term financing is available and is the type of financing that should be obtained against his fixed assets to provide his own basic working capital to justify the banks lending against inventory and receipts.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): But do you classify as inventory crops which are not yet delivered to the processor?

Mr. PATON: No.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Is that not the period in which he requires his loan to be ready for the receipt of those crops?

Mr. PATON: No. I know that one year's financing carries over into another; but theoretically you should be able to segregate the financing. The time the producer will require heavy bank financing is when he is due to take delivery of the growing crop from the growers.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): What has he apart from the expectation of getting these?

Mr. PATON: He has a record of earnings with his bank; he has an equity in his basic worth.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): It is on the basis of that you will grant the loan?

Mr. PATON: Yes.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Is there any need for you to have section 88 then?

Mr. PATON: Specifically we will not grant a loan, but rather a line of credit which he can take down as he acquires inventory and sells the processed goods.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I must confess I am not quite clear yet.

Mr. PATON: I might just point out that we have compiled a folder here which includes references to this act, references to amendments to the act, dating forward from the 1954 revision of the Bank Act and coming up to our submission to the present Royal Commission on Banking and Finance, and our evidence given before that body. We have this here in a folder and we would very readily produce enough copies for the committee if this would be of help.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I would like something a little simpler for a simple-minded person like myself. How much consideration do you give to the expectancy of a processor to obtain crops in your evaluation of his creditworthiness when he comes to you for a line of credit?

Mr. PATON: My friends here tell me I have a good answer in this review. May I read it and see whether this will cover it? This is in the brief of The Canadian Bankers' Association to the Royal Commission on Banking and Finance. It has to do with sections 86 and 88.

It says:

> In addition to small business, individuals and farmers there are a substantial number of well-established and middle-sized businesses in Canada engaged in manufacturing or processing raw materials which must depend on inventory to support or secure borrowings for operating purposes. These firms require bank advances for the purpose of meeting wages, accounts payable to suppliers, overhead, and other expenses in the ordinary course of business. Section 88 enables such firms to use

their inventory as security for bank loans, and it is through assistance in this manner that raw materials end up as finished products for sale in the domestic or foreign market.

Then we go on to give an example dealing with a customer's inventory of $150,000.

I have not been able to answer your question of what we consider a small processor.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I do not say you are not able to, but you have not yet told me, in your evaluation of the credit-worthiness of a client who comes to you for a line of credit, how much you consider his expectation of getting a crop, which he will not own until he has paid for it, delivered to his plant.

Mr. PATON: His business would be no different from that of any manufacturer. The manufacturer of coats and suits, for example, if he could not obtain his raw material from which to manufacture his finished good and sell them and turn them into receivables, could not get bank credit. If there is an unavailability of any material, then section 88 credit would not be available. I do not think there is any difference. If a processor could not get his raw material from a producer or grower, then the line of credit would not be available. He would have nothing to process; he would have no labour to pay and no cans to buy.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Would you agree we are not dealing with the situation of processors who cannot get their supply of raw materials. We are dealing with processors who get their raw materials and fail to pay for them.

Mr. PATON: This happens in all industries, too.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Well, I had other questions with respect to your ratio of losses and I must say I have not been at all convinced by your brief or your evidence unless you are prepared to present some figures on that. I would like to ask you this question. What type of security would you ask from the producer of a product that is going to be processed by a firm to whom you have advanced a line of credit. Say, I want to grow tomatoes for your client who has borrowed from you and I want to borrow from you to grow my crop; in that case, what sort of security do you ask from me?

Mr. PATON: I am sorry but I am not with you, would you repeat your question?

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Yes. Suppose I want to set myself up as a tomato grower and there is a man coming into the district who will process my crop. This man has credit from you and I want to get a line of credit as well to engage in my operation. In that case what will you demand from me in the form of security?

Mr. PATON: The first thing I would ask of you would be a statement showing your worth and then my demands for security would rest entirely on what your statement showed. If you grow tomatoes you would have to have somewhere to grow them. I would ask whether or not you are a tenant farmer or, do you own the farm, and is it clear; have you a record of operations and have you experience in the line of growing tomatoes? Then, if I am satisfied on these questions I would give you a line of credit under Section 88, or perhaps without Section 88 if your other worth is sufficient.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Would you not also ask me searching questions as to where I was going to sell my crop?

Mr. PATON: Yes.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): And, the fact that I had a certain volume of tomatoes to sell, that is, a certain number of tons, would be part of your consideration in giving me a line of credit?

Mr. PATON: A known market for your product has to be available before we would give you a line of credit.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): What I would like to get out of you, if it is possible, is this. I suggest to you that you would be concerned with the value of my tomato crop, would you not?

Mr. PATON: It is most likely, yes, because, you see, we would have your interest at heart as well as we would take into consideration the fact that we are likely to lend you money in future years and it is to our benefit to have you as a customer over many years.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Would you have an interest at heart to the extent that when the processor went broke you would return to me pro rata the amount of my crop he had not paid for?

Mr. PATON: Your question is hypothetical because we never have been confronted with this situation.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): The tomato grower knows he is beaten before he goes to see you.

Mr. PATON: As I have said, I have not experienced a bankruptcy of a processor.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I thought you stated rather rashly this morning the reluctance and the caution of the bankers to advance funds to the small processors if they have not the protection of Section 88 because you had to protect your depositors. Now, there have been quotations from Mr. Justice Abbott ten years ago when he appeared before the banking and commerce committee. I asked him questions at that time on this point, namely that the only way in which your depositors could be in any way harmed would be by failure of the bank?

Mr. PATON: Yes.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Are you telling us there is any possibility, short of a complete economic collapse in Canada, of a bank failing now—and I would suggest before you answer my question you read Mr. Justice Abbott's statement before the banking and commerce committee ten years ago and also that of Mr. Graham Towers, former governor of the Bank of Canada.

Mr. PATON: I say it is a rather archaic red herring you have pulled across the trail. It is not the safety of our depositors—they are perfectly safe—and the operations of our banks in Canada have been such as to render them safe.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): You made some reference to the Inspector General of banks. The Inspector General also appeared before that committee ten years ago and he will be appearing again this year, and he said that the inspection by the Inspector General is so severe and so far-reaching that there is no possibility of a bank getting too far out of line and going broke. Is that not true?

Mr. PATON: Yes.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Could you manage your affairs in such a way that you could go broke, with the Inspector General looking over your shoulder?

Mr. PATON: I would not make any effort to do so, I can assure you. Perhaps that is one of the reasons why losses under Section 88 have been nominal; the very existence of this security permits us to lend on a liberal basis.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): They have been nominal, have they?

Mr. PATON: I was asked for specific figures which I have not in my possession.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): You have told us now they have been nominal?

Mr. PATON: Yes, in reference to the $1 billion we have outstanding.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Would you not say that if you continued to exercise the same care and management as you have in the past these loans would be equally safe without the protection of Section 88?

Mr. PATON: Not necessarily, no.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Have your foreclosures or whatever you call them under Section 88 been of such a magnitude that they have in any way affected your loss position in connection with loans under Section 88?

Mr. PATON: Do you mean the losses are heavier than in other forms of lending?

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Has your use of section 88 to recover loans you have made been of such a magnitude that if you had not had that power they would have materially affected your loss ratio?

Mr. PATON: They would have affected the ratio.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): To a discernible degree?

Mr. PATON: Yes, to a discernible degree perhaps. However, this is not something one can answer specifically. Perhaps I should point out that, in connection with the $1 billion credit, under Section 88, in addition we have receivables security which is included. The whole $1 billion has not rested solely against goods on the shelf and in various states of process, but also against receivables covering goods sold to the trade, and that is included.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I thought it was in your brief; however, it must have been in your verbal presentation where you suggested that your objections to this bill are not so much to Bill C-5 per se, but fear that the same demands which have caused the production of Bill C-5 may be forthcoming from other sectors of the economy? I mean you are not objecting to this as such but you are afraid it may be a forerunner of similar legislation. Is that correct?

Mr. PATON: Is that on page 2, paragraph No. 4?

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Yes.

Mr. PATON: I think it is fair to say—and perhaps others might want to add to what I will say—that we feel the legislation as such will be quite inadvisable in its present form.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): But, according to your evidence the effects would be quite inconsequential.

Mr. PATON: I do not admit that. I do not admit that my own evidence indicates that.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): That is all I have to say.

Mr. CLARK: There is one thing I would like to say particularly and it is that in getting the record of losses that we have had under Section 88 you will have to take into account that the position might have been quite different had we not had Section 88; the loss picture under the existing security structure would have occurred in a completely different set of circumstances from those that would prevail were Section 88 no longer effective.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): But it still does not get around to this point that apparently the effect of Section 88 with regard to the recovery of loans has been inconsequential and, therefore, with regard to most of the loans you have granted under Section 88 the provisions of that section have not been operating at all.

Mr. PATON: Oh, that is not so at all. Section 88 has assured the orderly carrying through of season to season operations—usually it is season to season—and the orderly carrying through from raw material to the point that it is saleable and the financing for that purpose has been provided by reason of this security.

Mr. CLARK: You see, in terms of creating bankruptcies this action is often taken by a creditor whose account is important to him but relatively small in terms of the total credit made available to the person put into bankruptcy. As a consequence of a bank using section 88 in respect to the inventory and receivables, particularly having regard to seasonal goods, someone with a smaller stake in the overall security is not in quite the same position he would otherwise be in in order to take advantage of a fortuitous circumstance in going into bankruptcy at a point. This section has been effective throughout the years as a means of ensuring the orderly financing of the processing of a crop, of timber or a fishing catch until it is in the cans or piled, or on the dock.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Thas act has been successful in that regard, has it not?

Mr. CLARK: Yes.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): For example, for some as yet unexplained reason the banks have considered that the provisions of section 88 makes it safe for them to make these loans and therefore are encouraged to make these loans, is that correct?

Mr. CLARK: This legislation was created, sir, so that the banks could safely make these loans.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Yes.

Mr. CLARK: That is why this legislation was created.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): According to Mr. Paton experience has now revealed that at least in this period of history it is perfectly safe for banks to make these loans except in a nominal number of cases where it was apparently unsafe and the banks judgment was wrong.

Mr. CLARK: Perhaps I should try to give you my answer in a different way, Mr. Cameron. In other countries where there does not exist this type of legislation other forms of security are commonly used in the lending community to accomplish the same purpose. In the United States, as Mr. Paton has said, there is active lending under field warehousing. This practice accomplishes the same purpose for which section 88 was designed. That is why they have that type of legislation or procedure in operation in other countries. In some places the purpose is accomplished by the taking of chattel mortgages or mortgages. My point, sir, is that this section 88 is just a vehicle for doing the same thing that is done by other means in other places.

Does that clear up the question?

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): No, it does not really clear it up at all because the evidence we have received indicates that the banks have not needed the protection of section 88.

Mr. CLARK: I do not agree with that statement.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): When we are told that your losses are nominal are we to assume that if we abandon section 88 by passing this Bill C-5 the banks will suddenly lose their good judgment, which

they have used over the years and which has enabled them to make these loans with only nominal losses? What difference will the passage of this bill make in the bankers' good judgment?

Mr. PATON: The value of section 88 to the banks in respect of bank loans cannot be related solely to the actual loss ratio; that is, where a bank does not recover fully. The existence of section 88 security enables the banks in many cases to recover loans which would be irretrievably gone if section 88 security had not been in existence. For instance, this bill recommends that in the event of bankruptcy the inventory of the cannery be put into the hands of the court. One has about 24 hours to deal with a raw inventory such as fruit before spoilage. I think we all realize that any time anything goes into the hands of the courts there are delays.

The fact is that the banks have the protection of section 88 security and in the event of a problem arising which, in the banks' judgment, necessitates some action the bank can continue the proper operation of that processing plant to enable full recovery from the inventory. This would not be true following the passage of Bill C-5. Under that set-up and in the events outlined one would have to call in a bailiff or trustee, take action for the benefit of the unpaid suppliers, and perhaps apply for injunctions. I am afraid I am now getting into a legal field and perhaps I should not do so. One has the facility of operation at the present time which reacts to the benefit of the processor as well as to the benefit of the producer in the event of trouble.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Might I suggest to you, Mr. Paton, that your argument might be very forceful if you could present evidence to us that it has been necessary for the banks in a good number of instances to take the recourse of recovery provided for under section 88. You have just told us that your losses have been nominal. Perhaps the questions we require to have answered are covered not merely by your losses but also by the number of instances involved in respect of which you had to take action under section 88 to obviate losses. I gather from the evidence that you and your colleagues have given that there have not been very many cases out of the total in respect of which you have had to take action under section 88.

Mr. CLARK: We have tried to keep them to a minimum, sir.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I gather that you have been very successful.

Mr. THOMAS: Mr. Chairman, I should like to associate myself with Mr. Cameron in being an individual of simple mind, so my questions are very likely to be as simple as his were.

We have here before us a request for passage of this bill giving certain primary producers some preferences over certain other creditors under the bankruptcy proceedings. Mr. Paton has stated, as I understand it, that he feels under the present act the primary producers labour under certain disabilities as compared to some other creditors under bankruptcy proceedings. It seems to me that the work of this committee is to discover where these inequities exist, and under what conditions they exist and then, of course, fulfil our function in recommending to parliament the steps required to remedy this situation as far as possible.

I am quite willing to admit that equity suggests a fine ideal toward which we all should aim, but one could not likely find two individuals in the world who could agree as to what is equitable under a given set of circumstances. I am sure that we are trying to adopt legislation in an attempt to make our practices as equitable as possible.

Now, if I might follow this subject, in order to clear up my own doubts, as well as those doubts of others, when a processing concern goes into bankruptcy with the relationship of these various creditors, and we will take for an example

a soybean grower, as I understand it, there are three things that may happen when that grower delivers his soybean crop to the elevator. He may sell his load of soybeans for cash, carry away his cash ticket to the bank and cash it, at which time he has completed his association with the soybean crop and it no longer belongs to him. At this stage if the processor goes into bankruptcy it is my understanding that that farmer in those circumstances has no interest at all in those soybeans according to normal practice, is that correct?

Mr. PATON: Did you state that the farmer had cashed his ticket?

Mr. THOMAS: That is correct.

Mr. PATON: That farmer under those circumstances is no longer involved.

Mr. THOMAS: In another set of circumstances the farmer may store his soybean crop in that elevator, receive his storage ticket stating that he has so many bushels of soybeans of a certain grade stored in the elevator. Possibly he does this because he wishes to take a chance on a rise in prices. At that stage the soybeans are in the hands of the elevator operator in storage. Under the procedures of bankruptcy, am I to understand that the trustee in bankruptcy takes over those soybeans which belong to this farmer, title for which has not passed to the elevator? It is my understanding that the implication from the evidence placed before us this morning is that the trustee in bankruptcy takes over the soybean crop in storage and deals with it as if it belonged to the bankrupt; is that correct?

Mr. CARSON: Is that the case Mr. Standing's brief referred to?

Mr. THOMAS: Yes, and it implies that that is the case now.

Mr. CARSON: Is that case still pending, Mr. Standing?

Mr. STANDING: It is still pending except to the extent that the solicitors have all been paid. The judge has approved of the settlement, so it is only a matter of distribution.

Mr. CARSON: That is a case we will have to look into.

Mr. THOMAS: The third thing that happens to this farmer when he takes his load of soybeans is that he may take an advance on these soybeans. He then goes away with his storage ticket together with an advance for part of the payment, but not all of the payment. He may still have an interest in the soybeans, but the elevators also have an interest in the soybeans because an advance has been made on them. To my mind this whole problem revolves around the second and third instances we have mentioned namely, the man who takes his storage ticket for his soybeans, and the man who takes a storage ticket together with an advance.

Now, we might go to the logging business and the fishery. A man delivers a truckload of logs to the sawmill. The same three situations might occur. A man might bring in a load of fish in his boat. I do not know anything about fishing, but I assume that the same three things could happen. It is in that area of possession and partial legal right that we run into this business of equity as between the parties interested in a case of bankruptcy.

Now, the question is: what can be done to bring about a greater degree of equity? Mr. Paton mentioned there were inequities. I would like his interpretation of where these inequities arise and what they are as between the interested parties in a case of bankruptcy.

Mr. PATON: I would like to assure you that I am no expert in bankruptcy. I am paid to stay out of that type of experience. I have been reasonably successful so far. I wish I were in a position to give a better answer, but as I see it, your elevator owner, your processor to whom this man delivers his soybeans, can only give title to his inventory once. If he gives title twice, he is creating a criminal or a fraudulent act of some description. In giving a storage receipt I would imagine he has to arrange with his bank, if he is under

section 88. That title still rests with the farmer who brought it in. If a farmer is merely storing his grain and has a contract that he is paying so many cents a month for storage, it could be that these soybeans will remain as they were when they came into the elevator. They are merely being stored. It would be easy to segregate that and keep it apart from any other inventory which the elevator company has under section 88, or under whatever type of security they have given. Also, the bank or other lender should have no interest in that specific security because they are not asked to finance it. The processor has not paid anything to the grower.

In a case where it is partial, this might be more difficult. I am speaking of a case where partial payment has been made by the elevator to the producer. I would say, however, that if there is partial payment, perhaps the load could be divided into two. It seems to me that it is not a difficult situation to segregate the inventory to which the elevator company has title.

Mr. Otto: Mr. Nesbitt put the question that where grain is bagged and could be identified, the title may or may not pass. If it is mixed, it loses identity. As Mr. Standing said, these decisions take time. It usually takes five or six years to establish in our courts where the title lies. It may be that Mr. Nesbitt's comments earlier will be of help in connection with where the title does pass in these matters.

Mr. Thomas: I understood from Mr. Nesbitt's comments that he was drawing a line between grain as attached to real estate and grain as separate from real property. It becomes separate at the time it is harvested, cut and removed from the land. A standing crop would remain a part of the real estate, it would belong to the real estate on which it grew. Once it is cut and becomes mixed, I think there is a conflict of meaning there and maybe we are talking at cross purposes. I believe Mr. Paton also stated that in his opinion there would be no great difficulty in determining the amount which should be ascribed to any crop. Take, for instance, a can of tomatoes. So much would go for the label, so much for the can, so much for the raw material, so much for the fruit itself. In that way it would be a reasonably simple operation to set a value on this production or to distribute the various values included in this production at the time it was completed. Now, if that was so, then it appears to me that possibly the regulations or practice could be changed so as to better protect the interest of the primary producer. Coming back to the agricultural scene again, the objection to the present operation of section 88 is that if a processor goes bankrupt or in the case we heard a great deal about of an elevator company which went bankrupt, the trustee steps in and everything that is there is taken over by the trustee in bankruptcy, and the primary producer who may even hold storage tickets, is given no priority. I may be wrong there, and if so I shall be glad to be corrected. But the trustee takes over everything in which the primary producer may have complete ownership or partial ownership and this is all distributed.

Now, as I understand it, the present proposal is to amend the Bankruptcy Act and it aims to cure that situation and to protect the ownership as it may exist of the primary producer in the products which are coralled in this particular bankruptcy case.

The Chairman: Mr. Moreau?

Mr. Moreau: Getting back, as many before me have done, to section 3 of your brief I would like to pursue it a little further. I do not think your answers have been at all satisfactory in relation to this particular section. In view of the arguments put forward that your losses have been very small—at least relatively small in relation to the number engaged in the industry—you are making a comparison between the risks in other areas of lending, perhaps not under section 88. Therefore, I have to concur with Mr. Cameron, that I do not see

how giving the primary producer a preferred position would change substantially the whole question here. I do not at all accept the premise put forward that certain people need precipitate bankruptcy, if there was a certain practice involved under section 88 which prevents people from precipitating bankruptcy at times which perhaps are not too advantageous to the processors.

I think that the banks, with their very much superior means of acquiring information, having very very close control of the loans they have made to processors and so on, would have some control over the whole operation of financing, and if necessary would advance further loans. I do not really accept the point made that a very minor creditor would precipitate bankruptcy. I feel there is much more to this problem than that, and I cannot accept it. I feel that I have to agree with Mr. Cameron that we should have some sort of record as to exactly what sort of risks are entailed, and what the ramifications of this legislation would really be in specific terms.

The other point I would like to make is in regard to a statement you made earlier this morning that you did not consider the history of the industry in a lot of loans. Am I correct in this, that you assess the loan application essentially on a very personal sort of basis, at least, that is perhaps placed before you. Do I interpret your words correctly?

Mr. PATON: You do. We have of course knowledge of the industry and its operations, no matter what phases of lending we are in; so we have to consider it and its effect upon Canada and its development.

Mr. MOREAU: I think this is a very important point because it seems to me that certain industries have a high failure rate while others have a very low failure rate. This must come into your consideration. Therefore the action, with the superior ability of the banks, is I think to assess the risks, and I do not quite agree at all with that, because you can write to the Bank of Canada and find out whether there is a loan under section 88 of the Bank Act; whether it is in effect or not, and I think you will agree that the solvency or the position of these processors—many of the smaller processors, is very, very volatile and change quite readily.

While the bank demands certain information with regularity from this processor, they must essentially control their own interests here and protect their own interests, and because of this I do not think the producer is given relatively the same position. My only comment is that I think we need a little bit more specific information on the whole matter here. And if I interpret the committee thoughts correctly—perhaps I am being presumptuous—I think the principles embodied in this bill seem to find some general favor. Indeed, I find that the main objection being raised is that other industries may be soon seeking a similar sort of provision, and that other factors or groups may want the same relief under section 88.

And the second objection seems to be in the clause in the bill, under sub-section 2 of 51(a) where the handling of the bankrupt estate is provided for, and I think this may be a very valid objection particularly in the more volatile industries, the canneries and so on. This is a very real point. It seems to me that you should be prepared—or your association should be prepared to offer some alternative solution, either to protect the primary producer, perhaps to expand his special position here, which I, frankly find not to be very different from a waiver, and if we accept this proposition, perhaps you might agree to consider the whole new mechanism to give him sound protection or at least you may offer improvements, and so on of this bill. I have been listening all day to what has been going on, and I cannot help but conclude that I am in favor of the principle on the evidence I have heard—the principle of the primary producers here being in an inferior position when it comes to the necessity of a risk. I would like to get your comments on this.

When Mr. Whelan presented this bill in the house we heard some allegations, and you have briefly touched on this point earlier that perhaps the banks have abused their special privileges, in certain circumstances under the provisions of section 88, and that they have advanced credit, and been able to get new credit, so that when they precipitated bankruptcy they would be in a much better position to recapture their investment. I would like to have your comments on this. I do not know if there are very many specific instances of this or not, and it seems to me that the committee here would be very interested in this particular aspect if indeed this is true. I would like to hear what you have to say about it.

Mr. PATON: Your question is—may I put it this way—that if an insolvent situation exists, and if the bank has special knowledge that it does exist, or if we feel that bankruptcy is inevitable or a closing out of the business, we then look to see if we can bring other people in?

Mr. MOREAU: These were some of the allegations, not my own.

Mr. PATON: You mean they would bring other creditors into the place and take over their position? I had better not use a colloquialism. That is by virtue of our special knowledge, we would bring other people into play and make them take a secondary position to us? I have been in banking for 35 years and I have never in my experience had any thought that any bank would ever take such a position. We have been caught in positions and we have worked out of them in many cases to the ultimate benefit of a successful operation. At all times we have worked with our own interest in view, of course, but never with a view to bringing anybody else in and taking any advantage of their inferior knowledge of the situation.

Mr. MOREAU: I have no knowledge of such a situation, and I was not making that charge.

Mr. PATON: I appreciate the opportunity of putting it on the record, but I am satisfied that I speak for all the banks when I make a statement like that.

Mr. WHELAN: I would like to submit some evidence I have that is contrary to that.

The CHAIRMAN: You will have to wait your turn.

Mr. WHELAN: I do not want to forget, Mr. Chairman, that it is my bill.

Mr. LLOYD: Mr. Chairman, on a question of procedure—

The CHAIRMAN: May I say that we are proceeding with questioning of witnesses. The committee will hear the witnesses that it wishes to hear. It is certainly not the intention of anyone on the committee, and it is certainly not the intention of the Chairman to disregard anyone here; but we have an established procedure and will proceed that way unless the committee would like to change it.

Mr. LLOYD: Mr. Chairman, it was on the question of procedure I wish to speak. I think that we should try to keep this period for questions.

The CHAIRMAN: Thank you, Mr. Lloyd. I agree with your point.

Mr. MOREAU: I wanted to have that point on the record.

Mr. PATON: We appreciate your suggestions. We have a lot to learn and we are very anxious to hear your suggestions.

Mr. MOREAU: I would like to reiterate my first point that perhaps some alternate solution may be put forward by your group to handle this matter. I am sure the committee would be interested in this. Frankly, I was pretty well unfamiliar regarding this thing. I do not really feel it is a fair ball game, frankly, from the evidence I have been able to gather today. I appreciate the banks' special position. However, I think that a primary producer could be put out of business. This is essentially my point.

The CHAIRMAN: Mr. Whelan, if you do not appear to be satisfied, I might point out that the committee is the master of what is occurring here now. You are here as a witness, not as a member of the committee. The committee will determine whether or not it would like to hear further evidence. I think it was decided earlier this morning that when the questioning period of The Canadian Bankers' Association had taken place we would then question Mr. Standing and, following that, we would then question you. I believe this is the way matters will have to stand.

M. Côté (*Chicoutimi*): Monsieur le président, je vous remercie de me permettre de poser quelques questions. Les banques prennent-elles beaucoup de risques, quand on considère le pouvoir d'expansion monétaire qu'elles détiennent lorsque, par exemple, elles sont obligéés de maintenir une réserve de seulement 8 p. 100?

Mr. PATON: The statutory reserve of 8 per cent is the cash reserve; 8 per cent of the deposit liabilities. Eight per cent of these must be held in the Bank of Canada on an average for the month. An additional 7 per cent secondary reserve by agreement with the Bank of Canada has to be kept in short-term money market securities. This 15 per cent is the liquid reserves of the bank. It has nothing to do with the reserve against loans or against the lending dollar. It enables the banks to handle the day-to-day fluctuations in their cash positions and enables them to meet calls on their liabilities to the public and to the country. In no way does it allude to consideration of necessary and required reserves against our holdings.

M. CÔTÉ (*Chicoutimi*): Pourquoi le bill C-5, qui est proposé actuellement, obligerait-il les banques à restreindre leurs produits et leur production primaires, alors qu'elles ont en réalité le pouvoir de créer, de rien, environ 90 p. 100 des capitaux?

Mr. PATON: I am afraid I am not much of a theorist so far as the creation of capital is concerned. I like to look at the dollars we must pay to somebody The dollars we lend are the dollars we borrow from somebody.

Mr. OLSON: You are not serious about that, are you?

M. CÔTÉ (*Chicoutimi*): Le ministre des Finances (M. Gordon) a déclaré à la Chambre, il y a deux jours, que les banques à charte, au Canada, ont créé, depuis huit ans et six mois c'est-à-dire depuis la fin de 1954 à venir au 3 juillet 1963, la somme de 5 milliards 248 millions de dollars.

Le PRÉSIDENT: Si vous me le permettez, monsieur Côté, j'aimerais intervenir ici pour une seconde et vous suggérer, si possible, de rester un peu plus dans le cadre de la discussion. Je ne vois pas de rapport entre votre dernière question et le bill C-5. Il y en a peut-être, mais je n'en suis pas certain. Je tiens à vous avertir que l'heure avance et je vous demanderais de vous en tenir au bill C-5.

M. CÔTÉ (*Chicoutimi*): Est-ce que, effectivement, les banques considèrent qu'elles subissent une perte lorsqu'un client ne peut payer le crédit qu'elles ont créé dans la proportion de 90 p. 100?

Mr. PATON: To answer that question I would have to accept the premise that the banks create 90 per cent. That I am not prepared to do, nor, unfortunately, am I prepared to argue comprehensively against it, because I did not come prepared to do so. If this form of questioning could be—

The CHAIRMAN: If you will forgive me, I interrupted. I will repeat in English what I said in French a moment ago to the questioner. It was this: that I was unable to see the connection between Bill C-5 directly and the line of questioning which the present questioner was following. I suggested in view of the advanced hour that to the extent it was possible he come to his point rapidly and stay as close to Bill C-5 as he could.

Mr. OLSON: Mr. Chairman, on the point you brought up, I am prepared to show, with some very substantial evidence taken before a committee of this nature some years ago, that there is a very direct and real relationship between the line of questioning he is now pursuing and the intent of the bill.

The CHAIRMAN: That may be. I am suggesting he come to it so that I may see it as well.

M. CÔTÉ (*Chicoutimi*): Justement, monsieur le président, j'ai préparé mes questions selon les questions posées antérieurement, et c'est pourquoi j'estime que j'ai le droit de les poser.

Le PRÉSIDENT: Mais si vous en veniez au point, par exemple.

M. CÔTÉ (*Chicoutimi*): Encore une question, seulement. En considérant les privilèges extraordinaires que détiennent les banques à charte, ne serait-il pas normal qu'elles s'offusquent de la présentation du bill C-5, même si cela comportait un peu plus de risques.

Mr. PATON: I would say that we chartered banks do not consider we enjoy extraordinary privileges; I would say that we are in this lending business in competition with many other lenders, many of whom have wider fields to cover than the banks. On presentation of the bill we studied it with a view of finding out whether or not it would be beneficial for Canada, because if it is beneficial for the country it is beneficial for the banks.

Le PRÉSIDENT: J'espère, monsieur Côté, que je n'ai pas été trop sévère à vorte égard, mais à ce moment-là, je ne comprenais pas le sens de vos questions, ni leur rapport avec le bill C-5.

Mr. OLSON: First of all, I would like to establish, if I could, in my opening remarks, the relationship of the bill that is before us. For example, at page 287 of the evidence that was presented to this committee in 1939 Mr. Graham Towers, then governor of the Bank of Canada gave evidence, which reads as follows:

> QUESTION: But there is no question about it that banks create the medium of exchange.
>
> Mr. TOWERS: That is right. That is what they are there for.

And then later Mr. Towers says:

> That is the banking business, just in the same way that a steel plant makes steel.

Do you agree with this, Mr. Paton?

Mr. PATON: I would not agree or disagree until I have read the whole text prior to and subsequent to what you have read. Mention was made there of a medium of exchange.

Mr. OLSON: It says create a medium of exchange. That is right—credit.

Mr. PATON: Is that the medium of exchange?

Mr. OLSON: In the context it is used here, yes.

Mr. PATON: Well, that is why I would be hesitant to express an opinion without studying it. It is not that my group would be afraid or hesitant about answering these questions if we had knowledge they were coming up.

Mr. OLSON: Well, I do not want to get into an involved discussion because I agree it is very involved and that people with whom we are discussing it should come prepared but, if you accept what Mr. Towers has said then you are, in fact, manufacturers of credit, medium of exchange, expansion of the money, or whatever you want to call it.

Mr. PATON: I have the greatest respect for Mr. Towers and I have yet to see something of his with which I do not agree.

Mr. OLSON: And, by the same token the producers in this case are the manufacturers of their component that goes into the processors assets; therefore, I think the relationship between the two is this, that if you manufacture the credit that is used and somebody else produces some other ingredient there is no reason that you should have superior access to the proceeds of the inventory. Now, I do not want to get into an involved discussion but I think that reasonably attaches the relationship of this line of questioning to the bill that is before us at this time.

The other thing, Mr. Paton, that disturbs me a bit is the statement made earlier in this meeting by you and Mr. Clark, I believe, that one of the primary concerns for objecting to this bill was that you wanted to protect the interest of the depositors—that is, the peoples money that you were using. While I am satisfied with your explanation that you are not trustees in the usual context of what that word means you still, I think, reserve the opinion that there was a fairly direct relationship between the protection you have under Section 88 and the safety of the deposits. Is that not correct?

Mr. PATON: Not alone under Section 88, the relationship of a general lender the basis of lending and the risks we take.

Mr. OLSON: We are concerned primarily with a bill that seeks perhaps to mitigate some of the provisions in Section 88 and so I think we have to accept what you said, that this was the reason for your objection to Bill C-5.

Mr. PATON: I would not want to consciously say that as I read Bill C-5 originally the question of the safety of my depositors' money came to my mind and that I thought this is going to hurt this particular situation. But, as a practical banker who has lent many dollars, any time I lend money I have to get it back again.

Mr. OLSON: Yes, I agree. But, the argument was presented to us a number of times and I would like you to substantiate or withdraw the suggestion that was put forward that you were, in fact, jeopardizing the safety of these depositors if this Bill C-5 was enacted.

Mr. PATON: If the evidence shows that I have attached a direct relationship between the two I was wrong and I spoke incorrectly, but frankly I do not think the evidence will show that.

Mr. OLSON: Mr. Towers also said at page 455 of this committee meeting:

> The banks cannot, of course, loan the money of their depositors.

Do you agree with this?

Mr. PATON: Would you repeat that again please?

Mr. OLSON: Mr. Towers said:

> The banks cannot, of course, loan the money of their depositors.

Mr. PATON: I think the previous answer I gave will have to apply; that is, you cannot take one sentence out of context and ask me a direct question without the whole text. I would like to have the opportunity of studying the whole section and perhaps coming back. At this time I would not say yes or no to that question.

Mr. OLSON: Without asking you to dispute what Mr. Towers has said, do you think that is a fair statement?

Mr. PATON: I would prefer not to answer that question.

Mr. OLSON: May I suggest that you have a look at that statement as it appears at page 455 at some stage because this is a rather important discussion.

Mr. PATON: I do not want you to think I am treating this subject lightly, but I am not in a position to say yes or no to your questions. We will certainly examine this statement.

Mr. OLSON: When you make these loans to a processor in respect of which you have taken protection under section 88, if you do not use depositors' money, from where do you get that money?

Mr. PATON: Of course I cannot answer that question, not having answered the previous questions.

Mr. OLSON: Mr. Chairman, I would suggest that this is not a facetious discussion. I should like to know the answers to these questions, because if the banks are manufacturers of the credit that is used in respect of a processor growing potatoes, catching fish or cutting logs, his interest in his produce is as important to me as the interest of the banks in creating the money which goes into the finished product in view of the fact that banks have a superior interest in the inventory in the event of bankruptcy.

I should like to ask one other question, Mr. Paton. You mentioned in paragraph 7 of your brief that if this bill is passed it will protect a minority, namely the producers. I am not paraphrasing your statement but trying to save time by indicating its import. With the adoption of Bill C-5 the banks, as well as many other individuals, would not have the protection afforded to the primary producer. How do you reconcile the statement that the provisions of Bill C-5 protect a minority when the fact is that under section 88 of the Bankruptcy Act the banks have a superior interest? Do you consider banks are not a minority?

Mr. PATON: In relating the banks' investment to any industry one cares to consider, the banks would definitely not be a minority. The banks numerically are a minority, but in relation to their investment in the country, in the fishing industry, the lumber industry, or any other industry one cares to consider, the banks are a very substantial and integral partner of the operators, be they farmers or any other producers. As I mentioned this morning, out of 34,000 loans under section 88, 27,000 were made to individual farmers. I think it is fair to say that banks have a very substantial rather than minority interest.

Mr. OLSON: You are not suggesting, of course that your 27,000 figure is comparable to the number of primary producers protected by the passage of this bill? You said you had made 27,000 loans, but I suggest there would be a substantially greater number of primary producers protected than 27,000.

Mr. PATON: Yes. What I was trying to relate is that our interest in financing the industry is not predicated on a preference to the processor in relation to the producer. We have a very vital interest because every time a producer suffers a loss one can rest assured that he has a very substantial bank loan which is in danger of being lost or remaining outstanding for many years, until the loss is recouped, because the primary producer and the lending bank are partners in the same way as in any other operation.

Mr. OLSON: Would you say that section 88 of the Bank Act is now discriminatory in favour of banks?

Mr. PATON: No. In a given set of circumstances one takes a certain course. With this security available to us, we take our part in the financing of any industry you care to mention, basically through a value-judgment of the situation. We will take our place as a partner in this operation because these certain set of circumstances are available to us. If this source of security was not available to us, once again, we would have to make a judgment as to whether or not we would take our place to the same extent as a partner. We consider this security as part of the background in making our judgment in respect of any application.

Mr. OLSON: When a bankruptcy occurs, do the provisions of section 88 of the Bank Act discriminate in favour of the banks?

Mr. PATON: The provisions of section 88 of the Bank Act give us the position of being a secured creditor. In respect of every bankruptcy there are

preferred claims, secured claims and ordinary claims in that order. Preferred claims are claims which must be paid such as wages and taxes. Secured claims are claims of people with specific security. The mortgage holder on a property is a secured creditor. Would you suggest that the Bankruptcy Act is discriminatory in favour of a mortgage holder who has taken a mortgage on a piece of property and given full value?

Mr. OLSON: Quite frankly, Mr. Paton, in following up the suggestion made by Mr. Cameron, I am not convinced that you require this protection. I am wondering why you require the protection provided by section 88, which puts you in a position of preference over the producers. Perhaps you would like to tell us whether you think it is more convenient to the operation of a bank to have the provisions of section 88 available, and whether that is the main reason for your desire to maintain the act as it is at the present time?

Mr. PATON: I do not think I can agree with your suggestion, Mr. Olson. The convenience of the operation of a bank is important to us because we like to think of ourselves as efficient operators. We like to keep our overhead down, as does any other profit making operation. I do not know whether that is a good word to use or not. Convenience is important to us, yes. This is not the basis however upon which we decide whether a man or a company is entitled to a line of credit of $25,000, $50,000 or $100,000. If the maintenance of section 88 involved solely a matter of convenience, we would be better off lending money to substantial operations, allowing us to take care of our business much more expeditiously. That would be my answer to your question regarding convenience.

Mr. OLSON: Thank you, sir.

Mr. LLOYD: Mr. Chairman, I should like to direct a series of questions to Mr. Paton. I gather from the evidence you have given, Mr. Paton, that there is a primary consideration in making a loan under section 88. That primary consideration involves the ability of a borrower to repay from the assets he pledges through the ultimate liquidation of those assets on the market place. Do I gather from what you have said as a banker, that under the provisions of the Bank Act, keeping in mind the traditional intent of our banking system to give stability, you are looking for liquidity first? In other words, you are looking for the ability of a person to repay a loan from the assets involved?

Mr. PATON: That is correct.

Mr. LLOYD: Is that your primary reason for lending money? Proceeding on that premise, you obtain guarantors against the contingencies of a lost crop as a result of bad weather, or whatever the cause, and is it not your traditional policy to attempt to avoid calling on the creditors? Do you try to make your loans in such a way as to avoid calling upon the guarantor except as a last resort?

Mr. PATON: That is correct.

Mr. LLOYD: Does it not follow that when examining a loan request from a primary producer, you would consider the individual's assets and net worth in order to preserve the liquidity of the Canadian banking system? Have I outlined correctly the basic principle which you have enunciated?

Now we go to the processor. In the case of the processor, he comes to you with a request for $100,000 loan, and he says, "I am willing to assign to you the title to the material which has been in my hands for processing". You examine his statement of financial affairs, his assets and his liabilities. Do you usually ask for a list of his creditors?

Mr. PATON: Yes.

Mr. LLOYD: Therefore you are aware of the contingency of financial difficulty when you are making this loan under the provisions of section 88? Is that correct?

Mr. PATON: We are fully aware of it and of his liabilities.

Mr. LLOYD: And in those cases, I gathered from some evidence you gave earlier, you usually have a guarantor or try to obtain some underlying guarantee for the liquidation of the loan.

Mr. PATON: I am not sure that "usually" is the proper word. Frequently we have.

Mr. LLOYD: Depending upon the past experience with the particular processor, I suppose. You are guided by that.

Now finally, there are instances where human judgment may err, and you find you have to call upon the guarantor. We have had instances of that in Canada in bankruptcy. You call on the guarantor, or you notify him that his guarantee is in jeopardy. Then you proceed to take possession of the pledged asset under section 88 and to liquidate it. If your recovery is insufficient to pay the loan, you then call on the guarantor for the balance. However may he not, under the subrogation provisions of section 88, pay you off and take possession? In some instances he has a pretty intimate knowledge of the condition of that stock, and perhaps in some few instances, he has the capability of defeating the best interests of his creditors. Has he not?

Mr. PATON: Yes.

Mr. LLOYD: So that this responsibility lies primarily with the person who got the business in trouble in the first instance.

My line of questioning is leading up to this. In view of the fact that you in your administration pay very close attention to the list of creditors in your own interest, because many of those creditors would contain the names of many of your clients, and if there is a valid case to protect the unsophisticated primary producer from the processor, which is the real case in point which we are trying to deal with under bill C-5, would it not be practical to consider some amendments to the Bank Act itself rather than interfere with the whole procedure of section 88? To put it another way, would you be prepared to consider that at a later meeting of this committee? Could you, in some way perhaps, provide for some allocation of funds under certain cases where loans are made to the processor to see to it that at least some funds are disbursed to the primary producers' creditors? Because I have said that I must confine myself to questions, I cannot obviously say what I think of this bill at this stage, but I think you can gather from my suggestion where I stand. So that I would like to ask you the following question: would it no be practical—and you may wind up finding other reasons not to do it—and would it not be a more acceptable alternative to try to regulate the kind of loan under section 88 instead of hazarding the whole operation of this section generally in the market?

Mr. PATON: Mr. Lloyd, I might say I find your words leading up to the question very lucid, and I find the question very interesting also. To say whether or not it would be practical is something I would like to mull over, and I think we all would. If you do not mind, we would all probably like to look at today's proceedings and study them, so that then we can come back and give you a more comprehensive and more sensible answer to your question.

Mr. LLOYD: Mr. Chairman, I would like in particular to emphasize the operation of this subrogation section of the Bankruptcy Act. This is one that sometimes causes a great deal of inequity which Mr. Thomas was trying to ascertain, and I think everyone, as well as you, Mr. Paton, will agree that there is cause for us to be concerned about the unsophisticated primary producer who does not know of the operations of the Bankruptcy Act. There is every justification to be concerned; we only differ as to the gravity.

The CHAIRMAN: Are there any further questions which the committee would like to direct to the witness? If not, then, on behalf of the committee and myself, I would like to thank you, Mr. Paton, Mr. Clark, Mr. Carson and Mr. Robson for appearing before us today. If you wish to retire, I think the committee would give you permission, or if you wish to stay, our hearing will continue. We have other witnesses, and you may wish to hear what they have to say. Thank you very much.

Now, as agreed this morning, I would ask Mr. Standing to come forward, and the committee may address questions to him if they so wish.

Mr. OTTO: It is obvious, Mr. Paton, that we are expecting a pay raise because of our air of bravado in relation to the bankers.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): That is why we are rude to the bankers.

Mr. OTTO: Mr. Standing and Mr. Chairman, I do not want to appear repetitive. I believe that we can define this measure as a remedial one. There is an ill or a wrong that the sponsor says exists, and it seems to me that the burden of carrying a loss has been placed on all parties. We have heard evidence from the bank representatives that they bargain for risk, the manufacturer of component parts bargains for risk, and I will ask Mr. Standing, if you were here during my earlier questioning, whether you know the operation of the producers and whether they, when they set their price, bargain or do they consider that there may be a loss and do they provide for it?

Mr. STANDING: I think it is very difficult to see how producers who do not pool the product could consider establishing within the price a factor for risk of non-payment. Even among canners in Ontario where they do not negotiate price, they have attempted to establish licensing procedures to establish proof of financial responsibility.

This apparently has been a dream. They cannot work into the structure a factor to recover the risk in the price. My immediate neighbours sold fruit to a canning company which went bankrupt last year. They did not spread their risk out to cover it by selling to a number of canneries, but instead they contracted to one, and they lost it all. So it would not matter what the price was. They could not consider the risk in the price.

Mr. OTTO: You said this happened last year, this particular case?

Mr. STANDING: Yes.

Mr. OTTO: You mentioned pooling. What do you mean by pooling?

Mr. STANDING: Well, in the case of grain producers in western Canada, they pool their crops. They put their crops into the hands of the Canadian wheat board, and they receive only an initial payment, after which all the producers share in the balance of the proceeds. Now let us say they sold wheat to Poland and the Canadian government would back them. They would all share in whatever loss there was if Poland did not pay. But in the case of the commodities in eastern Canada, not under the Canadian wheat board, they are not protected in this way.

Mr. OTTO: Is there a great number of private producers who would suffer a risk from selling to many processors, or is it merely the case of a sale to one processor?

Mr. STANDING: In the case of the processing crops, usually there are contractors. Most factors prefer to have one man contract with them for it; and we actually find in practice it is done with one processor.

Mr. OTTO: What do you mean by contractor?

Mr. STANDING: In the case of canning companies they sign an agreement to take the produce and a given quantity of goods from the processors.

Mr. OTTO: Do you mean that you grow them for the processor?

Mr. STANDING: Yes. All your canning crops are contracted for by written contract.

Mr. OTTO: Your answer is that it is in your opinion almost impossible for a producer to estimate a possible loss and to provide for it by his price. It that correct?

Mr. STANDING: We have been told that when producers are concerned about the quality of the man they are dealing with, they should demand cash.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): You referred to losses incurred by your immediate neighbour. What happened in that case? Did the firm go bankrupt? What happened to the crops that had not been paid for? Were any of them in the hands of the processor?

Mr. STANDING: According to the producers it is in the hands of the bank. The pack was in the warehouse, and the credits were discontinued.

Mr. OTTO: I have one more question. On the last page of the report of the bankers association they said that it is quite simple for a producer to get a report of the financial worthiness of the processor. From your experience would you say that it is easy or difficult, or do most producers know how to get the information as to the financial responsibility of the processor?

Mr. STANDING: I do not like to question your interpretation, but if they say it is easy for a producer to get a statement of the financial position of the processor, all they can find out is if they are under section 88.

Mr. OTTO: Paragraph 11, if you will notice, says—there is a query about an hon. member's remarks in the House of Commons, and it says:

> "The fact is, of course, that every person, upon payment of a fee of 25 cents is entitled to have access to and to inspect the registration book at the office of the Bank of Canada in the province where the processor has his place of business—"

This is theoretical. But what is the practical application of it?

Mr. STANDING: This does not say anything about his financial responsibility. Clause 11 refers to the fact that anybody may, by paying a fee, find out if a company is under section 88 of the Bank Act, and that is all. It would be absolutely ridiculous. I would not even do it for the marketing board. We have 425 licenced buyers of wheat in Ontario, and if any of them did not come under section 88, we would not give them a licence.

Mr. OTTO: Suppose I am a producer and I want to find out if the John Jones Company is a solid company so that I might sign a contract. What do I do?

Mr. STANDING: The producer company is where, at the moment?

Mr. OTTO: Are you aware of the mechanics?

Mr. STANDING: Oh yes, our board makes application to the banks and to Dun and Bradstreet for the financial position of the particular person applying to deal with that product. I have a number of them in my file and all of them are worthless. We have only one; we have been told that only one was; it was indicated to our office that the man was not financially sound, because we did not get a reply. That is all I could do about it. I nearly had litigation over it, because the man insisted that he have a licence to deal in soya beans, but we understood that he was not financially responsible.

Mr. OTTO: Did you receive a financial report of the company which went bankrupt?

Mr. STANDING: We had a financial report three days before dissolution.

Mr. OTTO: What was the financial report?

Mr. STANDING: It was satisfactory.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Where did you get it?

Mr. STANDING: I cannot answer that question directly. This was under fruit and vegetables which was a little outside of my jurisdiction.

Mr. LLOYD: May I make a practical suggestion? This is a very involved matter and it has implications as to what it might do to the provisions of the Bankruptcy Act. Now, if we have to pursue all that, we have to examine at some considerable length and debate at some considerable length the provisions of section 88. I mention merely one of the provisions of the statute. It seems to me that we might now hear from Mr. Whelan who has been most patient and then we might adjourn.

Mr. MOREAU: We began this morning with a statement from Mr. Whelan.

Mr. LLOYD: Oh, I am sorry. I was not here then.

The CHAIRMAN: We have already heard from Mr. Whelan, when he presented his brief this morning.

Mr. LLOYD: Then I move that we now adjourn.

The CHAIRMAN: If I might inquire about the questioning of Mr. Standing, would you mind at the moment before moving adjournment, if there are not too many questions of Mr. Standing, disposing of his part of the testimony. We shall have to hold another four or five meetings to get through with this matter, and we might not require Mr. Standing to come back.

Mr. MOREAU: I was wondering about this bankruptcy you referred to last fall, when one of your neighbours was involved. I wondered if the provisions of section 88 applied in this case.

Mr. STANDING: Yes.

An hon. MEMBER: I second the motion to adjourn.

The CHAIRMAN: Mr. Whelan will be with us for some time. He is available at all times, and when this hearing reopens, he will be available for questioning. Are there any further questions of Mr. Standing?

Mr. MOREAU: I presume Mr. Whelan will be leaving and will not be here for any more committee meetings before the recess. Is that a fair assumption?

The CHAIRMAN: Unless the committee decides to proceed further between now and the recess, that is a fair assumption. We shall have to determine just what our program is going to be.

Mr. MOREAU: In view of that, I have one or two questions to ask Mr. Standing.

The CHAIRMAN: I was talking about Mr. Whelan, not Mr. Standing.

Mr. OLSON: On page 6 of the brief you read to us this morning, Mr. Standing, you say:

> Over 400 dealers in grain in the province of Ontario receive grain from primary producers in order to condition and sell said grain in the normal grain trade channels. In order to finance the grain in the interim between purchase and sale, dealers borrow money under section 88 of the Bank Act, to pay producers.

I understand all this. Then you say:

> If producers are not paid, then attachment by the bank of the said grains is not necessary.

Would you expand on that?

Mr. STANDING: I do not understand section 88 of the Bank Act as well as I should. I was under the impression in the case of all of the grain bankruptcies that it was assumed that the dealer in grain pledged the grain he owned to the bank for the loan when a dealer makes an arrangement with the bank under section 88. I have just done that. We have just got credit from the bank to buy all surplus wheat in the province of Ontario under

section 88; but we do not borrow any money. When we buy wheat and pay for it we pledge the documents with the bank and they honour the cheque we made out to the person we bought it from. Now, if the bank only took an attachment to the grain that the person in bankruptcy owned, then the producer who had not sold his grain should be able to get it back. That is what I meant in this clause.

Mr. MOREAU: Mr. Paton indicated that the bankers association could only report one case. I think this was the statement that was made. Not only that, he indicated there were very few bankruptcies. I wonder whether for next fall you might produce statistics as to how many cases were involved in the last five years.

Mr. STANDING: Of course it is not just bankruptcy; it is dissolution. It is the same thing. In one case nobody could afford to put the man into bankruptcy.

Mr. MOREAU: I think we should have this information.

Mr. STANDING: I can get it.

Mr. OLSON: I take it, then, that your understanding of the provisions of section 88 of the Bank Act is that if this grain was in an elevator, despite the fact that that elevator company had arranged for a line of credit under section 88, unless they had paid the producer, he would be able to get it back.

Mr. STANDING: That is right, because if any bank loaned money under section 88 on grain that the dealer owned, any other grain that was in the elevator—

Mr. OLSON: Your understanding is that the bank could not attach the grain.

Mr. STANDING: This was established in the supreme court of Ontario by Judge Smiley. The Kellogg Company in London and the solicitors for the Royal Bank of Canada and the solicitors we engaged jointly as producers argued about who owned the actual grain, and whether the bank had title.

Mr. OLSON: Was this a question of identifying it or ownership aside from identity?

Mr. STANDING: Title.

Mr. OTTO: I have one question. On the question of the legality, is it true that the action was commenced in 1957 and no decision is yet reached in 1963? How many producers who would be in that difficulty could last six years with all their crop returns held up by court action? Is this really even of any consequence?

Mr. STANDING: We are dealing here with 110 producers who had a portion of the year's earnings involved.

Mr. OTTO: I am sorry—just a portion.

Mr. THOMAS: We have a motion before the committee that we adjourn. However, I think out of courtesy to Mr. Whelan we might give him a minute or two before we adjourn.

Mr. LLOYD: I came here to help make a quorum. I am willing to stay here to hear what is apparently some urgent matter Mr. Whelan would like to answer. But I have one question I would like to ask.

The CHAIRMAN: I was going to say we will first of all finish our questioning of Mr. Standing.

Mr. LLOYD: Mr. Standing, you have heard my questions. I did recognize the problem. Do you think there would be some practical advantage in pursuing amendments to section 88 of the Bank Act rather than in proceeding in this fashion, or have you given that matter any thought?

Mr. STANDING: I rather think I implied this in the questioning here a few moments ago in regard to whether the bank had title under section 88

of the Bank Act. So, I would have to agree it may be that is where the remedy would be most effective for us.

The CHAIRMAN: Are there any further questions of Mr. Standing?

Mr. MOREAU: I wonder if Mr. Standing on behalf of the producers' groups could perhaps also include some suggestions as to how this could be done. I appreciate the very far-reaching implications of the amendment to this bill and wonder if we could do the same thing without perhaps getting into very far-reaching matters.

Mr. OLSON: I would suggest there is some variation of interpretation as to where section 88 now applies in respect of grain. I would suggest that when we meet later on we have both the people from the bankers association and from the producers give us a fairly clear interpretation of what they think as to where it applies.

The CHAIRMAN: Are there any further questions which the committee would like to address to Mr. Standing? Thank you very much, Mr. Standing, for coming here today.

Would the committee now care to address questions to Mr. Whelan?

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I gather, Mr. Chairman, that Mr. Whelan had some evidence he wanted to put in. I am wondering if that would be just as appropriate when we meet in the fall, or whether he feels it should come in now. I would be in favour of hearing him now if he feels it is important.

Mr. MOREAU: If Mr. Whelan has some evidence of abuse of the privilege granted to the bank under the Bank Act, he should present that evidence if possible perhaps at our next meeting.

The CHAIRMAN: Is it lengthy evidence?

Mr. WHELAN: No. It is a statement which was given to me.

The CHAIRMAN: Then perhaps you might come up and present it now.

Mr. LLOYD: The question would be, do you have any evidence, Mr. Whelan, of hardships arising under the provisions of section 88 of the Bank Act or other provisions of the Bank Act?

Mr. WHELAN: In answer to that, I have one letter from the British Columbia Federation of Agriculture. It says:

> My board wish to add their support to your efforts through Bill C-5 to correct the iniquitous position that farmer suppliers usually find themselves in when the processor they are dealing with goes into bankruptcy.
>
> In this province, on April 28, 1961, Visco Poultry Packing (1957) Ltd. ceased operations following being declared bankrupt. All assets were immediately seized by Imperial Bank of Canada under section 88 of the Bank Act. This resulted in 19 poultry farmers being unpaid for the birds they had delivered to the tune of $76,582.52. One large producer lost $14,390.70. The prospects of any recovery are nil.
>
> In this case it seemed more than just coincidence that there should have been an especially heavy kill laid on in advance, just prior to the plant being closed, particularly in view of the fact that the president of the company was also the personal guarantor of the bank loan of some $150,000. The bank, of course, seized everything including the freshly killed poultry, so did not need to claim on the guarantor.
>
> It is our hope to forward you the particulars on two other like cases so that you can use them along with the above when your bill is before the banking and commerce committee.

The CHAIRMAN: With the permission of the committee I will have this marked as Exhibit No. 1.

Agreed.

Mr. WHELAN: I would like to say, Mr. Chairman, that I have numerous other groups who would like to bring evidence before this committee. These are producing groups of primary products and they were unable to be present today.

The CHAIRMAN: If you would permit me, Mr. Whelan, are there any further questions anyone would like to address to Mr. Whelan?

Mr. OTTO: No.

The CHAIRMAN: We are going to deal now with the procedure in the future.

Mr. LLOYD: Mr. Chairman, I would hope that Mr. Whelan would be available for any further questioning and, since he is a member of the house, I presume that he would be available and will be given the opportunity of being heard at a later time.

The CHAIRMAN: At the present time, gentlemen, are there any further questions you would like to address to Mr. Whelan?

Mr. KLEIN: Mr. Chairman, you have a motion.

The CHAIRMAN: Gentlemen, I wonder if before we adjourn, and as there are a number of other organizations who have expressed an interest in presenting their views to the committee, namely the Canadian horticultural society, the Canadian Federation of Agriculture, the Canadian credit mens association, the Ontario fruit and vegetable marketing board and others, totalling possibly 15, if next week the steering committee might meet to determine the order in which these might be heard as well as determining when the next meeting might be held.

Mr. THOMAS: I will so move.

The CHAIRMAN: Is it agreeable?

Some hon. MEMBERS: Agreed.

The CHAIRMAN: We have had one other bill referred to us which, I believe, could be disposed of rather rapidly; it is the addition of a French translation to the name which was referred to us yesterday. If we are agreeable and at the call of the Chair we might have a meeting to deal with that one before the recess.

Mr. LLOYD: That would be the only one?

The CHAIRMAN: I would suggest the steering committee should draw up a schedule for the hearing of further representations and we shall resume the consideration of this bill after the summer adjournment.

Thank you very much, gentlemen; we will adjourn to the call of the Chair.

STANDING COMMITTEE ON BANKING AND COMMERCE

The following is the English translation of questions and answers in French on the date indicated.

FRIDAY, July 26, 1963.

(*Page 21*)

Mr. CÔTÉ (*Chicoutimi*): Mr. Chairman, could we have a French translation of the brief Mr. Whelan has just read?

The CHAIRMAN: Mr. Whelan did not produce it in French.

Mr. CÔTÉ (*Chicoutimi*): It is a most interesting document.

The CHAIRMAN: We could ask the Clerk's office to have it translated and to distribute copies when it is ready.

* * * * * *

(*Page 28*)

Mr. CÔTÉ (*Chicoutimi*): Do bankers really take a lot of risks?

The CHAIRMAN: I am sorry but Mr. Gray has the floor. If you will be good enough to leave your name, we shall call you as soon as your turn comes.

* * * * * *

(*Page 54*)

Mr. CÔTÉ (*Chicoutimi*): Mr. Chairman, thank you for allowing me to ask a few questions. Do the banks take a lot of risks when, considering the power they have with regard to monetary expansion, they only have to maintain a reserve of 8%, for example?

* * * * * *

Mr. CÔTÉ (*Chicoutimi*): Why would Bill C-5 which is now being proposed oblige the banks to restrict their primary products and their production when in reality they have the power to create approximately 90% of their capital out of nothing?

* * * * * *

Mr. CÔTÉ (*Chicoutimi*): The Minister of Finance (Mr. Gordon) stated in the House two days ago, that in eight years and six months, or since the end of 1954 up to July 3, 1963, the chartered banks in Canada have created the sum of $5,248,000,000.

The CHAIRMAN: If you will allow me to interrupt you a second, Mr. Côté, I would suggest that, if possible, you should try not to stray from the subject under discussion. I fail to see any connection between your last question and Bill C-5. There may be a connection but I am not sure. I would point out that it is getting late so will you kindly keep to the subject of Bill C-5.

Mr. CÔTÉ (*Chicoutimi*): Do the banks actually consider they lose money when a client cannot pay the credit they have created to the extent of 90%?

* * * * * *

(*Page 55*)

Mr. CÔTÉ (*Chicoutimi*): Exactly, Mr. Chairman, I have prepared my questions according to those asked before, and that is why I consider I have the right to ask them.

The CHAIRMAN: Well, could you get to the point.

Mr. CÔTÉ (*Chicoutimi*): Just one further question. Considering the exceptional privileges they enjoy, would it not be normal for the chartered banks to object to the presentation of Bill C-5 even if it involved somewhat greater risks?

* * * * * *

The CHAIRMAN: I hope I have not dealt with you too harshly, Mr. Côté, but I did not get the meaning of your questions, at the time, and I did not see their connection with Bill C-5.

OFFICIAL REPORT OF PROCEEDINGS AND EVIDENCE

This edition of the Minutes of Proceedings and Evidence contains the text of Evidence in the language in which it was given, and a translation in English of the French texts printed in the Evidence.

HOUSE OF COMMONS

First session—Twenty-sixth Parliament

1963

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: EDMUND ASSELIN, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 2

FRIDAY, OCTOBER 18, 1963

Respecting

Bill C-5, An Act to amend the Bankruptcy Act

(Primary Products under Processing)

WITNESSES:

Mr. Lionel Sorel, 1st Vice-President, Canadian Federation of Agriculture and President of the Union Catholique des Cultivateurs; Mr. A. H. K. Musgrave, President, Ontario Federation of Agriculture; Mr. Gilles Ledoux, Secretary, Quebec Tomato Growers Association.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1963

29384-5—1

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: Edmund Asselin, Esq.

Vice-Chairman: Maurice J. Moreau, Esq.
and Messrs.

Addison,
Aiken,
Armstrong,
Asselin (*Richmond-Wolfe*),
Basford,
Bell,
Boulanger,
Cameron (*Nanaimo-Cowichan-The Islands*)
Chaplin,
Chrétien,
Côté (*Chicoutimi*),
Douglas,
Flemming (*Victoria-Carleton*),
Gelber,
Grafftey,
Gray,
Grégoire,
Habel,
Hahn,
Hamilton,
Jewett (Miss),
Kelly,
Kindt,
Klein,
Lloyd,
Macaluso,
McLean (*Charlotte*),
Monteith,
More,
Morison,
Muir (*Lisgar*),
Nesbitt,
Nowlan,
Nugent,
Olson,
Otto,
Pascoe,
Pilon,
Ryan,
Rynard,
Sauvé,
Scott,
Skoreyko,
Tardif,
Thomas,
Thompson,
Vincent,
Whelan—50.

Dorothy F. Ballantine,
Clerk of the Committee.

CORRECTION (English copy only)

Proceedings No. 1—Friday, July 26, 1963.

In the Minutes of Proceedings and Evidence—

Page 40, 5th line from the bottom and following should read:

. . . notifying the borrower under section 88. We have the right to dispose of these goods as we see fit—I am reasonably sure that I am correct on that, but at all times we are conscious of the importance of getting the best price for these goods. We may find, when we step in, that perhaps 30 or 35 per cent of the inventory is in process. We will expend additional funds to complete these . . .

ORDERS OF REFERENCE

WEDNESDAY, October 16, 1963

Ordered,—That the name of Mr. Whelan be substituted for that of Mr. Emard on the Standing Committee on Banking and Commerce.

Attest.

Léon-J. Raymond
The Clerk of the House

29384-5—1½

REPORTS TO THE HOUSE

JULY 5, 1963

The Standing Committee on Banking and Commerce has the honour to present the following as its

FIRST REPORT

Your Committee recommends:

1. That it be empowered to print such papers and evidence as may be ordered by the Committee, and that Standing Order 66 be suspended in relation thereto;

2. That its quorum be reduced from 15 to 12 members and that Standing Order 65(1)(*d*) be suspended in relation thereto.

Respectfully submitted,

EDMUND ASSELIN,
Chairman.

Concurred in this day.

JULY 11, 1963

The Standing Committee on Banking and Commerce has the honour to present the following as its

THIRD REPORT

Your Committee recommends that it be authorized to sit while the House is sitting.

Respectfully submitted,

EDMUND ASSELIN,
Chairman.

Concurred in this day.

(NOTE: The Second Report deals with a Private Bill in respect of which Proceedings were not published.)

MINUTES OF PROCEEDINGS

FRIDAY, October 18, 1963.
(10)

The Standing Committee on Banking and Commerce met at 9:15 a.m. this day. The Chairman, Mr. Edmund Asselin (*Notre-Dame-de-Grâce*) presided.

Members present: Messrs. Armstrong, Aiken, Asselin (*Notre-Dame-de Grâce*), Basford, Cameron (*Nanaimo-Cowichan-The Islands*), Gelber, Gray, Grégoire, Habel, Kelly, Kindt, McLean (*Charlotte*), Moreau, Muir (*Lisgar*), Olson, Pascoe, Pilon, Ryan, Rynard, Scott, Thomas and Whelan—(22).

In attendance: Mr. Lionel Sorel, 1st Vice-President, Canadian Federation of Agriculture and President of the Union Catholique des Cultivateurs; Mr. A. H. K. Musgrave, President of the Ontario Federation of Agriculture; Mr. Gilles Ledoux, Secretary, Quebec Tomato Growers Association.

The Chairman reported that the Subcommittee on Agenda and Procedure had met on Thursday, October 8th, and agreed to recommend that the Committee hold regular sittings on Friday mornings at 9:00 a.m. to hear briefs in connection with Bill C-5 and to consider any other matters which may be referred to it by the House.

On motion of Mr. Moreau, seconded by Mr. Habel, the above mentioned report was adopted.

On motion of Mr. Thomas, seconded by Mr. Armstrong,

Resolved,—That the quorum of this Committee be reduced from 12 to 10 members.

In the absence of French shorthand reporters, the members agreed that the interpretation of questions and answers in French be regarded as part of the official record.

The members resumed consideration of Bill C-5, An Act to Amend the Bankruptcy Act (Primary Products under Processing).

The Chairman introduced the witnesses and welcomed them to the meeting.

Mr. Musgrave read a brief prepared by the Canadian Federation of Agriculture and was questioned, assisted by Mr. Sorel and Mr. Ledoux.

On motion of Mr. Scott, seconded by Mr. Gray,

Resolved,—That the papers appended to the brief of the Canadian Federation of Agriculture be printed as Appendices to the Minutes of Proceedings and Evidence. (*See appendices A, B, C.*)

Mr. Sorel thanked in French the members for their courteous reception of the brief.

On behalf of the members, the Chairman thanked the witnesses for coming and presenting their views to the Committee.

At 11:00 a.m. the Committee adjourned to the call of the Chair.

Dorothy F. Ballantine,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

FRIDAY, October 18, 1968.
(10)

The Standing Committee on Banking and Commerce met at 9:45 a.m. this day. The Chairman, Mr. Edmund Asselin (Notre-Dame-de-Grâce) presided.

Members present: Messrs. Armstrong, Asselin (Notre-Dame-de-Grâce), Barford, Cameron (Nanaimo-Cowichan-The Islands), Gilbert, Gray, Flemming, Habel, Hales, Kindt, Lambert (Charlotte), Moreau, Saint (Laprairie), Glenn, Rynard, Ellen, Ryan, Burkard, Scott, Thomas and Whelan—(22).

In attendance: Mr. Lionel Sorel, 1st Vice-President, Canadian Federation of Agriculture and President of the Union Catholique des Cultivateurs; Mr. A. E. K. Musgrave, President of the Ontario Federation of Agriculture; Mr. Gilles Ledoux, Secretary, Quebec Potato Growers Association.

The Chairman reported that the Subcommittee on Agenda and Procedure had met on Thursday, October 17th, and agreed to recommend that the Committee hold regular sittings on Friday mornings at 9:30 a.m. to hear briefs in connection with Bill C-3 and to consider any other matters which may be referred to it by the House.

On motion of Mr. Moreau, seconded by Mr. Habel, the above mentioned report was adopted.

On motion of Mr. Thomas, seconded by Mr. Armstrong,

Resolved,—That the quorum of this Committee be reduced from 12 to 10 members.

In the absence of French shorthand reporters, the members agreed that the interpretation of questions and answers in French be regarded as part of the official record.

The members resumed consideration of Bill C-5, An Act to Amend the Bankruptcy Act (Primary Products under Processing).

The Chairman introduced the witnesses and welcomed them to the meeting.

Mr. Musgrave read a brief prepared by the Canadian Federation of Agriculture and was questioned, assisted by Mr. Sorel and Mr. Ledoux.

On motion of Mr. Scott, seconded by Mr. Gray,

Resolved,—That the papers appended to the brief of the Canadian Federation of Agriculture be printed as Appendices to the Minutes of Proceedings and Evidence. (*See Appendices A, B, C.*)

Mr. Sorel thanked in French the members for their courteous reception of the brief.

On behalf of the members, the Chairman thanked the witnesses for coming and presenting their views to the Committee.

At 11:00 a.m. the Committee adjourned to the call of the Chair.

Dorothy F. Ballantine,
Clerk of the Committee.

EVIDENCE

FRIDAY, October 18, 1963.

The CHAIRMAN: I believe I see a quorum, gentlemen, so we will call this meeting to order.

The first item of business is the report from the subcommittee on agenda and procedure, which took place some few days ago. The subcommittee on agenda and procedure met on Thursday, October 8, and agreed to recommend that the committee hold regular sittings on Friday mornings at 9 a.m. to hear briefs in connection with Bill C-5 and to consider any other matters which may be referred to it by the house.

In this connection may I say that the only time available was 9 o'clock on Friday mornings. We will hold these weekly until we have exhausted the business that is to come before the committee. The subcommittee has indicated that if the pressure of business becomes great they will leave it to the Chair to call other meetings and to try to speed up matters. However, for the present we will hold one meeting a week.

Is there a motion to approve the recommendation of the subcommittee?

Mr. MUIR (*Lisgar*): Before we approve this I think it would be more convenient, if we have time to do the business of the committee, to meet at 9:30. I personally was held up ten minutes this morning at one of the bridges and it is now 9:15, and we have only just obtained a quorum. I think 9:30 would be more convenient for most of the members.

The CHAIRMAN: This subject was discussed by the subcommittee on agenda and procedure and it was thought that we only had two hours because we sit on Friday mornings at 11 o'clock, and to the extent that it is possible we hoped we would not be sitting while the house was in session; and we agreed to adjourn at 11 o'clock; if there were still questions to address to witnesses we would ask them to come back during the afternoon so as to terminate hearings and not to impose too great a hardship on them. Many of them, as you know, come from great distances.

We might at the same time make a motion to reduce our quorum requirements to ten, although I must say that today's situation is a little extraordinary because several groups had to leave parliament hill last night for various pre-arranged engagements today, and this might not be repeated every Friday.

Mr. THOMAS: I move, Mr. Chairman, that we reduce the quorum to ten and meet on Friday at 9.

Mr. ARMSTRONG: I second the motion.

The CHAIRMAN: Possibly, Mr. Thomas, you might move the adoption of the report of the subcommittee on agenda and procedure in connection with the time and date of the regular meetings, and then we could have another motion on the quorum after we have adopted that.

Mr. MOREAU: I make that motion.

Mr. HABEL: I second it.

The CHAIRMAN: It is moved by Mr. Moreau and seconded by Mr. Habel. Are you ready for the question? All in favour?

Motion agreed to.

It is now moved by Mr. Thomas, seconded by Mr. Armstrong, that the quorum be reduced to ten. Is there any discussion on the motion? Are you ready for the question? All in favour? Contrary minded?

Motion agreed to.

Gentlemen, it gives me a great deal of pleasure to welcome here today the representatives of the Canadian Federation of Agriculture. We have their president, Mr. A. H. K. Musgrave.

Mr. A. H. K. MUSGRAVE (*President, Ontario Federation of Agriculture*): No, I am president of the O.F.A.

The CHAIRMAN: Would you consider that a promotion or a demotion?

Mr. MUSGRAVE: You are promoting me. We have here the first vice-president, Mr. Sorel.

The CHAIRMAN: Then, we have Mr. Musgrave, the chairman of the Ontario Federation of Agriculture, the gentleman who spoke a moment ago, and on his left we have Mr. Lionel Sorel, président, Union Catholique de Cultivateurs. On his right nous avons Monsieur Ledoux, le secrétaire production spécialisée de U.C.C., Union Catholique de Cultivateurs. It gives me a great deal of pleasure, gentlemen, to welcome you here today.

I understand that Mr. Musgrave will be reading a brief in connection with the consideration of Bill C-5, to amend the Bankruptcy Act.

Mr. Musgrave, would you care to present your brief to the committee now?

Mr. MUSGRAVE: Mr. Sorel is leader of our delegation because of his position as vice-president of the Canadian federation, and I wonder if he would like to say anything first.

Mr. LIONEL SOREL (*President, Union Catholique de Cultivateurs*): No.

Mr. MUSGRAVE: This submission is by the Canadian Federation of Agriculture, Mr. Chairman and gentlemen, to the standing committee on banking and commerce, and the subject is Bill C-5, and Act to amend the Bankruptcy Act.

May we first express our appreciation of the opportunity being given to the Canadian federation of agriculture to appear before this committee. It is a privilege that is very much appreciated.

This submission in support of Bill C-5 is made on the instructions of the board of directors of the Canadian federation of agriculture, who fully support the intent of the amendment to the Bankruptcy Act which has been introduced by Mr. Whelan and given approval in principle by the House of Commons.

This will not be a long or complex submission. Our representations are concerned with the application of the amendments to farmers. The position, quite simply, is that the farmer, who often delivers the product of a year's work to a plant, should be in the position of a preferred creditor in case of bankruptcy. The position was put well and forcefully in a letter received by the Ontario federation of agriculture from one grower who suffered loss in bankruptcy in 1962 of Graham Products Ltd. This man said:

> I would like to voice my opinion very strongly on the Bankruptcy Act. It is a very unfair practice that the banks are allowed to sell my produce, which has been unpaid for, and the government upholds them.
>
> I have lost approximately $13,500 on account of Graham food going into receivership on my peach crop. It is not only the loss of payment, but loss of a year's work and the cost of harvesting same, which would amount to $7,000 in the least.

> Farming is a considerable risk at any time without having the banks (backed by the government) take my crop and under Section 88 I am unable to redeem my loss.
>
> Why is such an underhand policy allowed when the bank knows and plans to foreclose before this produce has even been delivered, leaving a farmer in financial difficulties?

This seems to us to sum up the situation very well. There is of course the charge contained in the last paragraph respecting the nature of the activities of the bank concerned. It is perhaps expressed in a form more extreme than is correct or than could be firmly proved. A few sentences from a report on the same situation by the Ontario tender fruit growers' marketing board, however, gives the kind of facts that lead to such opinions being held by farmers. The report is dated July 22 of this year.

> Since November 27th (the date of going into receivership) the receiver has been liquidating stock at a normal rate at market prices and it would appear that had purchases of fruit and vegetables been kept to a normal amount—that is, purchased by Graham food—and the bank had not stepped in that the company could have still been operating. At the time of placement in receivership there was a book deficit on the company's financial statement of $122,074 over total assets of $1,676,030. The bank loan was $1,376,514 on an inventory of $1,340,657 so that it seems that the bank had made a serious error in making such a large loan to the company even if it did have good security.

To the above information must be added the following facts. In January, 1963, a letter to creditors stated: "Severe operating losses in 1961—we have made the underline here; it was not in the letter—and 1962, which amounted to nearly $200,000 in each year placed the company in a precarious financial position." The previous August the bank concerned wrote to a dealer: "The above named (Graham Food Products Ltd.) have carried a satisfactory account at this bank for the past three years. While they are carrying a fairly heavy inventory which to some extent cramps their working capital position, we consider them a reasonable risk for their normal business requirements."

Those are the two letters that we were comparing there.

The marketing board memorandum concludes:

> At time of writing, the affairs of the company are still being managed by the receiver and growers can only watch the use of their fruits and vegetables to partially satisfy the claims of other creditors who by law are in a preferred position.

Some $100,000 was lost by growers in this particular case. We think it illustrates very well why the present law should be changed.

The heart of the problem of course lies in the question of the effects on industry, including agricultural producers, of this amendment. Will it disadvantage producers through restricting the availability of credit to the point where outlets for their product are not available to the extent they should be? Or, will it result in undesirable reduction of competition through elimination of small plants? We contend that fair treatment for the banks is not an issue of any significance in this instance. We think it should be pretty clear that the banking system is not threatened by this amendment, and the banks are perfectly capable of protecting their security and profits, and limiting their risks to a proper level.

The issue, we repeat again, is whether the producers whom the amendment is designed to protect are in fact asking for the right thing in their interests. It extends perhaps to the question of whether the amendment unreasonably restricts the opportunities for commercial activity of potential and existing processors and the people employed in those plants. It does not extend to the question of fairness to the banks. In this matter, they can take care of themselves whichever way it goes.

By the amendment, section 88 of the Bank Act is not eliminated. The effect of its provisions is merely limited. The nature of the limitation is that no longer will farm produce, delivered but not paid for, be available as security for the banks on loans to the purchaser of that produce. The amendment of course does more than this. It also gives a preferred position to the farmer over other suppliers, in the same way that the wages of workers are in a preferred position.

Our submission is that this is a right and proper course to follow. The vulnerability of the individual farmer to losses arising out of the bankruptcy of the processor to whom he sells his produce is very great, and very serious. Such a loss can often ruin the farmer. If it does not ruin him it can mean the loss of his work for a year plus the acquisition of a new burden of indebtedness for farm costs incurred in producing the crop. Even if less than a year's work is involved, his livelihood is directly and damagingly affected. In short, the farmer cannot afford, and should not be expected to afford, the risk of such losses.

If it is argued that in the absence of the full opportunity to utilize section 88 there will be plants that will not be able to get into business, to the disadvantage of the farmer through loss of outlets for his produce and reduced competition for this product, we reject this argument in principle. We do not really think it is in the interests of the farmer or the industry to look to plants that cannot operate except by making the farmer stand security for the processor's bank loans. We would think a healthier food industry should result from the loss of this particular opportunity.

The banks suggest that this is a foot in the door to elimination of the section 88 security altogether, to the detriment of commerce in this country. We are not prepared at these hearings to argue the value and propriety of section 88 in all its aspects. In response to this argument we would only say that the amendment before us does not necessarily envision such as extension to other types of creditors. The usefulness of section 88 can be argued in a more general way at other times.

Besides, our submission is not just against section 88. It goes beyond that. It is that the farmer should be a preferred creditor over other creditors in case of bankruptcy, for reasons the same as those protecting the worker's wages. As with every rule there will be anomalies in the application of this one. There will be small businesses, local suppliers, as vulnerable as the farmer. There will be farmers who for particular reasons are not especially vulnerable compared to other creditors. But broadly speaking we submit that the case for a preferred position, after that of the wage-earner, is a valid and equitable position to give the farmer.

We recognize also that the amendment goes beyond the producer of farm products in its application. We are representing here the farmer and small woodlot operator (who is typically also a farmer). We claim no knowledge of the position or problems of other groups although we would think the position of the fisherman would in most cases be very similar.

Bankruptcies do not happen very often. But this is not a case against the amendment. If anything, it is a case for it. The small number of bankruptcies is evidence that the economy is not in such a position that recourse to the

protection of section 88 is vitally and frequently necessary. At the same time, the infrequency of these bankruptcies in no way reduces the seriousness to the individual farmer of being caught up in one.

In terms of actual case histories, we do not have a large dossier to present to this committee. The case of Graham Food Products has been mentioned. The case of Visco Poultry Packing (1957) Ltd. of British Columbia has already been placed before the committee. We would mention also, particularly, the recent case in Quebec of J. J. Joubert & Fils Ltee. where 278 producers of vegetables lost $51,905, and the case of Les Abattoirs Richelieu Inc. in which 70 farmers lost $154,000. There have been a number of other cases that could be mentioned as having occurred during the last 15 years in Quebec.

You will I believe be getting further information from particular Ontario groups.

Attached to this submission are some notes on the bankruptcy of Graham Food Products prepared by the Ontario Tender Fruit Growers' Marketing Board and quoted in part in this submission; the letter from the British Columbia federation of agriculture which has already been placed in the record before this committee; and a letter to the Tomato Producers' Board in Quebec from its counsel, advising it of the hopelessness of the case of J. J Joubert and Fils Ltee., and recommending that they resign themselves to the loss.

I would like to mention at this time that Mr. Sorel, who is present, on three occasions has been victimized by this same bankruptcy procedure.

The CHAIRMAN: He looks remarkably healthy in spite of that.

Thank you very much, Mr. Musgrave. I would at this time request that the witnesses answer any questions on the brief which the members of this committee may care to direct to them. As I mentioned earlier, Mr. Sorel, Mr. Musgrave and Mr. Ledoux are your witnesses this morning.

Mr. MUIR (*Lisgar*): Mr. Chairman, I have a question which I would like to put at this time. Would the placing of any limts on section 88 of the Bank Act tend to limit the credit that would be ordinarily extended to processors for the carrying on of their work.

Mr. MUSGRAVE: Did you say would that limit the processors in carrying on their work?

Mr. MUIR (*Lisgar*): By putting on any limit that we would in respect of section 88 of the Bank Act would that tend to limit the credit that the bank would be willing to offer the processors.

Mr. MUSGRAVE: That would be a matter for the banks to decide. As far as I am concerned, and the people I represent, we object to having a processor operate on our credit, which is what is happening. If a processor is in such a weak position that the only way he can operate is by using value owned by other people, and those other people have no share in any earnings he may make, we object.

Mr. MUIR (*Lisgar*): Well, in that case, sir, assuming that it does limit the credit which the banks or other lending companies would be willing to offer to the processor, would you think it desirable to add a further amendment making it mandatory that any processor handling primary products be bonded to an extent depending on the capacity of the processing plant?

I cite as illustration Manitoba where they made it mandatory for hatcheries and eviscerating plants to be bonded depending on the capacity of the hatchery and of the plant, from $2,000 up to $4,000, and again up to $5,000. Could this same principle not be extended to other industries so that at any time the amount of produce that a plant held would be covered by a bond? I mean, this would be on top of the amendment that we have here. Do you not think it would be desirable?

Mr. MUSGRAVE: I believe, Mr. Chairman, and gentlemen, that the meat processing plants in Ontario do have such a bond. I know that a trust fund is set up so there is always money there to pay for the delivery of products.

Mr. MUIR: (*Lisgar*): Do you not feel it would be desirable, let us say, for fruit processing plants and canneries which deal with primary products, to be bonded?

Mr. MUSGRAVE: That is possible, sir. But that is not exactly what we are asking. However, it is possible.

Mr. MUIR (*Lisgar*): I think it would cover the same thing without limiting the amount of credit that the processor may be able to get.

Mr. MUSGRAVE: I would not agree to that as a substitute.

Mr. MUIR (*Lisgar*): No, but it could be added to it; that is, in addition. I think your axe would be getting double protection, and it would perhaps be adding more protection for everyone, including the processor himself. I just wish to throw this suggestion out to you, because I think it is something that we should consider when looking over this amendment.

The CHAIRMAN: Thank you, Mr. Muir. Before we go on, I wonder if I might have a motion that the notes which are appended to the submission made by the Canadian Federation of Agriculture, I mean the notes concerning the bankruptcy of the Graham Food Products be printed as an appendix in the report?

It has been moved by Mr. Scott and seconded by Mr. Gray.

Motion agreed to.

Mr. SCOTT: I realize that you are here only to represent a particular group in the community, and that you are presenting your position alone. But what disturbs me about the submission is this: it seems to me that you are asking us to accept a very new principle, and while this might be granted and be beneficial to you, are you not in danger or upsetting the whole basis on which commerce operates, so that the next thing we will have will be the building suppliers wanting similar protection? It seems to me that the line taken here is one which, if accepted in principle, is entirely opposite to the whole concept of business on which all commerce operates. What consideration has your group given to the ultimate consequences of a widespread acceptance of this principle?

Mr. MUSGRAVE: Our contention is that business people are in a much better position to assess the financial position of the people to whom they make deliveries than are farmers; our contention is that farmers are more nearly in the position of the labouring man, and at present the labouring man is regarded as needing this protection.

One other thing, in the event of a bankruptcy, where a tradesman has extended credit and is losing, it is usually a small part of the operation of that particular person. But where a farmer is delivering perhaps a year's products, under contract sometimes, to one processing plant, then his whole year's business may be gone. We think that makes a lot of difference.

Mr. SCOTT: I do not agree with you there.

Mr. MUSGRAVE: And may I say just to elaborate a little further, in anticipation of the suggestion in our brief, that this bankruptcy thing does not happen very often; neither does murder happen very often; but it is a very important sort of thing to the "murderee". So just because it does not happen very often we do not say that we should not bother about it. We still have pretty strict laws about it.

Mr. SCOTT: The fact that it does not happen very often is one of the main reasons for not accepting the principle. I feel it is pretty dangerous.

The CHAIRMAN: Now, Mr. Sorel.

Mr. LIONEL SOREL (*President of the Union Catholique de Cultivateurs and first vice-president of the Canadian Federation of Agriculture*): I would like to say a few words in French.

(Text of Statement not recorded).

The CHAIRMAN: Gentlemen, something has just been drawn to my attention. I think you had better repeat your remarks in English because we do not happen to have a reporter taking French this morning. He was asked for and he should be here. Has anybody any suggestions?

Mr. GELBER: Is there an interpreter present?

The CHAIRMAN: No, there is no interpreter either. I wish to apologize to our witnesses this morning for this happening. I wonder if the clerk could get in touch with the appropriate people right away.

Mr. GELBER: If he would care to summarize his remarks in English, it would be appreciated.

The CHAIRMAN: Mr. Sorel has offered to speak in English in this particular instance.

Mr. GRAY: There are others here who could translate for our colleagues.

The CHAIRMAN: Thank you. And I myself would be glad in future to do this for you.

Mr. LEDOUX: What Mr. Sorel said is that when a processor or a cannery goes to the bank to get credit he very often has to prove that he has a certain number of acres on contract for the coming crop. At that moment all those contracts which have been signed by the producers bind those producers to deliver their produce to the processor, and the usual way is to pay for this produce at the beginning of November or December. These payments are made on produce which has been delivered in June, July, August and sometimes even in September. Therefore, when the processor goes to the bank to get credit, the grower is not in a position to know the financial position of the processor with whom he is under contract. I think that would generally summarize it.

The CHAIRMAN: In any case, Mr. Ledoux if you wish to speak in French I would be glad to translate it.

Mr. MOREAU: There was another point made, Mr. Chairman, that the financial position of the processor might change in the interval between the time when the contract was signed and before the payment would be due, so that the processor would have no opportunity to learn of the change of position, and even if he learned it it would not be any good because he had signed his contract.

Mr. OLSON: I would like to pursue the actual practice of using this protection under section 88 of the Bankruptcy Act. In the submission that was made by the Canadian Federation of Agriculture spokesman I find that he says he had not many case histories to present to the committee. In the case of Graham Food Products Limited, the fact is pointed out that the bank loan was $122,000 above the total assets of the company, the bank loan, of course, being protected under section 88 of the Bankruptcy Act. I wonder if this same over-extension of credit applied also in the case of the 278 producers who lost $51,000 to the J. J. Joubert and Fils Ltee., and also the 70 farmers who lost their produce to Les Abattoirs Richelieu. Was there over-extension of credit in both of these cases as well?

Mr. LEDOUX: In the case of J. J. Joubert and Fils I would say there was.

Mr. OLSON: Would you say that in practice the banks have in fact over-extended credit to the processors under the protection of this act, in most of the cases where bankruptcy has been declared?

Mr. LEDOUX: You mean in Quebec?

Mr. OLSON: Generally.

Mr. LEDOUX: I would say, yes.

Mr. OLSON: Well then it would seem that perhaps the producers would be better off even in so far as marketing their crops was concerned if there was no protection under section 88 because then there would be no possibility of the bank over-extending credit to keep them in business to accept their produce.

Mr. MUSGRAVE: I would not say that, sir. I have no objection to section 88 applying to that part of the inventory which is paid for. What I object to is section 88 applying to my produce that has been delivered and is not paid for. That is using my credit to support the processor.

Mr. OLSON: This is exactly the point I am making, that because of the present provisions of section 88 the banks have, in some cases, kept the processor in business after his liability has exceeded his assets, and accepted more produce from the producers which was actually used, at least we can suppose, when this process was used to build up an inventory, to protect some previous loan.

Mr. MUSGRAVE: That is right. If the bank had recourse to whatever part of the inventory had been paid for and no more, then the bank would not have any object in allowing a processor to remain operating when he was insolvent.

Mr. SOREL:

(Text of comment not recorded).

The CHAIRMAN: Mr. Sorel says he feels that the producer also makes great efforts towards giving credit to the manufacturer, and this is done voluntarily and freely. He feels that this is a sufficient effort on the part of the producers, and that while this is done freely and voluntarily he does not see why the fact that he does this should give the processor the right to use the credit which he is giving him to pass on to someone else and create another credit. He says that this effort of giving credit to the manufacturer is done between the time that his product is delivered and later in the fall. He drew our attention to the fact that he produces fruits and vegetables and that he has not yet received one cent although they were delivered a few months ago. He is convinced at the present time that some of the beans that he has produced have now been consumed by the eventual consumer and yet he has not been paid. He feels this is an abnormal situation.

Mr. OLSON: I have one other point. From the case history of Graham Food Products it is quite obvious that when the bank loan was $1,376,000 against total assets of $1,676,000, that this is not in keeping with normal banking practice. I think it would be very useful to the committee if the federation would undertake to give us the case history respecting these other two bankruptcies that they have drawn to our attention to see if there is a similar pattern of over-extension of credit with a view to building up inventory to protect a bank loan that has been made previously to acquire that inventory. I wonder if they would undertake to provide us with this information?

Mr. MUSGRAVE: We can do that, sir.

The CHAIRMAN: Mr. Pascoe?

Mr. PASCOE: My questions have pretty well been answered by Mr. Sorel. As a western grain grower I was interested in information in respect of partial cash payment with regard to delivery, but I understand that is not the way it is worked here. You mentioned growers delivering under contracts. You might explain whether the processor pays any of the operating costs in respect of producing the crop?

Mr. SOREL: No. Sometimes they do provide the seed for peas or something like that; sometimes there is the seed.

The CHAIRMAN: May I inform the committee and our witnesses that we now have the services of an interpreter, although we do not yet have a French reporter.

Mr. MOREAU: We might accept the translation as part of the official record and can probably get over the hurdle in this way.

The CHAIRMAN: Thank you. Will you proceed, Mr. Pascoe?

Mr. PASCOE: I have finished.

Mr. SOREL (*Interpretation*): It has been said that there are very few bankruptcies. Actually, there are very few in the strict sense of the word, but we do have quite a few cases where the producer will accept any kind of a settlement rather than go into bankruptcy. For instance, you may have beans which will sell for $100 per ton, and a person would accept $70 if it is offered to him. In fact, I have done this myself. In other words, the producer will accept any kind of a settlement rather than go into a receivership.

Mr. GELBER: Mr. Chairman, I do not know how familiar the witnesses are with the details of the Graham Products failure. Do any of the witnesses know whether the bank had a personal guarantee from the principals of this firm?

Mr. MUSGRAVE: I do not know that.

Mr. GELBER: If it were so, the bank and the debtor would have a common interest in building up unpaid inventory. That would be a very interesting thought which we might try to find out, Mr. Chairman.

Mr. MUSGRAVE: The bank and the guarantor?

Mr. GELBER: The principals, the debtors. Mr. Chairman, we have had a very interesting idea put before this committee; that is, that unpaid inventory not be subject to section 88. I understand the witnesses say they would be satisfied if that were so. That would be a very interesting principle to extend to section 88 generally; that is, that buyers who had not been paid have their inventory not subject to section 88, except that portion which is in process. It would be hard to segregate. It would make this bill even more significant if that idea became part of the Bankruptcy Act. I wonder if the witnesses would like to comment on that. I would think this is a particularly interesting proposition.

Mr. KINDT: It is your thought that this would be on the first assets of the business?

Mr. GELBER: I just thought the committee might be interested in this idea in view of its work next year in connection with the Bank Act. Is it not a fact that in the province of Quebec there is a certain protection in respect of goods delivered within 30 days of bankruptcy?

The CHAIRMAN: Yes; in many fields. For instance, I think it is 30 days in connection with building materials. There are other fields in which the delay is longer. It has to be registered; it is a different system.

Mr. MOREAU: I have had some experience with this 30-day provision in the province of Quebec. Before you find out you are not going to be paid, the 30 days are up in some cases.

The CHAIRMAN: Mr. Musgrave, would you like to comment on Mr. Gelber's remarks?

Mr. MUSGRAVE: Mr. Chairman, I would say we are not taking that position. We are saying that the farmer's position should rank next to labour. This is a very interesting suggestion. I would like to think about it further. I am not prepared to say now that we would accept that. We say that the working man who depends on his week's wages is entitled to protection; this is recognized by our law and our system. We say that the farmer should rank next. It is interesting to hear that in the province of Quebec the

person who delivers building supplies has a nominal 30 day protection. I understand the farmer does not even have that.

Mr. GRAY: This discussion is interesting, but I doubt it is relevant to the terms of the bill.

Mr. GELBER: I just put forward a suggestion. I would like to ask another question now.

We had a submission by the Canadian Federation of Agriculture; we had a submission by the Canadian Bankers' Association. They are not dealing with the same problem. The Canadian Bankers' Association told us that section 88 in effect means that the processing industry generally has more support from the banks and therefore can provide a better service to the farmers, and that this means the farmers do not have to deliver to too few processors and have a more competitive area in which to sell. The federation of agriculture tells us of individual cases where by reason of this situation individual suppliers suffered. Do the witnesses feel they are gaining as an industry by section 88 in spite of the fact that individual suppliers may suffer?

Mr. MUSGRAVE: I think, Mr. Chairman, that we are putting forward the principle that the farmers' credit should not be used to bolster a processing industry which otherwise could not operate. We are saying we do not think it is of any advantage to us to maintain processors who otherwise could not operate and would not exist. Does that answer the question?

Mr. GELBER: Yes.

The CHAIRMAN: Mr. Kindt, do you wish to ask a supplementary question?

Mr. KINDT: Yes, Mr. Chairman. If I understood Mr. Musgrave's position and the position of the federation of agriculture, what you are attempting to do, as stated in this brief, is to first of all, establish a principle that a producer or farmer is not in a position to know—.

The CHAIRMAN: Mr. Kindt, excuse me for interrupting. I will put your name down here as wishing to ask questions, but your question is not really supplementary. You are discussing the whole question.

Mr. KINDT: I will wait my turn.

Mr. GRAY: Mr. Chairman, I should like to ask Mr. Musgrave whether he really agrees with the contention of one of the other members of this committee that this is a new principle that is being suggested in view of the fact that there is already a similar privilege granted under the Bankruptcy Act to wage earners?

Mr. MUSGRAVE: I would say, sir, you could not say that it is a new principle. As you ponted out, this privilege is already extended to wage earners. We feel what we are suggesting is an extension of that principle to people who are in a very similar position.

Mr. GRAY: Would you also agree that there is already the same principle found in much provincial legislation, particularly in the province of Ontario where building suppliers have a mechanics lien protection? Would you agree with that suggestion on my part?

Mr. MUSGRAVE: Yes. I am not too familiar with the mechanics lien legislation but I know something about it and I know it is in existence.

Mr. GRAY: In effect they are given the same privilege because they are supplying building materials.

Mr. MUSGRAVE: Yes.

Mr. GRAY: I am perhaps now referring to a legal question but I should like to suggest that the witness who felt it would be useful to add a further

amendment to cause these processing plants to be covered by a bond is perhaps suggesting something rather difficult because this involves something that is not within federal jurisdiction.

Mr. MUSGRAVE: You are asking me a question that is beyond my ability to answer. I think, as you suggest, that is a question of law.

Mr. GRAY: Yes, and as a lawyer I was raising the question. I was just throwing this suggestion out to the committee at this point.

The CHAIRMAN: Would you suggest, Mr. Gray, that this be referred for opinion to the law officer of the crown?

Mr. GRAY: I am not referring to this bill in any way. I am of the opinion that the bill itself is clearly within the competence of federal parliament. I am just raising the question at this point for the edification of the committee.

The suggestion of bonding processing firms is first of all not something that can be legitimately added to this bill which is an amendment to the Bankruptcy Act. Secondly, bonding an individual processing firm operating within provincial boundaries might not be within the legislative competence of our parliament. I am just making this suggestion to keep this discussion in perspective. It is a useful point which has been raised by Mr. Muir, but I wanted to make this comment at this time.

Would you agree or disagree, Mr. Musgrave, that the continuation of the present terms of section 88 encourages bank officers to engage in sloppy practices in granting credit to processors?

Mr. MUSGRAVE: Mr. Chairman and gentlemen, it would seem that that situation does supply an additional cushion. I cannot say, and I have no way of knowing whether that actually happens. I have no way of proving this.

Mr. GRAY: From observation it would appear that it does happen?

Mr. MUSGRAVE: If I were a bank manager and knew that I could protect my operation by seizing goods delivered but not paid for and that I would never have to pay for them, I think I might be a little easier in granting credit. I have no doubt that bankers are much smarter than I am and perhaps would not do that. Being the kind of person I am, I would probably do that.

Mr. GRAY: Your charitable comment I am sure should be appreciated by the bankers.

In closing my questioning, I would suggest to members of this committee who have not already done so that they read the evidence, especially the cross examination of the representatives of the banks who appeared before use before the adjournment. That evidence is very useful, I assure you. Thank you Mr. Chairman.

Mr. MUIR: Mr. Chairman, since my suggestion was commented upon, I think perhaps I should be allowed to say a word or two in this regard.

It would seem to me that there must be regulations under the Federal Department of Agriculture that would have to do with the bonding of certain processors operating under federal jurisdiction. While we can only suggest to the province that this would be desirable, I would like to know that some research was being made in this regard.

The CHAIRMAN: I think it is perfectly in order for us to discuss alternatives in the committee here. I think all Mr. Gray was pointing out was that if the federal government wanted to do something in that direction this might be something within the jurisdiction of the provincial governments.

Mr. MUIR: I thought Mr. Gray's suggestion was good and I agree that we should follow this through in an attempt to find out the extent to which bonding can be handled by federal authorities.

Mr. CHAIRMAN: Would this committee be interested in having an opinion from the law officer of the crown in respect of the point raised by Mr. Gray?

Mr. MUIR: That might be useful, Mr. Chairman, and it might also be useful to call the deputy minister of agriculture of the federal department who deals with these matters. He may well have something to contribute.

The CHAIRMAN: Thank you Mr. Muir.

Mr. SCOTT: Mr. Chairman, I wanted to ask Mr. Muir if he could give us any opinion in respect of whether, when these processing plants apply for bank credit, the products that are given by the farmer form a very substantial part of the assets that are pledged to the bank?

Mr. MUSGRAVE: Mr. Chairman, I have not seen an application form which would be filled out by a processor when applying to the bank for credit. In some cases where a processor has a contract with a number of large producers, the product to which you have referred may well form a large part of the assets. There may not be very much in the way of liquid assets involved other than the product either in its raw or processed form.

Mr. SCOTT: You say also that the farmer enters into what is in effect a future contract, is that right?

Mr. MUSGRAVE: That is right.

Mr. SCOTT: And I understand this is also used as security?

Mr. MUSGRAVE: That is correct, sir, so that the farmer from the time he puts the seed in the ground is obligated to deliver a certain tonnage per acre from each acre that is under contract to that processor.

Mr. SCOTT: Would that mean that if the processor went into bankruptcy the farmer would have to deliver his products to a bankruptcy company?

Mr. MUSGRAVE: That is the way the act reads. It does not say you would have to do that, because once a company is bankrupt I suppose you would not do that, but that is certainly part of the credit available to the processor. I do not think I would ever deliver a product to a bankrupt company.

Mr. GRAY: You might be obliged to do so.

Mr. SOREL (*Interpretation*): There is no exception to the rule. We are obliged to deliver the product.

Mr. MUIR: I think a bankruptcy might well be timed so as to take place after the crop was in but before it was sold.

Mr. MUSGRAVE: You said that. I did not say that.

The CHAIRMAN: Mr. Kindt, I am sorry you had to wait so long.

Mr. KINDT: That is fine, Mr. Chairman, I must leave for another meeting very shortly.

Mr. Musgrave, does it depend upon the terms of the contract and how it is written, when the primary producer receives periodic payments for his products, and whether or not at that particular point in the transaction between the producers and processors there could be perhaps some looseness which could be tightened up to at least partially look after the situation? I realize and agree that the producers are operating in the dark and know nothing of the financial positions of these corporations to which they deliver their product, but what you are asking for is protection? In so far as that is concerned, I very much agree.

Could you answer the first question?

Mr. MUSGRAVE: I will try, Mr. Chairman.

The producer is prepared to extend credit over a time period to the processor so that he may process the product, sell it and start getting some income, so quite often the producer does not ask for a down payment. That is correct, is it not?

Mr. LEDOUX: Yes, it is.

Mr. SOREL: Yes.

Mr. KINDT: In principle, should the primary producer be extending credit to the processor? That is the function of the bank. That is the function of some lending agency. It seems to me that under our banking act there should be some trust fund or some revolving fund to protect creditors. If you put money in the bank you are protected on your deposit. It seems to me that perhaps we should take another look at some of the methods which are being used to make the producer—manufacturing more operative under our system of *caveat emptor*—in other words, let the buyer beware when it comes to purchasing something. What is now in effect is let the seller beware. What you are saying is that the seller cannot beware because he does not know anything about the financial situation of the corporation.

Mr. MUSGRAVE: The producer has one market All his product goes to that market. To secure that market he must find a contract in many cases. When it comes to delivering, he does not have much option, does he?

Mr. KINDT: None at all.

Mr. MUSGRAVE: It would seem to me that the producer is acting wisely when he extends time to the processor.

You are suggesting, as I understand it, that the producer should say to the processor that unless he can pay some cash on this day and more cash on this day, he will not deliver. I think we would unduly restrict business by taking that attitude, and we are not taking it. We are taking an attitude very similar to that taken by the wage earner, the labouring man. We do not want our credit used to bolster the processor's credit. We do want to be ranked next to the wage earner in securing the product of our labour.

Mr. MUIR (*Lisgar*): May I comment on that one thing?

I think that type of contract puts the farmer in a terrible position and that the credit these people need ordinarily would go to the producer for a first payment, a down payment, on his produce. I know that is the situation used out in Manitoba among the sunflower growers and other crop producers. They sign the contract to deliver to the processor but in the contract it is stated that an initial payment will be made.

I fail to see why a processor would need all this credit if he was not paying some of it out to the producer.

Mr. MUSGRAVE: I do not know whether I am supposed to answer that, sir.

The CHAIRMAN: If you would care to make a comment, please do.

Mr. MUSGRAVE: The fruit and vegetable processor operates usually for a short period, not for a full year. He has perhaps six months to operate, not more; and he does have a heavy expense at that time. It is in the interest of the producer that the processor should operate quickly. The consumer does not appreciate a product that is allowed to deteriorate between the time of gathering and the time of processing. It must be done quickly in order to capture and retain flavour and palatability. To do that the processor has to pay out a certain amount of money, he has to get his machinery in operation and pay for quite a lot of help. So the producer is willing to allow a certain time lag to assist the processor, provided that his credit is not further compromised. That is, he is giving the processor one kind of credit—a time credit.

The CHAIRMAN: Mr. Whelan, before you address a question may I welcome you to the committee. I am sure we can say it is now a more colourful committee than it was before our recess. Actually, the colour of the committee has been further increased by the presence of Mr. Kelly today.

Mr. WHELAN: I would say, Mr. Chairman, that Mr. Kelly is here as a farmer today, having an interest in an area where processed crops are sold

to the type of processor to be talked about today. I think this committee—and I would apologize to these gentlemen who are presenting this brief here for keeping them waiting—points up the interest that is being taken in this bankruptcy bill because, of the many meetings I have attended, this is one of the best and one of the earliest, having had a quorum approximately fifteen minutes after the time we were supposed to commence, and had they known that three people of the calibre of these three were to be here today they probably would have been here at 9 o'clock, but unfortunately I did not notify them soon enough.

Have you studied any other countries, say the United States, that have similar ways of marketing? Do their banks have this ridiculous protection which is afforded to our banks here? Do you know if they do?

Mr. MUSGRAVE: I cannot answer that.

Mr. SOREL: I do not know.

Mr. WHELAN: I understand they do not.

In Ontario there are certain rules of marketing for Ontario producers that producers in other sections of Canada do not have with regard to payment for produce. Is it not correct that under the Ontario marketing legislation some marketing groups have to pay within so many days?

Mr. MUSGRAVE: I think that is true.

Mr. WHELAN: I think this is true, and what I am trying to ask is whether you are aware that some of the smaller processors, some of those who do not have as big finances available as the big giant processors, do not follow these rules? Are you aware of this?

Mr. MUSGRAVE: I am conferring with one of my colleagues on this.

Mr. WHELAN: This is what happens. Farmers sign these contracts with small processors and maybe they will wait a year for payment, hoping the processor is lucky enough to sell the produce and that if there is any money left after he pays his bank, the farmer will get his money. Has there been any evidence presented to the farm organizations along this line?

Mr. MUSGRAVE: I think in Quebec. Mr. Sorel can answer that.

Mr. SOREL (*interpretation*): No sales are ever made on conditions similar to that. It does happen that a producer will have to resort to that and settle on that basis, but that is only when the processor is unable or unwilling to pay. No sales are ever made on those conditions.

The CHAIRMAN: I think what the witness said, if you will permit me, was that the conditions that you have just stated are not contained in the contract, but in fact what occurs is that the producer will make any kind of arrangement possible, and not in accordance with the terms of the contract, to get some kind of payment. The type of conditions you mentioned do not occur in a contract.

Mr. WHELAN: Mr. Sorel, then what you are saying is that many processors are not abiding by the agreements they make with the farmers?

Mr. SOREL (*interpretation*): No, most of them abide by the contract. It happens when the farmer sees that he is in a bad fix—and only when he finds he has no chance of being paid otherwise.

Mr. WHELAN: Is it the opinion of farm organizations that small processors should be helped and looked after for the good of agriculture?

Mr. SOREL (*interpretation*): Inasmuch as the processor is not called upon to pay the shot continuously.

Mr. MUSGRAVE: Up to a point we believe he should be.

Mr. WHELAN: Mr. Muir spoke in respect of the bonding of processors. I might say at this time that some of the small processors in my area have had a

meeting to discuss this bonding matter. The suggestion made was similar to the case of bonded warehouses for liquor, where this processed product would be placed in a bonded warehouse, as a result of which the banks would know exactly how much produce the processor had and the farmer as well would know how much produce the processor had. I wonder whether you gentlemen have found out that not the proper information in all cases has been given to the banks and that in a good number of cases banks seem to be a little lax in checking to make sure that this kind of produce is in the warehouse.

Mr. SOREL: We do not know. At least, I myself do not know.

Mr. WHELAN: Have you made any study of the fact that these small processors should be insured by the government, if necessary? I believe one of the other members brought this up a short time ago. This would apply in the same way as export credit, if you understand how that works. A good many of our manufacturers are protected under this type of insurance. Would either of you two gentlemen care to make a comment on this and to say whether or not you think this would be feasible. I think you are aware more than probably many of us are that the agriculture producer in Canada is one of the most efficient there is, and one of the things we are very much concerned about is protecting the small processor, along with protecting the farmer from vertical integration by the large processors—that is, coming in and completely taking over the total operation from the farmer.

Mr. MUSGRAVE: We would say that might be of assistance but we have not considered that.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): In the appendices attached to your brief there are certain suggestions that on occasions producers not only have not been informed of the bankruptcy or an impending bankruptcy but that the processor or the bank, or the two of them together, have actually encouraged the delivery of more produce after bankruptcy proceedings were begun—or, at least, after the preliminary steps had been taken towards it. Do you know of any instances where either the processor or the bank has notified the producer of the situation?

Mr. MUSGRAVE: I was told of one case where the processor stopped taking delivery on, I think, a Friday but recommenced on Monday, and they took in all they could for three days, and then on the Wednesday or Thursday bankruptcy was announced.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I do not know whether or not you were here about ten years ago, but at that time your organization appeared before the banking and commerce committee to try and achieve that same end. At that time it was to make an amendment to section 88 of the Bank Act itself. I suggested at that time to the representatives of your organization that it seemed as though, according to their testimony, the banks were somewhat lax in their credit operations and that obviously they did not make too careful an inquiry about the position of those to whom they were making credit. I asked at that time if your membership had ever considered the possibility of taking advantage of this generosity on the part of banks in order to set up your own processing operations. In the intervening ten years could you advise if any steps have been taken in that direction? I have in mind Mr. Whelan's comment, that one of the purposes of the producers and others who are requesting this legislation is to prevent this vertical integration. That would appear to me to be one of the ways in which both purposes could be achieved. Can you advise me as to whether or not any advances have been made toward that end, or if any attempts have been made to form such an organization.

Mr. MUSGRAVE: I would say although there have been meetings held and there has been some investigation, we have to say that the business of farming,

becoming increasingly complex as it is, farmers have felt perhaps they should stick to their own job. There have been occasionally some steps toward processing but these have not been very large or significant. We have one in Barrie, Ontario, the first Cooperative Meat Packers, which is operating to satisfaction. However, I cannot say there has been any move in that general direction.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Has there been any investigation of the situation in the British Columbia fruit industry, which is perhaps the most prosperous part of our province's agricultural industry, where this type of development has taken place to a very great extent; in fact, much of their prosperity has been based on cooperative packing houses.

Mr. McLEAN (*Charlotte*): Mr. Chairman, at this time I would like to comment generally because I have been on both ends, namely the banking and packing end. I think that banks have had some of their worst experiences under section 88. It would seem to me that the bank manager gets a little careless under section 88.

In the early days we borrowed under section 88 and, as we had a general business all over the world, we borrowed in New York. When I was down there I spoke with a banker in New York; he asked me how we borrowed in Canada and I said under section 88. He said what would you call it, and I said I would call it a banker's headache. I went on to explain it to him and he said: Oh well, I do not think we would be bothered with anything like that; we borrow on a plain note in New York. I came back and advised the bankers here that I could borrow in New York on a straight note and asked: how about you? The answer I was given was that they could do anything New York could do, and we never had anything more to do with section 88.

I think the processors should be protected and I do not think it would hurt the banks at all. I known they have this 30 day period in Quebec as I lost a carload of goods under that. The bank manager wrote me a letter, saying that everything was fine and I shipped the carload on 30 days credit, and lost the whole thing. I could not do anything about it. I do not think the head office is to blame; I do not think in this particular case they were responsible. I think in many cases it is the manager who is endeavouring to protect himself. As I say, I think in a great many instances under section 88 it is the individual banker of the branch who tries to protect himself and it is not bankers generally who do such things. In my particular case I do not think the officials at head office knew exactly what was going on because, if they did, I do not think they would like it. I think it is the individual manager who is responsible in this particular case. But, as I have said before, in my experience I think the processor should be protected.

In connection with the fishing business there would be, I suppose, $60,000 or $70,000 a week paid out for fish. The fisherman comes in every week and gets his money, and he does not have to extend credit. The processor is getting the credit from the bank and they pass it on to the fishermen. I think the processor should get his money from the bank and pass it on to the farmer.

Mr. SCOTT: Your evidence has impressed me of the need for some assistance to the suppliers. Is there a large number of small processing plants engaged in this sort of operation?

Mr. MUSGRAVE: You ask if there is a large number?

Mr. SCOTT: What is the make-up of the processing industry? Is it confined to large companies, or are there small processing plants which do this work?

Mr. MUSGRAVE: As far as my information goes—and I cannot pretend to be an oracle on this—there is a number, and a reasonable number of large dominant plants; then there are a few smaller ones. There could be more than I

know about; I do not know how many there are, but I believe there is a number of small plants, some of them quite efficient.

Mr. SCOTT: I wonder if you could get us some information about that. The argument used against you by the bankers is that because of this protection, they are able to keep a lot of processing plants in business, and because of this there is competition among them, so that you get the benefit of that competition. They argue that if you should remove this protection, the tendency would be for large processing plants to come into operation, and that this would eventually depress the prices which you get, because there would be less competition among them. Can you get us some information which would help us in this field?

Mr. MUSGRAVE: You means as to the number of large and small plants?

Mr. SCOTT: Yes. And if your argument is true, you might be defeating your own purpose in the long run, because by removing this protection we would be helping to create giant processing plants which would eventually dominate the suppliers. Perhaps there might be some other solution to your problem than this.

Mr. MUSGRAVE: I must reject your argument right now, subject, of course, to further investigation. The large dominant plants already have a terrific voice in setting prices; and the small plants will have some effect as competitive organizations if only with respect to location and to distance. For example, a producer may have an option to deliver to a large plant at a longer distance and to a smaller plant which is closer by. If he has reasonable security for his product, he will choose to travel the shorter distance. This has a number of other aspects. For example, the roads of Essex and Kent in the fall season are pretty busy, when there is a lot of traffic caused by farmers delivering goods to plants. The further they have to go the more will be the traffic hazard. That is one reason we would like to see the small plant maintained, but not at our own cost.

Mr. SCOTT: Mr. Whelan suggested it would be very helpful if you could supply us with information on how this type of problem is attacked in other countries or areas, because it might assist us in dealing with the general problem. So if you could let us know what solutions have been tried, and their effectiveness in other jurisdictions, it would help a lot and be of great assistance to us.

Mr. GRAY: I second the idea that we be supplied with further information in this regard.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Mr. Chairman, I have a supplementary question. Do the producers actually have an opportunity to benefit from the competition between rival processors? Is there likely to be more than one processor within economic distance?

Mr. MUSGRAVE: In some cases, yes; but in other cases, no, there would not be; and quite often negotiating boards—that is, commodity groups which have negotiating boards, negotiate with processors, and that is how the price is arrived at. The large processor has a pretty big voice now in negotiating, and in setting terms and prices.

Mr. RYAN: I have been listening and trying to find a solution. I am convinced that there is real merit in the idea of Mr. Whelan's bill, but I am not so sure that it is the right answer. To my mind there is possible room for consideration by both Mr. Whelan and this committee of the idea of an amendment to section 88 of the Bank Act to the effect that before the bank makes a loan to a primary producer, it must be an insured loan. In this way you get around any argument about provincial versus federal jurisdiction, and you simply put an amendment in the Bank Act itself on when a loan

can be made. This would have the indirect effect that Mr. McLean would like to see, of making sure that the bank and the insurers of the loan would make a pretty thorough and careful investigation before the insurance was granted. It would mean that in the event of a bankruptcy the loan would be free for any insurance company to use, and the money would be there available, so that it would not be necessary to touch the Bankruptcy Act at all in this respect. I think that this might be the answer in other respects as well. This is just an idea that has been running through my mind as I listened today, and I thought the committee might like to consider it.

The CHAIRMAN: Thank you. Now Mr. Pascoe.

Mr. PASCOE: I was going to ask a question concerning the number and size of the processing plants, but I think it has been pretty well answered already. But I would follow that question with one in regard to the contracts for the growing and delivery of products. On page 5 of your brief you say:

> There will be farmers who for particular reasons are not especially vulnerable compared to other creditors.

Are there special arrangements made for some farmers which others do not get?

Mr. MUSGRAVE: No, I am thinking of the occasional farmer who operates in several different lines, one who is not a specialist; he is not growing soybeans alone, or peaches alone; he has a number of outlets, so that bankruptcy in one particular line—for example, if he lost his tomatoes, he has still got his peaches, his soybeans and perhaps dairy cattle—so it is not so serious a matter for him.

But in the case of a man who has only his 25 acres of tomatoes, and that is pretty well his sole business, if anything goes wrong with his market, he is really taking a terrific beating.

Mr. AIKEN: Mr. Chairman, I want to follow up Mr. Muir's original idea. I think basically in dealing with processors we are dealing with the people who are handling other people's goods. The main target today, and previously, seems to have been the banks. But it seems to me, coming to Mr. Ryan's idea, that really we should be dealing directly with the processors who are holding other people's goods in trust. There are only two ways to protect those goods; the first is the type of legislation now proposed; the second is bonding of some nature so that the farmer-producer will have protection.

I would like to ask if any of the witnesses can tell us whether bonding is practical for small processors. Can they go to a liability company or bonding company and get a bond to protect the goods of other peple that they are holding?

Mr. LEDOUX (*interpretation*): Last year, or indeed over the last two years the tomato producers in Quebec have been negotiating an arrangement with the processors' association with respect to the depositing of a bond with the government body which controls markets in the province of Quebec, a bond which could be equal to 40 per cent of the value of the produce. This is in effect.

I must add, however, that my counsel has advised me that because of the present provisions of the Bankruptcy Act if he were a trustee he would probably pick up the bond himself.

Mr. AIKEN: I recognize, Mr. Chairman, that bonding would probably be a provincial matter to be enforced by the province. I feel that we ought to try to come to some solution whereby bonding is a requirement either under the Bank Act or by tacking it on to this legislation. It is a difficult constitutional problem but I think that is the answer, because we are trying to deal with a problem that does not arise too often by making a massive change in the bankruptcy procedure. As far as the present brief is concerned, it would possibly be advisable, but the bill itself is much beyond this.

Mr. MUIR (*Lisgar*): Mr. McLean suggested that he could not see why, if a processor went to the bank for a loan, some of it should not at least be used as initial payment on the produce that he is processing. This I heartily agree with. I think that under the situation that has been presented to us today, where the producer is practically financing the processor in any case, the answer to their problem is to form a co-operative and to do it on their own, because they are financing them from start to finish. It would seem to me that this would be a very untenable position.

Mr. WHELAN: Mr. Chairman, I would like to make a comment on bonding.

The CHAIRMAN: I am sorry, Mr. Musgrave, do you wish to comment on Mr. Muir's statement?

Mr. MUSGRAVE: The logical conclusion would be for labour unions to form a co-operative and collect.

Mr. MUIR (*Lisgar*): They do. I would say labour as a union is a co-operative.

Mr. MUSGRAVE: They have protection and we would like the same thing. There is abuse here. We want that abuse corrected. We do not want our primary producers in jeopardy of losing a year's work, a year's business and products. This, at present, seems to be the best solution. There have been cases where bonding has been in effect and the losses have exceeded the amount of the bond. We do not think that that is good enough.

Mr. WHELAN: I would suggest, Mr. Chairman, that we ask the small processors, and maybe even the large processors, to appear before this committee so that we can get the other side from them. It is easy to get the list of the small processors because they are licensed to operate in most of the provinces.

There was one thing that annoyed me and I wonder if this has been brought to your attention. In your brief you mention that to a certain extent banks do not give the proper information to the marketing boards who have the right to ask the provincial government to refuse a licence to the processors. Do you feel you give accurate information?

Mr. GRAY: I think the reporter should note that Mr. Whelan said this with a broad smile on his face.

Mr. MUSGRAVE: May we say, Mr. Chairman, that perhaps we do not always give complete information.

The CHAIRMAN: Is that all, gentlemen?

Mr. SCOTT: I have one small question. From what you said earlier, I understood that the processing field is dominated by the large processors. Is that correct?

Mr. MUSGRAVE: I think that is pretty nearly correct as far as Ontario is concerned.

Mr. SCOTT: So that the argument that the bank is using against you is false in that the situation already exists?

Mr. MUSGRAVE: To a large extent we have had to agree with that.

Mr. WHELAN: Has any evidence been presented to the farm organizations, as far as you are aware, that since this bill has been brought before the committee here the bankers are telling the small processors to inform the growers that Whelan is trying to put them out of business? This has been brought to my attention and that is why I want the small processors to be actually brought before this committee.

The CHAIRMAN: I made a note of your suggestion and the secretary will draw it to the attention of the steering committee.

Mr. GRAY: If there is any truth to that suggestion, I would like to say it is most improper.

Mr. SCOTT: It is a form of coercion.

Mr. WHELAN: We must realize that a contract with a processing company in an area where these vegetable and processor crops are produced is a prize possession, and many mild forms of intimidation are used against these people because of the good job that it offers as far as a stable price that the marketing board has been able to get for the producers is concerned. These contracts are not that available for anyone who would like to produce this product because we are importing a great many of these products that could be produced in Canada. This is one of the reasons why we must protect the small producers.

Mr. MUSGRAVE: We agree with that.

The CHAIRMAN: In relation to the point of privilege Mr. Gray mentioned, I would think possibly that if Mr. Whelan feels he has a point of privilege it should be brought up somewhere else besides this committee, if he feels that.

Mr. WHELAN: What do you think of having the small processors brought here and asking them?

The CHAIRMAN: I have taken note of your suggestion that processors be called, and I will speak to the steering committee about it. I would think it would be a useful suggestion for the committee to examine all interested parties, processors as well, because certainly we are discussing them almost to the same extent that we are the other two parties.

Mr. MUSGRAVE: May I say one more word? As far as the Canadian Federation of Agriculture is concerned, I think I can speak for these gentlemen here, we are not angry at anyone. We do not feel ill will or malice against banks or processors at all. If we were in the position they are in, we might do worse than they are doing. We are suggesting that there is a condition which permits the producer to be victimized, and we would like it redressed.

Mr. RYAN: Mr. Chairman, one final comment.

The CHAIRMAN: I might point out it is five minutes to eleven.

Mr. RYAN: Further, along the line of thought of Mr. Aiken and myself, I would like the committee to consider during the adjournment the idea of the federal government setting up an insurance board or crown corporation, if you wish, which would insure these bank rules under section 88, and would supervise them, thus giving the primary producer a great deal of the protection he seeks in this field.

The CHAIRMAN: Thank you, Mr. Ryan.

Mr. WHELAN: Mr. Chairman, you mentioned that it is nearly 11 o'clock. I would like to point out to the three members from the federation of agriculture that if they have time they might come over with us and watch a most glorious waste of time in the House of Commons.

The CHAIRMAN: Mr. Sorel, Mr. Musgrave and Mr. Ledoux, do you have anything you wish to communicate to the committee?

Mr. SOREL (*Interpretation*): I would like to thank you for the opportunity you have given us of putting forward our views before the committee. We would like to thank you for your courtesy and understanding. I would also like to thank you Mr. Chairman, for your courtesy.

The CHAIRMAN: May I thank you, gentlemen, for appearing before us and giving us your views in such a clear and concise fashion. You may be sure that your views will be given every consideration by the members of the committee.

In view of the fact that it might be of assistance to you to know in advance, next week we will study the Allstate Life Insurance Company of Canada bill, Bill S-28. Apparently the sponsors and the witnesses are ready. The witnesses, in respect of Bill C-5, which we have been studying this morning, are not able to appear during that week, but will appear the following week.

There being no further business the committee stands adjourned.

APPENDIX A

ONTARIO TENDER FRUIT GROWERS' MARKETING BOARD
(Letterhead)

NOTES ON THE BANKRUPTCY OF GRAHAM FOOD PRODUCTS LTD. IN NOVEMBER, 1962

On November 27th, 1962, the Bank of Montreal appointed the Clarkson Company Limited as Receiver and Manager of Graham Food Products Limited. This action came as a result of the financial position of the processing company and the security held by the Bank for the money loaned to Graham's. Although the Bank's position is regarded as legally sound, its action has deprived growers and other creditors of any hope of recovering any part of their accounts owing to them.

The events prior to the action taken on November 27th appear to be normal but are set forth as follows for the record:

Payments for asparagus purchased from the Ontario Asparagus Growers' Marketing Board were made according to the "Agreement for Marketing the 1962 Crop of Asparagus for Processing" during June and July, 1962. Similarly, payments for sweet and sour cherries purchased from growers and dealers were made on September 15th, 1962 in the normal manner. However, a dealer in fruits and vegetables located in the Niagara Peninsula had heard rumours about the financial situation of Graham's in late August and after enquiring through its local bank, received the following report dated August 28th from the Bank of Montreal, Trenton, Ontario.

The above name (Graham Food Products Ltd.) have carried a satisfactory account at this Branch for the past three years. While they are carrying a fairly heavy inventory which to some extent cramps their working capital position, we consider them a reasonable risk for their normal business requirements.

On this knowledge, this Company continued to sell Graham's produce. Other Companies in the district as well as many growers in Niagara and the Essex area also freely sold fruit and vegetables as in past years. When the established time of November 15th came to make payment for peaches and Bartlett pears to the Ontario Tender Fruit Growers' Marketing Board and no payment was made, enquiries at the office of Graham's revealed the owner was arranging for payment through the Bank and was in Toronto making the necessary arrangements. Repeated telephone calls to the owner were unsuccessful in reaching him until November 27th when the Board was informed by the owner that he was in the hands of the Receiver. While this was taking place payments to tomato growers had been made and with the exception of a few uncashed cheques, most tomato growers received their money.

Purchases by Graham's in 1960 and 1961 of tender fruit were considerably less than the amount taken in 1962 when deliveries were up 78% over the 1960-61 average. At the same time, sweet cherries and Bartlett pears were purchased in 1962 for the first time. It is estimated that dealers and growers of tender fruit delivered over $100,000 worth of peaches, Bartlett and Kieffer pears for which they have not been paid. In all, thirty-four growers and seven fruit dealers are creditors officially but many more growers are involved because they sold their fruit to one of the dealers who did not make a full payment to his growers.

The last delivery of fruit for which records are available was made on November 5th, consisting of Kieffer pears. Since the pears at this time of year require ripening it is ironical to note that these pears were being processed after November 27th when Graham's was in receivership which could only benefit the Bank at this point.

Since November 27th, the Receiver has been liquidating stock at a normal rate at market prices and it would appear that had purchases of fruit and vegetables been kept to a normal amount and the Bank had not stepped in, that the Company could have still been operating. At the time of placement in receivership there was a book deficit on the Company's financial statement of $122,074 over total assets of $1,676,030. The Bank loan was $1,376,514 on an inventory of $1,340,657 so that it seems that the Bank had made a serious error in making such a large loan to the Company even if it did have good security. However, it appears the Bank may lose several hundred thousand dollars even with the security they had by taking this action.

The reasons for failure appear to be over-expansion of purchases by Graham Foods beyond reasonable hope of profitable sales and over-extension of credit by the Bank to allow this situation up until the time for payments to growers in November of 1962. In a letter dated January 2, 1963, creditors of Graham's were informed as follows:

"Severe operating losses in 1961 and 1962, which amounted to nearly $200,000 in each year placed the Company in a precarious financial position. The Company was unable to pay its accounts and could not finance the completion of the canning of the 1962 produce to which it was committed. Accordingly, on November 27th, 1962 The Clarkson Company Limited was appointed Receiver and Manager under a Debenture held for the Bank of Montreal".

At time of writing, the affairs of the Company are still being managed by the Receiver and growers can only watch the use of their fruit and vegetables to partially satisfy the claims of other creditors who by law are in a preferred position.

ONTARIO TENDER FRUIT GROWERS' MARKETING BOARD

July 22, 1963.

APPENDIX B

BRITISH COLUMBIA FEDERATION OF AGRICULTURE
(Letterhead)

June 27, 1963.

Mr. E. F. Whelan, M.P.,
House of Commons,
Ottawa, Ontario
Dear Mr. Whelan:

My Board wish to add their support to your efforts through Bill C-5 to correct the iniquitous position that farmer suppliers usually find themselves in when the processor they are dealing with goes into bankruptcy.

In this province, on April 28, 1961, Visco Poultry Packing (1957) Ltd. ceased operations following being declared bankrupt. All assets were immediately seized by Imperial Bank of Canada under Section 88 of the Bank Act. This resulted in 19 poultry farmers being unpaid for the birds they had delivered to the tune of $76,582.52. One large producer lost $14,390.70. The prospects of any recovery are nil.

In this case it seemed more than just coincidence that there should have been an especially heavy kill laid on in advance, just prior to the plant being closed, particularly in view of the fact that the President of the company was also the personal guarantor of the bank loan of some $150,000. The bank, of course, seized everything including the freshly killed poultry, so did not need to claim on the guarantor.

It is our hope to forward you the particulars on two other like cases so that you can use them along with the above when your Bill is before the Banking and Commerce Committee.

Yours sincerely,

Chas. E. S. Walls,
Manager

APPENDIX C

March 20, 1962.

TRANSLATION

Tomato Growers Board,
515 Ave. Viger,
Montreal, Que.
Att. Mr. Gilles Ledoux

RE: Yourself and J. J. Joubert & Fils, Ltee. (bankrupt)

Dear Sir:

On March 16, I attended a meeting of creditors called by the Trusteeship in the bankruptcy of J. J. Joubert & Fils, Ltée. at Le Palais de Justice (Court House) in Montreal and, as foreseen, I have been named "inspector" (legal advisor). Immediately afterwards, I attended the first meeting of the "inspectors" at the office of The Trusteeship.

At their meeting, the creditors were told:

(a) that the Trusteeship was forced by legal procedures to give to preferred and secured creditors all the personal property of J. J. Joubert & Fils, Ltée.;

(b) that the secured claim of the General Trust of Canada could not be contested;

(c) that, on the other hand, it could probably be advantageous to contest the second secured claim which, if annulled, would allow some recovery, by changing the status of the preferred claim held by the Canadian National Bank into an ordinary claim;

(d) that the Trusteeship does not have any money on hand to contest this second secured claim;

(e) that, if the creditors would forfeit to the Trusteeship a sum equivalent to 3% of their claims, the proceeds thus obtained would be used for that work.

I then explained to the producers present, about 20 of them, that I was representing the Board and informed them that the Board had already committed itself, in the name of all and each one of them, to meet the necessary costs if the above proposal was accepted. I had beforehand been informed that the costs which producers would probably be asked to pay would not exceed $500.

Since the Trusteeship had asked the creditors to let their decision be known as soon as possible, all the producers left the decision to me, which I postponed until the meeting of the "inspectors".

At the meeting of the "inspectors" the following points were clarified:

(*a*) the steps or procedure to be followed;

(*b*) the costs involved;

(*c*) the legal basis of the proposed procedure;

(*d*) the chances of success.

In order to prepare their recommendation, the Trusteeship and its attorney, Mr. McAllister, should first of all proceed to look at the accounting books of J. J. Joubert & Fils, Ltée, its book of minutes, any document pertaining to its dealings with the Canadian National Bank, and finally, interview the directors of the bankrupt company and officials of the Canadian National Bank.

The estimated cost of these first steps would amount to about $4,000.00. This excludes any other expenses connected with the renewal of the Trusteeship's bond, the adequate insurance coverage of the personal property on band, and a number of other necessary measures.

Research should first try to establish the amount of credit allowed to the company by the Canadian National Bank against certain securities offered personally by the directors. Then should be established the total margin of credit allowed on the basis of personal securities and general mortgage as well.

The attorney of the Trusteeship claims that if the margin of credit remained unchanged whatever the kind of and the amount of securities held by the Bank, the secured claim which followed the giving of personal securities was agreed to without any consideration. (?)

This line of thinking could lead to a long legal fight, even to the Supreme Court.

The Trusteeship and its attorney did not seem to agree on the chances of success of such a proposal. The Trusteeship implied that, to his best knowledge, the margin of credit had been affected, i.e. increased, by the claim accepted by the bankrupt company. The attorney of the Trusteeship on the other hand, although more optimistic, did not support by worthwhile legal arguments his opinion that the secured claim based on apparently sufficient personal securities was void.

To further the hypothesis of the attorney of the Trusteeship, it would equally be necessary to look at the time element of such a procedure. It seems certain that a final decision from the highest tribunal of the country could not be foreseen before two years.

Should the outcome be successful, the Trusteeship should then try to buy out the claim of the General Trust of Canada and attempt to sell the building at the best price possible. If the real estate market has not improved by then, the creditors should not expect to recuperate much more than 25% of their claims.

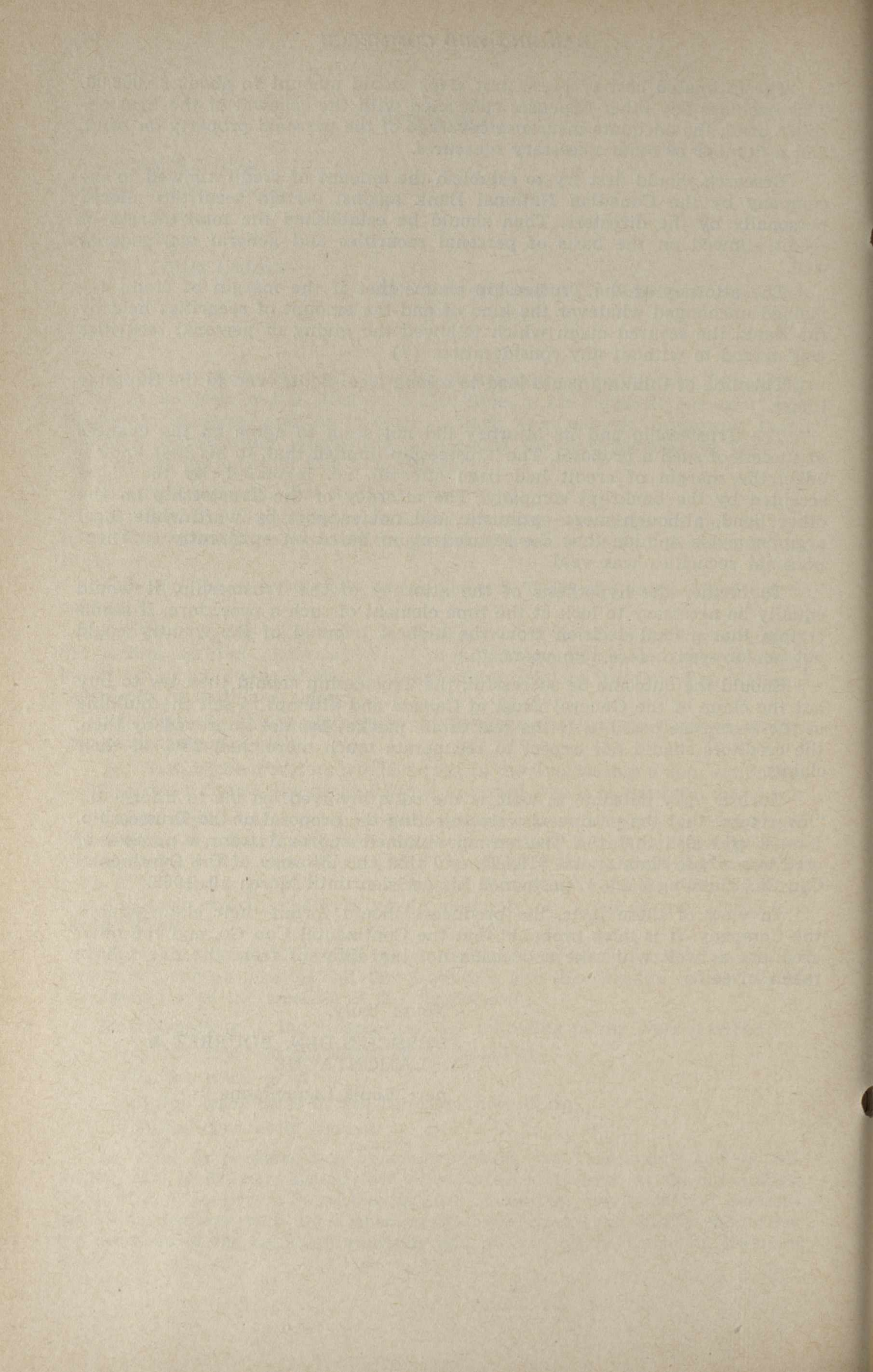
Such a risky outcome as well as the costs involved led me to inform the "inspectors" that the producers were rejecting the proposal of the Trusteeship. I must add also that the Trusteeship obtained approval from a number of creditors whose claims total $10,000. and that the attorney of the Continental Can Co., claiming (   ), postponed his decision until March 19, 1962.

In view of these facts, the producers should forfeit their claim against the Company. It is most probable that the Continental Can Co. and the other creditors as well will take a decision not too different from the one I have taken myself.

Yours truly,

VERSCHELDEN, BOURRET &
LAMONTAGNE

per: Louis Lamontagne



HOUSE OF COMMONS

First Session—Twenty-sixth Parliament

1963

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: EDMUND ASSELIN, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 3

FRIDAY, OCTOBER 25, 1963

Respecting

Bill S-28, An Act to incorporate Allstate Life Insurance Company of Canada.

WITNESSES:

Mr. James M. Tory, Parliamentary Agent; Mr. J. R. O'Kell, Secretary, Simpsons-Sears Ltd., Mr. John Atkinson, President, Allstate Insurance Company of Canada and Canadian Manager, Allstate Insurance Company; Mr. David Miller, Counsel, Allstate Insurance Company; Mr. K. R. MacGregor, Superintendent of Insurance.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1963

29610-3—1

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: Edmund Asselin, Esq.

Vice-Chairman: Maurice J. Moreau, Esq.

and Messrs.

Addison,
Aiken,
Armstrong,
Asselin (*Richmond-Wolfe*),
Basford,
Bell,
Boulanger,
Cameron (*Nanaimo-Cowichan-The Islands*)
Chaplin,
Chrétien,
Côté (*Chicoutimi*),
Douglas,
Flemming (*Victoria-Carleton*),
Gelber,
Grafftey,
Gray,
Grégoire,
Habel,
Hahn,
Hamilton,
Jewett (Miss),
Kelly,
Kindt,
Klein,
Lloyd,
Macaluso,
McLean (*Charlotte*),
Monteith,
More,
Morison,
Muir (*Lisgar*),
Nesbitt,
Nowlan,
Nugent,
Olson,
Otto,
Pascoe,
Pilon,
Ryan,
Rynard,
Sauvé,
Scott,
Skoreyko,
Tardif,
Thomas,
Thompson,
Vincent,
Whelan—50.

Dorothy F. Ballantine,
Clerk of the Committee.

ORDERS OF REFERENCE

THURSDAY, October 3, 1963.

Ordered,—That Bill S-28, An Act to incorporate Allstate Life Insurance Company of Canada, be referred to the Standing Committee on Banking and Commerce.

MONDAY, October 21, 1963.

Ordered,—That the quorum of the Standing Committee on Banking and Commerce be reduced from 12 to 10 Members and that Standing Order 65(1) (*d*) be suspended in relation thereto.

Attest.

LÉON-J. RAYMOND,
The Clerk of the House.

29610-3—1½

REPORTS TO THE HOUSE

October 21, 1963.

The Standing Committee on Banking and Commerce has the honour to present its

NINTH REPORT

Your Committee recommends that its quorum be reduced from 12 to 10 members and that Standing Order 65(1)(*d*) be suspended in relation thereto.

Respectfully submitted,

EDMUND ASSELIN,
Chairman.

Concurred in this day.

October 25, 1963.

The Standing Committee on Banking and Commerce has the honour to present its

TENTH REPORT

Your Committee has considered Bill S-28, An Act to incorporate Allstate Life Insurance Company of Canada and has agreed to report it without amendment. A copy of the Minutes of Proceedings and Evidence relating to this Bill (Issue No. 3) is appended.

Respectfully submitted,

EDMUND ASSELIN,
Chairman,

(NOTE: The Fourth to Eighth Reports inclusive deal with Private Bills in respect of which no Proceedings were published.)

MINUTES OF PROCEEDINGS

FRIDAY, October 25, 1963.
(11)

The Standing Committee on Banking and Commerce met at 9:10 a.m. this day. The Chairman, Mr. Edmund Asselin (*Notre-Dame-de-Grâce*) presided.

Members present: Messrs. Addison, Armstrong, Aiken, Asselin (*Notre-Dame-de-Grâce*), Asselin (*Richmond-Wolfe*), Basford Bell, Boulanger, Cameron, (*Nanaimo-Cowichan-The Islands*), Chrétien, Côté (*Chicoutimi*), Douglas, Gelber, Habel, Kelly, Macaluso, McLean (*Charlotte*), Moreau, More, Nugent, Olson, Pascoe, Pilon, Ryan, Thomas, Vincent and Whelan,—(27).

In attendance: Mr. James M. Tory, Parliamentary Agent; Mr. J. R. O'Kell, Secretary, Simpson-Sears Limited; Mr. John Atkinson, President, Allstate Insurance Company of Canada and Canadian Manager, Allstate Insurance Company; Mr. David Miller, Counsel; Mr. Charles Holman, Canadian Public Affairs Manager, and Mr. Roland Brousseau, Quebec Sales Manager, all of Allstate Insurance Company; and Mr. K. R. MacGregor, Superintendent of Insurance.

The members proceeded to consideration of Bill S-28, An Act to incorporate Allstate Life Insurance Company of Canada.

In reply to a suggestion by the Sponsor of the Bill, Mr. Ryan, that Minutes of Proceedings and Evidence relating to Bill S-28 be published, the Chairman stated that it was not the practice of Committees to print on Private Bills.

After discussion Mr. Boulanger moved, seconded by Mr. Pilon, that an official stenographic report of the Committee's Proceedings and Evidence on Bill S-28 be taken and transcribed and that six copies be made available for the use of the Committee.

Mr. Olson, seconded by Mr. Whelan, moved that the motion be amended to read as follows:

"That an official stenographic report of the Committee's Proceedings and Evidence on Bill S-28 be taken and transcribed and that 500 copies be printed in English and 350 in French, the cost of printing to be charged to the usual source".

The motion as amended was carried unanimously.

The Members agreed that the English interpretation of questions and answers in French be regarded as part of the official record.

Shorthand reporters were then called in to record the proceedings.

On the Preamble:

The Chairman called the Preamble and invited the Sponsor to introduce the Parliamentary Agent and the witnesses.

Mr. O'Kell and Mr. Atkinson made brief statements on the purpose of the Bill.

Mr. Tory was questioned, assisted by Messrs. O'Kell, Atkinson, Miller and MacGregor.

The Preamble, Clauses 1 to 8 inclusive, and the Title were severally carried.

The Bill was carried without amendment.

Ordered: That Bill S-28 be reported without amendment.

At 11:00 a.m., the Committee adjourned to the call of the Chair.

Dorothy F. Ballantine,
Clerk of the Committee.

EVIDENCE

FRIDAY, October 25, 1963

The CHAIRMAN: Gentlemen, we have a quorum.

At this time I would like to call upon Mr. Ryan. Mr. Ryan, would you reintroduce your witnesses in order that they may be placed on the record.

Mr. RYAN: Mr. Chairman, the parliamentary agent in respect of this bill is Mr. James M. Tory of Toronto, Ontario, who is across the way from me. Allstate representatives are also present, and I would like to introduce at this time our two main witnesses; first of all, Mr. Joseph O'Kell, secretary of Simpsons-Sears Limited, who is sitting immediately to your right, and to his right Mr. John Atkinson, president of Allstate insurance company of Canada.

Others present, who will answer any special questions referred to them are Mr. Roland Brousseau, Quebec sales manager for Allstate, and Mr. David Miller, counsel for Allstate Insurance Company. On his left is Mr. Charles C. Holmon, public affairs manager for Allstate Insurance Companies.

The CHAIRMAN: Gentlemen, shall the preamble carry?

Gentlemen, if you wish to address any questions to the witnesses or, possibly to Mr. Tory, you may do so. However, first of all, perhaps Mr. Tory would like to explain the purpose of this bill.

Mr. James M. TORY (*Parliamentary Agent*): Thank you, Mr. Chairman.

It is proposed, Mr. Chairman, that Mr. O'Kell, speaking on behalf of Simpsons-Sears Limited, would first make a statement to the committee as to the interest of Simpsons-Sears in this bill, and then Mr. Atkinson can explain to the committee some basic facts as to the operations of Allstate in Canada, particularly how the incorporation of this bill will fit in the long term plan in this country.

The CHAIRMAN: Then Mr. O'Kell will make a statement, followed by Mr. Atkinson, after which the members of this committee may direct questions. Also, I would like to say that if there are any questions with regard to the examination which the administration has made of this bill Mr. MacGregor, the superintendent of insurance, is with us this morning.

Would you now proceed, Mr. O'Kell.

Mr. Joseph O'KELL (*Secretary of Simpsons-Sears Limited*): Thank you, Mr. Chairman.

The CHAIRMAN: With your permission, I would suggest that we permit the witnesses to remain seated, if they so wish.

Mr. O'KELL: Mr. Chairman, I am the secretary of Simpsons-Sears Limited and I am appearing before this committee on behalf of that company to support the application for a private bill to incorporate the Allstate Life Insurance Company of Canada.

As has been stated on several occasions, the reason for the incorporation of this company and for the incorporation in 1960 of Allstate Insurance Company of Canada is to enable Simpsons-Sears Limited to acquire a 25 per cent interest in the Canadian business of Allstate Insurance Company, an Illinois corporation presently carrying on business in Canada under the authority of a licence issued under the Foreign Insurance Companies Act.

Allstate Insurance Company is wholly owned by Sears, Roebuck and Company, a United States company carrying on the retail and mail order

business, and the acquisition of this interest by Simpsons-Sears is in accordance with an undertaking given Simpsons, limited by Sears, Roebuck and company more than 10 years ago.

Simpsons-Sears is a Canadian company incorporated under federal charter on September 17, 1962, and carries on retail, mail order and department store operations throughout Canada.

The equity in our company—that is, in Simpsons-Sears—is represented by three classes of shares: class A shares, class B shares and class C shares. The two million class B shares are all held by Simpsons, Limited, a Canadian company with whose operations no doubt you are familiar. The two million class C shares are all held by Sears, Roebuck and company. There are 490,270 issued class A shares, which are held by present and former employees and by the Simpsons-Sears profit sharing retirement fund. At the present time, 86 per cent of these class A shares are held in Canada by 362 Canadian shareholders, including 166,940 class A shares, or 34 per cent of the class A shares issued are owned by our profit sharing retirement fund in which 9,000 Canadian employee members have an interest.

The issuance of any further class A shares has been confined by the order of the board of directors to employees of Simpsons-Sears, all of whom are presently resident in Canada, and to the Simpsons-Sears profit sharing retirement fund.

I would like to sum up this statement by saying that when the class A shares are taken into account in the capitalization of this company approximately 54 per cent of the equity of Simpsons-Sears will be held in Canada, and when the remainder of those class A shares are issued approximately 55 per cent of the equity will be in the hands of Canadians.

The question has been raised as to why Simpsons-Sears should not acquire greater interest in the Canadian operation of Allstate. I can only say that Simpsons-Sears will invest approximately $3,375,000 to acquire this 25 per cent interest.

Our directors after careful consideration felt that a retail organization such as Simpsons-Sears in its present state of development would be unwise to invest any greater amount in the insurance business at this time.

We in Simpsons-Sears strongly recommend that your committee approve the incorporation of the Allstate Life Insurance Company so that we may begin as a company immediately to participate in the earnings and operation of the two Canadian Allstate companies. We believe that this will be of benefit to Simpsons Limited and our other Canadian shareholders. In addition it will permit substantial interests in the business held entirely in the United States to be owned in Canada.

I make this recommendation to you on behalf of Simpsons-Sears Limited, a company the majority of whose equity is held by Canadians and which is doing all its business in Canada serving Canadian consumers, and which in every way should be regarded as Canadian. Thank you very much, Mr. Chairman.

The CHAIRMAN: Thank you Mr. O'Kell. Mr. Atkinson, I believe you have something you would like to add to that statement. Gentlemen, Mr. Atkinson, president of the company.

Mr. JOHN ATKINSON (*Manager of Allstate Insurance Company and President of the Allstate Insurance Company of Canada*): Mr. Chairman, and members of the committee, I am John Atkinson the manager of the Allstate Insurance Companies in Canada and I am president of the Allstate Insurance Company of Canada.

The Allstate Life Insurance Company was incorporated as an Illinois company in 1957 and was subsequently licensed to do business throughout the

United States. In 1961 Allstate Life Insurance Company came to Canada and applied to be registered by Mr. MacGregor, our Superintendent of Insurance for Canada. Following registration of the Allstate Life Insurance Company by the Canadian superintendent we then applied to and received from the insurance superintendents of the various provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland, licences to carry on the business of life insurance in these provinces.

The life insurance operations of our Allstate Insurance Company are conducted in Canada from two regional offices, Vancouver which supervises the provinces of British Columbia and Alberta, and the Toronto regional office which conducts the insurance operations for the remainder of the country.

These regional offices are staffed to handle all the functional and operational areas of our business, and here I refer to such things as settlements of claims, underwriting the risks, selling of our policies, the maintenance of our personnel and the performing of all other services required by us of our policyholder family.

One of the important developmental philosophies of our parent companies has been to, as completely as possible, decentralize its operation. I can say this philosophy has had a fine strengthening effect on our personnel. Referring specifically to the Canadian operation, it has been of great benefit.

I should like to explain this by just one example. The underwriting of life insurance risks by most companies is generally the function of the head office, but because of our decentralized way of life at Allstate and its necessary delegation of responsibility by degree as it can be assumed by our personnel we are now in a position in our two regional offices, Vancouver and Toronto, where the life underwriting staffs can make by far the greatest number of decisions on the risk and will refer only very rare cases, and these would be such instances where exceptionally large amounts of insurance are involved or special medical cases, to our home office medical staff.

This same development of increasing the knowledge and stature of our employees is taking place in all the other areas of our companies.

I mention this only because I feel it is important to assure you gentlemen of this committee that we have in effect developed and trained people who can take care of the Allstate Life Insurance Company if and when it is incorporated by the government.

I also feel it is important to tell you that we provide this insurance service from approximately 78, I think that was our latest count, locations spread across Canada. Our life insurance sales are handled by 250 agents presently employed. These agents are completely trained at our own insurance school. There are two schools maintained at our two regional offices. We refer to this as formal training. This training is required before we will permit an agent to be licensed or seek a licence in any of the provinces.

The training of our agents after the formal training in the field or on the job training is handled by fully qualified and highly experienced district sales managers. The training is continuous and will continue as long as the need for such training is apparent to us.

I think it is important also to state that agents of our Allstate Life Insurance Company operate, to the best of my knowledge, on exactly the same basis as do agents of any life insurance company in that they are on contract to our company exclusively.

We sell in our company the standard life insurance contracts sold by all insurance companies. Three specific examples are; we sell term insurance which has a high protection feature with no cash value, or no saving value; we sell whole or ordinary life insurance policies where the protection and

savings features are more evenly balanced; and, we sell the endowment form of policy where the savings potential is greater.

It is our intention that if this bill is approved, the life insurance contracts which have been placed in Allstate Life Insurance Company since 1961 will be reinsured in the Allstate Life Insurance Company of Canada.

I can only say with reference to our investment policies that the future investment policy of the Allstate Life Insurance Company of Canada would be well taken care of by required Government Statutes. We have maintained investments in Canada according to those statutes and always exceed the legal requirements.

The formation of the Allstate Life Insurance Company in Canada has advantages as you have heard already pointed out by Mr. O'Kell. To us in Allstate we consider it most important to carry out these promises which were made many many years ago, to provide a share of ownership to Simpsons-Sears in the Allstate insurance business.

The incorporation of the Allstate Life Insurance Company of Canada would complete this promise. I urgently petition you, Mr. Chairman, and members of the committee, to favourably endorse our petition.

The CHAIRMAN: Thank you, Mr. Atkinson.

Gentlemen, are there any questions that you wish to ask?

Mr. GELBER: Can we hear Mr. MacGregor?

The CHAIRMAN: Yes. However it has been previously pointed out that Mr. MacGregor is not the sponsor of these bills and that it may even not be proper for him to appear to be the sponsor. Consequently, if you wish to address questions to Mr. MacGregor, he is available as I announced at the beginning, but if you should want the history of the company, I would think that maybe it would be better if the sponsor should describe it.

Mr. GELBER: He has given us a good deal of help in the past and I thought it might be useful to have it now.

The CHAIRMAN: If the committee would like to hear Mr. MacGregor at this time, or if they have questions to address to Mr. MacGregor, I suggest we proceed with the questioning. However, as far as questions are concerned, I have on my list Mr. Moreau.

Mr. MOREAU: Mr. Chairman, Mr. O'Kell, you went into the history of the share ownership of the company of Simpsons-Sears. I would like to clear up two or three points that were raised. You indicated there were three classes of shares in Simpsons-Sears, A B and C. I wonder if you could tell us which of those classes are voting and which are non-voting, as well as the percentage of Canadian ownership that would be voting.

Mr. O'KELL: Class B and class C shares referred to which are owned respectively by Simpsons Limited and Sears-Roebuck and Company are the voting shares of the company. The class A shares are non-voting preference shares of the company primarily issued to employees, and they become voting shares only in the event of a dividend being declared and not paid.

Mr. THOMAS: I have a point of procedure, Mr. Chairman. I would suggest that we follow the suggestion that has already been made that we have the general statements from the sponsor first, from the company representatives, and also a general statement from Mr. MacGregor, and then that we go on with the questioning afterwards.

The CHAIRMAN: I am prepared to follow any procedure the committee wishes, Mr. Thomas. However, at the beginning of the meeting I thought we agreed that we would hear from the sponsors and the witnesses and that we would then question them. If the committee wishes to hear Mr. MacGregor and

to question him, then we might find ourselves in the position of wanting to question three or four people all at once.

Mr. THOMAS: Will he be available for questioning after we get the general statements?

The CHAIRMAN: Certainly. I will follow any procedure the commitee wishes to follow in the matter.

Mr. THOMAS: That would be my wish, that we hear the general statements, as we have, and that we hear a general statement from Mr. MacGregor next.

Mr. OLSON: This seems quite simple to me. If any member of the committee wishes to ask questions of Mr. MacGregor, he could do it.

The CHAIRMAN: I have on my list for questions Mr. Moreau, Mr. Aiken and Mr. Whelan.

Mr. MOREAU: As I understand the capital structure of the company as it has been proposed, it will be 75 per cent owned by Allstate and 25 per cent by Simpsons-Sears. Am I correct?

Mr. O'KELL: Correct.

Mr. MOREAU: Which in effect would mean that at least one part of Simpsons-Sears would own apparently about 12½ per cent, if you break it down in that way.

Mr. O'KELL: Yes.

Mr. MOREAU: I am sure you are aware but I will just put this in the form of a question, of the statement of the Minister of Finance in the budget speech. You apparently are also aware of the wish of the government to have existing corporations become Canadian by definition, and that is by having 25 per cent of their capital stock issued in Canada. You are aware of this statement, are you?

Mr. O'KELL: Correct.

Mr. MOREAU: And of this further definition of a Canadian corporation, that is a corporation resident in Canada where at least 51 per cent of its voting shares are owned by Canadians. You are aware of this part of the definition?

Mr. O'KELL: Yes.

Mr. MOREAU: I shall now go back to the statements made by the sponsor, Mr. Ryan, and to the 1953 agreement by Sears-Roebuck and Simpsons in Canada. As I understand the history, Simpsons-Sears by this agreement were entitled to participate in up to 51 per cent of the insurance business in Canada. Is this correct?

Mr. O'KELL: Let me clear that statement. What you say is true, Mr. Moreau, but when we came to evaluate the investment which Simpsons-Sears was going to have to make to acquire this interest, the directors of the company decided that this amount which I have quoted to you of $3,375,000, was all that we as a company were prepared to put into the investment, into the insurance business at this particular time. As a matter of fact it was considered that it would be quite a substantial amount and we gave long and considerable consideration before we arrived at the decision that we would even purchase this amount. Had we been able to get it cheaper, perhaps we might have thought better of it, but this was the utmost that the company thought they should invest at this moment in the company in Canada as a retail organization.

Mr. MOREAU: It is not our function to direct the company in its financial position. I would just like to ask, in the incorporation in 1960 of fire and other types of insurance business where the charter was granted, what percentage of ownership existed at that time? Frankly, I did not have time to do the research on this, so could you clear it up for me?

Mr. O'KELL: In my statement here I indicated that Simpsons-Sears Limited, our company, would have 25 per cent interest in each of the companies, the casualty company and the life insurance company.

Mr. MOREAU: Could you tell me what the status was at the time of the incorporation? I was wondering what equity Simpsons-Sears held in 1960?

Mr. O'KELL: The company at that time was not incorporated. It was incorporated in 1960, and I do not believe we have as yet received, nor have we paid for our 25 per cent interest in the casualty company. We are getting this as a package deal in both companies. When the incorporation of this Allstate Life Insurance Company is completed, then there would be a transfer to Simpsons-Sears of the 25 per cent interest in each company. This has not, as I understand, taken place yet, but it will as soon as the Allstate Life Insurance Company is incorporated.

Mr. MOREAU: I have one final question on this. I wonder if the company had considered, in view of the 1953 agreement and the apparent agreement at that time, that that could be a 50-50 deal. I appreciate that the expansion program, at least in the short term, strapped the company to some extent in capital. I wonder if the directors considered offering this stock to other Canadian shareholders?

Mr. O'KELL: We are speaking now of the Allstate Life Insurance Company which is the subject for discussion here. This would be a matter for the Allstate Life Insurance Company directors to determine. As I understand it—and I am really speaking for the president of the Allstate company on my right when I say this— it is my understanding that they are not in a position at the present time to think of offering shares in the Allstate Life Insurance Company to other Canadian shareholders by reason of the fact that the company has just begun to do business in Canada and it is not in a position where it could consider offering shares to the public. The Allstate Life Insurance Company, if I may say so, is not yet in black figures for one thing.

Mr. MOREAU: In developing this point, as I am sure you know we are now considering the budget proposals and the resolutions of the Minister of Finance, would you not think if we as a parliament and as members of parliament—and I am assuming now that these resolutions will be passed—express the wish that existing corporations should become Canadian, by the definition outlined by the minister, it would be rather farcical if we, again as a parliament and as members of parliament, grant new incorporations that do not comply with the express wishes of parliament?

Mr. O'KELL: I can hardly comment on your opinion, Mr. Moreau. I can only say that as far as this company is concerned, we think it should be incorporated in its present form and that it should be left to the directors of the company when it is incorporated to consider the wishes of parliament in future offerings of shares.

Mr. MOREAU: I would just like to clear up at least one point. I have no prejudice regarding foreign capital or Allstate. My difficulty regarding this incorporation lies entirely within the budget resolutions and what parliament is going to decide.

Mr. O'KELL: I have indicated that as far as the equity in the capital of Simpsons-Sears Company is concerned, more than 51 per cent of it is in the hands of Canadian residents and shareholders.

Mr. MOREAU: I appreciate the resolution did say that the corporation is a resident in Canada and with at least 51 per cent of its voting shares owned by Canadians.

Mr. OLSON: May I ask one supplementary question.

The CHAIRMAN: I do not normally approve of supplementary questions as they usually get quite far afield. However, if the committee, particularly Mr. Aiken, does not object I will be glad to allow you to ask such a question.

Mr. AIKEN: My questions relate to other matters.

The CHAIRMAN: If neither Mr. Aiken nor the committee has any objection, I shall be glad to hear you.

Mr. OLSON: I would like to ask if Mr. Atkinson and the directors have considered offering equity to Canadian shareholders.

Mr. ATKINSON: Not at this point, and for the reasons outlined by Mr. O'Kell. We really do not have anything to sell as far as a prospectus is concerned. I think it definitely would come under consideration when the company is operating on a profitable basis.

Mr. AIKEN: Mr. Chairman, I have three questions which relate to the insurance business rather than the financial structure. The first one I would like to ask is one that I think many people have been asking; it is a general question which I will put to Mr. O'Kell.

Why would a merchandising company like Simpsons or Simpsons-Sears want to get into the insurance business?

Mr. O'KELL: Mr. Aiken, may I say that possibly the investment of money in an insurance company such as this is a matter in which our directors must have been guided by the fact that they think this is going to be a successful operation and one in which the shareholders' money is properly invested.

We are not alone in Canada as a retail departmental store investing in the insurance business. We have our leading competitors in Canada who already own their own insurance business, with which I think you are familiar.

Mr. AIKEN: Then this is a financial investment rather than a branch of general merchandise; is that a correct assumption?

Mr. O'KELL: I would say this is a financial investment.

Mr. AIKEN: My second question relates to the agents who are going to be selling life insurance or who are now selling it under the present system. You mentioned there were a number. Do they apply themselves solely to selling life insurance or do they have other duties?

Mr. ATKINSON: Our men are licensed to sell all forms of insurance, casualty, fire and life. These are the same agents who are representing the casualty company.

Mr. AIKEN: These agents will be selling casualty and life?

Mr. ATKINSON: Casualty and life, yes.

Mr. AIKEN: These agents do not do anything else in the merchandising field?

Mr. ATKINSON: Absolutely not.

Mr. AIKEN: Then the third question is this. Can insurance, either life or casualty, be sold by persons who have no special training? I am referring to order office sales people.

Mr. ATKINSON: No, they cannot to the best of my knowledge. Properly licensed individuals devoting their time to insurance are the only people permitted by law to sell insurance. There is a legal requirement.

Mr. O'KELL: May I say that no employees of Simpsons-Sears are going to be employed in the business of selling insurance.

Mr. AIKEN: Then I might ask a direct question. If I went into a Simpsons-Sears order office, could I make an application for life insurance in that office?

Mr. ATKINSON: Not life insurance, no. It is a personal sale. There is no life insurance sale made by mail by the Allstate Insurance Company. If there was

an agent available, Mr. Aiken, in that order office as part of the operation, then you could purchase life insurance through him, but by no other means.

Mr. AIKEN: So if I went into an order office and it was a small office and there was no agent there they would merely refer this matter to the agent and have him call.

Mr. ATKINSON: That is approximately what would happen.

The CHAIRMAN: Mr. Olson has informed me he must leave in a minute or two, and he has some questions to ask, if Mr. Whelan does not mind.

Mr. OLSON: Thank you Mr. Chairman.

Mr. WHELAN: We have been told that at the present time no shares have been offered to Canadians other than those to Simpsons-Sears, because they have nothing to sell. At the same time we have been told that Simpsons-Sears is going to invest over $3 million. If there is nothing to sell then what is Simpsons-Sears buying?

Mr. O'KELL: Mr. Olson, let me repeat what I said before in my statement. This was an arrangement made at the time of the merger and the creation of Simpsons-Sears by the joint investment of Simpsons Limited and Sears, Roebuck. We, that is Simpsons-Sears, have delayed taking part in investment in the operations of Allstate until such time as we felt that Allstate—speaking now of the casualty company which was incorporated in 1960—has started successfully to do business in Canada. We have delayed investing in the Allstate Life Insurance Company until this point when its investment takes place.

We feel we can invest money in future operations of Allstate Life Insurance Company; whereas I do not think we would advise opening, nor would the shareholders or directors of Allstate Insurance Company care to open, this investment to the public at this particular time.

Mr. OLSON: Then, Mr. Chairman, in the normal course of setting up a new company I think we can agree there is usually a prospective equity; in other words there is some risk involved and usually as the company succeeds the shares go up. Do we take it then that they will only be offered to Canadians after the company has moved from the red into the black, by which time the shares offered to Canadians will be not necessarily inflated but at least of a much higher price than what is issued now.

Mr. O'KELL: I think you do not quite mean that last statement; you mean offered to the public.

Mr. OLSON: Yes, when or if it is offered to the public.

Mr. O'KELL: I can hardly speak for Allstate. I would ask the president to answer your question in that connection.

My own thought as a private citizen is that I would not want to participate at the present time in investment of a company which has just started, whereas I think Simpsons-Sears Limited is in a better position to take a risk in the investment than the citizens of Canada.

Mr. OLSON: Is there not a fundamental point here? Are you suggesting that Canadians are not willing to invest in a company being set-up? You are taking action now to make available only to foreign capital in the initial stages?

Mr. O'KELL: Mr. Olson, I can go back to what I originally suggested to you, and that is that in its present state of development and in preparing a prospectus supposing Allstate was preparing one, it would be a very poor prospectus indeed to offer to Canadian citizens to invest in Allstate Life Insurance Company with the balance sheet it could show for such a prospectus.

I think you yourself would have serious concern about investing either your money or your family's money in a company which is still operating in the red and which has no balance sheet, or really no experience in Canada except for its rather small operations in the last two years. I make this suggestion to you without offering any criticism of your suggestion.

Mr. OLSON: That is all, thank you, Mr. Chairman.

The CHAIRMAN: Now, Mr. Whelan.

Mr. WHELAN: I have three questions. The first one is this: I would like to ask if it is not so that the dominion government passed legislation approximately five years ago to allow life insurance companies in Canada to form mutuals?

Mr. ATKINSON: Yes, I believe that is so.

Mr. WHELAN: Several life insurance companies in Canada did form mutuals, such as Confederation, Manufacturers, Sun Life, and North American Life; they all became mutuals.

Mr. ATKINSON: Yes.

Mr. WHELAN: This was done to prevent American insurance companies from buying them. American insurance companies cannot buy up mutuals in Canada?

Mr. ATKINSON: I am sorry, but I do not feel qualified to answer that question.

Mr. WHELAN: If an American company wishes to get into the life insurance business here, I do not believe there are any more companies it can buy up, so they would have to start a new company.

Mr. ATKINSON: That is so.

Mr. WHELAN: There are no more left that they can buy up. Most of them are now in mutuals and are already bought up. So any American company wanting to start up here has to start a new company.

Mr. ATKINSON: Oh, I think there are several insurance companies in Canada available to buyers—I mean available to American buyers.

Mr. WHELAN: Is it not true that a new company starting up enjoys more benefits than co-operatives in that it does not have to pay income tax for 20 years.

Mr. ATKINSON: That is a question I do not feel capable of answering.

The CHAIRMAN: Perhaps you might address your question to Mr. MacGregor.

Mr. ATKINSON: I would like to call on Mr. MacGregor at this time to explain this detail.

The CHAIRMAN: Would you like Mr. MacGregor to answer it?

Mr. WHELAN: Yes.

The CHAIRMAN: I wonder if Mr. MacGregor would be kind enough to enlighten Mr. Whelan and the committee on the question he has just asked.

Mr. K. MACGREGOR (*Superintendent of Insurance*): Mr. Chairman, it is rather difficult to answer this question without covering several other aspects at the same time.

Mr. WHELAN: Is it not true that if they do not declare dividends, they do not have to pay taxes for 20 years?

Mr. MACGREGOR: No sir, I know of no such rule as that. The income tax act has a section in it, namely section 30, which applies to the taxation of life insurance companies, and that section says, in effect, that a Canadian life insurance company—and it does not matter how it is owned—shall pay tax at the usual corporate tax rate on the net amount transferred.

Mr. BOULANGER: Mr. Chairman, I wish to follow this answer very closely but right now we have no translation at all.

The CHAIRMAN: I wonder if you would please wait for a moment.

Mr. WHELAN: This is my question, Mr. MacGregor: you say that if they do not declare dividends in the first 20 years, they do not have to pay taxes.

Mr. MACGREGOR: That would be correct.

Mr. WHELAN: You are not forcing them to pay dividends.

Mr. MACGREGOR: I think your question stems from the thought that it takes a good many years, and that it may well take 20 years, before a new life insurance company earns profits.

Mr. WHELAN: That is all I say; if we did not allow a new company to be formed, that is, a life insurance company, then the life insurance sold would otherwise be absorbed by other companies and they would be paying a tax on the dividends concerned. In this case there is nothing to show that the new company will make money; they may absorb millions of dollars in Canadian funds and not make any money and therefore not declare any dividend for 20 years, and all that time the Canadian people will not be sharing in the fruits of the operation.

Mr. MACGREGOR: Briefly I think the answer is that if no profits are earned, then no tax can be incurred. Consequently even if profits are earned, they are not taxed at the present time under the income tax act until those profits are transferred to the shareholders of the company.

Mr. WHELAN: That is what I say; they do not have to pay tax if they do not transfer to shareholders. But with the other companies already in operation here in Canada, the people of Canada can share in the fruits of operation of those companies.

Mr. BELL (*Saint John-Albert*): May I ask a supplementary question, Mr. Chairman?

The CHAIRMAN: I shall put your name down on the list. There is one speaker before you.

Mr. BELL (*Saint John-Albert*): There are statements hanging in the air.

The CHAIRMAN: I will allow you to pick them up in about two minutes or so.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I think it would be preferable if we heard from Mr. Bell right now.

Mr. BELL (*Saint John-Albert*): I have one simple question so that the record will not look too incomplete. Is it not true that this income tax provision may be applied to all new insurance companies regardless of their ownership?

Mr. MACGREGOR: That is correct; it applies not only to new life insurance companies but also to all existing stock life insurance companies.

Mr. BELL (*Saint John-Albert*): No matter where the control of the company may be?

Mr. MACGREGOR: That is correct. Section 30 applies to Canadian life insurance companies which have capital stock. At the present time mutual life insurance companies are not taxed under the income tax act.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I would like Mr. O'Kell to clear up some things in my mind. Perhaps he has already answered this question when I did not grasp it. In the first place, am I correct in my understanding that Simpsons-Sears will be the major stockholder in this company when launched?

Mr. O'KELL: No. Simpsons-Sears will have a 25 per cent interest only in the new company when it is launched.

Mr. CAMERON (*Nanimo-Cowichan-The Islands*): And the rest of it will be where?

Mr. O'KELL: The rest will be Allstate Insurance, which is owned in turn by Sears, Roebuck.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): It will be wholly owned by Sears, Roebuck?

Mr. O'KELL: No, not wholly owned, but 75 per cent owned.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*) Can you clear up about the stockholding of Simpsons-Sears Class A shares being non-voting shares.

Mr. O'KELL: That is right, Class A shares are non-voting shares provided there are no arrears of dividends. There are 2 million Class B shares held by Simpsons-Sears Limited, as you know, and there are 2 million Class C shares held by Sears, Roebuck and Company, an Illinois Corporation.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): The stock is held equally between the two?

Mr. O'KELL: Yes. I think I have made it clear that these Class A shares were developed in capitalization for ownership by employees—that is Canadian employees of Simpsons-Sears Limited, and it is a profit sharing fund.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): But they would not be voting shares and they would have no control over the operation of the company.

Mr. O'KELL: They would not be voting shares at the present time, no.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Thank you.

Mr. McLEAN (*Charlotte*): What is the difference between your B and C?

Mr. O'KELL: There is no difference; they are equal.

An hon. MEMBER: One is voting and one non-voting.

Mr. O'KELL: No; they are both equally voting.

Mr. BELL: What would be the effect of this agreement if this bill did not pass? Would your present operations be able to continue? Would there be any rights and privileges which you would lose? Would any agreement which you have which has been referred to be in jeopardy?

Mr. O'KELL: If this bill did not go through and if the Allstate Life Insurance Company is not incorporated, Simpsons-Sears Limited would not, I am advised, be able to obtain an interest in the operations of Allstate in Canada. It is only with this incorporation that we can obtain an interest in the operations of Allstate.

Mr. BELL: In other words, here is a step which is being made towards some Canadian control.

Mr. O'KELL: Yes; I would endorse that. This is a 25 per cent interest which is being acquired by Simpsons-Sears Limited, and without this incorporation it would be impossible for any Canadian to acquire any interest in the Allstate company.

Mr. MACALUSO: Mr. O'Kell, what is the ownership of Sears-Roebuck in Simpsons-Sears Limited? Is it a 50 per cent ownership?

Mr. O'KELL: Yes. Simpsons-Sears has two million class C shares which are voting shares in Simpsons-Sears Limited.

Mr. MACALUSO: How many does Simpsons own?

Mr. O'KELL: An equal two million class B shares which are equal participation.

Mr. MACALUSO: And equal voting rights?

Mr. O'KELL: And equal voting rights.

Mr. MACALUSO: Further to the questioning by Mr. Aiken when he referred to the matter of a person dropping into the order office, say at Simpsons-Sears, to buy life insurance, if I were to walk into Simpsons-Sears, is there ever any intention in the future, say, to open up a booth in Simpsons-Sears to sell Allstate life insurance?

Mr. O'KELL: Mr. Macaluso, there are in the stores of Simpsons-Sears throughout Canada—and I am speaking now of departmental stores—what you refer to as booths which are leased to Allstate and their personal agents are in charge of these booths.

Mr. MACALUSO: I am aware of that and that is why I question the matter of life insurance.

Mr. O'KELL: Their agent could be on hand and could deal with the public.

Mr. MACALUSO: If this bill is passed and the company incorporated, what is the make-up of the board of directors going to be with regard to Canadian and American representation.

Mr. O'KELL: May I say that the board of directors of the Allstate Life Insurance Company are as set out here in the bill, and will continue this way. The directors listed in the bill are E. G. Burton, the chairman of the board and president of Simpsons Limited; James Button, who is the president of Simpsons-Sears Limited; Gordon Graham, who is the chairman of the board of Simpsons-Sears Limited and director of Simpsons Limited; John Illingworth, who is a vice president and regional manager of the Allstate Insurance Company; Norman Urquhart, who is vice president of Simpsons Limited and director of Simpsons-Sears Limited; and Mr. Atkinson whose name appears first and who is president of Allstate. Mr. Atkinson and Mr. Illingworth are both Canadians.

Mr. MACALUSO: Proceeding on to the proposed share structure as set out in the bill, your B and C class are your voting shares; but there is a policy now, is there not, in Simpsons Limited and Simpsons-Sears that the employees can purchase non-voting stock in Simpsons-Sears and also Simpsons Limited.

Mr. O'KELL: The shares purchased in Simpsons Limited are the shares listed on the Toronto stock exchange and are voting shares. In Simpsons-Sears Limited they are preferred shares and non-voting unless the dividend is in arrears.

Mr. MACALUSO: At the present time no employee of Simpsons-Sears has voting stock. I do not mean employees at the executive level but, for instance, a clerk or someone in the advertising department.

Mr. O'KELL: That is correct.

Mr. MACALUSO: In all likelihood if this company is incorporated, the class A shares here would have the same result; eventually there probably would be no transfer of the preferred stock from non-voting to voting stock.

Mr. O'KELL: Are you speaking of Allstate Life Insurance Company?

Mr. MACALUSO: Yes.

Mr. O'KELL: I do not think there is any question there of any different classification of stock in the Allstate Company.

Mr. MACALUSO: I am referring to voting and non-voting.

Mr. O'KELL: I do not think there will be any differentiation. There will be only voting stock in the Allstate Life Insurance Company.

Mr. MACALUSO: Perhaps I misunderstood. Class A, I believe, is non-voting preferred.

Mr. O'KELL: You are talking about Simpsons-Sears Limited capitalization. The Allstate Life Insurance Company stock will be only voting stock and therefore Simpsons-Sears Limited will have 25 per cent voting interest in the Allstate Life Insurance Company.

Mr. MACALUSO: At the same time it still comes down to the fact that Sears, Roebuck and Company owns 50 per cent of the voting stock of Simpsons-Sears Limited.

Mr. O'KELL: Yes.

Mr. MACALUSO: So it boils down to a 12½ per cent interest by Simpsons-Sears Limited.

Mr. O'KELL: Yes.

Mr. MACALUSO: So that Sears-Roebuck really owns more than 75 per cent of Allstate Life Insurance Company if this bill goes through.

Mr. O'KELL: Would you repeat that?

Mr. MACALUSO: With the combination of the 50 per cent ownership of Sears, Roebuck and Company in Simpsons-Sears, if Allstate Life Insurance Company is incorporated under this bill, Sears, Roebuck and Company will actually in effect own more than 75 per cent of this company.

Mr. O'KELL: That is correct.

Mr. TORY: If you look at the equity and look at the voting shares, it is 87½ per cent. So far as the equity of the company is concerned, it is slightly less than 87½ per cent, as more class A shares are issued. The reason class A were non-voting was to set up a partnership between Canadian and American interests. You can appreciate from the standpoint of both sides that there is strength in that equality; it is an equal partnership in all aspects. To make the class A shares voting would mean in effect that one share would control the company, one share on either side of the line. I think that is the important reason why the class A shares are non-voting. I think it is a protection for the Canadians as well as the Americans.

Mr. MACALUSO: So far as this committee is concerned, and I think most of the members of the house, when we are dealing with shares in these new proposed companies, I think we are concerned with the voting shares and not with the equity shares.

Mr. TORY: May I make one remark in respect of this 50-50 ownership; the 50 per cent ownership gives a very strong element of control in that it does not leave class A shares open on the market, which would allow the purchase of one more share by American interests.

Mr. MACALUSO: If I may interrupt, we understand what you are getting at. Although I agree, at the same time the problem which is facing us here is the control of votes in this matter, and that is what confuses me.

The CHAIRMAN: Votes are something which all members have on their minds every day.

Have you a question, Mr. Moreau?

Mr. MOREAU: Mr. Chairman, I would like to pursue this line of questioning. It seems to me we have been skirting around this problem, and I would like to ask a very direct question in this connection.

I appreciate the remarks made by Mr. Tory in respect of the holding of one more than 50 per cent of the stock. I realize the structure of Simpsons-Sears is not under discussion here and I do not think we have any business to deal with that—and I am in sympathy with it. In connection with this new incorporation, presumably the directors have some good reason for not making it a public company. I believe my question earlier was misunderstood; I was not suggesting it necessarily had to be a public company. I wonder if the directors had considered bringing in other Canadian financial interests, not necessarily a public offering but perhaps a private offering of some of these shares.

Mr. O'KELL: To the best of my knowledge it is not being considered at the present time.

Mr. McLean (*Charlotte*): Mr. Chairman, I would like to direct a question in respect of Simpsons-Sears. I understand they sell goods under contract; that is, the person to whom they sell must be insured. Am I correct in that assumption?

Mr. O'Kell: I did not quite understand your question, Mr. McLean.

Mr. McLean (*Charlotte*): At the present time the banks will make small loans and will insure the man who receives a loan, say, if he buys a car. Now, if this same man makes a contract with Simpsons-Sears, is it the habit of the insurance company to insure this man so that if he dies the contract will be paid.

Mr. O'Kell: To the best of my knowledge, there is no liaison of that kind between Allstate Life Insurance Company and our credit operations.

Mr. McLean (*Charlotte*): At the present time, if you have a big contract do you insure the man?

Mr. O'Kell: No, we do not; we do not write any insurance in that connection—and I am speaking of Simpsons-Sears.

The Chairman: Are there any further questions the committee would like to direct to the witnesses?

Mr. Cameron (*Nanaimo-Cowichan-The Islands*): Mr. O'Kell, you said earlier this was the only chance Simpsons-Sears had to obtain holdings in Allstate Life Insurance Company.

Mr. O'Kell: Yes.

Mr. Cameron (*Nanaimo-Cowichan-The Islands*): Is Allstate Life Insurance Company in Canada now in operation?

Mr. O'Kell: No. There is an Allstate Life Insurance Company, an Illinois corporation which is licensed under the Foreign Insurance Companies Act, to carry on business, and it is presently carrying on business. However, it is not possible, we are advised, for us to obtain an interest in the operations of Allstate until it is incorporated in Canada.

Mr. Atkinson: This company has been functioning since 1961.

Mr. More: Will it continue to function if this bill is granted?

Mr. O'Kell: Yes.

Mr. Atkinson: The Allstate Insurance Company which was established in 1961 will function in Canada. Is that the question you asked?

Mr. David Miller: (*Counsel for Allstate Insurance Company*): Mr. Chairman and members of the committee, I believe there has been a misunderstanding in this connection. If Allstate Life Insurance Company of Canada is incorporated Allstate Life Insurance Company of Illinois will continue to be licensed but will not be writing business in Canada.

Mr. Cameron (*Nanaimo-Cowichan-The Islands*): You said they will not be doing what?

Mr. Miller: They will not be writing business in Canada.

Mr. Atkinson: We are contemplating transferring the business of that company to Allstate Insurance Company of Canada after the bill is incorporated.

Mr. Cameron (*Nanaimo-Cowichan-The Islands*): In my own province of British Columbia Allstate Insurance Company writes quite a lot of car insurance.

Mr. Atkinson: Yes.

Mr. Cameron (*Nanaimo-Cowichan-The Islands*): How is this connected?

Mr. Atkinson: This insurance is presently written in the Illinois company, the Allstate Insurance Company, and it will be transferred and re-insured in the Allstate Insurance Company of Canada, which was incorporated by this government two years ago.

Mr. DOUGLAS: Will it be transferred for a consideration?

Mr. ATKINSON: It is part of the arrangement that there will be a transfer of the assets of this company to the Canadian company, as a going concern.

Mr. DOUGLAS: Who owns the Illinois company now?

Mr. ATKINSON: It is owned by Sears-Roebuck.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Is it entirely owned by them?

Mr. ATKINSON: Yes.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): It is a wholly owned company?

Mr. DOUGLAS: And I presume they are transferring the business they now have to the Allstate Life Insurance Company in return for some consideration of stock.

Mr. ATKINSON: Yes.

Mr. DOUGLAS: Have you any idea as to the amount of stock?

Mr. MILLER: The allocation of shares in Allstate Insurance Company of Canada is on a 75-25 basis; the capitalization would show 13,333 shares.

The CHAIRMAN: Order gentlemen.

Mr. DOUGLAS: Did you say 13,333?

Mr. MILLER: 13,333.

Mr. DOUGLAS: Which would be given to whom?

Mr. MILLER: That would be the total number of shares, of which there would be an allocation of 9,955 to Allstate Insurance Company and the remainder would be divided between Simpsons-Sears and the directors.

Mr. DOUGLAS: Would you repeat those figures for me.

Mr. MILLER: 9,955 and 3,333, and then 45 shares will be held by the Canadian directors as qualifying shares, as required by the Statutes.

Mr. DOUGLAS: What will each party pay for these shares?

Mr. MILLER: It is $100 par value.

Mr. DOUGLAS: Is there any consideration given to Sears, Roebuck and Company for the business that the Illinois company is turning over?

Mr. MILLER: There would not actually be any consideration directly to Sears, Roebuck and Company because the 75 per cent equity interest is in Allstate Insurance Company of Illinois. Allstate Insurance Company of Illinois is 100 per cent owned by Sears, Roebuck and Company.

The CHAIRMAN: Have you a question, Mr. Moreau?

Mr. MOREAU: I have just one question, Mr. Chairman. I may seem to be belabouring this point but, in my opinion, it is really the crux of the bill, as far as I, and I am sure other members of this committee, are concerned. I phrased my earlier question in the past tense and I would say now, if parliament were to pass the budget resolutions which are presently under consideration, would the directors of this company give consideration to placing some of this stock in the hands of other financial interests in Canada?

Mr. O'KELL: Certainly I would say they would give consideration to it. I am speaking now for the Allstate directors, for whom I am not in a position to speak, but that is my interpretation of their intention.

Mr. MORE: If I understood correctly, if this bill is denied it still means that Allstate of Illinois can write insurance in Canada.

Mr. O'KELL: Yes.

Mr. MORE: Then, the passing of this bill means that we have taken a step toward Canadian ownership in that it would give 12½ per cent interest to Canadian ownership. Is that correct? Is that the real difference between this and the present situation?

Mr. ATKINSON: Yes.

Mr. CÔTÉ (*Chicoutimi*) (Interpretation): I wish to make a short remark, Mr. Speaker. When Mr. Olson put his question a few minutes ago he wished to know why the shares had not been sold on the public market. If I remember his answer correctly it was stated that this entailed some risk, and this may have been the reason why these shares were not thrown on the market. To my mind the shares of an insurance company do not carry any risk, as personally I have in the past participated in the launching of three insurance companies and I have never considered that there was any risk in that regard. That is why I see no objection to the shares being offered to the public.

Mr. O'KELL: Perhaps I could reply to that and Mr. Atkinson and Mr. Tory may help me out.

I have always considered from an investing point of view that any investor who is purchasing any shares in a new company is taking a risk in its future operations as to whether he will ever receive dividends or whether he ever gets his money back. You heard from Mr. MacGregor say his experience in the insurance business led him to believe that a life company such as this starting up in Canada has many years to go before it will be showing any profits and, certainly, paying any dividends. Therefore, I would think a Canadian investor would be quite cautious of investing in this company.

On the other hand, it was asked why Simpsons-Sears Limited was so rash as to take this investment at the present time. May I say, to repeat my original statement, that this was the result of an agreement made 10 years ago at the time Simpsons-Sears was incorporated, and if we do not take what is offered to us now I do not think we will have the opportunity of participation in the future. This is why we are most anxious to have this Allstate Life Insurance Company incorporated so that we can take the interest, and we think we as a corporate shareholder are much better advised to take it than we would be if we were purchasing on the open market as a personal purchase.

The CHAIRMAN: Mr. MacLean, do you have another question?

Mr. BOULANGER (*Interpretation*): I should like to ask another question relating to the question asked by Mr. Côté.

I believe in the explanation which was just given as to the reason why shares are not put on the open market it was said that at that time Allstate did not have a balance sheet very favourable to show. This was the answer you gave at the beginning, if I remember correctly.

Mr. Côté refers to reasons concerning the individual shareholder, but in the first answer you said that the balance sheet of the company would not be attractive enough, and that was the reason why the shares were not put on the open market, is that right?

Mr. O'KELL: I do not know that I have understood the full import of the question, but I do repeat what I said before, that I would have thought that Allstate would be rather rash to offer shares to the public in its present state of operations.

Mr. McLEAN (*Charlotte*): What is the amount that Simpsons-Sear is investing?

Mr. O'KELL: The investment is in the amount of $3,375,000.

Mr. McLEAN (*Charlotte*): Looking at the operation of insurance companies today, and looking at the price of their stocks, I think $3,375,000 is a small

amount having regard to the size of this concern. I do not see why it would not go ahead and double that, complying with the 25 per cent rule and thereby avoid any difficulty.

Mr. TORY: We would still not comply with the Income Tax Act even though 50 per cent of the Allstate Company were held by Simpsons-Sears, because the way we feel in respect of Simpsons-Sears complying, is that it is really a Simpsons-Sears capitalization of 50-50 rather than 51-49 which prevents us from complying with the terms.

Mr. MOREAU: There are two definitions involved. I only cited one.

Mr. TORY: If Simpsons-Sears acquired 50 per cent interest in Allstate, and I believe I am right but I have not the budget in front of me, we still would not comply.

Mr. MOREAU: To clear this situation for the record, and I think it advisable to place this on the record, there is another definition which states that a company or corporation has 60 days immediately preceding its taxation year to have 25 per cent of its voting shares owned by individuals resident in Canada and or the other definition which I have cited to you.

Mr. TORY: Yes, but the only point I was trying to make was that if Simpson-Sears acquired a larger interest than 25 per cent of Simpson-Sears business I still feel they would not come within the definition of the degree of Canadian ownership and control in the act.

Mr. MCLEAN (*Charlotte*): We are not referring to control, but referring to the 25 per cent as mentioned in the budget. Why can Simpson-Sears not obtain 25 per cent? This would only involve a few million dollars, and I am not referring to voting control.

Mr. TORY: If Simpsons-Sears acquired 50 per cent of the voting stock I believe we still would not comply with the definition regarding degree of Canadian ownership and control in the budget, because the minimum of 25 per cent interest has to be owned by a company controlled in Canada. In this case Simpson-Sears does not comply with the definition because it is a 50-50 company. We could raise the ownership or raise the percentage to 50 per cent ownership by Simpsons-Sears and still not comply with the definition regarding the degree of Canadian ownership and control.

Mr. MCLEAN (*Charlotte*): Where does the control of a 50-50 company lie?

Mr. TORY: It is somewhere in the middle, between two individuals.

The CHAIRMAN: Are there any further questions?

Mr. DOUGLAS: Mr. Chairman, I should like to clear up one point. Mr. O'Kell said that Simpson-Sears was putting $3,375,000, into the company.

Mr. O'KELL: That is right.

Mr. DOUGLAS: They are to receive 25 per cent equity for that investment?

Mr. TORY: Yes, in the two companies.

Mr. O'KELL: Right.

Mr. DOUGLAS: What is Sears, Roebuck putting in?

Mr. O'KELL: Sears, Roebuck already own the operation of the Illinois corporation and they are transferring all their assets into the two Canadian companies when formed.

Mr. DOUGLAS: Is the Illinois firm going out of business?

Mr. O'KELL: No, it will still keep its charter in Illinois but it will not continue to do business in Canada, I understand from what Mr. Atkinson has said.

Mr. DOUGLAS: And all it is turning over to the company is Canadian business for a 75 per cent equity?

Mr. O'KELL: Yes, 75 per cent equity.

Mr. DOUGLAS: And this business is so bad that it is in the red?

Mr. O'KELL: We are speaking of the life insurance which has just started. You see, there are two companies here, one of which is not the subject of this bill. The casualty company which was formed in 1960 will also be doing business in Canada and will be taking its business from the Illinois corporation. Then there is the life insurance company which is being formed by this incorporation and which will also be doing business under the Canadian charter when you gentlemen approve it.

Mr. DOUGLAS: But do I understand that Sears-Roebuck are putting into this fund for the 75 per cent the business of the Allstate Casualty Company and the Allstate Life Insurance Company, and for this they are taking 75 per cent equity which roughly looks like something over $10 million? That is what their equity would be worth, over $10 million, and yet we are told that one of the reasons we could not offer this to the public is that it is so unattractive that the balance sheet is in the red, and yet this unattractive business is going to get a stock worth over $10 million?

Mr. O'KELL: I was referring to the Allstate Life Insurance Company which is the subject of the bill here. I said it was in the red. I am speaking of the life insurance company now.

Mr. DOUGLAS: Yes, but will the assets of the casualty insurance business be turned over to this company?

Mr. O'KELL: To the casualty company, the one that has already been formed by parliament.

Mr. ATKINSON: The Allstate Illinois Company will turn assets presently in existence over to the Allstate Life Insurance Company of Canada. The Allstate Life Insurance Company is a separate corporation.

Mr. DOUGLAS: What would be the relation between the two companies?

Mr. ATKINSON: They are independent of one another; they are two separate companies.

Mr. DOUGLAS: Then I will come back to my point: is all that Sears, Roebuck are putting up for a $10 million worth of stock simply the life insurance business done by the Illinois company?

Mr. NUGENT: On a point of order, Mr. Chairman. I cannot see that this has anything to do with us at all. These people can make an agreement and get for their money what they like. These are private people doing a private business.

The CHAIRMAN: I do not think your point is one of order.

Mr. NUGENT: What is wrong with it? What does it have to do with this committee? What kind of bargaining they are making between private individuals is none of our concern.

The CHAIRMAN: The subject of incorporation is before us.

Mr. DOUGLAS: It is very important that a Canadian company, half owned by the Canadians, is going to put up $3,375,000 for a 25 per cent equity in a Canadian firm. I want to know what the American company is putting up for its 75 per cent. I understand what it is putting up is 75 per cent of the business done by the Illinois Allstate Life Insurance Company which is so poor that it is in the red. It is not much of an asset that it is putting up. It is also turning over to the Allstate Casualty Insurance Company the casualty business. However, how does that give it an equity in this life insurance company?

Mr. MILLER: I may be able to answer your question. The Allstate Insurance Company of Illinois which will own a 75 per cent equity in these two Canadian companies is putting up the following: cash of over $3 million.

Mr. DOUGLAS: To which company? The life insurance company or the casualty company?

Mr. MILLER: Primarily to the casualty company. We are discussing here the Allstate contribution. The Canadian insurance in force includes the equity in ownership and premiums—these will still apply with respect to the life insurance—all rights to future renewals of the Canadian business—and the following is a very important factor—all personnel and facilities of the Canadian insurance operation. Now the latter may be an intangible item but it is a very valuable one.

Mr. DOUGLAS: That is a debatable matter. Do I understand that the cash of some $3 million is being turned over to the Allstate Casualty Insurance Company?

Mr. MILLER: Primarily.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): What do you mean by primarily? How much?

Mr. MILLER: As Mr. O'Kell has pointed out, this is a package transaction between the two companies. The companies will operate separately but they will be operated by the same personnel.

Mr. DOUGLAS: I would like more information on this package deal because turning assets over to another company does not enrich this company. This company is giving to Sears, Roebuck, or to the Allstate Insurance Company of Illinois, a 75 per cent equity which is worth something in the neighbourhood of $10 million. Now the fact that it is turning $3 million over to another company does not increase the assets which it is turning over to this company because it is this company that we are concerned with.

Mr. MILLER: I think, Mr. Douglas, that your point is well made and that we should be discussing just the life company and not delve into the casualty aspect of the matter.

Mr. DOUGLAS: I am willing to do that. I will come back to my simple question: what is Sears, Roebuck or its subsidiary, the Allstate Insurance Company of Illinois, putting up as its 75 per cent equity in the Allstate Life Insurance Company of Canada? What is it putting in? Is it some business which it says is in the red and some personnel?

Mr. TORY: When we talk of a package deal there are two existing Illinois companies and there are two existing Canadian companies. Now, the Illinois casualty company has been doing business in Canada for almost 10 years. The casualty company business is valuable and it is not in the red.

Mr. DOUGLAS: How does that help this company?

Mr. TORY: That is one transaction, and when we have given a figure here this morning of a contribution of $3,350,000 to be paid by Simpsons-Sears, it is to acquire an interest in both companies. Now, the life company, at its inception, will necessarily be a relatively small company as compared to the casualty company. I would venture to suggest that this is only a minor part of the total of the $3,350,000. I cannot quote you a figure but only a relatively small portion of that figure could be attributed to the acquisition of an interest in the life insurance company. The valuable interest that Simpsons-Sears is acquiring and to which most of the consideration will be directed will be the interest in the casualty company, which is the company that has already been incorporated by parliament.

Mr. DOUGLAS: That is a different story.

The CHAIRMAN: I do not want to get into a debate as your chairman but I might point out that clause 3 refers to the capital of the company which is

going to be incorporated and of which only half a million dollars has to be subscribed.

Mr. DOUGLAS: Yes. Then we ought to have been given that information in the first place.

The CHAIRMAN: It is in the bill.

Mr. DOUGLAS: I am not asking for it now.

What cash is going to be put in by each of the two contracting parties, Simpsons-Sears on the one hand and Sears, Roebuck on the other?

Mr. MILLER: I would say as it is in the bill at the moment, $500,000.

The CHAIRMAN: Maybe Mr. MacGregor would enlighten us on that.

Mr. DOUGLAS: I will leave that. There are two contracting parties, one putting up 75 per cent and one putting up 25 per cent. What is Sears, Roebuck putting up of that $500,000?

Mr. MILLER: Seventy-five per cent.

Mr. DOUGLAS: And Simpsons-Sears 25 per cent?

Mr. TORY: The value of the insurance company in the casualty business, which is a valuable asset, is being turned over to the Canadian company by Allstate; and that in part is their contribution to this casualty company.

With regard to the life company, I would suggest there will be no part of the consideration, or only a very small part of the consideration, as part of the value of the existing life business of the Illinois corporation. I think it would be safer to say the original capital subscribed would be on the basis of cash, on the basis of three to one or 75 per cent to 25 per cent, because in this company the actual business will not be valued at any substantial amount to account for a part of the contribution of the United States company.

Mr. O'KELL: Mr. Douglas, I think the question is: What is being put up in this life insurance company? As it says in the bill, $500,000 is being subscribed, 75 per cent, United States and 25 per cent will be put up by Simpsons-Sears Limited.

I would ask Mr. MacGregor, who I believe is familiar with this, if he would confirm that to the committee.

Mr. MACGREGOR: I think the answer is very simple, but from the department's point of view it would be a little different from some of the explanations that have been given.

The situation is indeed a complicated one.

Mr. BOULANGER: It was not when we started. We have just had a lot of questions making it so.

Mr. DOUGLAS: We have not had satisfactory answers. We have been told "in part" for this and "in part" for that. I want to know what each contracting party is putting into it.

Mr. MACGREGOR: May I make a few comments not only on the immediate question that has been asked but also on a few others.

The CHAIRMAN: If you can limit yourself to the points Mr. Douglas is making it might help the committee, and then afterwards if the committee want help on other questions they will ask you.

Mr. MACGREGOR: Mr. Douglas, as I understand it, this proposed new Canadian life insurance company, the Allstate Life Insurance Company of Canada, will be capitalized by two partners, apart from the qualifying shares that will be held by the directors.

My understanding is that it will be capitalized to the extent of 25 per cent by the Allstate Insurance Company of Illinois, which is the casualty company in the United States, and 25 per cent by Simpsons-Sears Limited in Canada.

There has been discussion about the transfer of the existing portfolios of business in Canada, business that is now in the United States company, the United States casualty company, where the existing automobile and fire business is, and a much smaller volume of life business in Canada that is now in the Allstate Life Insurance Company of the United States.

There has been discussion of these portfolios being transferred to the Canadian companies, one of which, the Allstate Company of Canada, has been set up in 1960; and this is the other partner.

Our understanding in the department is that the existing portfolio of fire and casualty business—mainly automobile business—which is very substantial and which is now in the Allstate Insurance Company of Illinois will in this package deal, as it has been referred to, be sold in effect to the existing Allstate Insurance Company of Canada; that is the casualty side of it.

The CHAIRMAN: I wonder if you would permit me just to ask for the benefit of the committee if you would determine or estimate what the 75 per cent and 25 per cent of capital amounts to, the capital to which you refer as that which is to be invested in the life company? To what does this amount in terms of dollars?

Mr. MACGREGOR: $750,000 on the part of Allstate Insurance Company of Illinois; $250,000 on behalf of Simpsons-Sears. That is apart from the directors qualifying shares.

Mr. CHAIRMAN: A total of a million dollars.

Mr. MACGREGOR: That involves the point I was just about to clear up. There has been talk in this discussion of transferring two existing portfolios, the automobile, fire and casualty, and also the life portfolio. It is not our understanding in the department that the small existing life portfolio will be transferred to this company, and that is what is complicating the discussion in my view.

Mr. DOUGLAS: It will not be transferred?

Mr. MACGREGOR: It will not be transferred; that is correct. The life insurance will not be transferred. I am not sure whether there is any misunderstanding between the representatives of the companies and the department in this respect, but we have had some discussions—though I must admit about a year ago—on this point. So far as the department is concerned, we have no objection to the transfer of a fire and casualty portfolio, if it is done in a proper manner; it is all from one company to another. Short-term policies and short-term interests are involved, and if a policyholder does not like the new company he can readily change, just like a boarding house. We hold different views on the transfer, sale or bandying about of long-term like policies; they are long-term contracts. If I take out a policy and choose my company, I do so in the expectation that the contract will stay with that company. Therefore we have expressed our view that the small existing portfolio of life business ought not to be transferred to this new company unless the circumstances were such as to make it desirable in the interests of the policyholders. And we do not think that is so. Our understanding is that both the United States insurance companies, the casualty company and the life company, will upon transfer of their portfolios to the Canadian companies discontinue writing new business in Canada but will each continue to be registered in Canada for the purpose of seeking reinsurance on the larger risks and so on. I include in that that it is my understanding that the small existing life portfolio of the company in the United States will remain in its own hands, and if it does there will be no complication about how this company will be capitalized; it will simply be 75-25.

Mr. DOUGLAS: So the reference in part has no meaning? There is no consideration for the transfer of the portfolio?

Mr. MacGregor: All the insurance department is interested in is the existing life business. We see it as our responsibility to ensure that the policyholders are protected.

The Chairman: I am afraid, Mr. MacGregor, I must ask you to terminate your remarks as soon as possible. The house is sitting at 11 o'clock.

Mr. MacGregor: I am almost through, sir. It is up to the owners of the companies to make their own deals, so to speak, and that is not the function of the department.

Mr. Miller: On behalf of the company I would like to state that if there has been any confusion with respect to the transfer of this business, I would like to put it on record at this moment that we intend to abide by any rulings and regulations of the department of insurance and of Mr. MacGregor in that regard.

Mr. MacGregor: The only other comment is that I should like to correct a technical point Mr. Atkinson mentioned.

The Chairman: I would like to find out whether the committee feels that we can conclude matters right away or would like to sit this afternoon. If we sit for two or three minutes more we might be able to conclude. Is that the feeling?

Agreed.

Mr. MacGregor: Mr. Atkinson referred to the fact that Allstate Life of Illinois and Allstate Insurance has been registered in effect by me. I would merely point out that the certificates and licences are granted by the Minister of Finance, not by the superintendent of insurance.

The Chairman: Gentlemen, if there are any further questions you wish to address to the committee, Mr. Ryan has indicated he has one or two things he would like to say.

Mr. Ryan: Mr. Chairman, a statement was made by an hon. member in the house upon second reading of this bill to the effect that the Allstate fire and casuality department did not insure drivers under 25 years of age. Is that so or not?

Mr. Atkinson: That statement can best be answered by the fact that we insure persons to the extent of 16.9 per cent of our total portfolio under the age of 25. Actually over 15 per cent of the licensed drivers in the country are in that group, so we actually insure in excess of that percentage.

Mr. Ryan: I would like to make a couple of comments: in respect to the extra-provincial licensing of the current Allstate setup in Canada I would like the committee to consider Mr. Whelan's remarks as to the 20-year income tax free position and to point out that this position will continue under the extra-provincial licensing system as it exists.

Secondly, in connection with Mr. Moreau's suggestion about the Minister of Finance's resolutions, those resolutions are not prohibitive and there is no suggestion that the minister desires to prohibit charters.

The Chairman: If there are no further questions are you ready for the vote?

Preamble agreed to.

Clauses 1 to 8, inclusive agreed to.

Title agreed to.

Shall the bill carry? (Agreed.)

Shall I report the bill without amendment?

(Agreed.)

Thank you, gentlemen. We shall adjourn now until November 1 when we shall resume our consideration of Bill C-5.

HOUSE OF COMMONS

First session—Twenty-sixth Parliament

1963

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: EDMUND ASSELIN, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 4

FRIDAY, NOVEMBER 1, 1963

Respecting

Bill C-5, An Act to amend the Bankruptcy Act

(Primary Products under Processing)

WITNESS:

Mr. J. S. Larose, Superintendent of Bankruptcy, Department of Justice.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1963

29386-0—1

STANDING COMMITTEE
ON
BANKING AND COMMERCE

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Vice-Chairman: Maurice J. Moreau, Esq.

and Messrs.

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Aiken,
Armstrong,
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Basford,
Bell,
Boulanger,
Cameron (*Nanaimo-Cowichan-The Islands*),
Chaplin,
Chrétien,
Côté (*Chicoutimi*),
Douglas,
Flemming (*Victoria-Carleton*),
Gelber,
Grafftey,
Gray,
Grégoire,
Habel,
Hahn,
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Jewett (Miss),
Kelly,
Kindt,
Klein,
Lloyd,
Macaluso,
McLean (*Charlotte*),
Monteith,
More,
Morison,
Muir (*Lisgar*),
Nesbitt,
Nowlan,
Nugent,
Olson,
Otto,
Pascoe,
Pilon,
Ryan,
Rynard,
Sauvé,
Scott,
Skoreyko,
Tardif,
Thomas,
Thompson,
Vincent,
Whelan—50.

Dorothy F. Ballantine,
Clerk of the Committee.

CORRECTION

Proceedings No. 2—Friday, October 18, 1963.

In the Minutes of Proceedings and Evidence—

Page 82, Line 5, should read:

Mr. GELBER: The witness put forward a suggestion.

Page 90, Line 4, and following, should read:

It would mean that in the event of a bankruptcy, the loan would be freed from the liabilities. The insurance company would step in, and the money would be there available to pay for it so that it would not be necessary to touch the Bankruptcy Act at all in this respect.

Page 92, Line 32:

"bank rules" should read "bank loans".

MINUTES OF PROCEEDINGS

FRIDAY, November 1, 1963.
(12)

The Standing Committee on Banking and Commerce met at 9.15 a.m. this day. The Chairman, Mr. Edmund Asselin (*Notre-Dame-de-Grâce*), presided.

Members present: Messrs. Aiken, Asselin (*Notre-Dame-de-Grâce*), Asselin (*Richmond-Wolfe*), Cameron (*Nanaimo-Cowichan-The Islands*), Douglas, Gelber, Habel, Kelly, Klein, Morison, Muir (*Lisgar*), Nugent, Otto, Pilon, Ryan, Sauvé, Thomas, Whelan (18).

In attendance: Mr. J. S. Larose, Superintendent of Bankruptcy, Department of Justice.

Mr. Ryan and Mr. Gelber asked that certain corrections be made in the evidence of the Committee meeting of Friday, October 18th, 1963 (Issue No. 2). The Committee agreed to the corrections.

The Committee resumed consideration of Bill C-5, An Act to amend the Bankruptcy Act (Primary Products under Processing).

The Chairman introduced Mr. Larose, who then made a statement about the effect Bill C-5 would have on present provisions of the Bankruptcy Act.

Mr. Larose was questioned concerning protection of the primary producer under present provisions of the Bankruptcy Act; rights of primary producers as compared to wage earners; the possibility of confining provisions of Bill C-5 to agricultural products only, and other matters.

The Chairman thanked Mr. Larose for appearing before the Committee on such short notice.

The Chairman reported to the members on the future order of business suggested for the Committee. Mr. Otto suggested that consideration be given to having future witnesses file their briefs for information of the Committee, rather than appear for questioning. He felt that the hearings had reached a stage at which there was duplication of evidence. The Chairman said that the Subcommittee on Agenda and Procedure would take this and other suggestions under consideration.

At 11.00 a.m. the Committee adjourned to Friday, November 8th.

Dorothy F. Ballantine,
Clerk of the Committee.

29386-0—1½

EVIDENCE

FRIDAY, November 1, 1963.

The CHAIRMAN: Gentlemen, I see a quorum and consequently I call the meeting to order. This morning we will resume consideration of Bill C-5 which is an act to amend the Bankruptcy Act. We have with us this morning Mr. J. S. Larose, superintendent of bankruptcy. I thought, with your approval, that we might hear a statement from Mr. Larose, and then proceed to the questioning.

As you know, we have invited Mr. Larose to give testimony before the committee following a request that the committee made some weeks ago. Would this be acceptable?

Mr. RYAN: Mr. Chairman, before Mr. Larose commences, may I be permitted to make a correction in the Minutes of Proceedings and Evidence of this committee on Friday, October 18, 1963, at page 90. In the fourth line it is recorded that I said:

> It would mean that in the event of a bankruptcy the loan would be free for any insurance company to use, and the money would be there available, so that it would not be necessary to touch the Bankruptcy Act at all in this respect.

This does not make sense, and I do not believe it is what I said. What I intended to say is this.

> It would mean that in the event of a bankruptcy, the loan would be freed from the liabilities. The insurance company would step in, and the money would be there available to pay for it so that it would not be necessary to touch the Bankruptcy Act at all in this respect.

I would ask the committee to permit the amendment.

Then, at page 92 of the same evidence, in the fourth line of my statement the words "bank rules" should read "bank loans".

The CHAIRMAN: I take it there is no objection to these corrections. In that case, gentlemen, it gives me a great deal of pleasure to introduce Mr. J. S. Larose, superintendent of bankruptcy; he is an employee of the federal government.

Mr. J. S. LAROSE (*Superintendent of Bankruptcy*): Mr. Chairman, thank you for the invitation extended to me and for those kind words. Gentlemen, I have some serious misgivings about this bill, and with your permission I should like to place them before you briefly. In the first instance, bankruptcy legislation generally is aimed at distribution of the proceeds to the creditors subject only to certain well established and clearly defined priorities. These are obvious when one looks at the relative provisions of the various acts. Here in Canada we have established a system of uniformity in the distribution of the proceeds, and this was done in 1950. Prior to that time there had been a remarkable lack of uniformity and considerable differences throughout the provinces. My fear is that this bill will probably be the forerunner of other similar legislation which will in effect disturb this plan which I believe is fairly well accepted and fairly equitable.

Moreover, when you have an estate in which there are funds available for the creditors, section 95 of the Bankruptcy Act applies. This is the priority

section. Now, the proponents of the bill admit that there are few cases which would be covered by the bill, and yet this scheme of distribution to which I referred has been in effect since July 1, 1950, and this present act and its predecessor go back to December 1, 1932. Apart from this consideration it appears to me that there are others who are interested and affected by the provisions of this bill, and of course I am not referring here to banks nor am I referring only to the primary producer, and yet their rights would be affected and they would suffer if this bill were enacted.

In addition to that perhaps I should mention that, as I have referred to the bank, the Bankruptcy Act itself seeks to interfere as little as possible with the rights of secured creditors. I wonder if this is the proper form to attain what seems to be one of the objectives of the bill, or whether this should not be done in a consideration of the Bank Act as distinct from the Bankruptcy Act.

Finally, I see yet another problem in the practical application of the provisions of this bill, and this problem arises from subsection 2 of section 51(a) in the matter of the actual realization and distribution of the proceeds.

Gentlemen, I have given you very briefly my thoughts on the subject. I could amplify these, but I believe I will leave it to you and to any questions you may wish to ask to clarify particular aspects.

The CHAIRMAN: Gentlemen, I have before me no names yet. If anyone wishes to ask questions, please do so.

Mr. OTTO: Mr. Larose, from your brief opinion expressed about the bill it is pretty difficult to get down to specific questions. However, there are several things you have said, and one is that you thought this was more in keeping with the Bank Act than with the Bankruptcy Act. Is that correct?

Mr. LAROSE: That is true.

Mr. OTTO: Now, amendments to the Bank Act, if any, would be some time in coming; but do you not agree that this is a specific problem, a specific injustice in this matter of the private producers, that should be looked after before any revisions to the act are contemplated? Why do you say that this is specifically a problem for the Bank Act rather than the Bankruptcy Act?

Mr. LAROSE: I would say that the reason for that thought on my part is that there is a distinct reference in this bill to the Bank Act, and it seems to me obvious that one of the first and foremost effects of the bill does come to bear upon the provisions of the Bank Act itself.

Mr. OTTO: But surely you must agree that what we are discussing here is the distribution of the remainder of the assets in the event of a bankruptcy which could not be covered by the Bank Act. Do you agree or could you point out how this particular situation could be covered by the Bank Act?

Mr. LAROSE: I agree with you in that respect; however, with the exception of those items which are given precedence to the Bank Act, I think that it is the banks that are primarily affected.

Mr. OTTO: Do you think that we could incorporate, in any revisions of the Bank Act, the question of distribution of assets in the event of a bankruptcy or in the event of a failure?

Mr. LAROSE: I admit that is questionable but, on the other hand, it does occur to me that a revision of the Bank Act would be possibly a forerunner of any consideration of a corresponding revision to the Bankruptcy Act in this particular field.

Mr. OTTO: Although I do not want to become entangled in legal terms, it does seem to me that under this bill there is an attempt to remedy an injustice or, at least, a purported injustice in the distribution of assets in the event of

a failure and, therefore, distribution is the prime reason for this bill. Are you suggesting under the Bank Act that consideration be given to the whole matter of bankruptcy or the regulation and distribution of assets?

Mr. LAROSE: That is rather a large question. I would say in the matter of the distribution of the proceeds of a bankrupt estate the two acts are obviously rather intermingled and closely intertwined because you have section 88 of the Bank Act and, of course, you have the section of the Bankruptcy Act dealing with secured creditors, and you have that section which says, in effect, that the Bankruptcy Act does not interfere with the Bank Act.

Mr. OTTO: In your statement, Mr. Larose, you said that you were not in favour of this bill; you also said that you did not want to see the bankruptcy regulations as they pertain to the Bankruptcy Act disturbed, and you also said that the last change in the Bankruptcy Act was made 13 years ago; that is, I believe, in 1950. Is it your opinion that the regulations of the Bankruptcy Act, in their application to business today, do not need revision, or are they completely in keeping with modern business trends?

Mr. LAROSE: That is rather a pointed question and, certainly, I would be very much out of order in saying the Bankruptcy Act is sacrosanct and should not be interfered with. I hope I did not convey that impression. I might say that the act, as a whole, is being very carefully considered in all its aspects. Certainly, we do not feel that it is, shall we say, "a thing of beauty and a joy forever," which does not call for amendment; what I do say is that under this present scheme of distribution which was established, as you said, some 13 years ago, it has functioned by and large, I believe, quite well. It was established only after a careful consideration of the corresponding legislation in other countries and it was obviously also in consideration of the Canadian scene. I think, generally speaking, there has not been much fault to find with the provisions of section 95 and with the plan of distribution which this section sets up.

Mr. OTTO: Have you had occasion to read the evidence of previous witnesses in this committee?

Mr. LAROSE: Yes. I must say that my invitation to attend this present meeting was extended to me at the last minute, but I did in the small hours of the evening last night—in fact, until 1 o'clock—peruse the evidence of the previous meetings.

Mr. OTTO: Are you still of the opinion that under the present regulations of the Bankruptcy Act, and the Bank Act as well, the primary producer, as mentioned by some of the witnesses previously, is fully protected or adequately protected as compared with, say, other parties to a business transaction? To be more specific, do you think the primary producer is adequately protected against, say, a processor who has failed and whose assets, being the processed goods, have been seized by the bank?

Mr. LAROSE: I think you will agree that I am not free to comment on the Bank Act as such. In the matter of the Bankruptcy Act it is true there may be some inequity; however, as I pointed out, even those advocating this measure have not claimed, from my reading of the proceedings of the previous meetings, that there has been a considerable number of such cases, and this is over the many years that the act has been in force.

Mr. OTTO: The first witness, I believe, was the president of the Toronto-Dominion bank, and he made a statement similar to this. Are you saying because there are not sufficient numbers of people who are hurt or could be hurt this justifies not changing the act? Are you saying that it is of no importance if one person is hurt but that it is if 1,000 persons are hurt?

Mr. LAROSE: No, what I am saying is that if you have 1,000 people who are going to be affected by the adoption of this measure as opposed to, shall we say, ten, for the sake of argument, I think that is one of the factors to be considered.

Mr. OTTO: In this case we are considering the primary producer. In any amendment to the Bankruptcy Act or, say, in the adoption of this bill, who could be hurt by certain changes; presuming the primary producer will benefit, who could be hurt or affected by this bill?

Mr. LAROSE: I would say that all others with claims which would be made subsequent to the claims of the primary producer would be affected to the extent to which there were funds available.

Mr. OTTO: I am going to direct you questions which I have put to previous witnesses. Will you agree that the primary producer who is selling the produce to the processor does not assume an additional risk of losing everything in the case of someone else's bankruptcy? The primary producer being the farmer, does he, in your opinion, assume an additional risk, or is his risk finished when he has his crop in?

Mr. LAROSE: I am not too sure that I follow your question but I would say there is a risk for everyone who, in transacting with another, does so on a credit basis or through the postponement of the satisfaction of his claim.

Mr. OTTO: I will put it this way. Will you agree that the bank is in the business of taking risks?

Mr. LAROSE: I would say so.

Mr. OTTO: Would you say that in the conduct of business the person who supplies the cans, the labels and so on, expects a certain amount of bad debts.

Mr. LAROSE: Again, I would think so.

Mr. OTTO: You are also saying the farmer, who already has taken his risk with the weather—that is, the hail and so on—assumes an additional risk.

Mr. LAROSE: I think that is a fair assessment of the position. It is another risk that he takes, yes. And—

Mr. OTTO: I have one other question.

The CHAIRMAN: If I may interrupt, Mr. Otto, Mr. Larose did not finish his answer.

Mr. LAROSE: I would like to add that I think with the experience admittedly, which he has acquired down through the years, it is a risk which he perhaps takes knowingly. His experience has demonstrated this factor in the same manner as any person extending credit. His experience shows the field and the element of risk involved in any transaction in which he enters.

Mr. OTTO: Are you aware that in most of these cases the sale price of this produce is set up by a board, a group or an association?

Mr. LAROSE: Yes.

Mr. OTTO: Therefore, can you tell us how he could allow for the losses in the setting up of his price?

Mr. LAROSE: I believe that point was raised during the earlier proceedings, if I am not mistaken, and I do not feel I am competent to discuss the matter, particularly in view of certain remarks which, as I recall it, were made by someone speaking for one of the boards or producing agencies.

Mr. OTTO: The evidence we had was that the agency which sells the goods does not expect any losses. You made a comment to the effect that this bill, if adopted, would be the forerunner of other changes in the Bankruptcy Act. Would you elaborate on this and say what is wrong with more changes to the Bankruptcy Act, if necessary?

Mr. LAROSE: I can point up the problem in a way. Obviously I cannot say it will be a forerunner. I would say it might well be the forerunner, and I think I can say that from experience, because there have been certain innovations in other legislation which have come to bear on the Bankruptcy Act. These innovations were copied subsequently. Again I think it is safe to say if a measure such as this were adopted, then certainly it would establish a precedent. It is quite within the realm of possibility that this group—and if I use the word group, do not misunderstand me—might seek to better their own positions under the Bankruptcy Act.

Mr. OTTO: Do you or does the department have any plans for extensive revision of the Bankruptcy Act?

Mr. LAROSE: The answer is yes. The act has been under study for some considerable time. We have not yet completed the task because of the tremendous amount of work involved. We are examining the act from beginning to end. We have received numerous representations and these are being very, very carefully studied. I must add that each and every such representation must be considered not out of context, but in its application to the other provisions of the act, and the effect it would have upon the application of the act generally.

Mr. CHAIRMAN: If you would permit me to interrupt, I might say that your last question, Mr. Otto, was really not relevant to the subject.

Mr. OTTO: It is, Mr. Chairman. I am going to ask Mr. Larose whether his opposition to this particular bill is because of plans for complete revision of the Bankruptcy Act which he or his department has in mind, and it is not specifically an objection to this particular bill.

Mr. LAROSE: No; I do not think I would be quite honest and fair with you if I said my misgivings with regard to this bill are founded upon the overall picture. I think I should say my misgivings relate specifically and directly to this bill and to the effect which it would have upon the underlying principles of the bankruptcy legislation in general, and our own act in particular, and more especially the scheme of distribution established by section 95.

Mr. OTTO: Thank you.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Mr. Larose, you mentioned your fears in respect of further legislation stemming from this which would upset what I believe you described as the scheme of distribution in bankruptcy. Do you consider that scheme is satisfactory? I have this in mind: Mr. Otto mentioned the can manufacturers who would have a certain allowance for risk in their calculations. I submit to you that the can manufacturers in any one instance only could have a marginal risk in relation to their total operations. Would you agree that is so?

Mr. LAROSE: I would say from what I have heard of the evidence given on previous occasions that position is well taken.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): On the other hand, would you not agree that the farmer, who may have a single crop, takes a total risk?

Mr. LAROSE: Yes; I think that is a correct statement again.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Yet in the scheme of distribution that you are so jealous to protect, there appears to be no distinction between those two types of creditors.

Mr. LAROSE: Again I am not too sure that the Bankruptcy Act—and mind you I am not jealous in protecting the present scheme of distribution, nor in protecting the act as a whole, because it is under very careful study—I am not too sure that the Bankruptcy Act could ever begin to attempt to protect

satisfactorily each and any type of claim arising in a bankruptcy proceeding. The best that can be done in any legislation regarding bankruptcy and insolvency is to seek to obtain the most equitable scheme of distribution possible, having regard to the rights of the greatest number of people involved. Beyond that I do not think it is feasible, without hedging and introducing so many ifs, ands and buts; it would be difficult, if not almost impossible, to apply any act.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Can you tell me how it happens that the rights of workmen under the Bankruptcy Act have been given preferred treatment?

Mr. LAROSE: Are you referring to the Bankruptcy Act as such, or to other legislation, Mr. Cameron?

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Well, of course there is other legislation; but still that principle is recognized, is it not?

Mr. LAROSE: I think you will agree that in so far as other legislation is concerned I can make no comment. With regard to the Bankruptcy Act, this consideration is universal and I would say even in this bill it does not seek to interfere with the right of the wage earner. So, I repeat that this is a universal application; it is not limited to the Canadian act and the wage earner always has been given this particular priority. I believe the legislators of various countries are agreed that this is rightly so.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Would you not agree that is so because the legislators in all parts of the world recognize if the worker loses what he has, it is a total risk of everything he has put in?

Mr. LAROSE: That may well be one of the reasons. I do not say it is the only reason.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): What other reasons could you suggest?

Mr. LAROSE: Well, other reasons have been advanced, one being the peculiar position in which he finds himself, to some extent being at the mercy of his employer, and not infrequently being unaware of the approaching insolvency of his employer; and I think again, because of the fact that he is so entirely dependent upon wages since he has no other source of income. For all these reasons I think that down through the years he has been given this priority.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Could you distinguish between the economic and social position, which you have so accurately defined, of a worker and that of the producer of one crop of vegetables for sale, probably to only one available market?

Mr. LAROSE: I think there is some distinction to be made to the extent that the primary producer is not in the same position as the wage earner. The wage earner, shall we say, is a servant, while the primary producer is his own contractor, if I may use that word.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): But nevertheless the primary producer, the minute he is committed, whether or not you agree, is running a total risk when he gives his fruits, his entire year's labour, over to the processor.

Mr. LAROSE: That may be true.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): In effect, is he not in a worse position than the employee or worker who can be collecting wages at intervals all along?

Mr. LAROSE: Possibly, but I should reiterate the remark that I made previously in this regard to the effect that in the vast majority of bankruptcies

of other than wage earners you have wage earners involved whose rights are affected; in other words, regardless of the element of risk, I think that we must agree that there are many, many more instances in which the wage earner is adversely affected by bankruptcy. I think it is for this reason among many others that he has been given a preferred position under the Bankruptcy Act.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): You have suggested that rather than amend the Bankruptcy Act an attempt should be made, perhaps, to revise the Bank Act. I am not sure whether you have had time or occasion to consider the proceedings of earlier banking and commerce committee hearings. I recall that an attempt was made 10 years ago on the same basis as that of Bill C-5, with virtually the same evidence, and virtually the same groups appearing before the committee. You have suggested there is a danger if this bill is passed, that there will be a series of bills which will be continually altering the stream of distribution under the Bankruptcy Act. There is only one place in the Bank Act that I know of where you can have any effective action in this regard, and that is section 88. Therefore you have suggested to us that rather than proceed with Bill C-5 we should amend section 88 to remove this particular class of producers from its operations.

Mr. LAROSE: While I must admit that I have not had an opportunity to read the evidence given some ten years ago, I think I should correct what may be a wrong impression in the one being attributed to me, that I am suggesting that the Bank Act should be amended. Certainly I have no authority, and I would be going beyond the bounds of my position to make such a suggestion. But I do say that if an amendment is proposed, I wonder if such an amendment should not be directed in the first instance to the Bank Act in view of the implications of the bill.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I understood you to suggest that a more appropriate piece of legislation might be amended, namely, the Bank Act.

Mr. LAROSE: It would seem to me that this is attacking the Bank Act more directly, and while I would not wish to be put on record as suggesting that the Bank Act should be amended, by the same token, I wonder if the Bankruptcy Act is the proper forum for attaining the purpose which lies behind this bill.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Thank you, that is all.

The CHAIRMAN: Can everybody hear all right? If so, Mr. Whelan.

Mr. WHELAN: My first question is this: you say that this is constantly under consideration; but the provision that is being amended by the bill has been in the statutes of Canada longer than confederation. Is that not right?

Mr. LAROSE: I am sorry but I do not follow you.

Mr. WHELAN: You said that it was under consideration at all times to be changed. I say is it not right that this legislation that we are presently operating under, this section of the Bankruptcy Act, has been the law of Canada since before confederation, over 100 years or practically 100 years ago?

Mr. LAROSE: What I did say was that our Bankruptcy Act is undergoing a very intensive and far reaching study. This particular provision, that is, section 95, as such, is new, that is, since July 1, 1950. It replaced the provision of the former act which had been in effect since December 1, 1932; and I might add that the provisions of the previous act, that is those provisions which were in force since December 1, 1932 to July 1, 1950, had been applied in such diversified fashion that it was found necessary to established some degree of uniformity. It was for this reason that section 95 was enacted in the 1949 act.

Mr. WHELAN: I am speaking of section 51. I do not know if you have read the submission and comments made by someone from the bankers' association, but in my submission, they paid full tribute to that section 88, in that it was aimed at the then political and economic conditions of Canada. They pointed out that those economic and philosophical conditions of Canada in 1859 are not those which obtain in Canada in 1963. You have said that it is under constant consideration, yet these provisions are practically the same in 1963 as the ones we had in 1859. Mr. Otto said this is not helping the primary producers.

Mr. LAROSE: The answer, I think, is that the provisions to which you refer are those of the Bank Act and not of the Bankruptcy Act.

Mr. WHELAN: I can go further. I will not go too deeply into the submission that was made at that time, but I will read the explanatory notes of the bill:

> —in effect, the processor gambles with the credit of the producer as risk capital—the bank clothed in the blanket protection of the producer's assets secured by section 88 of the Bank Act, the processor diapered with the limited liability of the Bankruptcy Act, while the primary producer goes bare of assets and stripped of credit.

Mr. LAROSE: You are referring here to section 88 of the Bank Act rather than the Bankruptcy Act despite the subsequent reference to a limited liability.

You will recall that the Bankruptcy Act as such does not interfere with the rights of secured creditors, whether it be the bank or any other secured creditor, in addition to the fact that there is a specific provision in the Bankruptcy Act excluding banks.

Mr. WHELAN: I have another question. You say a few cases are covered by the bill. From the evidence given on this bill I think this is true, but do you not feel that in a democratic country we should legislate for minorities as well as for majorities?

Mr. LAROSE: That is true, but within certain limits. I think my previous remarks expressed my views on the question. You admit there are few cases, and I think the other witnesses did likewise. If you offset these against the considerable number of other groups—and again I use that word for want of a better one—which are affected by the Bankruptcy Act and by the scheme of distribution established by section 95, I think it is a very difficult matter to begin to make exceptions, because once you do this then you are open to similar suggestions to the effect that other exceptions be made. Then I am afraid the end result would be that you would have a very unwieldy act and, more particularly, a very unwieldy scheme of distribution.

Mr. WHELAN: You made the statement, I believe in answer to a question by Mr. Otto, that the primary producer took this risk knowingly. Perhaps this was in answer to Mr. Cameron; I am not sure. This I challenge because we have marketing boards in some of the provinces and even as late as last year the board, having the right to refuse or ask the department to refuse a licence, wrote to a bank and the bank, three months before the company went into bankruptcy, stated that this company was in a good financial position and that there was no objection to a licence being issued. How can you then say that they take this risk knowingly?

I dispute this strongly and I cannot understand why you should make that statement.

Mr. LAROSE: I am in no position to take exception to that particular case, which I recall. I do not feel it would be proper for me to comment on that particular aspect of the matter when it concerns the board in its own operation and in its relationship with the bank.

Mr. WHELAN: In conjunction with that, Mr. Cameron asked about primary producers having the same rights as wage earners. I think what Mr. Cameron had in mind was that a good many of our primary producers produce one crop. They may have to borrow thousands of dollars from the bank in order to pay wages to people who have worked for them, but they may not get one cent if the processor goes into bankruptcy. However, the same bank or another bank which lent the money to the farmers to produce the crop is the bank which puts the processor into bankruptcy; so the bank does not lose at all.

Do you not agree that the primary producer in this case should be in the same position as the preferred creditors? I would even go so far as to say that he should be entitled to at least the wages that he has paid out and for the time that he has put into the production of his product.

Mr. LAROSE: I do not think your last suggestion about the producer's own time could be applied because I think the same suggestion might also be made with regard to others. As to wages which he may have paid out, again I do not feel competent to discuss legal aspects of subrogation.

Banks are secured creditors. They have taken security and they rely on that security. As I mentioned earlier, the Bankruptcy Act has never sought to interfere with the rights of security creditors of whatever classification they may be, whether it be the bank under section 88, a mortgage creditor, a lien holder or any other secured creditor.

Mr. WHELAN: You have not answered the question clearly enough for me. I should explain that I am not a lawyer.

I am trying to get across the fact that there is a feeling that we as primary producers should be protected at least for the cost of the wages that are put into the crop.

Mr. LAROSE: I am not too sure of that. I am not too sure whether or not this is the result of the plan of distribution envisaged by this act, but I do not quite see how this could be applied within the scope of the Bankruptcy Act, and again I say that a similar argument might be advanced by others. It would be most difficult to conceive of any scheme of distribution which would attempt to right all grievances. I do not see how it would be workable.

Mr. WHELAN: Then let me ask a further question. We say the losses were not great, and you acknowledge this. Why then is there the strict protection for the banks? Their risk is very negligible. For a small primary producer, however, this system can mean complete annihilation.

Mr. LAROSE: The banks are secured creditors, and in extending credit they must assess the credit risk involved. Once they have obtained this security the Bankruptcy Act, I repeat, does not interfere with it.

Mr. WHELAN: How many countries have a similar system? You say you have made a study. Have you studied what other types of protection the banks enjoy, and other preferred creditors?

Mr. LAROSE: Our scheme of distribution here in Canada was evolved after a careful consideration of the corresponding legislation in the United States, England, Australia and New Zealand.

Mr. WHELAN: In the United States do they not just borrow on a straight note?

Mr. LAROSE: Despite the fact that I have just come back from the United States I am afraid I cannot answer that question offhand.

Mr. WHELAN: Mr. McLean gave evidence last week or the week before to the effect that he had borrowed money in this way through Boston for the processing plant he runs at New Brunswick.

Has the particular section in the Bankruptcy Act with which we are dealing ever been changed? Has it ever been changed since it was first initiated?

Mr. LAROSE: This bill seeks to introduce a new section to follow section 51. I am not sure that your reference is related to section 51; I think rather you are referring to the scheme of distribution as such, are you not?

Mr. WHELAN: That is right, yes.

Mr. LAROSE: This scheme of distribution was very considerably modified by the act of 1949 which came into force on July 1, 1950.

Mr. WHELAN: I think Mr. Cameron has pointed out too that in 1954 the matter was presented to the Banking and Commerce committee, but nothing has been done since that time. No changes have been made to give the primary producer any protection whatsoever. What alarms me is the suggestion that this should possibly go through the Bank Act. I believe it is every ten years that the Bank Act is supposed to be revised. Does that mean that we will wait for another ten years?

Mr. LAROSE: Again I am not confident to discuss the Bank Act or amendments to that act, but my primary concern is with the Bankruptcy Act and its purposes.

Mr. MUIR (*Lisgar*): Well, Mr. Larose suggested that the amendment does not take into consideration risks undertaken subsequent to risks assumed by the primary producer. Am I right that, if this amendment went through, that you would not be protected from subsequent risks?

Mr. LAROSE: I am not too sure that I follow the implication of your question, Mr. Muir.

Mr. MUIR (*Lisgar*): I think you mentioned, if I heard you right, that if this amendment were to be accepted, the people who have taken risks subsequent to those assured by the primary producer would not be protected under this amendment.

Mr. LAROSE: Are you referring then to the man who supplies the cans, and so on?

Mr. MUIR (*Lisgar*): And any other credit that he needs after he has received the produce from the farm.

Mr. LAROSE: Certainly I think it is safe to say that any person extending credit as such who was not a secured creditor is not protected.

Mr. MUIR (*Lisgar*): Other witnesses have given evidence that some producers use the primary produce to finance their total operations from start to finish without using some of the credit they had received for the produce to even pay an initial payment to the primary producer. In other words, they have taken in the whole crop to process without paying out anything whatsoever to the primary producer and have used this for their financial operations.

Mr. LAROSE: That may well be. I have gathered that from the testimony of some of the previous witnesses.

Mr. MUIR (*Lisgar*): In that case then, would you not think that the primary producer is entitled to more protection than those who take subsequent risks on this operation?

Mr. LAROSE: Your point is perhaps well taken, but the first question that comes to mind is the question of the feasibility of making an appropriate distinction and of implementing any such suggestion.

Mr. MUIR (*Lisgar*): That is the point we are trying to establish here, I think. I believe you made the statement that the primary producer knew the risks he took when he delivered his produce to the processor. Is that correct?

Mr. LAROSE: Yes, within limits.

Mr. MUIR (*Lisgar*): And yet he enters into a firm contract with the processor that he shall grow the produce and the processor shall process it for him. However, he has no way of protecting himself if the contract is broken by a bankruptcy.

Mr. LAROSE: I would say that a similar remark would apply to any person extending credit who has not taken security.

Mr. MUIR (*Lisgar*): Well, the security in this case I would think is the contract because the processor not only puts up the produce in many cases but the produce finances the operations, and should finance the operations. But if the processor gets involved in other debts that the produce will not cover, then you have the primary producer at the mercy of the processor.

Mr. LAROSE: Does not the answer lie then within the contract itself as such?

Mr. MUIR (*Lisgar*): How would you suggest that you could have a different type of contract? The farmer grows the stuff and he cannot let it rot in the field. He enters into the contract with a man who processes it, and yet if it is processed and the man goes broke, he can let it rot in the field for all the good it will be to him.

Mr. LAROSE: I am afraid you are addressing this question to the wrong person.

Mr. MUIR (*Lisgar*): Another witness—I believe it was Mr. MacLean, and he should know because I think he is a processor—said that there was no reason why a processor should use all the farm produce for financing the operation without at least paying an initial payment.

Mr. LAROSE: I would not say that I can find any fault with that statement, but the question that occurs to me is whether or not the solution, if there is a solution to the problem, lies in the Bankruptcy Act.

Mr. MUIR (*Lisgar*): I would suggest that it does because it seems to me that under the present act there is not enough protection given to the man who assumes the first risk, and he does assume the first risk because the employment comes after, the producer of the cans comes after, the whole operation is subsequent to the risk assumed by the man who supplies the produce outside of the factory building itself. And yet, under the present system, this producer does not receive the protection that I would think one who assumes the first risk should.

Mr. LAROSE: But it seems to me that there are others who assume similar or corresponding risks and who, in the event of a bankruptcy, are not given a preferred rating.

Mr. MUIR (*Lisgar*): They all do this after the primary producer assumes his risk.

Mr. LAROSE: Possibly in a specific case which you have in mind, but in other transactions I am not too sure that it would be entirely accurate to make such a blanket statement that these are all subsequent risks.

Mr. MUIR (*Lisgar*): Other than the risks involved by the processor himself when he builds a plant any moneys that are used for the operation of the plant must surely come after the initial risk of the primary producer, because without the produce the plant does not operate.

Mr. LAROSE: That is true, but could not the same be said of other types of operations?

Mr. MUIR (*Lisgar*): Would you explain that a little further for me please?

Mr. LAROSE: Any form of manufacturing I think would fall somewhat within the same general qualifications, would it not?

Mr. MUIR: (*Lisgar*): That could be, but perhaps we are dealing with a different situation here where you have a large number of small producers, while in other cases it would not be the same, such as in forestry, if you have that in mind.

Mr. LAROSE: That is possible. You may have a great number involved, but I do think you will find that you would have a large number involved also in

the other field which I mentioned. In addition to that, it seems to me from the evidence I have read that in point of fact the actual number of primary producers affected, at least in proceedings to date, has not been as considerable as might have been indicated.

Mr. MUIR (*Lisgar*): We go back to the point brought up by some other gentlemen that the fact that we have not too many of these situations does not mean that it should continue to operate.

Mr. LAROSE: I appreciate the validity of that remark, Mr. Muir, but, on the other hand, if any change would adversely affect a large number of producers, I think that is a factor which should be given some consideration.

Mr. MUIR (*Lisgar*): Do you think the amendment would affect a larger number?

Mr. LAROSE: I think so.

Mr. MUIR (*Lisgar*): Perhaps in terms of a larger number of dollars but not in terms of a larger number of people.

Mr. LAROSE: I would say yes, in both cases, for two reasons; the only creditors who would be ranked ahead of the primary producer under the bill would be those seeking wages, salaries or other remuneration; all other claims under the Bankruptcy Act—and they would be considerable, not only dollarwise but in point of view of numbers—would lose out in any such change.

Mr. MUIR (*Lisgar*): But the point I would like to leave with you is that although this may hurt other people, even those who were willing to make the loans for that operation, these things were all done subsequent to the risk involved by the producer who delivered his produce to be processed. The point I would like to make is that although other people are hurt when they enter into the transaction they have a better way of finding out the financial position of the processor than the producer does and, if they assume the risk, they are more or less assuming it with their eyes open. I think I can drop the subject there.

The CHAIRMAN: Have you a question, Mr. Klein?

Mr. KLEIN: Mr. Chairman, before asking a question I would like to make a preamble.

The CHAIRMAN: That is what we expect from lawyers.

Mr. KLEIN: We seem to be living in an era in which we are moving away from ownership by the owner. We are going into an era in which we have the lease back arrangements; we are going into an era in which instead of the builder owning the land upon which he is putting up a building, he is entering into an emphyteutic lease and never owns the land; we are living in an economy in which we are told somewhere in the vicinity of 75 per cent of the people who are driving cars today do not own them, and they never will. This seems to be the area in which we are now drifting.

As a matter of fact, if by some fiction of the law every creditor could on one day ask for payment from his debtor it would develop into an awful mess. I am not making any defence of section 88 but, perhaps, in that sense section 88 was ahead of its time rather than antiquated, if we consider the direction in which the economy is now running. It would seem to me all we are doing here is perhaps confusing the small farmer with bigness. If we can call it an industry, for want of a better word, the only industry that did not get big in this country or in any other country for that matter is the farming industry. The farming industry itself is the only thing that has remained, for the most part, small. I think it is wrong to even suggest that the farmer should assume a risk because I do not consider the farmer is in the same position as the supplier of materials. He supplies a product but he is not in the same position of assuming a risk as the supplier of materials because, for the most part, the

product the farmer sells is the result of his own sweat. I would think we perhaps should start thinking in terms of the farmer, not as a primary producer but perhaps in terms of the provisions that were made under section 95 of the Bankruptcy Act, in respect of the question of distribution, where we have made protective clauses for the wages, salaries, commissions and compensation of a clerk, servant, travelling salesman, labourer and so on, because the farmer is more in the classification of a labourer than he is in the classification of a supplier of materials.

Now, this thought comes to me only this morning, and I profess I do not know how we can provide for that protection. But, if we think in terms of the farmer as a labourer, as we do in terms of the labourer, in which, for example, under section 95 (*d*) the servant, travelling salesman, labourer and so on is protected to the extent of three months of his salary next preceding the bankruptcy, to the extent of $500. I do not know whether or not we could work something like that into the Bankruptcy Act for the farmer. I do not know whether $500 would be the figure or whether it would be 10 per cent of the amount of the credit that he has advanced but surely we must start thinking about this bigness and, as the bigness is getting bigger, the farmer gets smaller. If the farmer is the backbone of this country I think we have to do something to protect him so that there will be farmers left. Now, how this is to be done or to what extent is questionable. Whether it would be equitable to the extent of 10 per cent of the amount he has advanced so he will have some money left to carry on a crop for next year if he has lost all the proceeds of this year's crop is a question we will have to consider. But, we have to start thinking in terms of doing something for the farmer and keeping him aloft and in existence. I do not know how this is to be done.

My question to you is this: In the discussions that are going on in connection with the revision of the Bankruptcy Act is any consideration being given to the position of the farmer? Is he being given any extra special consideration under the Bankruptcy Act?

Mr. LAROSE: You have raised so many different issues that I am not sure that I will recall them all. You will forgive me if I overlook any and I trust you will refresh my memory if I do so.

At the very outset you discussed the Bank Act. I must refrain from commenting on it. I will leave you to debate with Mr. Whelan whether or not it is antiquated.

You compared the farmer with the wage earner. I am not too sure that the comparison is an appropriate or adequate one. But, going beyond that, there is the larger issue, whether or not within the scope of section 95 it would be feasible to adopt one or the other of your alternative suggestions. You have suggested, for example, section 95 (1) (*d*) might be modified in some manner or other to provide for such a case but I think this only serves to underline my earlier remark concerning the difficulties which would be encountered in attaining any such measure, apart from the fact of the bearing it would have upon all subsequent claims. It would not only be difficult to implement but would interfere seriously with the rights as they now stand of all creditors who would be ranked subsequently to those to be covered by section 95 (1) (*d*).

Mr. KLEIN: If I understand you correctly you do not feel it feasible to treat the farmer in the way I have made a distinction in the term of labourers.

Mr. LAROSE: I must confess my first impression is that it would be most difficult to provide for such a case. Even if this could be done, I think it might well, eventually, be necessary to extend that thinking to other groups and broaden the scope so considerably that you would be upsetting considerably the present scheme of distribution which has been functioning so well. A further

thought is that other measures have been introduced in the past for the relief of the farmer. I am not in a position to say how effective they are, or whether or not they are sufficient. However, I repeat that to attempt a distinction under section 95 would, as I see it, present many problems.

Mr. KLEIN: It would seem to me that the reason why there has been a distinction made in the case of the category suggested under section 95 (*d*) is that in those instances the persons involved have given everything, have nothing else to give, and if they do not get back something for what they have given, they will starve. This seems to be the reason for section 95 (*d*). I would say in many instances the farmer is in the same position; in most instances he has given his full crop; he has nothing else; he has nothing to fall back on. We have to give him something to survive with as we are doing in section 95 (*d*).

Mr. LAROSE: I think there are other groups which might make the same claim.

Mr. KLEIN: If their claim were valid, it would mean that they should get relief. Simply because we are afraid others will ask for relief is no reason to deny a just demand by people who require relief. I do not think we should deny relief where relief evidently is needed because we are afraid others will demand the same thing.

Mr. LAROSE: Granted; but what I envisage here is that eventually you might remove the vast majority of the claims out of the general classification of unsecured creditors and advance them to the position where they would be covered by paragraph (d), and any subsequent creditors, I would say, in effect would be eliminated.

Mr. KLEIN: It seems to me that governments of all countries, for example, recognize the need of farmers, and have given subsidies while they do not give subsidies to other sections of the economy. I think the farmer is so unique in the scheme of the economy now, the economy of the twentieth century, that he is apt to get snowed under in this tremendous bigness into which we are going.

Mr. LAROSE: Please do not misunderstand me. I am not averse to the farmer or to acceding to any legitimate rights. My only thoughts are those I have already mentioned. I am not at all seeking to discriminate against the farmer.

Mr. KLEIN: I am not suggesting that for a moment. I am only suggesting we should consider putting them in a unique category, because if we do not we are discriminating against them.

Mr. LAROSE: To some extent, would you not say they have been so treated by other forms of legislation aimed at bettering the lot of the farmer?

Mr. KLEIN: Yes, but with all this betterment, if he is going to lose everything because of the processor going into bankruptcy, then we have not helped him at all. All we have done is put the processor in a position to exploit him. If we do not do something, all the processor would have to do is get the farmer to sell his crop to him and then he can go to the bank and say: "Look at all the collateral I have; I have the crop belonging to the farmer; I do not want to put any of my money in; I would like the farmers to finance me so that I can go to you under section 88, and you will give me all the money I want, and the farmer can worry about whether or not I come through." It seems to me there is an inequity somewhere.

Mr. GELBER: I would like to make a correction on page 82 of our Minutes of Proceedings and Evidence. I was asking questions of the witness and I took a remark which he made. This is at the top of page 80. I thought he had made a more general proposal with regard to a change in the Bankruptcy Act

than was implied in asking for a consideration for the primary producers. At page 82 I am quoted as saying:

> I just put forward a suggestion.

I understood the witness to make the suggestion. I would like the record corrected at the top of page 82.

I rather think that Mr. Whelan, Mr. Cameron and Mr. Klein are speaking of a one-crop farmer who only has one customer. I am interested in the proposal in Mr. Whelan's bill, because I am interested in other suppliers as well. Actually, I think there is a great deal in his proposal and in the suggestions made by Mr. Cameron, Mr. Klein and Mr. Whelan. I wonder what Mr. Larose thinks of the situation in the province of Quebec where I believe there is protection in respect of 30-day goods in the event of bankruptcy.

Mr. LAROSE: I am not too sure what you are pointing at, or what you are seeking.

Mr. GELBER: My understanding of the evidence given by Mr. Musgrave and others at the last meeting is that their chief objection to the Bankruptcy Act is that the merchandise they have delivered to the processor which is not processed becomes part of the estate in the event of bankruptcy and that the bank has priority. What they want is that the goods which are not processed be available to them in the event of bankruptcy. I am wondering what Mr. Larose thinks of the situation in the province of Quebec where it is my understanding that where merchandise has not been processed and has been delivered within 30 days of bankruptcy, there is a return of that merchandise. What do you think of that arrangement?

Mr. LAROSE: From your remarks I gather what you are suggesting in effect is that consideration might well be given in the other provinces to the introduction of legislation similar to that relating to 30-day goods in the province of Quebec.

Mr. GELBER: What would you think of that being part of the federal legislation?

Mr. LAROSE: Well, in respect of the 30-day goods provision as such, as I understand it, in the scope of the banks, their authority did not come to bear on bankruptcy and insolvency directly in the first instance.

Mr. GELBER: Do I understand that you have no comment in respect of whether it should be incorporated in the federal legislation?

Mr. LAROSE: I think all I would say at this point is that the suggestion which is noted in the minutes of the proceedings will be considered. I do not think, however, that I am free at the moment to comment, either on its advisability or feasibility under the circumstances.

Mr. GELBER: I understand your position. It is my feeling that with section 88 the banks will encourage suppliers to send in goods because it protects the position of the bank and protects the guarantee of the debtor. I think this breeds too much inequity. I wonder if consideration could be given not only to the 30-day goods provision, but also to unprocessed goods and goods in process, which is a more difficult problem.

Mr. AIKEN: Mr. Chairman, I think the field has been covered pretty well. I would like to ask a couple of questions of Mr. Larose. Bill C-5 is very broad in its terms, because it includes not only protection in respect of agriculture, but also forests, mining, sea, and so on.

Is part of your fear about this bill that it is too broad in its implications, and instead of protecting those who need protection, it might extend a complete new type of protection across the board?

Mr. LAROSE: Certainly it would introduce an entirely new concept into bankruptcy legislation in this country.

Mr. AIKEN: Would your opinion change any if the bill were confined to agricultural products?

Mr. LAROSE: That is rather a leading question.

Mr. AIKEN: Yes, I know it is difficult.

Mr. LAROSE: It is one which I must confess I had not anticipated, because of the actual phraseology of the bill and the discussions which have surrounded it to date. But I still think that this would lead back to one of my original remarks to the effect that even were this bill so worded, there is no assurance that subsequently the others mentioned would not seek similar legislation.

Mr. AIKEN: Well then, may I narrow it down one more step and leave it there. Would you feel that if the act were limited to those for whom it is particularly designed, that is, the single crop producers with single outlets, by keeping it very narrow in its concept, you would still have the same objection?

Mr. LAROSE: I think that question is really tied in with your previous query, and to some extent therefore the same answer would apply. Apart from that, I think there would be a further problem involved, namely that of interpretation, and a ruling whether in particular instances a particular person fell into such a particular category.

Mr. AIKEN: In other words, your main objection is that it might open up a field which would be difficult to define in its application across the board?

Mr. LAROSE: That is one of the objections, yes.

Mr. AIKEN: Thank you.

The CHAIRMAN: Now, Mr. Whelan.

Mr. WHELAN: I have only one question. You referred to those other people in opening up the field. I know of no other section of our social organization that has not the protection that these primary producers need in all these sections, and I do not care what one you mention. You used terminology here that I did not understand, that we are going to open it to a field of other people. I know of no other class or industry that does not enjoy more protection than does the primary producer.

Mr. LAROSE: Again I am not too sure of the implications of your remarks, unless you are referring to one of two things: your security creditor has security upon which to rely; and if you are referring to Mr. Aiken's suggestion of a change in section 51-A-1, the other people, if I may use that word again, according to Mr. Aiken's remarks, would be those interested in the products of the forests, quarry, mine and so on.

Mr. WHELAN: You said it would be opening it up to all the other creditors, and you used the term creditors. There is no other creditor who is in the same position as the primary producer in supplying his products.

Mr. LAROSE: Probably not entirely in the same position, but there are others, actually, who might be said to be analogous and who at the present time are classified as unsecured creditors.

Mr. WHELAN: A primary producer may obtain such protection when he has quarried the stone for use in tombstones. But after it is changed in shape, form, and design, he loses identification, the same as we do with tomatoes. Once they are put into ketchup we can no longer identify them. On the other hand the can manufacturer can identify his cans by serial numbers, and theoretically he may go in, open them up, and remove the fruit from them and take back the cans. If possession is one-half the battle, then he can go in and seize his equipment and run out, and you would have to have a court action

to fight him. We would not dare to do that, because if we did, we would be classed as thieves, and even if this was our product, we could not properly identify it.

Mr. LAROSE: I believe this very question has been raised in court in one of the cases mentioned, so therefore I am not free to comment.

The CHAIRMAN: I have no other members who desire to ask questions. May I now, on behalf of the committee, extend our thanks and gratitude to you, Mr. Larose, for being here this morning and answering questions for members of the committee. May I take this opportunity to apologize to you for the short notice. In actual fact it was requested that you should appear at some future date. However the witnesses who were to appear this morning were unable to get here, and that is why you got such a short notice. But in spite of such short notice I consider that you have done a good job. I would not want anybody to think by this that I am pro or con the opinions which you have expressed.

Before adjournment, with your permission, I would like to announce the future order of business that we have been able to determine. Next Friday, November 8, 1963, we shall hear the Canadian Credit Men's Association Limited. They will be our witnesses at that time.

Mr. WHELAN: Whom do they represent?

The CHAIRMAN: They are a national association having to do with men granting credit. If Mr. Whelan would like to know more about them and be prepared for them I understand, unofficially, rumour has it that they will oppose your bill.

On Friday, November 15, we shall have with us the Ontario Fruit and Vegetable Growers Association; on Friday, November 22, we shall have with us the deputy minister of agriculture, Mr. Barry. This has not been confirmed, but it would appear that it might be the case. And on Friday, November 29, we shall have with us the Canadian Food Processors Association. That is as far forward as we see at the present time.

Mr. OTTO: May I make some remarks? With all due respect, I think that most of the members of the committee have heard just about everything that could possibly be heard on this matter. So I wonder if it could not be arranged that these people present their briefs in writing, which we might go over at one meeting and come to a conclusion—in possibly one meeting, say a meeting after the next. Conceivably this could drag on and on. I for one have heard almost every aspect of argument, one way and the other, and I can see no benefit from further representations, even though I know they would like to present their position.

What is the feeling of the committee on that?

The CHAIRMAN: The steering committee did have a meeting, Mr. Otto, and it was suggested that people who wished to present their briefs should be allowed to do so. However, if it is your wish, I will take up your suggestion with them and see if I can compress this matter. I know some of these organizations have given a great deal of time and effort to preparing briefs which they would like to submit. The committee themselves have asked the deputy minister of agriculture to appear for questioning in relation to some aspects of this topic, and I think every member of the committee would wish to hear him.

There are certain physical problems involved, and most of our meetings last only two hours. However, I will take up the matter with the steering committee.

Mr. OTTO: In the alternative, could we possibly have two meetings a week in order to clear up the matter before the end of the session?

Mr. GELBER: I think we should ask these people to submit their briefs and then if they want to come here we will not spend time while they are reading their briefs.

Mr. KLEIN: I would like to hear these people, particularly the processors, because if we were to hear them we could at least have a salutary effect on them.

The CHAIRMAN: There are two of these witnesses who have been requested to come by the committee, and I do not think any alteration could be made in that respect.

As far as other meetings are concerned during the week, this presents rather a difficult problem. I know you are just giving your mind to this for the first time, Mr. Otto, but we have considered it before. We found that Mondays appeared to be very difficult. Tuesdays are difficult also because there are two other standing committees; Wednesday is a day generally reserved for caucuses, and Thursday is the same as Tuesday. We just seemed to be left with Friday. We have examined this very carefully in relation to the meetings of the other standing committees, and the steering committee found that the only time available was Friday morning at 9 o'clock, which gives us two hours prior to the house sitting and, if necessary, we have permission to sit during the house sessions. If we were to sit during the rest of the week we would probably have to choose a time which conflicts with the house sittings, and this is something most members of the committee and the steering committee feel is not desirable and should only occur when it is absolutely necessary, for instance, to protect the interests of a witness who comes from a long distance. However, I will take it up again with the steering committee.

Mr. OTTO: Perhaps with the permission of all concerned we could sit for a whole day and clear up this matter.

The CHAIRMAN: The steering committee will discuss this. We did sit one day for a full day and, if you remember, the experience was not a good one.

Mr. MUIR (*Lisgar*): I think we would be open to criticism if we did not hear these people, particularly if any changes were made in the act. I do not see the necessity of hurrying. I think it is something that has to be considered very carefully, and I think we should give the witnesses an opportunity to present their evidence.

The CHAIRMAN: Thank you very much, Mr. Muir. This, of course, has been decided by the steering committee and by the committee, and I think in the circumstances it is the best we are able to do.

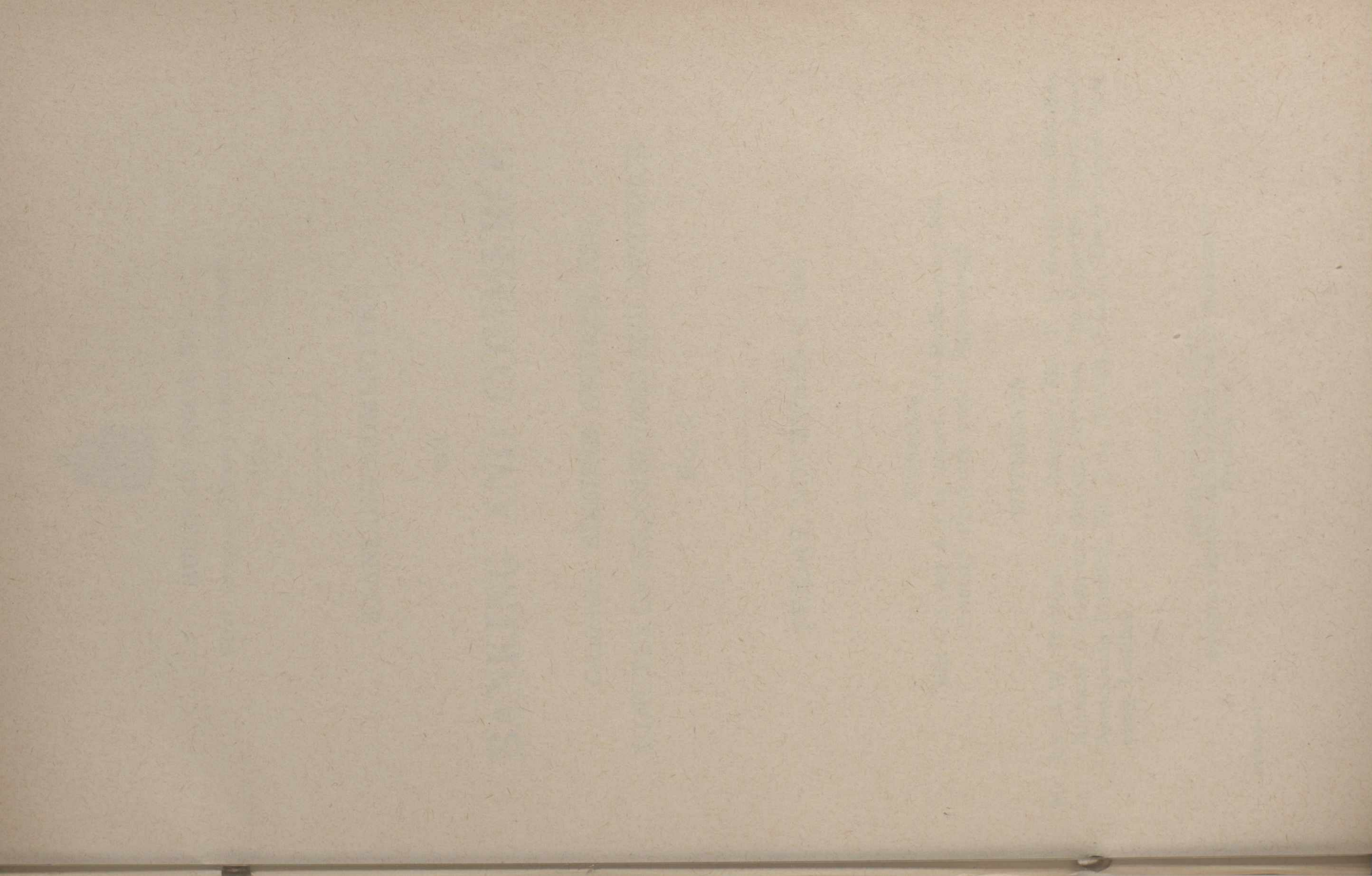
Mr. WHELAN: The primary processors, the group who were to be here to give evidence this morning, decided to consolidate their evidence.

The CHAIRMAN: If the problem can be approached in the way in which Mr. Whelan's witnesses are approaching it, then the situation will be helped.

Mr. AIKEN: Can we perhaps carry that further and have more than one brief and more than one group at each meeting so there will be some confrontation? That might cut down our time. I agree that we should hear them, but perhaps we could have two or three briefs at one meeting, and perhaps prevent repetition.

The CHAIRMAN: I will put that forward at the steering committee, Mr. Aiken. However, this is our program at the present time; should any change arise you will be advised.

I thank you, gentlemen, and we will now adjourn until Friday, November 8.



HOUSE OF COMMONS

First session—Twenty-sixth Parliament

1963

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: EDMUND ASSELIN, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 5

FRIDAY, NOVEMBER 8, 1963

Respecting

Bill C-5, An Act to amend the Bankruptcy Act (Primary Products under Processing)

WITNESSES:

Mr. Lloyd W. Houlden, Q.C., Counsel; Mr. T. J. Houghton, Manager, National Adjustment Bureau Services, The Canadian Credit Men's Association Limited; Mr. J. L. Biddell, F.C.A., The Clarkson Company Limited.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1963

29645-9—1

STANDING COMMITTEE
ON
BANKING AND COMMERCE

Chairman: Edmund Asselin, Esq.
Vice-Chairman: Maurice J. Moreau, Esq.

and Messrs.

Addison,
Aiken,
Armstrong,
Asselin (*Richmond-Wolfe*),
Basford,
Bell,
Boulanger,
Cameron (*Nanaimo-Cowichan-The Islands*),
Chaplin,
Chrétien,
Côté (*Chicoutimi*),
Douglas,
Flemming (*Victoria-Carleton*),
Gelber,
Grafftey,
Gray,
Grégoire,
Habel,
Hahn,
Hamilton,
Jewett (Miss),
Kelly,
Kindt,
Klein,
Lloyd,
Macaluso,
McLean (*Charlotte*),
Monteith,
More,
Morison,
Muir (*Lisgar*),
Nesbitt,
Nowlan,
Nugent,
Olson,
Otto,
Pascoe,
Pilon,
Ryan,
Rynard,
Sauvé,
Scott,
Skoreyko,
Tardif,
Thomas,
Thompson,
Vincent,
Whelan—50.

Dorothy F. Ballantine,
Clerk of the Committee.

CORRECTIONS

Proceedings No. 4—Friday, November 1, 1963.

In the Minutes of Proceedings and Evidence—

Page 136, Line 25:
For "assured" read "assumed".

Page 136, Line 33:
For "producers" read "processors".

MINUTES OF PROCEEDINGS

FRIDAY, November 1, 1963.
(13)

The Standing Committee on Banking and Commerce met at 9:15 a.m. this day. The Chairman, Mr. Edmund Asselin (*Notre-Dame-de-Grâce*), presided.

Members present: Miss Jewett and Messrs. Addison, Armstrong, Aiken, Asselin (*Notre-Dame-de-Grâce*), Asselin (*Richmond-Wolfe*), Boulanger, Cameron (*Nanaimo-Cowichan-The Islands*), Douglas, Gelber, Habel, Klein, Lloyd, Macaluso, McLean (*Charlotte*), Moreau, Morison, Muir (*Lisgar*), Nugent, Olson, Pascoe, Sauvé, Whelan.—(23).

In attendance: From the Canadian Credit Men's Association Limited: Mr. Lloyd W. Houlden, Q.C., Counsel; Mr. T. J. Houghton, Manager, National Adjustment Bureau Services; *From The Clarkson Company Limited:* Mr. J. L. Biddell, F.C.A.

Mr. Muir (*Lisgar*) requested that certain corrections be made in the Minutes of Proceedings and Evidence of November 1, 1963 (*Issue No. 4*). The Committee agreed to the corrections.

The Committee resumed consideration of Bill C-5, An Act to amend the Bankruptcy Act (Primary Products under Processing).

The Chairman introduced Mr. Houlden and Mr. Houghton. He also introduced Mr. Biddell who had prepared a brief and asked leave to present it to the Committee. It was agreed that Mr. Biddell should present his brief after the representatives of The Canadian Credit Men's Association Limited had presented their brief and had been questioned. (*Secretarial note:* In the event time did not permit Mr. Biddell to present more than a summary of his brief and therefore, by leave of the Committee, the full text of the brief is attached as *Appendix "A"* to these Proceedings).

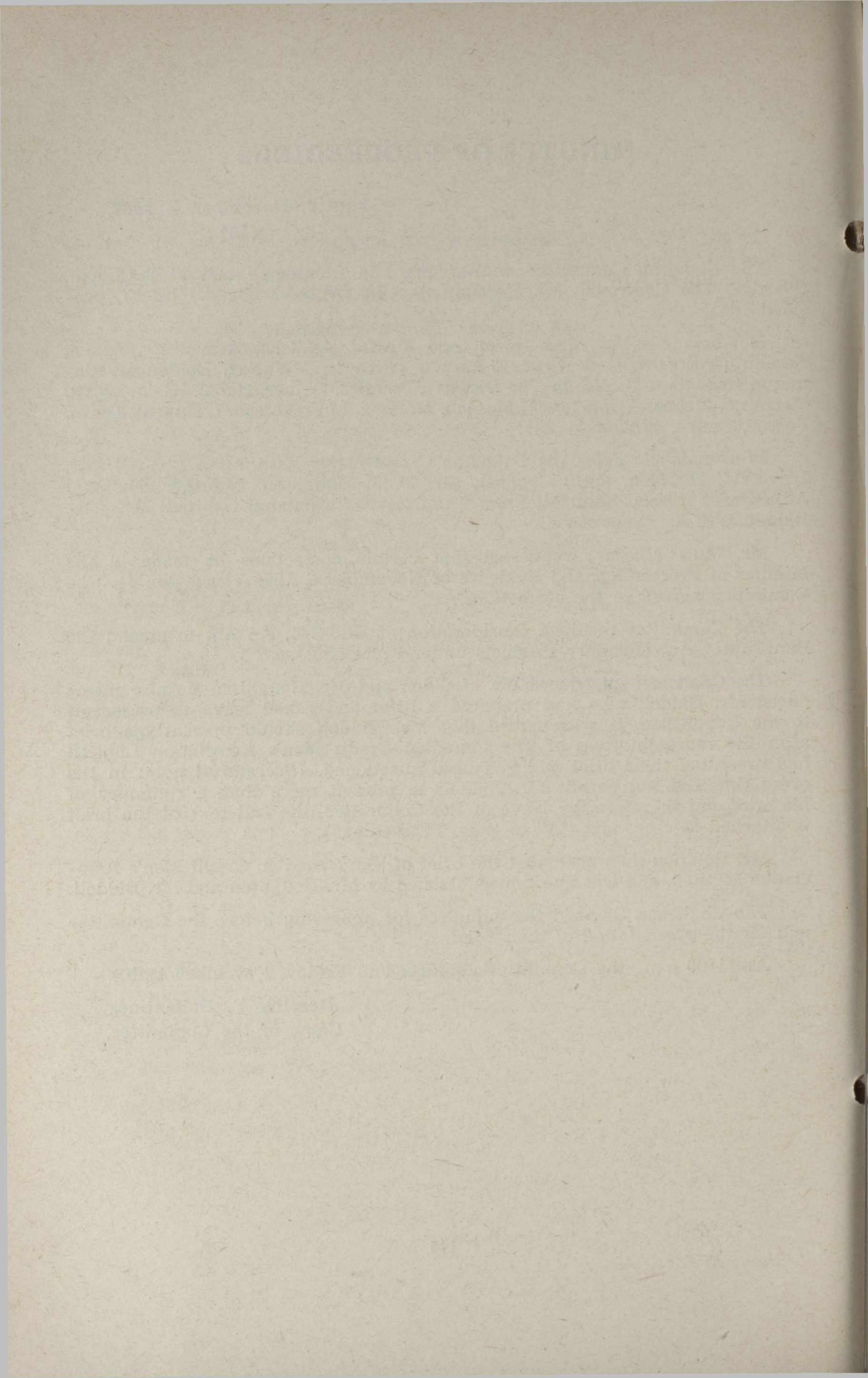
Mr. Houlden then presented the brief of The Canadian Credit Men's Association Limited, and was questioned, assisted by Mr. Houghton and Mr. Biddell.

The Chairman thanked the witnesses for appearing before the Committee and for the presentation of their brief.

At 11:00 a.m., the Committee adjourned to Friday, November 15th.

Dorothy F. Ballantine,
Clerk of the Committee.

29645-9—1½



EVIDENCE

FRIDAY, November 8, 1963.

The CHAIRMAN: Gentlemen I see a quorum and will call this meeting to order.

We will be resuming our consideration of Bill C-5, an act to amend the Bankruptcy Act.

This morning we have scheduled the presentation of the Canadian Credit Men's Association. We have as a witness Mr. L. W. Houlden, Q.C. We also have with us Mr. P. J. Houghton, manager of the National Adjustment Bureau Services. I am also informed that Mr. J. L. Biddell, F.C.A., of the The Clarkson Company Limited has a brief which he would like to present to us and then submit himself for questioning by the members of this committee. I note that his is a fairly lengthy brief. I should think if we have time after hearing the first brief we might consider accepting this brief if possible between now and 11 o'clock. Is this agreeable to everyone?

Some hon. MEMBERS: Agreed.

Mr. WHELAN: Mr. Chairman, will this procedure limit our questions in respect of the Canadian Credit Men's Association?

The CHAIRMAN: It is not the intention of the Chair to limit this committee in any way, Mr. Whelan.

More seriously, I should like to state that the method we should perhaps follow is to ask questions in respect of the first brief and then, if time permits, receive the second brief and then ask questions in that regard.

Mr. NUGENT: Mr. Chairman, before we proceed any further I wonder whether in view of the implications of the MacKay Report—

Mr. HABEL: What has this to do with this meeting?

Mr. NUGENT: Appearances are more important than facts at some times and while I am not suggesting that myself or that any of my colleagues would not want to co-operate with this committee fully under any circumstances, I wonder whether the Chairman might like to consider his position at this time, and whether he would consider the situation in view of the type of business this committee does?

Mr. HABEL: Where is the bill of rights?

The CHAIRMAN: Gentlemen, without going into the point raised by Mr. Nugent's question, I may state that I do not feel that I should go into this question further. If your question raises a point of order I will ask the Vice Chairman to take over during the time it is discussed, but I have no feeling of having done anything wrong, improper or illegal at any time in connection with the matter to which you have referred. Consequently I do not feel that there is any question in regard to withdrawing or resigning on my part.

It may be in order since the matter has been raised to state that my statement in the House of Commons yesterday was merely the relating of things which were related to me and should not be taken by any member of this committee as suggesting or insinuating anything about them.

Mr. OLSON: Mr. Chairman, I do not know that I am completely familiar with all of those things which have been raised here, but it seems to me that the same thing should apply in this committee as in the House of Commons.

If anyone has a complaint to make rather than making innuendoes and insinuations, he should either present information on the charge or remain silent.

There is one other thing which does disturb me, Mr. Chairman, and that is the statement made in the House of Commons yesterday to the effect that you had been intimidated; either you do certain things or the functions of this committee are going to be harassed. I am not very happy about that suggestion.

The CHAIRMAN: In relation to this matter, that is what I referred to a moment ago.

I should like to say to all members of this committee in regard to the statement I made in the House of Commons yesterday that I was simply relating a statement or message which was given to me in the way it was given to me. This does not imply or insinuate anything in respect of any member of the House of Commons. Obviously this message came to me through a messenger who is not part of the House of Commons, from someone who is not part of the House of Commons.

I do not think I need go further in this matter.

Mr. SAUVE: (French).

The CHAIRMAN: (French).

Mr. SAUVE: (French).

The CHAIRMAN: (French).

(*Text of statement and replies in French not recorded.*)

The CHAIRMAN: There was no question raised in that regard. I have stated that if someone is raising a point of order in respect of this situation upon which the chair should make a ruling, in view of the fact that it may involve me personally I would gladly relinquish the chair to the Vice Chairman while the point was being debated.

Mr. MACALUSO: Mr. Chairman, I have the impression that the hon. member merely made a suggestion and that there was no point of order raised. We have not heard any motion so let us proceed with the normal business of this committee.

The CHAIRMAN: I think this matter has gone far enough, gentlemen.

At this time I should like to introduce Mr. L. W. Houlden, Q.C. and Mr. P. J. Houghton manager of the National Adjustment Bureau Services. I think Mr. Biddell if I understand correctly, is also going to sit at the table with the other two gentlemen, and if time permits we will hear his brief and question him after having exhausted our questions in respect of the first brief.

Gentlemen, Mr. Muir must leave early this morning and wishes at this stage to make one or two corrections in the Minutes of Proceedings and Evidence.

Mr. MUIR (*Lisgar*): Thank you, Mr. Chairman. At line 25 at page 136 there appears the word "assured". This should read "assumed". At line 33 on the same page I am reported as having stated; "Other witnesses have given evidence that some producers use the primary produce—", I meant to say "processors". I should like to have those two corrections made, Mr. Chairman.

Mr. P. J. HOUGHTON (*Manager National Adjustment Bureau Services, Canadian Credit Men's Association Limited*): Mr. Biddell has sufficient copies of the brief if you care to have them distributed.

The CHAIRMAN: Perhaps by so doing we will settle this problem.

With your permission, gentlemen, I will have Mr. Biddell's brief distributed.

Mr. Houlden will read his brief and then we will address questions to him. You do not need to stand, Mr. Houlden, unless you feel you must.

Mr. Lloyd W. HOULDEN (*Q.C., Counsel for the Canadian Credit Men's Association Limited*): Mr. Chairman and gentlemen.

The Canadian Credit Men's Association Limited (herein called C.C.M.A.) is a non-profit organization of some 4,000 members. These members are engaged in manufacturing, wholesaling and distributing of products throughout the Dominion of Canada. The C.C.M.A.—I will use that abbreviation hereafter—furnishes credit information to its members, arranges for the holding of meetings for the exchange of credit information, and generally represents the interests of its members in matters which affect credit granting.

Over the years, C.C.M.A. has given close attention to the provisions of the Bankruptcy Act. From time to time, C.C.M.A. has made representations to the government in respect of amendments which it has felt would strengthen the act and permit the act to carry out the purposes for which it was designed. A recent example of this is a brief submitted by C.C.M.A. on March 27, 1962, to the Minister of Justice, dealing with suggested amendments to Part VIII of The Bankruptcy Act. Those are the criminal prosecutions sections.

C.C.M.A. has given careful consideration to Bill C-5 and has canvassed its members requesting their opinion on the bill. As a result of the submissions which have been received, C.C.M.A. feels for the reasons set forth in this brief, that Bill C-5 is not good legislation and should not be enacted.

Mr. LLOYD: Mr. Chairman, I am sorry to interrupt, but was it the intention of the committee that we should all have copies of this brief while it is being read?

The CHAIRMAN: I believe copies have been sent to all members, however, there are further copies here which the messenger can distribute. If you wish to dispense with the reading of this brief that is another matter. I think it would be as well to have the brief read at this stage.

Mr. HOULDEN: C.C.M.A. wishes to make it clear to the standing committee on banking and commerce that it has no connection with any of the chartered banks of Canada, nor does it in any way speak for or represent the interests of such banks. Further, C.C.M.A. is not concerned with suggested changes in Section 88 of the Bank Act. This is a matter which can be considered, if, as, and when amendments are proposed for that Section. C.C.M.A. is only concerned in this brief with The Bankruptcy Act and the suggested amendment to it.

The following are the objections C.C.M.A. would like to submit in respect of Bill C-5.

(1) Preferential effect of the proposed bill

One of the prime purposes of bankruptcy legislation is to provide a method whereby the property of the debtor can be realized in an orderly manner and distributed to creditors on an equal or *pari passu* basis (Section 100 of The Bankruptcy Act). There are certain exceptions to a *pari passu* distribution provided for in Section 95 of The Bankruptcy Act. The principal ones are claims of wage earners and landlords. The reasons for these exceptions are obvious and need not be stated.

The other exceptions in Section 95 are government claims. The association feels that consideration could well be given to the cutting down of the extent of these preferences, if not, their complete abolition.

If Bill C-5 is enacted, claims of producers of products will be given a preference over other creditors. The members of C.C.M.A. who are also supplying to wholesale purchasers, shippers and dealers, will, under this legislation, rank after the claims of producers and the bank have been satisfied. For example, if a lumber dealer goes into bankruptcy, the supplier of lumber will be paid out of the assets left after payment of costs of administration and wage earners, but the supplier of stationery for the office will not be paid until after payment of costs of administration, wage earners, suppliers of lumber and the bank.

Again, if we consider a fruit producing plant which goes into bankruptcy with an inventory consisting of canned fruit, is it right that the unpaid fruit grower should be given a preference over a creditor who supplies the sugar or spices for the syrup, or the manufacturer who supplies the cans, the machinery company which installed the equipment or the corner service station operator who services the trucks? C.C.M.A. believes that it is improper that one class of creditors should be given a preference over other classes.

(2) Unfairness of the proposed bill

This is unfair because the largest portion of the materials used to produce the final product may have been supplied by those who are not primary producers, but due to the fact that the manufacturer has used a primary producer's product at some stage in the process, the product must be sold and used for payment of the claims of primary producers in priority to the claims of other suppliers.

From enquiries made, C.C.M.A. has ascertained that in the cost of canned products, the cost of the primary product would not exceed 25 per cent, yet, under the proposed legislation, the producer of the primary product would be paid in priority to those who have supplied 75 per cent of the materials used.

(3) Bill C-5 implies that primary producers are not good businessmen

Bill C-5 implies that farmers, fishermen, lumber suppliers, etc., are not as good businessmen as other granters of credit. This Bill is designed to give special protection to one group of creditors. In his evidence before the Standing Committee, Mr. Whelan, M.P., stated at page 19 that one of the reasons for introducing the bill was because there now are large one-crop farms, and other farms of one product primary production, on a scale undreamed of by our 1861 predecessors in government. The C.C.M.A. believes that persons in charge of such operations are as qualified as any of the members of C.C.M.A. to see that their interests are protected creditwise.

(4) Effect on secondary industries

It is common ground that bankruptcy places undue hardship on all affected by the insolvency. It is no group in a community that is affected but rather the community as a whole. If the loss were suffered by only one group, it would place such a heavy burden on that particular group, that it might be forced out of business and into financial ruin itslef.

If we say we will sacrifice all other creditors for the sake of retaining prosperous primary producers, regardless of the results, then, this will have a serious effect on secondary suppliers. The secondary manufacturer would be placed in a precarious position, in that whenever he supplied goods that might be incorporated in an end product in connection with primary goods, he must run the risk of receiving no return whatsoever in a bankruptcy. This would be extremely bad at this time when we are trying, as a nation, to encourage the growth of secondary industries.

(5) Effect on the economy generally

If this bill is enacted, the members of C.C.M.A. will be reluctant to grant credit to industries falling within the scope of the legislation. The wholesale purchaser, shipper, or dealer, will find it a difficult matter to obtain credit terms.

As has been pointed out by the members of the Canadian Bankers Association (see page 11 of the Minutes of Proceedings & Evidence dated July 26th, 1963), the small producers, wholesalers, etc., would find it hard, as a result of this legislation, to carry on or to increase their production. The larger and better financed institutions would not be hurt but the small producers would be seriously affected.

(6) Difficulties in carrying out the legislation

Bill C-5 will be difficult legislation to implement. In effect, it does away with Section 95 of The Bankruptcy Act and subsidies a new scheme of priorities. It is the submission of C.C.M.A. that the bill raises many problems. Some of these are the following:

Does the Section mean that out of the monies realized, all costs of administration of the bankruptcy are first to be paid? If, for example, a large estate were involved, would all legal and trustee's costs be charged against the realization? Or is it the intention that only the costs of administering the fund should be charged as costs of administration?

As regards the claims of wage earners, is it the intention of the Bill that a clerk in the office would not be given a preference but a machine operator would receive the protection of the Section?

The Bankruptcy Act in addition to assignments and Receiving orders provides for the making of proposals. Does Bill C-5 have any application where a debtor makes a proposal? If not, the act can be easily circumvented in this fashion.

The section provides that claims of producers must be proven to the Court. How is this to be done? Will the trustee have to apply to the Court for a reference to determine those entitled to share?

Who is the producer of the product? Is a large lumber dealer who supplies lumber to a retailer, a producer of the product? Wholesale purchaser, shipper of, or dealer in products of agriculture, etcetera, include a very wide range of industries and are not restricted to canneries, grain elevators and operations of that nature.

Subsection 3 of Section 51(a) provides that the claim is to be filed within 30 days with the court. It is not the practice to file claims in bankruptcy with the bankruptcy court, nor does the court have the facilities to handle the filing of such claims. It would seem that the claims should be filed with the trustee and reported in some manner to the court. Further, if a creditor does not file his claim within 30 days, what will be the result?

It is the submission of C.C.M.A. that the proposed Section 51(a) raises a great number of difficulties and is not well drafted legislation. The C.C.M.A. believes that the enactment of the legislation in its present form, would result in extensive litigation.

Mr. MOREAU: Mr. Houlden, I have a few questions I should like to ask in respect of this brief.

You have raised some doubt as to who actually is a primary producer. You state at the bottom of page 2 as follows:

> For example, if a lumber dealer goes into bankruptcy, the supplier of lumber will be paid out of the assets left after payment of costs of administration and wage earners,—

So far during the meetings of this committee we have been talking about a producer as being someone who produces at the primary level. A lumber wholesaler I would not think would be qualified as a primary producer and certainly not within the terminology we have used. I wonder where your difficulties in regard to this definition of a primary producer occur. What are the difficulties you have in defining a primary producer?

Mr. HOULDEN: The difficulty as I see it, Mr. Moreau, results from the very wide wording of the section as it appears in this bill. The courts must interpret this legislation when it comes before them and the wording used in the proposed section is as follows: "Wholesale purchaser or shipper—" of any such products.

Is a lumber dealer not a dealer of the products of the forest? Is a court not going to find that a lumber dealer comes within that definition and therefore the act applies?

In the manner in which the statute is proposed, a wide range of things will be covered including the products of agriculture, the products of the forest, including lumber dealers, and the products of a quarry—I presume that covers stone, sand and gravel—products of a mine, the products of the sea, lakes and rivers. This will cover all the primary industries and perhaps will go even farther with this suggested wording.

Mr. MOREAU: You raise some objection to the position given by this proposed legislation to the creditor who supplies sugar and spices, for example, because he is somewhat further down the line than the primary producer would be under this proposed legislation. Is it not a fact that he presently is considered down the line after a number of other preferred creditors, namely the federal government, the banks and wage earners? This is not really a new precedent or new ground that we are breaking at all; is that correct?

Mr. HOULDEN: This is tremendously new ground, Mr. Moreau. Just think of the effect of this legislation. If you suggested to me today that you wanted Section 95 to apply to the person who is supplying the primary producer this would involve a different question. What you are saying in this legislation is that we will take these people and put them ahead of secured creditors. Secured creditors have advanced their money and obtained proper security. We cannot say to them that these people are going to be paid first and secured creditors will have to wait in line. Also then you are going to apply section 95 after that. You are going to pay the primary producer, the cost of administration, as well as the wage earners before the secured creditors, and after those are paid. The claims under section 95 which includes ordinary wage earners, landlords and government claims.

Mr. MOREAU: I am sure you have read the evidence given at earlier meetings of this committee, which indicates that the primary producer is very much in the position of a wage earner in that he perhaps is a one crop farmer having a very high incidence of labor contained in the product that he delivers and essentially is not very far removed from the wage earner in these considerations. I am just wondering what your difficulty is in this regard.

Mr. HOULDEN: I shall give you two answers to your question. First of all there are not very many bankruptcies of this type. They are not too common. In large bankruptcies you will often find that some of our members have been supplying service only to one industry exclusively and when that industry goes into bankruptcy those suppliers may go into bankruptcy themselves. When a large company goes bankrupt it is much like throwing a stone into a pond, you get a great many spreading ripples. Frequently as a result of one large bankruptcy you will find a number of other industries going into bankruptcy.

I feel sorry for these primary producers. These individuals often lose their whole year's crop. However, as I say, in any large bankruptcy many of our members are hurt just as badly. Perhaps the man who serviced the bankrupt company's trucks did no other business than that, so that in the event of a bankruptcy his source of income is also lost.

Mr. MOREAU: I would expect that such a supplier would have more than one customer; however, I appreciate the point you have made.

I am interested in the statistics which you have quoted indicating that the cost of the primary product would not exceed 25 per cent. It seems to me that this could be quite a variable factor and I am wondering how you arrived at such a figure.

Mr. HOULDEN: We asked several large canning companies what this figure was. Actually the figure given to us was less than 25 per cent, but we felt that

we should take a higher figure. We were informed that the cost was somewhere in the neighbourhood of 22 per cent or 23 per cent, but we felt that it would be better to consider the cost of the primary product as being under 25 per cent.

Mr. MOREAU: Would this figure not vary a great deal as between tomatoes and apple juice, for instance, and strawberries?

Mr. HOULDEN: I do not know the answer to that question; I am sorry. We did contact several canning companies and these are the figures which we were given.

Mr. WHELAN: Mr. Chairman, at the outset I should like to state that I am not very familiar with the Canadian Credit Men's Association and if my questions appear to be rather naive, I hope that with the knowledge that I am a farmer and not a lawyer you will forgive me. Perhaps Mr. Houlden would indicate something of the composition of the Canadian Credit Men's Association?

Mr. HOULDEN: I have outlined that composition in the opening part of the brief, Mr. Whelan. We have approximately 4,000 members who are in what you might call the secondary industry business. These members are manufacturers, wholesalers and distributors of products.

Mr. WHELAN: Is your association affiliated with any other associations such as trusteeships in bankruptcy?

Mr. HOULDEN: The Canadian Credit Men's Association were at one time trustees in bankruptcy and still hold a licence, but they are going out of that field.

Mr. BOULANGER: Did you say that you are going out of that field?

Mr. HOULDEN: Yes.

Mr. BOULANGER: At this time you are still operating in that field, is that correct?

Mr. HOULDEN: That is quite right.

The CHAIRMAN: I was under the impression that Mr. Boulanger was raising a point of order, but it seems that he was not. I think we should proceed.

Mr. WHELAN: I have done some research on this in Might's and I find there is some confusion, at least so far as a layman is concerned. In 1963 it shows under the Canadian Credit Men's Association general manager E. T. Burke; then Canadian Credit Institute, registrar E. T. Burke; then under Canadian Credit Men's Trust Association and Canadian Credit Men's Association and again under trust associations the Canadian Credit Institute. These are all under the same street address, under the same telephone number, 6 Crescent Road—the Canadian Credit Men's Association and the Canadian Credit Institute. This appears to be really confusing to me. I have said that I am not a lawyer. I do not know what is the work of these different organizations, but they all have the same telephone number—trustees under bankruptcy, Canadian Credit Men's Trust Association and Canadian Credit Men's Association Limited. They all have the same telephone number.

Mr. P. J. HOUGHTON (*Manager, National Adjustment Bureau Service, Canadian Credit Men's Association Ltd.*): May I answer? I am with the Canadian Credit Men's Association. The Canadian Credit Men's Association was incorporated in 1910 under dominion charter as Canadian Credit Men's Trust Association Limited. By supplementary letters patent last year, we dropped the "Trust" from our name. The Canadian Credit Institute is the educational arm of our association. We conduct a course of study in credits and collections through the extension department of the University of Toronto, and currently this year have about 700 students in all parts of Canada taking this three year

course in credit management. The prime function of the association is credit reporting at the commercial level.

Mr. BOULANGER: I am having a difficult time and I am doing my best with the English. I do not accuse you of not speaking plainly, but you are speaking as fast in English as we sometimes do in French.

The CHAIRMAN: Mr. Boulanger, I may be misinformed, but I believe there is a translator in the translation box.

An hon. MEMBER: There is no one in the booth.

The CHAIRMAN: Then, under the circumstances, Mr. Houghton, I think if you would give your comments a little more slowly I am sure Mr. Boulanger will have no difficulty.

Mr. HOUGHTON: I offer my apologies if I was speaking too fast.

Mr. BOULANGER: I did not intend to be sarcastic, but I have been having some difficulty.

Mr. HOUGHTON: We are a non-profit organization, we are owned and controlled by some 4,000 wholesalers, manufacturers and distributors. We have offices from Moncton to Victoria. Each member of ours is a shareholder, and we are governed by a national board of directors, and locally by boards of governors composed of credit managers or general credit managers of firms.

Mr. BOULANGER: Mr. Chairman—

Mr. WHELAN: May I continue?

The CHAIRMAN: Mr. Boulanger, for your information the translator was here and as no one was using the system he left. However, we have sent for him again and as soon as he arrives I will inform you.

Mr. WHELAN: Does this cover all these other organizations which have the same telephone number?

Mr. HOUGHTON: There are only two. The Canadian Credit Men's Association Limited has its head office at 6 Crescent Road, and the Toronto branch office is at 12 Berryman Street. We have one switchboard at Berryman Street, and our head office is connected. The offices are about a mile apart.

Mr. WHELAN: Then these other things shown under Might's do not mean anything.

Mr. HOUGHTON: There are only two, and I am associated with them.

Mr. WHELAN: The Credit Men's Trust Association, Credit Men's Association Limited and the Canadian Credit Institute all are listed under 12 Berryman Street, and have the same telephone number as has 6 Crescent Road.

Mr. HOUGHTON: By supplementary letters patent last year the Trust was dropped from our name and we are known as The Canadian Credit Men's Association Limited. There is just one organization.

Mr. WHELAN: In respect of paragraph one on page 2 in my own opinion I think this paragraph misrepresents the purpose of the company. The Canadian Credit Men's Association is a profit organization being incorporated under Part I of the Companies Act as a share capital company limited as to liability.

Mr. AIKEN: On a point of order, we are not investigating, surely, the Canadian Credit Men's Trust Association. These gentlemen are here to present a brief. I do not know why we have to suspect them of anything.

Mr. WHELAN: This is part of their brief. They say they are a non-profit organization.

The CHAIRMAN: I am not sure whether this has a great deal to do with Bill No. C-5. The Credit Men's Association Limited have presented a brief in respect of bill No. C-5, and I would think it might be wise if we relate our

questions to that general field. We have had discussion this morning which has ranged over different subjects. I wish we could relate our questions to the general subject of bankruptcy and Bill No. C-5.

Mr. WHELAN: You mean that any organization may come here, present a brief pointing out the good aspects of the organization, and that no member of the committee can question what they say about their organization?

The CHAIRMAN: I do not mean that. I believe, however, that the point Mr. Aiken brought up has some foundation in that we are not here as an investigating committee to investigate the Canadian Credit Men's Association Limited.

Mr. MOREAU: The credibility of witnesses.

The CHAIRMAN: Possibly if you ask Mr. Houlden to explain this, as a lawyer he may have a good explanation.

Mr. BOULANGER: On a point of order, I do not agree with Mr. Aiken or even completely with you, Mr. Chairman. (*Statement in French not recorded.*)

The CHAIRMAN: Would the committee like me to translate generally what Mr. Boulanger has said?

Some hon. MEMBERS: Yes.

The CHAIRMAN: He opened his remarks by stating that he disagreed with the point raised by Mr. Aiken, and also with some remarks made by the Chair on the point raised by Mr. Aiken. He stated in a general way that when the Credit Men's Association Limited in the brief say they are non-lucrative and represent 4,000 members, and when they made certain other assertions, these are matters which could be questioned and he, Mr. Boulanger, wished to ask questions on this subject.

Mr. AIKEN: Mr. Chairman, I have no objection to questions directed toward who the Canadian Credit Men's Association represents; but I gathered that Mr. Whelan was directing his remarks a little further towards the reliability of this association. I do not think this is proper at all. The Canadian Credit Men's Association Limited is well known and has been in the credit field for 50 years.

Mr. LLOYD: On a point of order; I think Mr. Whelan was quite gracious at the beginning when he mentioned he is a farmer, not a lawyer, and not knowledgeable in the matters of law. I am quite sure that what he is asking can be answered easily. He might ask: What do you mean by the term non-profit organization; I do not understand this.

The CHAIRMAN: I was going to suggest we continue with the questioning. I would suggest, however, that we relate the questions as much as possible to the subject which is before us. Would the witness explain the term non-profit organization?

Mr. HOUGHTON: We are not considered taxable by the tax office and declare no dividends and pay no directors' fees. Any profit we make is returned to our members in increased service.

Mr. WHELAN: Your company is a collection agency for the members?

Mr. HOUGHTON: That is right; it is a part of our function.

Mr. WHELAN: In respect of paragraph 2 on page 2 of your brief I say that it is not one of the objects set out in the company's letters patent to strengthen the Bankruptcy Act and permit the act to carry out the purposes for which it was designed. Generally the purposes of the act are, first, to provide for an orderly and equitable distribution of the assets among the creditors with certain exceptions, secondly, to protect and re-establish an honest debtor and, thirdly, to punish and prevent fraud. The objects of the

company are to collect the debts owing to its creditor members to the prejudice of other creditors who are not members of the company. Is that right?

Mr. HOULDEN: No.

Mr. WHELAN: Do the members of your organization not enjoy a preference?

Mr. HOUGHTON: No, not at all. I might say that of our 4,000 members, not all of them by any means use the facilities of our collection department. That is just a very minor function of our association. Our main business is that of credit reporting to our members, and amongst our members only. It is the interchange of credit information between members of our own association only.

Mr. WHELAN: Then would you not say that Bill C-5 is good legislation when measured against the objects of the company? No primary producers are members of the company, and the result of the bill would be to frustrate the company in its stated object to get as much for its members as it can. Is that not right?

The CHAIRMAN: Would you restate your question. I do not think the witness has understood it.

Mr. WHELAN: I will admit that Bill C-5 is not good legislation when measured up against the objects of the company, because no primary producers are members of the company, and the result of the bill would be to frustrate the company in its stated object to get as much for its members as it can.

Mr. HOUGHTON: That is agreed.

Mr. WHELAN: The company, therefore, is interested in including as many assets of non-members in the Bankruptcy Act as will pay its members 100 cents on the dollar?

Mr. HOULDEN: If that were true, the primary producers will share with us. Our feeling is that we should all stand together. That should be the purpose of bankruptcy legislation, and not to take one group and set it ahead of everybody else.

The CHAIRMAN: (French—not recorded).

Is the translator here yet?

An hon. MEMBER: No.

Mr. WHELAN: In respect of paragraph 4 on page 2, it is my opinion it is appreciated that the company is not connected with the chartered banks and that it is not concerned at this time with section 88 of the Bank Act. Is it not true that the section is as much against the interest of the company as is Bill C-5?

Mr. HOULDEN: Section 88?

Mr. WHELAN: Yes.

Mr. HOULDEN: I am not here to discuss section 88 today. Whether or not it is wise legislation is not a matter before this committee. I am here to discuss this proposed amendment. If section 88 comes up before this committee, we will consider it.

Mr. WHELAN: The company says that under the Bankruptcy Act there are certain exceptions to an equal distribution of assets, and that the principal ones are for wage earners and landlords. I say this is not an accurate analysis. Section 95 first excepts secured creditors. This exception includes a bank's security under section 88 of the Bank Act, and registered conditional sales and liens, among other secured assets. The company omits to mention that when it acts as a licensed trustee, its fees and remuneration rank second among the unsecured creditors.

Mr. HOULDEN: Yes.

Mr. WHELAN: So, you have preference over the primary producer.

Mr. HOULDEN: We have gone out of the bankruptcy field in every province except one. We are not doing bankruptcies, and will close up as soon as possible. We have some open accounts, and we will close them up and leave the field. Besides, we have explained that we are non-profit. Any lawyer here will know that the Canadian Credit Men's Association have always charged for bankruptcy work at a minimum fee.

Mr. WHELAN: A trustee can refuse to act if he believes there are not enough assets to pay him?

Mr. HOULDEN: Absolutely.

Mr. WHELAN: Then he is not in the position of a primary producer; he does not work unless he knows he is going to get paid.

Mr. HOULDEN: You must remember the stage at which he comes in. If a producer knew that the cannery was not going to pay him, you would not see him go ahead and supply the cannery. It is the same with the trustee.

Mr. WHELAN: Under section 17, the remuneration of the trustee can be voted by the creditors in such amount as they see fit.

Mr. HOULDEN: It is almost never done, I assure you, from experience.

Mr. WHELAN: He can get up to 7½ per cent of the assets.

Mr. HOULDEN: Yes.

Mr. WHELAN: Before the primary producer gets anything.

Mr. HOULDEN: Let me say this: when the canning company goes into bankruptcy somebody has to take over, and somebody has to do the work of cleaning up the mess and making the distribution. In this bill it is provided that the cost of administration shall come first.

Mr. WHELAN: This, actually, is copied out of one of the other bills. I am surprised at your earlier statement that you could not define primary producer, because this is copied from another act.

Mr. HOULDEN: It comes from section 88, and that is causing a great deal of difficulty at the present time.

Mr. WHELAN: Has your organization ever made any representation against this section 88?

Mr. HOULDEN: No. When and if it comes up we will consider it and will be here.

Mr. WHELAN: You like it the way it is?

Mr. HOULDEN: No. I did not say that.

Mr. WHELAN: The company believes that all other preferences, which include welfare payments to the government, should be cut down or abolished. Is that right?

Mr. HOULDEN: We feel this way: you say to a wage earner, "You are restricted to three months prior to bankruptcy." You say the same thing to the landlord. If, for instance, the Department of National Revenue has not bothered to collect its tax for several years, in the case of a bankruptcy it can come forward and take all the assets for itself. Why should it not be restricted in the same way you restrict the wage earner and the landlord, if not abolish its preference altogether. We do not see why there should be any priority for government claims. That is our feeling.

Mr. WHELAN: This suggestion confirms the statement made, that the company's object is to promote the financial interest of its unsecured creditor members by making as many assets as possible available to them.

Mr. HOULDEN: All of the unsecured creditors, not just our own members. We want them all to share equally.

Mr. WHELAN: I would like you to correct me if I am wrong. It is not accurate to say that Bill C-5 gives the primary producer a preference over other creditors. It gives him a preference over some other creditors; but there are presently all manner of creditors who have secured or preferred claims. The company's brief has mentioned some of them. At the same time in your brief you say that the primary producer has preference over all the creditors.

Mr. HOULDEN: Under this proposed bill.

Mr. WHELAN: No. The bill does not give preference over all other creditors.

Mr. HOULDEN: It does; that is the whole purpose of this bill. The bill says that, when one of these canning companies goes bankrupt, its assets then become a trust and that trust must be realized upon. When those assets are realized, first there is paid the costs of administration, then the wage earner, and then the primary producer.

Mr. WHELAN: We come in before the banks.

Mr. HOULDEN: Ahead of everybody.

Mr. WHELAN: The management and the wage earner come in and then we come in. That is my understanding.

Mr. HOULDEN: That is not the way it is worded.

Mr. WHELAN: The examples of the way the effect of Bill C-5 operates, as given by the company, are irrelevant. A creditor who supplies sugar or spices for the syrup, or a manufacturer who supplies the cans, is not supplying his whole year's work and investment to the processor. In respect of the machinery company which supplies the equipment, that company undoubtedly is protected by a registered chattel mortgage; and the service station operator who services the trucks has a lien for work and services which he can attach to the trucks at any time he suspects the credit of the processor.

Mr. HOULDEN: First of all, I think you assume too much when you say the machinery company will have a conditional sales agreement. It does not always have it.

Mr. WHELAN: You are saying he is not a good business manager; because he has that right.

Mr. HOULDEN: I have a case where a machinery dealer is caught for $75,000 in a bankruptcy completely unsecured.

Secondly, in respect of the garage proprietor, any lawyer will tell you he only has his lien if he has the actual truck in his possession. If he has done the repair work and it has gone out of his garage, then he has lost his lien; he does not have possession.

Mr. WHELAN: He can go and get it.

Mr. HOULDEN: No, he cannot.

Mr. WHELAN: In respect of your objection number two, this is another example of misstatement by the company. The company says that the product must be sold in priority to the claims of other suppliers. As pointed out, many of these suppliers are secured creditors, or have been paid back by moneys secured from the bank in return for a blanket mortgage. Again, the company says in the case of canned products, the cost of the primary product would not exceed 25 per cent. The company says the primary producer gets paid under Bill C-5 in priority to the other suppliers who have contributed 75 per cent. This 75 per cent, of course, includes the workmen's contribution which is protected, overhead to the landlord which is protected, financing charges due the bank which are protected, and other secured contributions.

Mr. HOULDEN: That is not in this bill.

Mr. WHELAN: But they have this protection even if it is not in this bill.

Mr. HOULDEN: The bill takes it away; that is the whole purpose of this legislation.

Mr. NUGENT: May I interject? I have heard Mr. Whelan and others speak about primary producers here many times. This bill does not deal with primary producers; they are not in there at all.

Mr. HOULDEN: That is perfectly right. The language of this bill is so wide it could cover any range of industry.

Mr. WHELAN: The definition of primary producer is already in the statute. This is the definition we have copied.

Mr. HOULDEN: This comes from section 88, and that section is causing a great deal of difficulty in the range of industries covered.

Mr. WHELAN: I am only a layman and might not be as informed as my friend Mr. Nugent. However, I assume that a statute which has not been questioned is still good legislation and could be used, and that by so doing we would not get into too much trouble.

Mr. HOULDEN: I am sorry you used this definition, because it is very wide. I think this is causing a lot of trouble, and it has been questioned in court.

Mr. WHELAN: In respect of your objection number three, you say that Bill C-5 implies that primary producers are not good businessmen. This indeed is a soft impeachment so far as I am concerned. It is answered by Bill C-5. The company says, on page 2 of its brief:

> From time to time, C.C.M.A. has made representations to the government in respect of amendments which it thought would strengthen the act and permit the act to carry out the purposes for which it was designed.

This is what we as primary producers are trying to do by Bill C-5. The C.C.M.A. may take pride in this confirmation by Bill C-5 of its belief that persons in charge of primary production are as qualified as any of the members of the C.C.M.A. to see that their interests are protected creditwise.

Mr. HOULDEN: No.

Mr. AIKEN: I think perhaps we should allow Mr. Whelan to read his complete brief.

Mr. LLOYD: I think we should give Mr. Whelan the opportunity of comprehending some of those things in respect of which he confesses a lack of knowledge. I agree that members should be allowed a great deal of latitude in their questioning, but we are now becoming involved in a form of questioning which is in defence of the bill.

Mr. WHELAN: Mr. Chairman, I can only say that I may be asking questions in defence of my bill but they are questions in conjunction and in connection with the brief which has been presented this morning. I am quite agreeable to presenting my statements at a later meeting and, if it is the desire of the committee, I shall defer my remarks at this time. I am only too willing to present my comments to the committee at a later date. However, I do feel that if individuals are going to present briefs, and I understand the gentleman from Clarkson Gordon is going to present one, members should be given the opportunity of making statements in regard to those briefs.

Mr. NUGENT: Mr. Whelan surely will be allowed to present a brief later on if he so desires. Let us deal with each brief in turn. I would like to have a crack at him on his brief later.

Mr. WHELAN: I wish you would tell that to the primary producers of Canada.

The CHAIRMAN: It is not the intention of the Chair to limit anyone in questioning as long as everyone remains within the bounds of propriety and order. If I understand you correctly, Mr. Whelan, you have a brief which you wish to present?

Mr. WHELAN: I do not know whether it should be referred to as a brief. I have considered the brief of the Canadian Credit Men's Association and have certain remarks and questions to ask in that regard.

The CHAIRMAN: If you intend to make statements and ask questions in regard to the brief presently before us you certainly are entitled to do so as that is the reason we are here this morning. While doing so may be time consuming, we are here to do a job. I would suggest that you make your remarks as short as possible so that we can complete our task within the time allotted. I would not go as far as Mr. Nugent, but perhaps Mr. Whelan will present his brief at some other time.

Mr. LLOYD: Mr. Chairman, very briefly all I am asking is that our questions should proceed along the lines of eliciting information and explanations. Our conclusions do not have to be drawn at this stage.

Mr. WHELAN: I will discontinue my questioning at this point, and if there is any time left after other members have finished I will then continue.

Mr. BOULANGER: Mr. Chairman, I should like to ask one question. Mr. Houlden you have stated in the French edition of your brief at page 2 the following:

> La C.C.M.A. tient à préciser au Comité permanent de la Banque et du Commerce qu'elle n'est nullement liée à aucune des banques à charte du Canada et qu'elle n'entend d'aucune manière se faire le porte-parole ou le représentant des intérêts de telles banques.

You have stated quite clearly that you have no relationship with any chartered banks, but can you indicate how many directors of the boards of chartered banks are members of your association?

Mr. HOUGHTON: There are no bank directors serving on our board of directors, or our boards of governors.

Mr. BOULANGER: Are any bank managers or directors members of your association?

Mr. HOUGHTON: No, there are none.

Mr. MCLEAN (*Charlotte*): I should like to know whether it is the opinion of these men from the Canadian Credit Men's Association that the primary producer should be on the same footing as all other creditors?

Mr. HOULDEN: That is right, Mr. McLean. That is our submission.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Mr. Chairman, I should like to ask a follow up question. Mr. Houlden, do you really think that the producers of tomatoes or corn, or whatever it is, are in the same position as the suppliers of cans, labels, office machines and other things of this type? Do you not agree that the man who has perhaps 50 per cent or 75 per cent of his expected annual income involved in one product which is involved in a bankruptcy proceeding is in a much more serious position than a company which supplies cans, labels or office machines to perhaps 100 different customers?

Mr. HOULDEN: Yes, I agree with that statement.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Do you think in that event he should be given a preferred position?

Mr. HOULDEN: As I said before, Mr. Cameron, it is true of practically every bankruptcy that one or two people have geared their particular industry

to the company which has gone under. I am sorry when that happens and hate to see these other companies perhaps go under or have to struggle during that difficult period, but I think the cure that is suggested in this bill is worse than the disease. That is the point I am trying to put across. When you attempt to provide a cure in the way that Mr. Whelan has suggested through this bill, you are providing a cure that is worse than the original disease.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): You are speaking of the number of creditors who have geared their products to the concern that has gone bankrupt?

Mr. HOULDEN: Yes.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Do you really think that is an accurate description of the position of a producer of agricultural products in an area where there may only be one possible purchaser of that product from a processing point of view? Are you not suggesting that they either go out of business and stop producing or gear their production to the one outlet?

Mr. HOULDEN: I am not suggesting that there is no solution to this problem which you have raised. However, if you consider a company town, if I may use that expression, where there is one large industry and that industry folds up, this hurts all the small suppliers in that area. I have every sympathy for the primary producers, and perhaps there should be some method of working out the problem. Perhaps the answer lies in bonding. Perhaps the answer lies in the supplying of government insurance. I do not know what the correct answer is, but we are sure that this bill will not provide a solution to the problem.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): You do believe that the primary producer does have a prior right to protection?

Mr. HOULDEN: If you leave out the word "prior" I would agree with that statement. These people do need protection, but this bill does not solve the problem.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): You still say that they are on precisely the same footing as the company which manufactures cans and labels, is that correct?

Mr. HOULDEN: No, I have not stated that and I am sorry if I have given that impression.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): You have rejected the use of the word "prior"?

Mr. HOULDEN: I suggest that we must find some solution to this problem. I agree with you when you state that when a farmer has to sell his product to a canner in his vicinity and that canner goes bankrupt that is a real hardship because the farmer's entire product for that year is lost. This is a terrible thing to happen, but I do not think the solution to this problem is found in this proposed bill.

Some years ago Mr. Biddell and I were involved in a large bankruptcy.

The CHAIRMAN: Excuse me, I wonder if you would permit me to interrupt at this stage. I am informed that the interpretation system will be in operation within a very few minutes. Anyone who cares to use the simultaneous translation system will be able to do so.

Mr. HOULDEN: I was going to give you an illustration. Some years ago, the Stanrock Uranium Mining Company in the Elliott Lake area went bankrupt. There were some $29 million in bond holders unpaid and some $6 million

in creditors. This involved a very hardship to the people of the Sudbury area who had been supplying a great deal of the material to the mine. I remember at that time small creditors who were hurt wanted to come here to Ottawa to get parliament to pass legislation to provide that out of the money that was being paid to the bondholders ten cents of every dollar would go to them and 90 cents to the bondholders. I remember Mr. Biddell saying at that time that the government of Canada could not do that sort of thing.

If people are going to buy our bonds and going to invest in Canada they have to know that their security is solid, and when you pass this type of bill as now proposed, and as Mr. Nugent has pointed out, it covers a great range of industries, you are doing something that should not be done. You must keep in mind that creditors only take security because of the worst that might happen. If the worst is not going to happen, they would not bother with their security. When you state to them that if something happens, their security is not going to be any good and that another group will be paid ahead of them, I say that you are doing our country a great harm. This is the idea I have attempted to point out in this brief.

Mr. KLEIN: The people to which we have reference are not in the same position as bondholders and creditors. They are not in the same position at all.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Mr. Chairman, I should like to get this situation clear. Mr. Houlden, are you telling the committee that while you do agree that producers, such as Mr. Whelan had in mind, which are largely the producers of agriculture products, should have protection, you do not agree that they should have any preferred position in Canada over the producers of cans, labels, office machines and things of that sort, in bankruptcy proceedings?

Mr. HOULDEN: I agree with that.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): You feel that they should be in a preferred position?

Mr. HOULDEN: No, I do not think they should be in a preferred position. I think there must be some other solution to this problem than the one suggested by this bill. For instance, the province of Manitoba has passed legislation providing for bonding. I think similar legislation exists in the state of New York. I do not believe the proposal contained in this present bill provides a solution.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): You do not think the primary producer should be in a preferred position. I gather from your brief that you have two main foundations upon which you base your objection. You have just stated the first of these foundations. The second basis seems to be found on page 4 of your brief and involves a question of business acumen on the part of the producer. Mr. Houlden, are you really seriously trying to tell us that a man who spends most of his time producing tomatoes or corn has the opportunity of being aware of what is taking place in the business world to the same extent that you or your association have the opportunity of knowing?

Mr. HOULDEN: Mr. Cameron, facilities are available to the primary producer so that he may become aware of the situation. As Mr. Whelan has said if a man is operating a large one crop farm, I do not see any reason why credit information is not available to him.

Following up the discussion regarding the Graham Food Products situation, in the event credit information had been available at that time would not the primary producers have sold their products to that company in any event?

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Mr. Houlden, that particular case has still to be investigated further by this committee, and I hope to ask the Bankers' Association some rather pointed questions in that regard. I appreciate that information was withheld from the producers and misinformation was supplied.

Mr. HOULDEN: You do appreciate the fact that this bill would not have been a solution in that situation, because this bill has reference to the wholesale purchaser having possession of the goods at the date of the bankruptcy. In the case to which you have referred there never was a bankruptcy. The bank had taken possession, so this bill would be of no use under those circumstances.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): That was an exceptional case.

Mr. HOULDEN: I feel that was the customary case.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Let us return to our discussion of the business acumen of the individual who spends his time producing agricultural produce. I agree that he is probably much more intelligent than the other people because of the nature of his business, but would you not agree that he does not have the opportunity of knowing what is happening in the business world? You receive reports from various sources, do you not? You receive very specified reports, am I correct?

Mr. NUGENT: Perhaps they should be made available to the farmers.

Mr. HOULDEN: Mr. Cameron, when I say everyone should share equally I am including the small proprietor, the small canner and everyone in that category. Perhaps the small garage operator does not have the same opportunity as a primary producer because the primary producer is a very good customer of his bank whereas the small garage proprietor may not be an important customer. The primary producer may be in a better position to get information from his bank than the small garage proprietor.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): You base the whole situation on the principle of *caveat vendor*?

Mr. HOULDEN: Is that not the essence of our whole economc system?

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I am afraid it is, and that is why I should like to see some effort made to redress the balance occasionally. I do not like to see cases seriously presented which are based to my mind, on completely unethical attitudes. Thank you.

Mr. NUGENT: Mr. Chairman, through the witness I should like to clarify the situation for the benefit of the members of this committee. The term "primary producer" is not mentioned here, but I should like to go through a few of the categories covered by the witness. For instance, the feller of trees who hauls the logs to the mill is covered by this bill, is he not?

Mr. HOULDEN: Yes.

Mr. NUGENT: The saw mill where these logs are cut into rough lumber would also be covered by this bill?

Mr. HOULDEN: That is my point.

Mr. NUGENT: If that lumber went to a planing mill would that mill not also be covered?

Mr. HOULDEN: That is correct, and let us go further.

Mr. NUGENT: If the finished lumber went to a furniture manufacturer, or a window frame maker, would they not also be covered?

Mr. HOULDEN: I think perhaps you have gone a little far in that case, but let us consider the lumber dealer. Would not a lumber dealer dealing in this produce come within the meaning of this proposed section?

Mr. NUGENT: I was just trying to show through your testimony that this bill is not related only to the primary producer of the product, whether the product is agricultural or otherwise.

Mr. HOULDEN: That is right.

Mr. NUGENT: It is obvious from your brief that this whole bill does not meet with your pleasure. Is there any other specific observation that you as a lawyer would like to make in regard to the drafting of this bill even in the event you agreed with it?

Mr. HOULDEN: I mentioned to Mr. Cameron that the bill only refers to the situation where the purchaser is in possession of the goods. Anyone present who has done bankruptcy work knows that that is an exception. In most bankruptcy cases of this type the secured creditors have come and taken possession of the goods so that this bill would not be of any use.

I have made reference to a number of objections in the brief. There is some peculiar wording in this bill. It states that when insolvency takes place the property will be held by the bankruptcy in trust. I would find it very peculiar to have a debtor holding goods in trust.

It goes on to state in paragraph two that the property shall vest in the court in trust. The court is not a trustee. I think the property should be held by the trustee in bankruptcy because he is the one who will wind up the situation.

The bill also states that there is a reservation in respect of the rights or interests of a bank or the Industrial Development Bank, but a private lending institution as a result of the adoption of this bill will be completely out of luck. There is no protection offered to such a lender.

Paragraph 2 (d) states that the property shall go to the trustee of the estate of the bankrupt subject to any right or interest that a bank incorporated under the Bank Act or the Industrial Development Bank, but it says nothing about the rights of private lending institutions.

I think those are the other matters which I felt should be mentioned.

Mr. NUGENT: Thank you, Mr. Chairman.

The CHAIRMAN: Gentlemen, at the beginning of our meetings I normally identify the witnesses. I am afraid I did not do that today and there has been some confusion. On my immediate right is Mr. Houlden who is counsel for the association. Next to Mr. Houlden is Mr. Houghton the manager of the National Adjustment Bureau Services of the Association and the third gentleman is Mr. Biddell who is trustee with the Clarkson, Company Limited.

Mr. NUGENT: Mr. Chairman, I should like to ask one further question if I may. The Canadian Credit Men's Association does make credit reports available. Is there any reason why these primary producers cannot contact your association and get this information if they wish?

Mr. HOUGHTON: They would have to be members of our association, and there are certain requirements. Certainly any producer is eligible to apply for membership in our association.

Mr. NUGENT: All a primary producer would have to do to get the information would be to ask someone who is a member of your association for that information?

Mr. HOUGHTON: No, I cannot agree with that statement because our information is given in confidence to our members for their sole use and should not be passed on.

Mr. DOUGLAS: How much would it cost a primary producer to become a member of the association?

Mr. HOUGHTON: Our membership rates vary of course, with the amount of useage our members make of the association. The cost runs as low as $130.00

per year to perhaps many thousands in the case of larger companies such as General Electric.

Mr. KLEIN: In many localities would not the primary producer and the processor deal with the same bank in a small community.

Mr. HOULDEN: I think that situation would be likely, Mr. Klein.

Mr. KLEIN: Would you consider a report from any ordinary branch manager of a bank as being reliable.

Mr. HOULDEN: Such a report would be considered in the same way as any credit report. Sometimes credit reports are wrong, but generally speaking they are reliable.

Mr. KLEIN: Is that true of information received from a branch bank manager?

Mr. HOULDEN: Yes. He is the man who should know what is happening.

Mr. KLEIN: Would you accept a telephone recommendation from a manager of a branch bank in respect of credit?

Mr. HOULDEN: I would rather have further investigation made. One would perhaps talk to the bank manager and get as much information from him as possible. One could ask for the financial statement of the cannery with which the producer is dealing. This is the type of thing our members do. These are the type of credit checks which can be made.

Mr. KLEIN: Is not the one crop farmer a captive creditor of the processor?

Mr. HOULDEN: I am sorry that this is perhaps true. As I have said to Mr. Cameron, it is a very unfortunate situation. I am not a farmer myself, I am a city man, but I think it may well be what happens.

Mr. KLEIN: I think everyone will appreciate the fact that the product of the farmer is usually perishable, and being so, the farmer is a captive creditor of the processor because he simply has to sell his product.

Mr. HOULDEN: There are many people in the canning business. It may well be that in given areas there is only one canner, as Mr. Cameron has suggested, and if that is so then you have a bad situation. If there is more than one canner in an area the farmer can sell his product to other canneries because other markets are available.

Mr. KLEIN: It seems to me that every witness before this committee has expressed sympathy for the farmer, yet no one has told us how to transfer this sympathy into something concrete.

Mr. HOULDEN: This has been done, Mr. Klein. Mr. Biddell is able to explain this.

Mr. BIDDELL: The whole purpose of my brief was to cover this situation.

The CHAIRMAN: Mr. Biddell, a moment ago you suggested that you could summarize your brief very shortly for us. Perhaps you could answer questions which have been asked by doing so at this stage.

Mr. NUGENT: I think that would be a good idea, Mr. Chairman.

The CHAIRMAN: Several other individuals have indicated their desire to ask questions, but apparently the content of your brief falls directly within the sphere of Mr. Klein's questions. What is the wish of the committee in this regard?

Mr. AIKEN: Mr. Chairman, if the brief of the Clarkson, Gordon Company can be consolidated in an answer to the question perhaps it would be a good idea to deal with it now I am afraid we are not going to have very much time this morning to deal with this second brief.

The CHAIRMAN: Perhaps the committee will agree to allow Mr. Biddell to summarize his brief in answer to Mr. Klein's question.

Mr. HABEL: Mr. Chairman, I have a question I should like to ask.

The CHAIRMAN: Several members of this committee have indicated they wish to ask questions but apparently the answers to some questions are contained in Mr. Biddell's brief, and it might save the time of this committee if Mr. Biddell were to summarize that brief now.

Mr. HABEL: Perhaps the answer to the question I wish to ask will clarify the whole situation.

Mr. Houghton, if the primary producers were to organize one group, such as a co-operative, would your association be willing to accept a representative of that group as a member of your association so that information could be provided to the producers?

Mr. HOUGHTON: I am of the opinion that such an arrangement could be made. I certainly would have to discuss this with our board of directors. We do not have any members of this type at the present time, but this suggestion is worthy of exploration.

The CHAIRMAN: Does the committee wish Mr. Biddell to summarize his brief at this stage?

Some hon. MEMBERS: Agreed.

The CHAIRMAN: Mr. Klein, would you restate your question?

Mr. KLEIN: Mr. Chairman, I should like to rephrase my question keeping in mind the last question and answer. I do not think the problem can be solved by making credit information available to the farmers. I do not think this will solve the farmers' problems. In many cases the farmer must sell his produce to a single processor, and whether his credit is good or not makes little difference to the situation. Such a processor under those circumstances can actually exploit the farmer because he knows the farmer must sell his product.

Mr. HOUGHTON: Perhaps Mr. Biddell will cover that situation in his answer, Mr. Klein.

Mr. J. L. BIDDELL (*C.A., Clarkson Company, Ltd.*): Thank you, Mr. Chairman.

I have prepared a brief and copies will be left with you gentlemen. I do not want to read this brief but I should like to summarize it very briefly for you.

I did not have opportunity of reading all of the evidence that has been presented to this committee before preparing this brief and perhaps it would have been a good deal shorter if I had done so. However, I would just like to emphasize a few things, many of which may already have been covered by other witnesses.

It seems to me that certain things are fundamental to this whole problem.

At the outset I should like to say that I agree with the purposes of the sponsor of this bill. I do feel that there is a real need for some additional protective measures for the small independent producer, but in the case of farmers particularly, and wood cutters, perhaps, whose whole year's income is tied up in one crop which on occasion is lost, there is a need for protection. I must state that I disagree completely with the method suggested in Bill C-5. The reason I disagree is because I am thoroughly convinced that it will not work.

My own experience is that of a licensed trustee. I have done no other work of any kind in the last 15 years. I have handled a great many bankruptcies and insolvency situations during that period across Canada. I have spent a great deal of time, particularly in the last two or three years, working with various organizations in an attempt to improve bankruptcy and credit legislation in order to take care of special cases such as we have been discussing, particularly with a view to avoiding fraudulent transactions, of which

we have had far too many in recent times. I am very interested to see that something is done for the protection of primary producers, but I am quite sure this cannot be done effectively under the Bankruptcy Act.

In regard to that specific subject, what is being attempted through the passage of this bill is to prevent lenders to primary producers from obtaining security against their losses. Specifically Bill C-5 refers to chartered banks and to the Industrial Development Bank. I am quite sure that the federal government has the power to prevent chartered banks and the Industrial Development Bank from accepting primary products as security. Certainly the federal government could stop them from doing so. I am equally satisfied that the federal government could not say, through any legislation it might pass, that John Smith, a private lender, cannot lend $25,000 to a canner and accept a chattel mortgage on the inventory as security, or perhaps a floating charge debenture, because I am quite sure that regardless of the legislation the federal government might pass, it cannot interfere with security of that type. What happens in this insolvency situation is this: the majority are precipitated by a secured creditor who has made a loan, finds he cannot obtain payment, calls his loan, and seizes his security. This happens long before bankruptcy proceedings commence. Bankruptcy proceedings follow quickly, but almost inevitably, nine out of ten times, the secured creditor goes in and seizes his security. If we look at Bill C-5, it says that the primary products in the possession of the debtor shall be reserved as a trust for the primary producers. By the time the insolvency is recognized those products will no longer be in the possession of the debtor; they will be in the possession of the secured lender who has seized them. If this lender is a chartered bank, the legislation is going to see that this does not happen.

However, I do not think it will be in the power of the federal government to do effectively what Bill C-5 sets out to do. What it will be doing will be to attempt to legislate to disqualify the cheapest source of credit which the producers can obtain, that is the credit they get through the chartered banks, and drive them to much more expensive sources of credit, the private lenders. They will get their loans, but not at 6 per cent. They will get them at anywhere from 12 to 30 per cent. In my practice I see a great deal of this going on. Therefore, I do not think the approach which is being taken by way of amendment to the Bankruptcy Act will work. I doubt very much, on constitutional grounds, that the federal government can make it work.

I am quite certain the other aspects of the bill which say we will take these inventories and vest them in the court will be self-defeating. I have had a great deal of experience in the last few years where the court was the medium to decide how assets would be liquidated. This is fine if the assets are in terms of money, and the only argument is who owns the money; but when the assets are tomatoes, potatoes, or some similar produce, the possibility of the courts being able to deal with them effectively and recover any sensible profit for the people involved is unlikely. You can just forget it; it will not work.

As I have said, I am most interested in seeing some relief being obtained for these people; I think there should be some. I am satisfied there is a way to do it; but it is not by way of amendment of the Bankruptcy Act. All we need to do here is have a very considerable extension of the procedures already in effect in certain places, for instance in the province of Manitoba; this is through a provincial government marketing agency. All day yesterday I had discussions with representatives of the Ontario fruit and vegetable growers association, and then I had a long meeting with the director of marketing services of the department of agriculture of the province of Ontario. I am quite satisfied that with a little effort and a little support from gentlemen such as yourselves it would be possible to arrive at a solution to this problem

which will be effective. I am quite certain that Bill C-5 will achieve nothing. The approach should be that the marketing organizations set up by practically every province should go further than they presently do.

The farmer, not unreasonably, seeing his local cannery obtain a licence from the province, is entitled to assume he can safely sell to that cannery and get paid. Unfortunately, the marketing services are not going far enough at the present time. They are handing out licences without paying proper attention to the financial stability of the people they are licensing. As many of you know, in the province of Ontario, the Ontario department of highways had a great deal of trouble with its contractors, and a few years ago they set up a system called prequalification rating. They insist on obtaining financial statements from all contractors who wish to bid on government road contracts. Based on the financial results, they rate these contractors and say they are in class A, B or C. This determines the amount of work these contractors are entitled to take. This has proven to be extremely valuable. It has reduced the number of insolvencies of contractors, and has reduced substantially the losses to suppliers of those contractors.

I think there is a direct analogy, if the marketing services adopt the same approach and require those producers who come to them for a licence to submit financial information, and then rate them according to a pre-set formula.

I will pick one company out of the air as an example; let us say Campbell's Soup. Clearly its financial statements would show that the suppliers are not running any more than a nominal risk in supplying to that company; but assume that the A.B.C. Canning Company has no liquid position. Then, the marketing agency would say to the A.B.C. Canning Company "We cannot give you a licence unless you put up a payment bond by a surety company with us in favour of the primary producer"; not in favour of the canner, or the sugar supplier, but in favour of the primary producer, the fellow who has his whole income for the year in one shot. This is being done at the present time in the province of Manitoba. I do not know by how many of their marketing associations this is being done, but certainly it is being done by some of them, and I believe with success. I do believe there is every likelihood that the department of agriculture of the province of Ontario will be prepared to pursue this in an intensive fashion. I suggest it is in this area that you should be directing your attention, if your aim is to do something for this group of prime producers. I am quite sure it can be done successfully.

In the last few years I have spent about 20 per cent of my time trying to work out the problems in this area. I, personally, am most interested in this problem and am quite prepared to devote a good deal of my time to it. I have had consultation with a senior official in the Ontario department of agriculture yesterday, and I am quite sure it can be done successfully. I am equally certain that if you attempt to tamper with the Bankruptcy Act and completely change the policy of the act by trying to take care of this problem, which is serious for those people involved—it really is a very small problem in relation to our economy—and if you are going to completely upset the scheme of the Bankruptcy Act by adopting a completely new policy, I think you are just opening a Pandora's box, and the problems you will create will be very much worse than the disease. The ramifications in respect of the effect on the supply of credit in Canada, I feel, will be something you will very much regret.

Quite frankly, I think if you open this can of worms, it would inevitably result in the return of the tight money situation for the small businessman, the like of which we have never experienced. There is a problem, but the solution is not by amendment to the Bankruptcy Act as proposed in this bill.

Mr. Klein: Your idea of a bonding company seems to be very good. However, do you think that the bonding company will bond the primary

producer if we do not give the primary producer some of the protection which this bill wants to give him? For the moment, I am not saying this is the proper bill; but do you think the bonding company will go along with the principle when there is not protection to the bonding company?

Mr. BIDDELL: I am quite sure the bonding companies will. They are doing it in Manitoba.

Mr. KLEIN: To what extent?

Mr. BIDDELL: I do not know that, sir. I have not had an opportunity to review that. I do know, however, that they are doing it to a large extent in the construction industry, and the problem is no different.

I might be able to throw a little light on the position of the bonding company when it does this. When a processor applies to a surety company for a bond he has to personally guarantee it. The owner of the cannery will have to give his personal guarantee to the bonding company. This is a great protection to the bonding company and a great assurance to the bonding company, because at this stage the owner of the cannery has all his personal resources behind seeing that the beneficiary of the bond will get paid. You may be sure that if this rule is adopted, the owner of the cannery is going to see that the primary producers, who really have his personal guarantee through the bond, will get paid first. This would be the most beneficial approach you could take in an effort to protect these people.

Mr. KLEIN: Your analogy of the bond supplied to builders or construction people is not a good one. The builder has the owner to turn to for the payment of the construction when the construction is completed. The bond company merely guarantees the owner that the building will be completed. He goes to the owner for the payment. In the case of the processor you have to go to the debtor of the processor to collect the money and he may not have it at this time.

Mr. BIDDELL: You and I are talking about two different types of bonds. The bond to which you refer is the performance bond. I am speaking about a payment bond. The use of these is increasing to a tremendous degree. This bond says that if the contractor has not paid all of his suppliers and subcontractors on the contract, then the surety company will pay them. That is the sort of bond I am speaking of which should be supplied by the canner to the local agency for the benefit specifically of these growers.

Mr. KLEIN: I think you said this in your brief, but I wonder if you would see any objection, for the purposes of distribution under the Bankruptcy Act, if the farmer or primary producer were put in the same category as the workmen, and the travelling salesmen, and so on, with regard to at least a percentage of his primary product being distributed by preference?

Mr. BIDDELL: Until you added that last sentence I was going to have a great deal of objection to the idea. If we found it was impossible or impractical to get much better protection for the farmer by the means I suggest, that is the extension of the activities of the marketing agencies and bonding, then I would have no real personal objection to the farmer being included in some fashion in section 95, so that he has a priority. However, it would be quite difficult to do that. You would have to be very careful to avoid fraudulent transactions being perpetrated on other creditors by way of this media. Presently we say that workmen have it for three months or $500 but when you are talking about an unlimited amount of credit which may be given by farmers to a processor, it may be that the farmer is really a company owned by the processor himself, and this would lead to a great deal of fraud and collusion. If it were necessary to review section 95 in order to do this, it would have to be done most carefully.

Mr. McLEAN (*Charlotte*): Mr. Houlden stated that the can maker, the sugar people and the label people were all in the same boat. I would say they are not in the same boat. Section 88 generally takes care of it. They have ten days to collect their bills; their invoice generally is dated at ten days, and the processor gets the money from the bank. It is section 88 which protects those people.

Mr. HOULDEN: No. The only protection in section 88 is for wage earners.

Mr. McLEAN (*Charlotte*): Section 88 gives the bank the goods.

Mr. HOULDEN: But there is no obligation to pay anyone except the wage earners.

Mr. McLEAN (*Charlotte*): No, but they have the goods and they have already paid for the cans and the labels. I know; we have been in the business. We had to pay for our cans in ten days. The primary producer is the long range fellow and he has no protection. Section 88 protects all these other fellows because the bank advances the money. In the United States they have no section 88.

Mr. HOULDEN: They have the same thing in the United States.

Mr. McLEAN (*Charlotte*): They have no section 88.

Mr. HOULDEN: But they do it under what we call section 86.

Mr. McLEAN (*Charlotte*): There is no section 88.

Mr. HOULDEN: They do it by field warehousing which is much more expensive.

Mr. McLEAN (*Charlotte*): We are a Canadian concern and we have our warehouses full of goods. Will you explain to me how the bank is going to do it down in New York?

Mr. HOULDEN: They do it quite effectively.

Mr. AIKEN: Mr. Chairman, I would like to ask a supplementary question of Mr. Biddell concerning this question of bonding. Would it be that if the processor was not in a stable financial position he would not get a bond, and would therefore not get a licence?

Mr. BIDDELL: It would depend on the policy of the marketing association. I believe it could be done in this fashion: the marketing agency would establish a set of criteria and provided the company ranked at the top it would get a licence and would not be required to put up a bond. If its financial position was such that it did not rank at the top, it would be given a class B licence by putting up a bond. The growers would know what the class B licence was.

It was pointed out to me yesterday by the Department of Agriculture that in many instances where they have attempted licensing they have had delegations of growers who have come and said: "We want you to give this fellow a licence; he is a good fellow." I said that if this happens, I think it would be perfectly proper to give such a person a class C licence which would clearly indicate to the growers that he did not meet the financial requirements and did not put up a bond, and they would deal with him at their own peril. I do not think you can do more than that.

Mr. DOUGLAS: You say "deal with him at their own peril". Are you not saying that if a farmer happens to be located in an area where there is only one cannery, that it is a personal risk and we are throwing you to the wolves?

Mr. BIDDELL: I guess his choice would be comparatively simple. He could join with others and form a co-operative, or not deal with him. Surely if someone's financial position does not measure up so that he can get a bond, if the farmer still wants to deal with him, we cannot help it.

Mr. DOUGLAS: The point is not that he wants to deal with him, but he has no choice. Therefore, if the firm in question goes bankrupt, the farmer who has put his entire year's labour into the product is not given any protection.

Mr. BIDDELL: If the government decides it wants to give an insurance policy to anybody who wants to sell goods guaranteeing he will get paid, that is something which goes considerably beyond the scope of this bill. If this is government policy, it can be done. That is the area in which I think you are suggesting we should try to protect this fellow.

Mr. AIKEN: Mr Douglas followed up what I was trying to get at. To point out the danger of a situation does not help. We point out the dangers of people taking loans with a large rate of interest from so-called loan sharks; we point out the dangers of dealing with people who are not financially stable. But if they have no other choice, then I do not believe this is enough. I know you do not have the final say in this, but is it going far enough to suggest that the processors should merely be rated. Under much of the marketing legislation a producer is required to sell to a certain processor. Should it not be carried to the full length; that is, force the processors to be bonded, and if they are not in the financial position where anybody will bond them, surely they should not be dealing with the public.

Mr. BIDDELL: I agree with you, but I raised this other aspect because the government official told me that they frequently had delegations of growers who came and said, "We want you to give this fellow a licence".

Mr. AIKEN: May I ask Mr. Houlden a question? If the section was more clearly defined, and if it were limited to the type of person we are trying to protect, the agricultural producer with one crop, would you change your opinion?

Mr. HOULDEN: No. It is the interference with the rights of secured creditors that I think is wrong with this bill. That is the great peril. I am all for finding a solution. I do not agree with some of Mr. Biddell's comments, but the greatest weakness in this bill is that it seeks to do away with the rights of secured creditors.

Mr. DOUGLAS: What do you say when it comes time to sell the producer's product if he gets 25 per cent of the return and the people supplying the cans, the labels and the administration get 75 per cent?

Mr. HOULDEN: I still think this bill is wrong in principle.

Mr. WHELAN: Mr. Biddell suggested that the banks would tighten up on credit. I gather from talking to some of these processors who are good friends of mine that if it is loose credit now, they do not really realize it. So far as bonding is concerned, I think Mr. Aiken has suggested that some sort of bonding or insurance should be provided for the processors. We are in full accord with this. Those who have some experience with farm marketing groups in Ontario will realize that their ability now to protect the primary producer is nil. As will be seen in the evidence of Mr. Sorel in the province of Quebec they have the 30-day arrangement, but in his evidence I believe he stated that by the end of the 30 days there is nothing left. He gave us personal experience as to what happens. You say that you cannot give the primary producer preferred treatment. How about the writers? When they give their proofs to the printer, they enjoy preferred treatment as a primary producer. They produce the transcript and nobody can take it: it is theirs.

Mr. HOULDEN: They are secured creditors.

Mr. WHELAN: I am only a layman and I cannot understand why a primary producer should not be a secured creditor.

Mr. HOULDEN: He can be. He can go to the cannery and say "Before I give you my produce I want a debenture."

Mr. WHELAN: Not in our province. The processor can come in and harvest the crop if you refuse. You are at his mercy. I am really happy to see that we have at least alarmed certain people in respect of the provincial legislation. I think there probably still should be some federal legislation. It is also quite obvious to me that we have alarmed some more people who are at the head table. This is good. It means we may get something out of this in the long run, whether it is in its present form or however it may be.

Mr. BIDDELL: I think you will get something, but I hope you do not get it by way of a bankruptcy amendment, because I do not think it will give you what you want.

Mr. WHELAN: In my investigation in respect of Bill C-5 I have learned more about bankruptcy than I ever had previously. There should be some changes in the law somewhere.

The CHAIRMAN: Gentlemen, may I on behalf of the committee extend our gratitude to you for being here this morning, and particularly Mr. Biddell who did an excellent job in summarizing his brief.

May I remind members that our next meeting is on November 15 at which time we will have before us the Ontario fruit and vegetable growers association.

The meeting stands adjourned until November 15.

APPENDIX A

THE CLARKSON COMPANY LIMITED

Trustees, Receivers, Liquidators
Toronto 1, Canada

November 7, 1963.

E. T. Asselin, Esq., M.P.,
Chairman,
Standing Committee on Banking and Commerce,
Ottawa, Canada.

Dear Sir:—

I have reviewed with interest Bill C-5 which is presently under discussion in your Committee and a number of the submissions that have been made to your Committee in connection with it. In this Brief I should like to put forward a number of comments concerning this Bill and the purpose for which it is intended.

(1) I am entirely in sympathy with the motives of the sponsor of this Bill in attempting to obtain some improvement in the position of the small independent producer of primary materials—products of the farm, the forest and the fishery who for economic reasons over which he has little control is required to sell perhaps his entire season's output to a processor, and if that processor fails to pay him, finds himself in dire personal straights. Such an independent producer—who is really little different from a wage earner who is presently granted special consideration in an insolvency situation—is entitled to some special measure of protection.

(2) I am of the opinion however, that the remedy proposed by Bill C-5 to take care of this problem would not only fail to achieve its purpose but would, if enacted, have a most serious and undesirable effect on the economy of Canada. I am quite firmly convinced that Bill C-5 will simply not work. It will not achieve the benefits that are being sought for the small independent producer and I must confess that I think it extremely doubtful that any other legislation that the Federal Government has the power to create can achieve the purpose of the sponsors of this Bill.

(3) There are practical means available to achieve a reasonable measure of protection for these small independent producers. These measures do not require Federal legislation but rather involve action by the Provincial Governments through agencies which they have set up to assist in the orderly marketing of primary products. The Federal Government should confine its activities in support of the independent producers to encouraging and assisting the provinces to take action in this area. I believe that legislation such as Bill C-5 if instituted by the Federal Government will inevitably result in an attempted cure which will be much worse than the disease.

The Position of The Individual Producer

In each of the fields of agriculture, fishing and forestry we have a very considerable number of persons who by their own labour, or perhaps with the assistance of a few employees, produce one or two crops out of their whole

year's effort. Because of their location or perhaps in part because of the activities of provincial government marketing agencies, many of these producers have little choice but to sell all of their product, frequently in a short space of time, to a single processor. On occasions certain of these processors become insolvent and the primary producer who may have his whole year's income at risk obtain little or no recovery.

The Bankruptcy Act recognizes that certain types of creditors are entitled to a priority in the settlement of their claims for reasons that are valid in the light of the social and economic needs of the country. The most important group preferred by the Bankruptcy Act are wage earners and no one can deny that they are entitled to special protection when their employer becomes insolvent. The wage earner, while technically free to withhold his services, must work to exist and his mobility in seeking work is considerably restricted. It is essential from both a social and economic standpoint that some special arrangement should exist whereby the wage earner can collect what is due to him.

It is not at all difficult to justify similar treatment for the small independent producer of primary products. One must recognize however that only certain primary producers can reasonably be put in the same category as the wage earner. Many primary producers are in fact large commercial ventures, some of them being owned by the processing and distributing organizations which take their production. Any attempt to provide a special measure of protection to a particular class of creditor will inevitably result in discrimination against other creditors involved in the affair. In order that such discrimination be held to a minimum great care must be taken to see that this special protection should only be available to those who are really entitled to it. The machinery proposed under Bill C-5 does not deal adequately with this facet of the problem.

Protection of the Primary Producer By Federal Legislation

I do not believe that it is within the power of the Federal Government to enact legislation which will effectively achieve the aims of the sponsors of Bill C-5. Through Federal legislation it is possible to restrict the rights of the chartered banks and The Industrial Development Bank and to provide that in an insolvency situation these banks will be prevented from obtaining any secured claim on primary products. Such action taken by the Federal Government however would not necessarily ensure that the primary producers would obtain a greater recovery when processors get into financial difficulty.

Under the British North America Act the fields of banking and of insolvency were placed under Federal jurisdiction but all matters concerning property and civil rights were placed in the jurisdiction of the provinces. Since the Chartered Banks and The Industrial Development Bank are controlled by Federal legislation the Federal Government could effectively prevent the Chartered Banks and The Industrial Development Bank from taking primary products as security. I think it extremely doubtful however that Federal legislation could be enacted which would effectively prevent other lending agencies or private lenders from taking these products as security for loans. The Federal Government could if it chose, refuse to permit the chartered banks and its own agency, The Industrial Development Bank, to make secured loans to processors but if this were done the inevitable result would be that the processors would obtain their loans from agencies and individuals over whom the Federal Government has no control. All that would be achieved by this approach would be to make it more difficult for processors to obtain operating loans. They would obtain them in any event but at a substantially higher interest cost.

I do not believe that the Federal Government has the power to legislate that a private individual or lending agency cannot make a loan secured by a

chattel mortgage or a bill of sale or a floating charge debenture on primary products in the hands of a processor. If this be true all that Bill C-5 would achieve would be to disqualify the processors' cheapest source of credit in favour of other more expensive sources of credit, many of whom would be unlikely to be as conscious of their responsibility to the public at large as are the chartered banks.

Bill C-5 would specifically exclude the chartered banks and The Industrial Development Bank from obtaining security on primary products in the hands of a processor and also decrees that primary products in the possession of a processor are held hy bim in trust for any unpaid producers who supplied the products. I doubt that the Federal Government has the power to establish such a trust and effectively prevent any private lender from obtaining title to these products arising out of a loan agreement with the processor. I believe that any province of Canada might be able to establish an effective trust in this fashion in somewhat the same manner as certain of the provinces have done with the proceeds of construction contracts under their Mechanics' Lien Acts. Even if this could be done however I do not think that it would be desirable.

From considerable experience in dealing with the trust provisions of the Mechanics' Lien Act, nothing is so obvious to me as the fact that in this area the wheels of justice grind extremely slowly. This is not too serious a problem when we are concerned with the disposition of a fund of money which is not subject to spoilage and does not require processing and marketing while the Courts determine who owns it. To attempt to establish a trust for tomatoes however presents vastly different problems. In the event of the insolvency of a canner, the Trustee would immediately be faced with the problem of marketing the tomatoes already canned, canning the tomatoes in process, and processing the tomatoes on hand. I see no possibility whatsoever of the machinery of the Courts being able to deal effectively with a problem of this kind in such a manner as to achieve a worth while result for the beneficiaries of the trust. Proceeding through the Courts to obtain instructions and approval for the processing and marketing of almost any commodity would I am sure be a self-defeating exercise.

How Can The Small Independent Producer Of Primary Products Be Protected

Perhaps the most frustrating aspect of attempting to devise new measures in the field of commercial law is to be frequently reminded that what you are attempting to do has merit but is probably unconstitutional. I have felt it necessary to raise this question in this Brief however because I am quite convinced that the solution to this problem lies mainly outside the field of Federal jurisdiction. I believe that attempts to solve it through Federal legislation are a waste of effort and can only result in greater problems than we are already facing. I do believe that there is a relatively simple solution to this problem however and that relief can be obtained for the small independent primary producer if the various provinces of Canada can be persuaded to extend the activities of the primary products marketing legislation which most of them have already instituted.

For the past several years the Ontario Department of Highways has been concerned with the problem of the over-expansion of highway contractors, the resulting insolvency of many of them and the serious losses suffered by their suppliers. Some time ago that Department instituted procedures which involved the grading of contracting companies according to their financial resources and set up a plan of pre-qualification under which the Department officials reviewed the affairs of each contractor who proposed to bid on Ontario Highway

contracts in order to determine the quantity of work which the contractor would be entitled to be awarded during any period.

The Government of Ontario has recently taken a further step in the construction field by enacting a Bill that provides that all suppliers to general contractors performing a contract for the Ontario Department of Public Works will be paid by the Province in the event that the general contractor becomes insolvent and is unable to pay his debts. In order to make this legislation workable the Ontario Government intends to require every general contractor who obtains a public works contract to file with the province a bond issued by a surety company which will provide payment in full to the suppliers on the contract if the general contractor defaults.

Now I agree that the field of construction is very different from the problems of primary producers but I have referred to the steps which are taken in the construction field in Ontario because I believe that these same principles can and should be applied to the control of the processing of primary products in the field of agriculture, the forestry and the fishery. Many of the provinces have set up government marketing agencies most of which require that a processor must have a licence from the agency before he is entitled to purchase the primary product from the producer. Many primary producers being aware that a processor has been granted a licence by the government agency not unreasonably assume that the agency has taken some recognition of the processor's financial stability. When such a licenced processor suddenly becomes insolvent it is understandable that the producers that have sold him their whole season's crop feel that they have been improperly dealt with.

Many of the government marketing agencies do in fact attempt to obtain financial information from the processors before granting them a licence. Whether or not these marketing agencies are sufficiently thorough in their review in this area is a matter of opinion. There would seem to be reasonable grounds for assuming that in many instances these investigations do not go far enough and processors are licenced even though their true financial position does not warrant their being entitled to further credit from anyone.

A number of the submissions that have been made concerning Bill C-5 suggest that the primary producer is no more entitled to special consideration than the supplier of cans or packing cases since he has as good an opportunity as anyone else to examine into the credit worthiness of the processor to whom he proposes to sell his products. In a great many instances this is not the case. It is difficult enough these days for a large commercial organization with a trained credit staff to obtain reliable information concerning the financial position of a prospective customer. For an independent farmer or fisherman to obtain such information is in many instances virtually impossible.

There is no reason however why a provincial government marketing agency should have difficulty in making a reasonably reliable estimate of the financial stability of an applicant for a licence as a processor. The marketing agency can insist on receiving financial statements and there would be every justification for it refusing a licence if it was denied information or if the information furnished was inadequate or unsatisfactory.

In my own view the marketing agencies should go further than merely reviewing financial information. Unless the financial stability of the processor in relation to its proposed volume of purchases is unquestionably sound, the marketing agency should require the processor to post with it a bond of a surety company which would protect the primary producers in the event of the non-payment of their accounts by the processor. This procedure has already been put into effect by certain of the government marketing agencies of the Province of Manitoba and from all accounts is working very well.

I believe that it is in this area—in the extension of the responsibility and requirements of the provincial government marketing agencies that efforts

should be made to improve the lot of the small individual producer of primary products. It has already been demonstrated that this has been done successfully in the marketing of certain primary products. I believe that the further extension of these procedures should be taken by each of the provincial governments. Such a program would achieve the desired protection for the small independent producers without restricting the supply of credit from the banks and other lenders which must continue to be available to our processing and manufacturing industries.

Conclusion

The problems of credit—its supply, and the effect of credit losses in insolvency situations—are problems which vitally affect the growth and well being of the Canadian economy. There is no doubt that our commercial laws dealing with insolvency matters require very considerable amendment. Credit losses are far too high, not only by primary producers but by businesses of every type. Many submissions have been made to the different levels of government in the past year or two which are still awaiting consideration and I am sure that your Committee has a great task ahead in sorting out these many recommendations and assisting in the development of more satisfactory credit regulations in all areas.

While there is a natural tendency to rush into amendments which will give relief to certain groups who obviously require it, great care must be taken to see that in the process we do not inhibit the supply of credit which can be made available to the Canadian businessman. I do not believe that under our free enterprise system it is practical to permit everybody to give credit indiscriminately and provide a government guaranteed insurance policy that all accounts will be paid. All credit granters, even the wage earner, must incur some risk under our system. Our whole way of life depends on the right of an individual to establish a business of his own and by obtaining credit to supplement his own investment and efforts, have a greater opportunity to grow and prosper.

It would be very easy to develop such restrictive credit legislation that lenders, be they the chartered banks or commercial organizations or private individuals, could not obtain any reasonable security for their loans. Under such circumstances in order to obtain capital, businessmen would have to pay a very much higher rate of interest than is presently the case and the small businessman would find himself in a "tight money" situation far more drastic than anything we have experienced in recent years. Every amendment which is proposed in our credit and insolvency laws must be carefully considered in the light of its possible effect on the supply of credit.

I feel very strongly that the measures proposed in Bill C-5 would have a drastic effect on the supply of credit in Canada and would react most unfavourably on the Canadian economy. Even if there were no alternative relieving measures available to assist primary producers I believe that it would be a great mistake to enact the provisions of Bill C-5. There would quite obviously appear to be alternative measures available however, which would be much more effective and would not result in the disruption of established credit procedures which have served Canada very well. Under the circumstances I believe that the Federal Government and your Committee should be devoting its energies to encouraging and assisting the provincial governments to adopt the appropriate measures in their own areas and should refrain from enacting amendments to the Bankruptcy Act of the type proposed in Bill C-5.

Respectfully submitted,

J. L. Biddell.

HOUSE OF COMMONS

First session—Twenty-sixth Parliament

1963

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: EDMUND ASSELIN, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 6

FRIDAY, NOVEMBER 15, 1963

Respecting
Bill C-5, An Act to amend the Bankruptcy Act
(Primary Products under Processing)

WITNESSES:

Dr. John F. Brown, Secretary-Treasurer, Ontario Fruit and Vegetable Growers' Association; Mr. P. A. Fisher, Director, Ontario Tender Fruit Growers' Marketing Board; Mr. Keith Matthie, Secretary, Ontario Tender Fruit Growers' Marketing Board; Mr. E. R. Ruthven, Director, Ontario Vegetable Growers' Marketing Board.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1963

29647-5—1

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: Edmund Asselin, Esq.

Vice-Chairman: Maurice J. Moreau, Esq.

and Messrs.

Addison,
Aiken,
Armstrong,
Asselin (*Richmond-Wolfe*),
Basford,
Bell,
Boulanger,
Cameron (*Nanaimo-Cowichan-The Islands*)
Chaplin,
Chrétien,
Côté (*Chicoutimi*),
Douglas,
Flemming (*Victoria-Carleton*),
Gelber,
Grafftey,
Gray,
Grégoire,
Habel,
Hahn,
Hamilton,
Irvine,
Jewett (Miss),
Kelly,
Kindt,
Klein,
Lloyd,
Macaluso,
McLean (*Charlotte*),
Monteith,
More,
Morison,
Nesbitt,
Nowlan,
Nugent,
Olson,
Otto,
Pascoe,
Pilon,
Ryan,
Rynard,
Sauvé,
Scott,
Skoreyko,
Tardif,
Thomas,
Thompson,
Vincent,
Whelan—50.

Dorothy F. Ballantine,
Clerk of the Committee.

CORRECTIONS

Proceedings No. 4—Friday, November 1, 1963.

In the Minutes of Proceedings and Evidence—

Page 127, Line 35:
For "distinction" read "pari passu distribution".

Page 128, Line 11:
For "form" read "forum".

Page 131, Line 7:
For "this group" read "other groups".

Page 136, Line 14:
For "confident" read "competent".

Page 138, Line 10:
For "producers" read "creditors".

Page 141, Lines 31 to 33 should read:
"Well, in respect of the 30-day goods provision as such, as I understand it, this lies within the scope of the provinces, as the provision does not come to bear on bankruptcy and insolvency directly in the first instance."

Proceedings No. 5—Friday, November 8, 1963.

In the Minutes of Proceedings:
The date should read "Friday, November 8, 1963".

29647-5—1½

ORDER OF REFERENCE

THURSDAY, November 14, 1963.

Ordered,—That the name of Mr. Irvine be substituted for that of Mr. Muir (*Lisgar*) on the Standing Committee on Banking and Commerce.

Attest.

LÉON-J. RAYMOND,
The Clerk of the House.

MINUTES OF PROCEEDINGS

FRIDAY, November 15, 1963.
(14)

The Standing Committee on Banking and Commerce met at 9:20 a.m. this day. In the absence of the Chairman, the Vice-Chairman, Mr. M. J. Moreau, presided.

Members present: Messrs. Addison, Armstrong, Cameron (*Nanaimo-Cowichan-The Islands*), Chrétien, Côté (*Chicoutimi*), Flemming (*Victoria-Carleton*), Gelber, Gray, Habel, Kindt, Macaluso, McLean (*Charlotte*), Moreau, Nugent, Otto, Pascoe, Rynard, Thomas, Whelan,—(19).

In attendance: Dr. John F. Brown, Secretary-Treasurer, Ontario Fruit and Vegetable Growers' Association; Mr. P. A. Fisher, Director, Ontario Tender Fruit Growers' Marketing Board; Mr. Keith Matthie, Secretary, Ontario Tender Fruit Growers' Marketing Board; Mr. E. R. Ruthven, Director, Ontario Vegetable Growers' Marketing Board.

The Vice-Chairman read a list of certain editorial changes to the Proceedings of November 1, 1963 (Issue No. 4) requested by Mr. J. S. Larose, Superintendent of Bankruptcy, who had been the witness on that date. On motion of Mr. Nugent, seconded by Mr. Habel, the corrections were approved.

Mr. Nugent commented on the lack of progress of the Committee in studying this Bill. He recommended that the Committee report back to the House now, that while in favour of the principles of the Bill, the Committee believes it does not accomplish the purposes for which it was drafted and that consideration be given to the introduction of other legislation. The Vice-Chairman stated that the Committee had requested that certain witnesses be heard to assist in deliberations on the Bill, and should be given the opportunity to hear those witnesses still scheduled to appear.

The Vice-Chairman then introduced the witnesses and suggested that since copies, in English and in French, had been distributed to members, the brief might be taken as read. The Members preferred to hear the brief, however, and Dr. Brown then presented the submission prepared jointly by the Ontario Fruit and Vegetable Growers' Association, the Ontario Asparagus Growers' Marketing Board, the Ontario Berry Growers' Marketing Board, the Ontario Grape Growers' Marketing Board, the Ontario Tender Fruit Growers' Marketing Board, and the Ontario Vegetable Growers' Marketing Board.

On motion of Mr. Gray, seconded by Mr. Cameron,

Resolved,—That Appendix A to the brief presented this day be printed as an Appendix to the Minutes of Proceedings and Evidence. (*See Appendix A*).

Dr. Brown was questioned, assisted by Messrs. Fisher, Matthie and Ruthven.

The Vice-Chairman thanked the witnesses for appearing and presenting their brief.

At 11:00 a.m. the Committee adjourned to Friday, November 22.

Dorothy F. Ballantine,
Clerk of the Committee.

EVIDENCE

FRIDAY, November 15, 1963.

The VICE CHAIRMAN: Gentlemen we have a quorum.

We have received a letter from Mr. Larose, superintendent of bankruptcy, who gave evidence before this committee last week. He has asked us to accept some editorial changes in the transcript of a minor nature. I wonder whether the committee will approve, as its first order of business, those corrections to the transcript which Mr. Larose has outlined?

Mr. NUGENT: I think perhaps we should hear them read. Are they extensive corrections?

The VICE CHAIRMAN: On page 127, line 30, "distribution" should be "pari passu distribution". On page 128, line 11, "form" should read "forum". The corrections are all of this nature.

Mr. NUGENT: Mr. Chairman, I do not think for the purposes of the record we should accept a motion without hearing the corrections read.

The VICE CHAIRMAN: I shall read the rest. Page 131, line 7: for "this group" read "other groups"; page 136, line 14: for "confident" read "competent"; page 138, line 10: for "producers" read "creditors"; page 141, lines 31 to 33, should read: "Well, in respect of the 30-day goods provision as such, as I understand it, this lies within the scope of the provinces, as the provision does not come to bear on bankruptcy and insolvency directly in the first instance."

Those are the corrections. Will someone move the acception of these corrections?

Mr. NUGENT: I so move.

Mr. HABEL: I second the motion.

The VICE CHAIRMAN: I declare the motion carried.

Motion agreed to.

Gentlemen our second order of business is the consideration of Bill C-5 an act to amend the Bankruptcy Act.

We have with us as witnesses, and I will ask them to stand up for identification as I introduce them, Mr. P. A. Fisher, a director of the Ontario tender fruit growers' marketing board, Mr. Keith Matthie, secretary of the Ontario tender fruit growers' marketing board; Mr. E. R. Ruthven, a director of the Ontario vegetable growers' marketing board, and Dr. John F. Brown, secretary treasurer of the Ontario fruit and vegetable growers' association.

I understand Dr. Brown is going to be presenting the brief, a copy of which you received one or two days ago. Copies were distributed in both English and French and I think this morning, depending on the wish of this committee, if all members have read the brief we might dispense with reading it again and just commence our questioning. If anyone feels that Dr. Brown should read the brief I am sure Dr. Brown will be glad to do so. I am prepared to accept guidance from the committee.

Mr. NUGENT: I should like to raise a preliminary point, Mr. Chairman. I only received the brief a day ago, but I think it is only fair to the witnesses and the members of this committee first to comment on the progress to date of this committee in respect of this bill.

It seems to me that certainly the evidence taken at our last meeting indicates that we all concur in the intent of the hon. member who sponsored this bill, but it has become obvious that the bill itself does not accomplish the purpose for which it was drafted. It is too broad in scope, rather like a shot gun instead of a rifle, and would cause more harm than do good.

I do not see how any member of this committee could hope that this bill would be passed by this committee in its present form, to say nothing of whether it would pass in the House of Commons. As long as we are just discussing this bill we are wasting our time.

I do not know how many more meetings are scheduled in respect of this bill, Mr. Chairman, but I do suggest that since we are really out of the realm of considering this bill as a possibility, and meeting only for the point of discussing the merits or demerits of attempting to accomplish something for these people, we should report back to the House of Commons that we cannot pass this bill but that we agree with its intent and should like to see something brought forward in a different form in an attempt to do something to help these people. Such a procedure I suggest would save this committee a great deal of time.

The VICE-CHAIRMAN: Mr. Nugent, I would just say that a number of people wrote to the committee or Mr. Whelan following second reading of this bill indicating that they would like to present briefs and give testimony to this committee. Your steering committee felt that these people should be heard whatever decision was taken by the committee in respect of this bill. I think that testimony will be of some value, whatever we do with this bill, in view of the fact that it would be on the record and perhaps be helpful in arriving at a suitable solution to the problem which the bill has clearly indicated exists. I think that is the reason we have had the number of meetings we have had in respect of this bill. I understand we only have to hear from Mr. Barry, the deputy minister of agriculture, and the Canadian Bankers Association again, which has indicated a desire to appear on one more day to complete the testimony. The clerk also informs me that the committee has asked the Food Processors Association to appear on November 29. I think we should complete this testimony, Mr. Nugent.

Mr. NUGENT: Mr. Chairman, if we are just a fact finding body attempting to find out whether something can be done, rather than a committee studying Bill C-5 specifically that is one thing. I notice in the brief to be presented this morning that there is no pretence on the part of the people presenting it that they agree with the bill. They completely endorse the intent, and do so in one or two places.

I think that our method of attempting to find some way of helping primary producers is a bit unorthodox when we are ostensibly studying Bill C-5. I gather from what has been said that we are merely directing the attention of this committee to the problem.

The VICE-CHAIRMAN: Mr. Nugent, our terms of reference indicate that we should study Bill C-5. I suggest that we should not stray from those terms of reference. I think we are limited by those terms of reference to a study of Bill C-5. The testimony given to date by the various witnesses who have appeared certainly is relevant to Bill C-5. I am directed by the desires of the members of this committee. However, the procedure we have been following was endorsed by your steering committee. As I have said, I am prepared to be guided by the wishes of this committee.

Mr. OTTO: Mr. Chairman, I am amazed to understand that Mr. Nugent has made up his mind whether this bill will pass or not in this committee.

Mr. NUGENT: My remarks had reference to the worthiness of this bill for passage.

Mr. OTTO: Whether or not this bill is to be passed by this committee is a decision which will have to be made by the committee at a later date after we have heard all the witnesses. Mr. Chairman, I suggest that we now hear the witnesses who have appeared this morning.

The VICE-CHAIRMAN: Is it the general wish of this committee to hear the witnesses this morning? Do you wish Dr. Brown to read the brief, or shall we dispense with the reading of the brief and begin by asking questions?

Mr. WHELAN: Mr. Chairman, I only received this brief yesterday, having been away for a part of Wednesday, and have not had time to go through it. I would appreciate very much Dr. Brown reading the brief, as has been done by the other witnesses who have appeared before this committee.

The VICE CHAIRMAN: I am sure Dr. Brown will be glad to read the brief, Mr. Whelan.

Dr. JOHN F. BROWN (*Secretary Treasurer of The Ontario Fruit and Vegetable Growers' Association*): Mr. Chairman, and gentlemen, we are pleased to have this opportunity of presenting a brief, and with your permission I will proceed directly to a reading of the brief as you have it before you.

The fruit and vegetable growers of Ontario, through their several organizations, appreciate the opportunity of presenting a submission to this committee. The submission is being presented jointly on their behalf by the following organizations:—

The Ontario Fruit and Vegetable Growers' Association
The Ontario Asparagus Growers' Marketing Board,
The Ontario Berry Growers' Marketing Board,
The Ontario Grape Growers' Marketing Board,
The Tender Fruit Growers' Marketing Board,
The Ontario Vegetable Growers' Marketing Board.

The first-named organization, since its inception in 1859, has been concerned with the over-all welfare and economic well-being of Ontario growers. The latter five organizations are all marketing boards established under the authority and in accord with the regulations of the Ontario Farm Products Marketing Act. These boards are charged generally with the direct responsibility of establishing terms and conditions of sale, including price, of that portion of the crops under their respective jurisdiction that is sold to processing plants.

These organizations are deeply concerned when their efforts to protect and further their members interests are, from time to time, frustrated by the complete absence of any prior protection for unpaid primary producers when the processor or dealer in possession of their products makes an assignment, or against whom a receiving order is made.

A deep-felt recognition of the need for some form of correction of this situation leads these organizations to fully endorse the intent of Bill C-5, and to submit the following material in support of this endorsation.

It is contended that of the four groups, and I should indicate the 4 major groups here, involved with the processor, namely growers, banks, supply companies and labour, the grower is the only one in a completely vulnerable and untenable position.

His position is unique in that he has to overcome all the hazards of frost, drought, excessive rain, hail, wind, insect and disease damage to produce his crop in the first place. Adverse weather conditions can upset harvesting schedules leading to deterioration in the quality of the crop or congestion at the processing plants with resultant loss in marketed crop. The course of events is forcing him into growing fewer crops in larger acreages with a higher dollar input. Processors are becoming fewer in number and more demanding in terms of quality and quantity so that he tends to have only one processor customer

for all of his crop. Lack of time and facilities hampers his ability to keep abreast of the credit position of his processor.

The inherent nature of price establishment for agricultural commodities precludes the possibility of building in an additional figure to cover risks of non-payment. And finally, any of his product for which he is unpaid, delivered to a processor borrowing from the banks under Section 88, is subject to a prior claim by the bank and the grower is in the position of an unsecured creditor.

By comparison, labour is protected under legislation embodied in the Bankruptcy Act as well as in Section 88 of the Bank Act.

The banks are in the enviable position of having, by their own admission, a factor built into their rates to cover risk of non-recovery, prior rights to all inventory secured under section 88 whether paid for or not and additionally, under section 78 of the Bank Act are allowed to take subsequent security of any kind upon any other assets, real or personal, movable or immovable, of the processor. And finally, the banks risk is further reduced by spreading loans over a number of processors and other businesses outside this immediate field, and by the fact that many loans under section 88 are guaranteed by the Government under legislation such as the Farm Improvement Loans Act.

Other suppliers such as can, carton and and label manufacturers or sugar refineries are in the position where only a relatively small part of their total business is done with any one food processor or even with food processors as a group.

Ontario growers produce some 12,000,000 dollars worth of fruit and 25,000,000 dollars worth of vegetables annually for processing purposes. This volume of crop is sold to fifty-odd processing companies ranging in size from the Canadian divisions of the large international firms, whose annual dollar purchases of raw material range up to more than $4,000,000.00, down to small Canadian-owned independents packing only one crop with annual purchases of under $50,000.00.

Credit risks are no problem with the international firms nor with most of the larger and better-established Canadian independents. However, some of the larger independents and a number of the smaller independents are a source of continual concern. Each year the marketing boards have a number of small processors teetering on the margin in that they are in arrears in their payments to growers under the board regulations.

The concern of the primary producers over this situation led to a request three years ago to the Canada Department of Agriculture for an investigation into the financial structure in the Ontario canning industry. The results of this detailed study of seven independent fruit canners was quite revealing in that it showed an average owners equity of only 18 percent of the total equity as compared to an average of 36.6 percent equity supplied by the bank. This study goes on to say:

> The equity supplied by accounts payable and notes payable exceeds the total value of inventories. The commercial banks and can supply companies, at this point of time, supplied credit equal to 94 percent of the value of inventories.

And further that:

> Security supplied by the processing companies for outside financing varies from firm to firm. The form of security varies from an assignment of inventories under section 88 of the Bank Act to an assignment of all assets and capital stock of the firm plus assignment of personal assets and the added personal guarantee of the owner.

The marketing boards, recognizing the vulnerable position of the grower in selling to an industry, some members of which are in the position just described, have been searching for a means to provide the grower with a fair level of protection. Two main methods have been investigated, reporting on the financial responsibility of the processor and bonding of the processor, neither have proved feasible to date.

Regarding the financial responsibility of the processor the two main sources of information, Dun and Bradstreet of Canada Limited reports and bank reports, have proved totally inadequate. Activity in this field would place an onus of liability on the marketing boards themselves in the event of a failure of a processor approved by the board, a function which they were not designed to perform and are not allowed to undertake.

The matter of bonding of processors has been investigated at some length with the Ontario farm products marketing board. Since this provincial government board, under which the grower marketing boards function, issues yearly licenses to processors, it is theoretically possible to require bonding as a condiition of license. However, to date no satisfactory method of implementing such a practice has been found. In addition, the well-financed processors object to being subjected to what is, in fact, an unnecessary cost for them.

A third method of protecting the grower that has often been discussed would be to have the banks require as a condition of the loan that full payment to the grower be a first charge against the loan. In other words, if the money is loaned, among other things, to pay growers for raw produce that this be a condition of the loan. Obviously the marketing boards are powerless to effect such a requirement unilaterally but consideration might be given to a legal requirement to this effect.

With this background, we would now like to comment on Bill C-5 and its intent. At the outset we would like to express our appreciation to Mr. Whelan for his continued efforts on our behalf and associate ourselves in every way with the brief submitted earlier to this committee by Mr. Whelan.

We feel that the action of the government in forwarding this bill to this committee is an acknowledgement of the fact that there is a problem and an instruction that a serious effort be made to find a solution.

It is realized that people more qualified than ourselves in the fields of finance and credit are seriously questioning the wisdom of implementing this bill from the standpoint of its implications to our economy as a whole. We are neither qualified nor capable of debating the merits of the bill from this standpoint.

However in Bill C-5 we see the best answer yet to the problems in our particular industry. That there is a problem has been dramatically highlighted this past season by the failure of Graham Food Products Limited. A list of the growers involved in this failure is appended to illustrate the personal financial tragedies that can occur under existing conditions and legislation.

This is not an isolated incident. In November of 1949 the Niagara Canning Company and Tecumseh Custom Canners both failed costing growers over $137,000. In 1950 Wentworth Canning Company paid off 18¢ on the dollar on a $133,848.00 loss to growers and later in the same year growers lost $73,000.00 when Niagara Glen Products went bankrupt. In 1961 the F. R. Beare Canning Company went under owing growers some $30,000 to $40,000.

We reject the arguments of the banks that this bill will result in a substantial reduction in credit to processors on the grounds that such action cannot be justified in light of their record of satisfactory recovery in our industry. We do accept, and expect, that there will be tighter scrutiny in the extension of such credit and that some of the least creditworthy processors

may have to restrict their operations. This is necessary and may even be desirable.

Tighter scrutiny of such credit under section 88 may be desirable from another standpoint. We believe that the intent of section 88 credit is primarily to assist in processing and carrying seasonal inventory. Potentially dangerous situations arise for our growers when this credit is extended over into another season as seems to be the case whenever producers end up being unpaid for their deliveries. Perhaps the practice followed by the banks, using section 78 of the Bank Act, when difficulties are encountered, of badgering the principal into signing a mortgage or debenture pledging his physical equipment and all his possessions including his ox and his ass and his wife and his maid-servant and the unborn calf provides the banks with the added measure of security needed to justify unwarranted loans, but the grower is in no way benefited.

In summary we submit that the grower, under existing legislation, is definitely in a disadvantageous position vis-à-vis the other parties involved. We submit that Bill C-5 designed to rectify this situation is the best answer yet to our problems, and, therefore, we fully endorse its intent.

We submit that Mr. Whelan is perfectly correct when he points out that conditions have changed drastically since Section 88 of the Bank Act was originally drafted.

We submit that the wise actions of our forefathers in drafting legislation such as section 88 to meet the conditions of their day commits us to amending the legislation wisely to meet the conditions of our day.

Respectfully submitted,

The Ontario Fruit and Vegetable Growers' Association
The Ontario Asparagus Growers' Marketing Board
The Ontario Berry Growers' Marketing Board
The Ontario Grape Growers' Marketing Board
The Ontario Tender Fruit Growers' Marketing Board
The Ontario Vegetable Growers' Marketing Board.

The CHAIRMAN: Before we proceed with the questioning, gentlemen, I wonder if we might have a motion to include Appendix "A" of the brief as an appendix to the proceedings.

Moved by Mr. Gray, seconded by Mr. Cameron (*Nanaimo-Cowichan-The Islands*).

Motion agreed to.

Mr. GRAY: May I ask the witness several questions, Mr. Chairman, arising out of his brief and also linked with some previous testimony. I wonder if you have had occasion to study the brief presented by Mr. Houlden at an earlier session?

Mr. BROWN: I have, sir.

Mr. GRAY: He made some comments that in his view bonding would be a more suitable procedure than the procedure contemplated by the bill we are studying. Do the groups you represent have any comments to make in that regard?

Mr. BROWN: I would like to refer that to Mr. Matthie of the Ontario tender fruit growers' marketing board because his board has investigated this matter more extensively than any other group appearing here this morning.

Mr. KEITH MATTHIE (*Secretary, Ontario Tender Fruit Growers' Marketing Board*): We did investigate this last spring after the Graham Food Products Limited case. We had discussions with the farm production marketing board and others, and after consideration we decided it was not a practical thing for

our board to get into. We could never be sure the bond would cover the amount involved. He might be given a licence for $500,000 worth of produce and buy $600,000 worth. What can he do after he has bought it to protect himself? You cannot take away the licence which he already has. We felt there was no practical way of implementing this in order to protect the board and the growers.

Mr. GRAY: Would the witnesses care to express any views in respect of Mr. Houlden's suggestion that the field warehousing approach used in the United States would be useful here?

Mr. BROWN: As we understand field warehousing in the United States, it is a form of bonded warehouse where the processor places his processed product in the warehouse and then produces a warehouse receipt to the bank for security for a loan. In Canada the loan is made under section 88 with the security given being the raw products in process. We feel that bonded warehousing would be much more restrictive and much more expensive than the present form; but it still brings no additional protection for the grower in the United States, because the security again is held entirely by the bank and not, as I believe some people have the impression, by the growers' raw products being held in bond.

Mr. GRAY: My third question is relative to the suggestion of Mr. Houlden that greater control could be given by the marketing boards over this problem.

Mr. BROWN: I have one obvious comment. So far as Ontario is concerned, there are two major processing crops that are not covered by marketing boards; that is, apples and potatoes. An approach to this problem through the marketing boards would not suffice to cover all the producers covered by our association. The other thing is that the present approach and the legislation under which our marketing boards operate would have to be changed to enable them to get into this field.

Mr. GRAY: Changed in what way?

Mr. BROWN: The prime responsibility of these boards is to arrange terms and conditions of sale. After that the particular transaction is still left within this framework to be negotiated between the processor and the grower himself.

Mr. GRAY: They have no prelicensing powers; they do not operate any prelicensing or preselling?

Mr. BROWN: No. In connection with the licensing, may I ask Mr. Fisher to answer that because our association is not directly involved.

Mr. P. A. FISHER (*Director, Ontario Tender Fruit Growers' Marketing Board*): Licensing of our processors is done by the current body, the Ontario marketing board, which is composed of a number of civil servants. They delegate certain powers to the growers' marketing boards, but they have retained the authority to license. They sometimes ask us for suggestions. We have been very grieved when they did not always accept our suggestions. We do not have the power to license.

Mr. GRAY: There is one other point arising out of my third question. Do the other provinces use marketing boards to the extent we do in Ontario?

Mr. BROWN: There is legislation in other provinces in respect of marketing boards, but they are not used as extensively in the processing field as in Ontario.

Mr. GRAY: So at the present time fewer crops are covered in other provinces than in Ontario?

Mr. BROWN: This is correct.

Mr. GELBER: From the brief I understood that suppliers are more or less captive suppliers, because they have to sell to one processor.

Mr. Brown: This would depend on the circumstances; in some instances this would be perfectly true. A producer who is in an area where only one processing plant is located is a captive producer. The other thing you must recognize is the fact that most of the crops are contracted. In the case of vegetable crops, a contract is signed between the producer and processor perhaps prior to the seeding or planting of the crop itself. A further ramification is that if you are selling to a processor who has a section 88 loan, in effect you have committed your crop to him and to the bank as security before you have sown seed or planted the crop.

Mr. Gelber: Then even if Dun and Bradstreet or the bank give you information that the producer is financially shaky, you would have no alternative but to ship to that processor because you are a captive supplier.

Mr. Brown: Under the terms of the contract that exists, or if you are a grower in an area with only one processor, that would be entirely true.

Mr. Gelber: Regardless of your contract, and even if the contract had a clause in it relating to financial worthiness of the processor, you would still be obliged to ship by reason of the fact that you did not have an alternative processor. Would this be correct?

Mr. Brown: This would be correct, yes.

Mr. Gelber: So, what happens then when a processor fails? What do the people who were supplying that processor do with their subsequent crops? They must have an alternative processor.

Mr. Brown: There are many different situations here. I would like, if I area in Ontario where a number of processors have ceased operation. He is in may, to ask Mr. Ruthven to answer this question because he comes from an a better position to give a more definite answer than I am.

Mr. E. R. Ruthven: (*Director, Ontario Vegetable Growers Marketing Board*): I would say that if the processor takes it into his head to do this the crop rots, that is all there is to it. There is no other protection, there is no other place you can go to to sell your crops.

Mr. Gelber: What happens to the people who are selling; they must have an alternative processor?

Mr. Ruthven: No, there was no other processor there the year before either. The case of Graham Foods Limited is an illustration.

Mr. Gelber: The people who were supplying Graham Foods Limited in the subsequent seasons must have found other processors.

Mr. Ruthven: No, the crop rotted.

Mr. Matthie: In the case of fruit such as peaches there is an alternative market which is the fresh market. It so happens that in fruit this was a relatively short year and the crops sold reasonably well. However, at a time of surplus it is very hard to sell it if it cannot be sold to the processor. He will have had enough from his regular growers.

Mr. Gelber: I was wondering whether this was not something of an overstatement. I would like another question answered.

Mr. Brown: Could I make a comment with regard to your previous question? As I indicated earlier, this situation would vary depending on the area where the grower was located. You asked what a man does in subsequent years if the processor with which he had connection fails and he is no longer in existence. He has two alternatives, one is to find another processor who is within an economical distance and try to get a contract with him, or else he simply gets out of the business of growing processing crops and he has to re-organize his whole farm venture in an attempt to get into some other area of agriculture.

Mr. GELBER: I have one more question I want to ask: to what extent could the industry help itself by having cooperative credit insurance on its sales? The number of failures mentioned here is not that large in terms of the size of the industry across Canada. I should imagine premiums would not be that high.

Mr. BROWN: Again I would like to refer this question to Mr. Matthie because this has been a matter with which his board has been concerned. They have looked into the matter of bonding and this whole field has been investigated by them.

Mr. MATTHIE: I do not think it is practical; I do not think our board could get itself into a position where we would guarantee the processors' accounts, which in effect would be what we would be doing. I know we investigated that part of it and the amount of premium you would pay to get blanket coverage would have no limit because you would not know ahead of time how much would be sold. I do not think it is possible to do that under our set-up. The other suggestion was that we would pool the returns but this is not protecting yourself, it is just sharing a loss.

Mr. GELBER: But it would not be a very large share because the total of loss mentioned in all your briefs for a period of years is small compared to the size of the industry.

Mr. MATTHIE: If you have a system where you are sharing the loss, if the grower knows a certain processor is shaky he is still going to put all he can in there and it will not matter to him because someone else will share the loss.

Mr. GELBER: A co-operative would have to O.K. the sale. That would be a way to examine contracts before they are made. It is a form of self-management in terms of credit.

Mr. MATTHIE: It would be a complete change from the system we are now using.

Mr. BROWN: There is one further comment I might make here. I understand for instance that if you take out export credit insurance, one of the conditions of taking that insurance out is that the receiver in a foreign country is not informed of the fact that you have this protection. In other words, there is some concern on our part that with this kind of insurance you speak of, if the processor knew this was in existence there would be a tendency for him to be less diligent and less careful in the management of his operations because of the overriding protection that was involved.

Mr. GELBER: Surely a central credit bureau would be in a better position to judge the credit worthiness of a processor than the supplier, therefore he could advise the supplier or he could refuse the credit insurance if he thought a particular processor was too shaky.

Mr. BROWN: But we are still bound to the problem discussed by the committee earlier of establishing in a valid way the financial position of the processor concerned.

Mr. GELBER: It is a matter of judgment.

Mr. OTTO: Mr. Chairman, we have heard from both Mr. Houlden and others about the marketing board assuming more responsibility. I wonder if one of the witnesses could very briefly tell us what the marketing board does. Does the marketing board set a price for a certain produce?

Mr. FISHER: No. We have to outline to the growers at the time we want to set up a board for any of our products exactly the powers that they are delegating to this board. We then have to have a vote and in that ballot are all these powers that we are asking them to vote upon.

Our board was set up three or four years ago and 87 or 88 per cent of our 3,000 growers voted yes for the powers they specified. However, setting the price was not one of them. The price was to be set by negotiation of three growers and three processors. If that failed, there were certain arbitration proceedings which were provided. However, normally these three processors and three growers set the price. But price setting, the terms and conditions of the sale and the grade and quality, as well as the time of payment and all of the type of packages to be used, the weight that could be deducted from empty packages and the multitude of details that had been the haggling points between the growers and the processors, are all under the authority of the board. They are all set. However, the actual price is not set, it is negotiated.

Mr. OTTO: When these three processors and three producers set a price, does this price then cover the whole area?

Mr. FISHER: It covers the province of Ontario except for any area that we exempt. If there are a few peaches grown in an outlying area and they are probably not going to go to a processor, we exempt that little area. However, they cover the commercial portion of the province.

Mr. OTTO: From the other briefs presented, and Mr. Houlden's in particular, I understand that every businessman should envisage a loss and cover himself against that possibility. Do you know whether this price, as it is set when these three producers and three processors finalize their price, covers a certain percentage of possible loss to the producer?

Mr. BROWN: I think I can answer that question in this way, that when the three growers and three processors sit down to negotiate this price, all of the competitive marketing situations in the market are taken into consideration. You must realize here that in all instances you are dealing with an agricultural crop the volume of which for any given acreage is dependent on weather conditions. Therefore, in essence you are setting an average price which has to be predicated on supply and demand situations not only here in Ontario but in other provinces in the case of some crops, and certainly on the competitive situation in the United States. So that to a very large extent you are powerless to build up any additional factor for loss. You are really negotiating an average price which has to be related to the open market situation.

Mr. OTTO: I have another question. In the experience of the application of this section 88 could any one of the witnesses tell me what percentage of the cases actually go into bankruptcy?

Mr. FISHER: I am an old man now. I came home from Guelph in the spring of 1911 and took over my father's fruit farm—100 acres of fruit. In the intervening time these cases where our growers got into trouble and did not get paid have been rather intermittent. In the hungry thirties there was quite a rash of them. We came to Ottawa a that time to ask for some type of relief. We did not have many cases until 1949 and 1950 when they started again. In 1962 we had this case with Graham Foods Limited but there were at least two more that were teetering on the margin of bankruptcy. They were not complying with all the regulations that our board had set up with regard to payments. It was just a question of whether or not they went into insolvency. One of them finally got his cheques pretty well cleared up but even the government did not see fit to give them a licence for the next year, their business was so precarious.

Not only those who got into trouble worried our board but also those who were teetering on the edge as well. The growers lost at that time well over $500,000. In the thirties we looked into all of the possibilities, the question of pooling, the question of bonding and, the question of co-operatives. We looked at it again in 1950 but we have not found the answer. We do not feel that bonding, which has been rejected by so many, is our answer. Take Graham

Foods Limited for example. For years and years they bought this quantity and in 1962 because they were in arrears and had not paid up their obligations of 1961, as a last straw they tried to get out of it by buying double the quantity. Of course, then they went broke. If we had bonded them, we would have bonded them for their normal purchases, but they gambled and bought double the quantity. Our bonds would not have been adequate. When a fellow gets into trouble he tries to get out, and we found, both in the thirties and in the fifties that there is no ready answer in bonding. It is very easy for those who are in favour of this bill to throw it back and say: bond yourselves; join or form co-operatives; or move into some of these other fields, but for 35 years growers have been trying to find an answer and we have not found one as yet. We think that something must be put in this bill so that credit is safeguarded, providing us with protection.

Mr. OTTO: Possibly I have not stated my question clearly. In many businesses insolvency occurs as a result of the secured creditor taking over the assets and there is a distribution of a part of the remainder of the assets, but the business does not go into bankruptcy because there is no one to put it into bankruptcy and no assets left. In this sphere of section 88 what percentage of failures actually wind up in a formal bankruptcy? What percentage of the producers take losses as a result of the seizure of the major portion of the assets so that there are not enough left to place the business into bankruptcy?

Mr. FISHER: I do not think I understand your question.

Mr. OTTO: I am trying to find out the percentage of failures which go into formal bankruptcy as compared to failures which go into hidden bankruptcy.

Mr. FISHER: To my knowledge and recollection there is not one instance where one of this type of failures has gone into formal bankruptcy. Normally the bank proceeds under other authority to take over and dispose of these assets, paying themselves.

Mr. OTTO: I see.

Mr. FISHER: Certainly that is what happened in respect of Graham Foods and the many other recent cases. I cannot remember exactly what happened back in the 1930's but I think the same procedure was followed and formal bankruptcy was not declared.

Mr. OTTO: On page 2 of the brief there appears the following statement:

> Lack of time and facilities hampers his ability to keep abreast of the credit position of his processor.

I wonder whether one of the witnesses might elaborate on that statement, explaining in plan language what actually happens to the producer, and why he does not use the business acumen that Mr. Houlden says he should have.

Mr. BROWN: I think the point we are trying to establish here, Mr. Otto, is the fact that when the grower has a family type operation, and in many instances this is the case, where he personally is responsible for supervising and harvesting his crop, is in the process of harvesting when his entire energies and time are involved in organizing a labour crew, working against the weather. he has little time left in which to maintain a waiting-watch, if you like, on the credit position of his processor.

In addition to that point, you mentioned facilities. We were thinking of the fact that a large industry often finds it necessary to hire people skilled and qualified in the area of credit management to look after their credit interests. The small family type grower does not have either access or the ability to achieve this sort of service for himself.

Mr. MATTHIE: To add to what Dr. Brown has said, in certain areas it is sometimes difficult to sell the fruit crop and a producer cannot say to the processor that he is concerned as to that processor's finances or ask him whether

he can pay for the fruit, because the processor will tell that producer if he does not wish to sell to him he can sell his crop somewhere else. The producer might create quite a bit of bad feeling by following this course even if he had the time to do so.

Mr. OTTO: The point I was trying to outline Mr. Chairman, is the fact that the evidence we have heard so far would indicate that often several months elapse between the contract and the actual delivery of the goods. I understand that in respect of normal businesses the time lapse in this regard is very short, from perhaps ten to 30 days. Therefore, the businessman who provides the labels for cans can more or less judge his own risk, but where there is such a long time lapse, is there no facility by which the producer can judge the credit worthiness of his processor?

Mr. MATTHIE: I do not think there is any such facility.

Mr. RUTHVEN: There is no such facility of which I am aware.

Mr. MATTHIE: One can ask the bank for a report, but I have not as yet seen a bad bank report; they are always good. There is no practical way the producer can keep up to date in respect of the credit position. Financial statements are always weeks or months old when received by the producers and the situation can change materially during that time lapse.

Mr. OTTO: On page 4 in the last paragraph you state:

> Regarding the financial responsibility of the processor the two main sources of information, Dun and Bradstreet of Canada Limited reports and bank reports, have proved totally inadequate.

I believe you have already answered my question in regard to banks, but in connection with Dun and Bradstreet could you just explain the statement that it has proved totally inadequate? Do you make this statement in regard to the producers only?

Mr. MATTHIE: We have received some Dun and Bradstreet reports and found out what they do say. If a company does not choose to disclose its financial operation and financial statement to Dun and Bradstreet there is no way they can force the company to divulge that information and that company must talk to people unofficially in order to find out the position. The information as a result is often very sketchy and sometimes very out of date.

Occasionally a processor who is in good shape will send his financial statement to Dun and Bradstreet, but otherwise their reports are very sketchy and the producer is no further ahead. All the producer can do is find out whether the processor is using section 88, or what judgments or assignments have been made. The producer can only judge from past occurrences and the situation may well have changed.

Mr. MCLEAN (*Charlotte*): Mr. Chairman, under what marketing board would pears, tomatoes, peaches and sweet potatoes be covered?

Mr. MATTHIE: Peaches, pears, plums and cherries are covered under the tender fruit growers' marketing board.

Mr. MCLEAN (*Charlotte*): Under these contracts are fruits delivered all at once, within a week, ten days, or how are they delivered?

Mr. MATTHIE: Peaches may be delivered over a six week period, and tomatoes may be delivered over a longer period than that.

Mr. MCLEAN (*Charlotte*): Perhaps there could be a clause written into the contract stating that payments must be made within five days of delivery, then the onus would be on the bank under section 88, and the bank would have to advance money to the processor to pay for the fruit.

Mr. MATTHIE: That is a possibility. As growers we have always felt that payments should be more frequent, but our processor friends say that this is

impossible because they are busy and do not have time to make these daily payments. They state that this would provide an added burden. Such a procedure has never been followed. Most of our growers deliver during a period of one month to six weeks and sometimes longer.

Mr. McLEAN (*Charlotte*): In years gone by we have faced this position but have made payments every week, and upon the delivery of the raw material the bank became responsible under section 88. Why are the label, canning and sugar people not in the same position? The banks could advance the money to the processor and the processor could make payments to the producers within ten days of delivery. Why cannot this procedure be followed?

Mr. MATTHIE: We have been told this cannot be done because of this lack of facilities. It has never been done in that way.

Mr. McLEAN (*Charlotte*): Can the marketing boards insist that these contracts be drawn in such a way that payments must be made within ten or five days of delivery.

Mr. MATTHIE: It is legally possible to do that, yes, but we do not feel that it is practical.

Mr. McLEAN (*Charlotte*): If such a practice is practical in respect of one line of goods I do not see why it should not be practical in respect of another line.

Mr. MATTHIE: The largest part of the operation to which you have referred would take place over a 52 week period and perhaps the offices and facilities of the processor are set up for that period of time.

Mr. McLEAN (*Charlotte*): I have made reference to the fish business which often is carried out over a period of one month, six weeks, eight weeks and even ten weeks, but payments must be made every week to the fishermen. The bank is made responsible in this regard. This situation used to exist in respect of that industry, but we have since grown out of this position and pay the men each week. There has never been any question of a man supplying the raw material and not being paid. I feel that the banks under section 88 receiving the finished product should supply the money. The grower works all season and produces a good crop. Surely to goodness he should be paid through the facilities of a chartered bank or the Industrial Development Bank when he delivers that crop.

Mr. BROWN: Mr. Chairman, I should like to make one further general comment in addition to what Mr. Matthie has said.

One must appreciate the historical background. I think it is a fair statement that prior to the advent of marketing boards very often the grower had to wait for literally months for payments. In some instances the product would be delivered in the late summer but the producer would not be paid until late winter. This was the situation which developed in the industry. The marketing boards have been rather diligent in their efforts to correct this situation and have advanced these payment dates very considerably during the period in which they have been in operation.

I think Mr. Fisher will confirm my statement when I say there is still a major bone of contention between the grower negotiators and the processor negotiators as to the closing date for payment. This situation has been greatly improved during the years the marketing boards have been in existence, but we still face the situation where there is a period of from 30 days to six weeks between the time of delivery and payment.

Mr. McLEAN (*Charlotte*): Surely there are some processors that pay weekly?

Mr. FISHER: No.

Mr. McLEAN (*Charlotte*): Some of the larger companies must pay weekly?

Mr. FISHER: No.

Mr. MATTHIE: Most of the processors will pay on approximately September 15, and some will pay 50 per cent after delivery.

Mr. McLEAN (*Charlotte*): It seems you have a horse and buggy situation where the growers are financing the processor. This situation has been in existence for many years. I think if the industry was straightened out there would be no need for this protection.

Mr. FISHER: You are making reference to a very fundamental question, Dr. McLean, and you are perfectly right in your statement.

There are some 30 different processors, who process our fruit, with which our board deals and many of them are relatively small. If we put many of them out of business it is inevitable that the bigger ones will ultimately come back and take over this business, but there would be a time lag of a year or two while the larger processors provided the necessary facilities. The growers might well have to deliver their produce over longer distances. This change would inevitably solve the problem and a given quantity of fruit would be processed. However, if we put 15 or 20 of the smaller companies out of business next year one or two years will elapse before the change is effected and there will exist great difficulties.

The growers have financed these small processors and, as the evidence submitted by the government representatives who investigated this situation indicated, some of the processors had even less than 18 per cent of their own capital in their businesses. The growers definitely finance these processors.

This system may be completely wrong, but it is the system that has been in existence in Ontario during my lifetime. The situation is being corrected slowly. The larger companies are becoming larger and the smaller companies are becoming smaller. If we adopt your suggestion we might well effect this change more quickly. Whether that would be good or bad I am not sure.

Many of our growers feel that if we close a number of these small processors next year the processors will not only complain to our marketing boards, they will complain to the minister of agriculture. I am afraid the minister of agriculture will be quite worried about this situation.

Mr. McLEAN (*Charlotte*): The banks can be protected under section 88 and they should supply the money to the processor so the producer can be paid.

Mr. BROWN: Dr. McLean, I think there is another aspect here that should be put on record. Years ago when a processor accepted a crop it was common practice for large wholesale organizations and large retail organizations to step in at pack time and buy very substantial quantities, advancing a reasonable amount of money to these processors. This practice has gradually disappeared to the point where the processor today has become his own wholesaler. The retail organizations now step in and buy 500 cases during the pack week and 500 cases each week thereafter. In that period we have advanced grower payments and have eliminated some of the grower credit that had been in existence in the past. We have had this countervailing influence when greater stresses have been placed on the processor by the buying practices of his customers. We admit freely that the processor has a credit problem owing to these countervailing factors which have been in existence over the last 15 or 20 years.

The VICE CHAIRMAN: Dr. McLean, perhaps you might raise this interesting point with the bankers association when they appear before us so that we can get their comments.

Mr. McLEAN (*Charlotte*): I was in the banking field for approximately eight years and know something of their point of view.

The VICE CHAIRMAN: Have you any other questions, Dr. McLean?

Mr. McLEAN (*Charlotte*): No, Mr. Chairman.

Mr. FISHER: Mr. Chairman, I hope you will raise this question at the time the processors appear before you.

The VICE CHAIRMAN: Dr. McLean, perhaps you would keep that suggestion in mind.

Mr. NUGENT: Mr. Chairman, the witnesses have stated they have been looking for an answer to this problem for a long time. I do not suppose any of the witnesses here today will suggest that Bill C-5 provides the answer?

Mr. BROWN: We have looked at this matter very seriously since Bill C-5 was first made public. Our investigation has led us to believe that this is the best answer that has been presented.

Earlier in your remarks, sir, you made reference to the fact that some significance should be placed on the suggestion that we support the intent of the bill. I think this is attributable to the fact that at the time we were preparing this brief we were concerned about one point in the bill, and that is the vesting in the courts of the assets.

There was the feeling on the part of some of our member bodies that when dealing with very perishable commodities, the use of the courts would be too unwieldy in selling the produce and realizing full value. Since that time, having referred the problem to some of our legal advisers, we have come to the conclusion that this is a feasible approach, and in point of fact there are mechanics within the courts to permit rapid handling so that there is not a problem.

Mr. NUGENT: You are not suggesting that you agree with the bill rather than just its intent? Is that your evidence at this stage?

Mr. BROWN: We are not legal people, but we see in the provisions of this bill an answer to our problem.

Mr. NUGENT: You are not concerned with the other problems resulting from the adoption of this bill as you have outlined at the bottom of page 5 and the top of page 6 of your brief? You state as follows:

> It is realized that people far more qualified than ourselves in the fields of finance and credit are seriously questioning the wisdom of implementing this bill from the standpoint of its implications to our economy as a whole. We are neither qualified nor capable of debating the merits of the bill from this standpoint.

Mr. Chairman, the witnesses have very clearly put this caveat in their brief. You say this bill protects you, but you are being very careful to state to this committee that you realize it may cause very serious complications. Are you now suggesting that you are not interested in those complications?

Mr. BROWN: We are not suggesting that the adoption of this bill would cause serious complications, we are merely noting the fact that other people have said this.

Our responsibility is to the organizations which we represent, and we are here today to speak on their behalf. We are prepared to present ourselves to this committee as expert witnesses in the particular fields we are charged to represent. This is the point which we wish to put across at this time.

Mr. NUGENT: Mr. Chairman, surely this witness is not telling me that the complications to our economy as a whole are none of his business? How the adoption of this bill affects your industry and how it affects the economy of the nation as a whole must all be part of the balance of questions and answers you must face.

Mr. BROWN: Yes, and we have indicated that we recognize that the adoption of this bill will lead to tighter scrutiny of credit and may affect some of

the less worthy credit processors of our industry, but we are prepared to accept the fact that this will happen.

Mr. NUGENT: The fact that this bill will wipe out secured creditors and give you precedence over secured creditors would be good, is that your idea?

Mr. BROWN: We feel that because of the position in which growers find themselves this is the only way that the inequity which seems to have been generally accepted by the committee and by those people who have appeared before this committee can be corrected.

Mr. NUGENT: There seems to be the tendency of people to refer to the position in which the grower finds himself, and that no matter what the position of the processor, the grower has to deliver his product to that processor. We have heard the suggestion made, that even though the grower knows he will not be paid, he must deliver to the processor. Are you suggesting that this situation has developed to that point? Do the growers have any influence in regard to the contracts made with the processors?

Mr. BROWN: I am not clear on the intent of your question.

Mr. NUGENT: The delivery of your products to the producer is handled by the contract made by your marketing boards, is that correct?

Mr. BROWN: That is correct.

Mr. NUGENT: Surely the grower has some influence on the marketing boards so that the marketing boards will provide some protection in these contracts to the producer?

Mr. BROWN: In respect of those crops handled by our own marketing boards, that is correct.

Mr. NUGENT: Is the witness suggesting that the producer must deliver his crop to a processor whether the processor can pay for that crop or not?

Mr. BROWN: In connection with the detailed aspects of these contracts, I will have to refer your question to one of our marketing board witnesses.

Mr. MATTHIE: Under our regulations we say, for the protection of the grower—which, of course, is in the field of tender fruit—there must be a contract between the processor and the grower. Under the Bank Act, I believe as soon as the contract is written the processor may go to the bank and say that he has purchased so much goods and needs so much money to process them. He in effect gives the grower's product as security to the loan. In this case the grower having signed the contract would have to fill the contract even though later on he knew that the processor might not be able to pay him.

Mr. NUGENT: When he signed the contract he has a condition in that contract to the effect that the grower has to pay him so much. That is something which you people have within your power to negotiate each year.

Mr. MATTHIE: We do negotiate prices; we set the terms of the contract and its implications.

Mr. NUGENT: Including the price and the time of payment.

Mr. MATTHIE: That is in a separate set of regulations and is not under the contract itself; but it does apply. Even though a contract was in existence and did specify a certain payment date, there is always a few days between delivery and payment, and anything can happen in the interval. In the case of Graham Food Products Limited, they missed the peach payment date of November 15, and declared the assignment on November 27. The Keiffer pear payment was due on December 1. You can see in the period when this took place very much happened.

Mr. NUGENT: There is some element of this in very business. Is that correct?

Mr. MATTHIE: Yes.

Mr. NUGENT: I have roughly calculated the amounts you have set out in your brief. You set these out from 1949 to 1961. I would gather that the Graham Food Products are in addition to these, and it would come to less than $500,000 in that 12-year period. Is that correct?

Mr. MATTHIE: This is just for the sphere of operation of the tender fruit growers' marketing board. This has happened in respect of other products. We are just speaking of a small section of the industry.

Mr. NUGENT: This brief is on behalf of the six boards whose representatives appear before us?

Mr. MATTHIE: Yes.

Mr. NUGENT: Do you have any idea of the total amount of sales in that period by all these people?

Mr. MATTHIE: The Ontario tender fruit growers' marketing board, for which I work, has annual sales of between $4 and $6 million. I do not know what the total would be.

Mr. BROWN: The sales of fruit and vegetable crops in Ontario to processors currently run in the order, as we have indicated in the brief, of about $12 million annually in respect of fruit, and $25 million in respect of vegetables annually. This would be an average figure reported by the Ontario department of agriculture statistics.

Mr. NUGENT: My rapid calculation would indicate that the losses you have listed amount to one-tenth of one per cent of the annual sale. Is this the problem you have now brought before us which you say is distressing to people; is this the insignificant reason why we should perhaps disregard the serious effect on the rest of the country?

Mr. MATTHIE: If this is insignificant to us, it would also be insignificant to the banks.

Mr. NUGENT: I would like to get the amount of the loss to these people in proportion to the sales over that period you have mentioned. Is the figure I have mentioned not the approximate percentage?

Mr. BROWN: You are now speaking of averages. Our case is built around the personal losses which individual growers have incurred. We feel that would be applicable because of the vulnerable position the grower is in. I believe that the Federation of Agriculture made reference to our friend, Mr. Tingen. This is the sort of direct personal loss which can be compared to the present situation. This man probably is financially crippled now as a result of the loss he sustained last year. It is literally the work of a lifetime wiped out.

Mr. NUGENT: I just wanted to make sure that we get this in perspective. I am sure all of us have a great deal of sympathy for a small man who has to take a loss on his own. Bearing in mind the many others involved in the industry as well as the producers and the country as a whole, is not the problem how this terrible burden, which occasionally falls on one small man, can best be spread out and absorbed by all of us. Is that not the problem we are facing?

Mr. BROWN: Yes.

Mr. NUGENT: That is why I thought I would bring up the question of the total sales. Certainly in respect of the principle of insurance, if, as I have indicated the total loss is only one per cent, then certainly it is well within the financial possibility that your associations could set up a fund of one half of one per cent, or one per cent of sales which would cover this without disturbing the economy of most of the country and quickly build an insurance pool which would take care of most of this sort of thing. There is no need for complicated legislation and unnecessary restrictive rules which would unnecessarily disturb

consumer credit and all the rest of it. Am I overlooking something? Is there some reason why a simple levy like that would not take care of it?

Mr. BROWN: It becomes a question of the approach you use. The approach you have suggested may be possible. We already have indicated, however, the fact that we believe that if this protection is known to the processor and the people granting him credit, there would be even less scrutiny of this credit than there is now.

The point you have made concerning the small percentage of loss involved here leads us to believe that the provisions of Bill C-5 will not have the ramifications suggested by other witnesses; certainly not in our industry, and some slight additional scrutiny of the credit on the part of the banks in particular would in itself alleviate the problem, I am told by processors I have spoken to that the credit granted under section 88 is not closely supervised by the banks. I am told, for instance, by one processor that he has not had a check of his inventory by a bank in the last two years.

Mr. NUGENT: Surely, although the witness says that since the percentage is so small it would not have the repercussions suggested, the repercussions of the bill would be on all credit granted; not on that insignificant amount of losses, but on the hundreds of millions of dollars of credit given by banks and other people. No one wants to take a loss. The insurance fund set up could pay a percentage of the loss—half or three-quarters—and this in itself would adequately guard against the lax attitude which you mentioned, would it not?

Mr. BROWN: When you speak in terms of affecting credit, I think we have to realize what Bill C-5 is asking. There is for example $100,000 worth of processed fruit and vegetables currently in the hands of a processor which has been given as security, and the first thing we have to recognize is that Bill C-5 would only affect—so far as the producer is concerned—roughly 25 per cent of that which would be grown; it would only represent the unpaid portion of that. Since the processor is making some payments as he goes along, it is going to be in the order of something considerably less than 25 per cent; so that even in an individual case we are talking about perhaps 10 or 15 per cent. When you prorate this against the whole industry, it becomes a very small amount. It is for this reason we cannot see that the total credit would justifiably be reduced by the provisions of Bill C-5.

Mr. NUGENT: Obviously the witness has his tongue in his cheek because at the time that securities are taken for long term loans, and so on—no matter whether given by banks or anyone else—the cover of inventory as compared to fixed assets, accounts payable, and so on, may vary very widely, even wildly during the year. It is at the time of giving the credit that these things are taken into account, and if one factor, such as the inventory, may be totally exempt from this security provision—and this may vary anywhere from 10 per cent to 60 per cent—you cannot be serious in suggesting this will not seriously hamper any consideration given credit.

The VICE CHAIRMAN: Mr. Nugent, I do not wish to attempt to limit the committee in any way. However, I think you have perhaps gone beyond the scope of the testimony of these witnesses. I believe they are here to indicate the ramifications to their industry. Subject to correction, I feel that perhaps the broader implications of the bill as it relates to credit and so on might be pursued when the bankers are before us and perhaps the processors. I feel you are going a little beyond the scope of the bill which we are considering here.

Mr. NUGENT: I agree, and I will drop it.

Mr. CÔTÉ (*Chicoutimi*):

(*Interpretation*): The persons representing the majority of the associations of primary producers in Ontario have shown us certain important figures involving some bankruptcies, notably the Graham Food Products Limited, the Niagara Canning Company, and other bankruptcies which occurred in Ontario. These figures indicate that the primary producers would have lost large amounts. I wonder if the witnesses could give us the approximate amount of the losses of the primary producers in relation to the losses of the suppliers.

(*Text*)

Mr. MATTHIE: This would be very difficult to answer. I think the suppliers' losses would be greatly in excess of what the growers' loss is as a total. As we have stated before, the producers' equity is on an average of 25 per cent, and the can companies, the sugar companies, and other people, certainly add a great deal more to that.

Mr. CÔTÉ (*Chicoutimi*):

(*Interpretation*): Could you tell us when these bankruptcies occur whether or not the banks have considerable losses? Do these losses represent a considerable amount relative to that of the producers?

(*Text*)

Mr. MATTHIE: Well, if the growers cannot get any money, we assume there are not enough assets to cover the liabilities. In certain of these cases we have mentioned, the banks did lose; but there is the one case on record where the banks were paid in full and only a small amount left for the growers. I am not familiar with all these things that happened before I came to the board, and it is hard for me to give you a definite answer on that.

Mr. CÔTÉ (*Chicoutimi*):

(*Interpretation*): Therefore in certain cases the banks' losses were practically nil, but the producer himself would have losses which would represent the result of his work for a whole year. Is this the case?

(*Text*)

Mr. BROWN: I think this is precisely the case. As Mr. Matthie indicated, we do not have with us the figures to enable us to supply the information you ask. Our records in the association indicate the losses our growers have had in a number of cases. We do not have a record of the losses sustained by the other creditors or by the banks. It is my understanding that only in the Graham Food Products case has there been a substantial loss by the bank. In the other cases the banks' losses were either non-existent or negligible.

Mr. CÔTÉ (*Chicoutimi*):

(*Interpretation*): You recognize, as I do, that it is probably easier to create bank credit, as has already been explained by Mr. Graham Towers, the ex governor of the Bank of Canada, than to bring out an apple from the soil. To bring out an apple from the soil represents more work than to create bank credit.

(*Text*)

Mr. BROWN: I am not sure I am in a position to answer that question. I know the amount of effort involved in growing the apple. I am not completely familiar with the amount of effort involved in respect of credit.

Mr. MATTHIE: Sometimes when you go to a bank you know how difficult it is to create the credit.

Mr. CÔTÉ (*Chicoutimi*):

(*Interpretation*): Is it possible that the banks are afraid of Bill C-5 which would protect the producers because they in fact have a privilege of giving

credit? Great economists have recognized that. I presume you will recognize that in a case like this it is the primary producers who must be protected first of all.

(*Text*)

Mr. WHELAN: I only have a couple of questions to ask. Did you every try to find out, by seeking outside help, if a processor was in a good financial position, and what procedure did you follow and what answers did you receive?

Mr. MATTHIE: The only method under our present system is to ask for a bank credit report. Other than this we would only have word of mouth or rumour which is just as effective in determining the credit worthiness of the processor, because the bank credit report has definite limitations. It is not possible to get anything that is 100 per cent foolproof. You always have an element of risk. For instance, the financial statement made up quarterly or even annually is greatly out of date by the time you get it.

Mr. WHELAN: There is one other question I would like to ask. Mr. McLean brought up this discussion as he is familiar with the processing companies. They operate only in short periods of time, two or three months a year. Maybe some of the secretaries on the board may correct me but this would involve an extra cost for the processing companies. As far as I am concerned I would like to say that Bill C-5 has not put any of these companies out of business, as some people intimated. I think it would cost these companies exorbitant amounts to pay a staff to do all this figuring, and it would have to have very good staff, not just part time students. They would have to be familiar with the whole operation of the company. Is that not right?

Mr. MATTHIE: This is one of the main objections that the processors had in discussing the question, the extra work that would be involved in making extra financial statements. The amount of bond itself, if it were granted, would cost roughly $10 per $1000. A company doing a million dollars worth of business would have a bond expense of an extra $10,000.

Mr. WHELAN: Can you explain how this works? How does the pay-off on these bonds work; is it paid immediately?

Mr. MATTHIE: It can be reduced as the indebtedness is paid, and the cost would be below that.

Mr. WHELAN: It was intimated here that all our crops handled in Ontario and in the whole of Canada are contracted. I would think this is very far from fact. A lot of the crops processed in Ontario and in the rest of Canada have no written contract. Is that correct?

Mr. BROWN: This is correct. The marketing board is not all-embracing, and where there are no marketing boards there may be a contract, but the contract is not supervised by any outside body; it is simply a contract between the individual grower and his processing company. In this instance the grower is in a very disadvantageous position in negotiating the contract to his interest as far as the terms of payment are concerned.

Mr. WHELAN: I have another point to make on bank losses. It has been implied here that one-tenth of one per cent, or whatever it would be, is an insignificant figure and we should not pay attention to it because the loss is so small to this industry. Would it not be your opinion that one-hundredth of one per cent of the loss to the banks is less significant to the bank in this operation?

Mr. BROWN: This is precisely the point we are attempting to make, that the burden for these losses falls with undue weight on individual growers. The grower has little chance to spread his loss; whereas the other people have both the opportunity to build in a factor for loss and to spread the risk.

The CHAIRMAN: I would like to say that we have to finish before eleven o'clock.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Dr. Brown, on page 5 of your brief you make mention of the possibility of an amendment to the Bank Act. I was wondering if you could tell us whether your organization made any investigation in this regard? Is the implied proposal here much the same as the one that was brought before the committee about 10 years ago to cope with the same problem?

Mr. BROWN: You are referring to this third method of protecting the grower? This has been discussed internally among our own organizations. The feeling behind this is that if this credit is extended for the purposes of paying the grower or for the purposes of paying other people, that perhaps the loan itself could be made conditional to these purposes being fulfilled. We feel that there are instances elsewhere in the financial field where if you borrow money for a specific purpose the bank does see to it that the money is used for this purpose. The difficulty that we have seen here is that there is no way in which the grower groups can unilaterally impose this situation. We merely included this in our brief to indicate that we have been continually concerned with this problem and that we have been searching for an answer. This is one of the possible answers that has been under consideration by our groups.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): If it did prove possible, would you think this would be preferable to Bill C-5, or do you still think Bill C-5 is a better method of doing it?

Mr. BROWN: I am not sure that we have given this whole matter enough thought to make it possible for me to answer this question specifically here today. In a general way I would have to say that any method that redresses our grievances is satisfactory to us, but we have not considered this in detail and I do not think I am in a position to give you an answer at the moment.

Mr. FISHER: May I add a comment to that? It is a very fundamental question. Our bankers, as well as some other people, have said "Why don't you go and bond yourself" or "Why don't you make a better investigation of the security of these people you deal with". Mr. Nugent asks, why do we not set up a fund to protect ourselves, and several other suggestions have been made, that we have been negligent in not looking into them and using them instead of coming down here to ask that Bill C-5 be made the means of correcting this problem. The question that has been brought up by Mr. Cameron has been discussed by us on many occasions. Now, we do not know exactly the terms of reference of this committee. There is a problem here and this is a suggested means of correcting it. Whether this committee can make alternative suggestions as to means of correcting it in the particular bill that is in front of us or not I do not know. I hope they can.

If Bill C-5 is not complete and adequate, I hope you can amend it to make it so. However, we have looked into all of these things and I am very much interested in what Dr. McLean said. I sit on one of these boards, and I have sat on it for many years. This matter has been before us periodically for at least 20 years. We have stepped up the date of payment since we became boards, but we have not stepped it up to a weekly payment. I am going to be very interested when you ask the processors, when they are here a week from now, what they think of that because it might be that that is part of our answer. There is no doubt that if this money that is lent to process a seasonal crop, whether it is fish or logs or fruit, were used to pay the processor, there would be no problem. It is only when it is not so used that there is a problem.

Now, we, like the others, have suggested other means if this is not adequate. We have been told: "Go home and bond yourself or insure yourself". It is very

easy to use those words and to tell us to go home and get 3,000 growers organized to do this. We just cannot do it. However, you brought up a question that we have discussed many times. We have a lot of faith that that might be part of the answer.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I just wanted to find out how much investigation has gone into this.

Mr. WHELAN: I wanted to make one comment in reference to what was said at the start of the meeting. It has been intimated that Bill C-5 did not have a chance to pass this committee to become law. I would like to state at this time that I have done a lot of research and have had financial and legal advice on this. I have evidence to prove that it will not contaminate or eliminate credit and that it can be made law without infringing on provincial rights.

The CHAIRMAN: We will now adjourn to November 22nd.

APPENDIX A

LIST OF GROWER AND DEALER CREDITORS OF GRAHAM FOOD PRODUCTS LTD.

Name	Amount Owing	Product
British Fruit Co.	$ 2,275.50	Keiffer Pears
Fred Culp & Son	2,305.38	Keiffer Pears
N. H. Culp & Son	2,716.47	Keiffer Pears
A. W. Smith	4,674.21	Keiffer Pears
F. Winoski	249.75	Keiffer Pears
J. Archer	2,111.41	Tomatoes
E. Majewski	511.57	Tomatoes
J. Mecking	1,856.91	Tomatoes
E. Ruthven & M. Simpson	455.09	Tomatoes
S. Williams	174.60	Tomatoes
Fred Culp & Son	716.92	Bartlett Pears
Lawrence Austin	806.61	Keiffer Pears
John Benedict	202.80	Keiffer Pears
Stan Benedict	95.60	Keiffer Pears
Joe Boley	265.15	Keiffer Pears
Broadwood Orchards	2,279.74	Keiffer Pears
Ross Bruner	462.45	Keiffer Pears
Keith Buchanan	45.12	Keiffer Pears
R. S. Cartwright	450.00	Keiffer Pears
Armand DeClerk	965.12	Keiffer Pears
Maurice & Hector Delanghe	473.28	Keiffer Pears
C. A. Dewhirst	307.80	Keiffer Pears
Andy Ellenberger	43.40	Keiffer Pears
Fox & Neal	1,962.26	Keiffer Pears
Abe Heinricks	131.17	Keiffer Pears
Archie Ransom	32.88	Keiffer Pears
Gladstone Smith & Son	747.64	Keiffer Pears
Thompson Bros.	2,303.80	Keiffer Pears
Gerry Veens	4,212.15	Keiffer Pears
Cyril Vervait	1,087.66	Keiffer Pears
A. G. Wigle	10.27	Keiffer Pears
Charles Butler	934.13	Peaches
R. S. Cartwright	348.82	Peaches
John Dubas	1,922.03	Peaches
Eastman Fruit Farm	608.71	Peaches
Ellenberger Bros.	709.07	Peaches
Harrow Potato Growers Co-op ..	34.53	Peaches
Frank Huffman	619.43	Peaches
Grace Mallard	4,816.39	Peaches
James H. Murray	935.11	Peaches
McGuigan's Orchards	1,063.66	Peaches
J. D. Tingen	13,616.84	Peaches

LIST OF GROWER AND DEALER CREDITORS OF GRAHAM FOOD PRODUCTS LTD. (*Continued*)

Name	Amount Owing	Product
Peter Welackey	2,472.29	Peaches
Hartley Wright	2,801.50	Peaches
Grimsby Fruit Co-op	2,592.40	Keiffer Pears
Jordan Fruit & Supply	220.00	Keiffer Pears
Nort Strong	13,240.98	Keiffer Pears
Jordan Fruit & Supply	734.81	Peaches
Nort Strong	3,814.04	Peaches
Vineland Growers Co-op	4,069.94	Peaches
Duer Produce Farms Inc.	2,432.40	Sweet Potatoes
Grimsby Fruit Co-op	3,715.51	Bartlett Pears
Jordan Fruit & Supply	588.40	Bartlett Pears
Southward Fruit	648.30	Bartlett Pears
Nort Strong	3,309.59	Bartlett Pears
Vineland Growers Co-op	2,662.24	Bartlett Pears
Nort Strong	4,267.32	Peaches
Vineland Growers Co-op	2,395.74	Peaches

HOUSE OF COMMONS

First session—Twenty-sixth Parliament

1963

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: EDMUND ASSELIN, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 7

FRIDAY, NOVEMBER 22, 1963

FRIDAY, NOVEMBER 29, 1963

Respecting

Bill C-5, An Act to amend the Bankruptcy Act
(Primary Products under Processing)

WITNESS

Dr. P. M. Ollivier, Q.C., Parliamentary Counsel.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1963

29649-1—1

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: Edmund Asselin, Esq.

Vice-Chairman: Maurice J. Moreau, Esq.

and Messrs.

Addison,
Aiken,
Armstrong,
Asselin (*Richmond-Wolfe*),
Basford,
Bell,
Boulanger,
Cameron (*Nanaimo-Cowichan-The Islands*)
Chaplin,
Chrétien,
Côté (*Chicoutimi*),
Douglas,
Flemming (*Victoria-Carleton*),
Gelber,
Grafftey,
Gray,
Grégoire,
Habel,
Hahn,
Hamilton,
Irvine,
Jewett (Miss),
Kelly,
Kindt,
Klein,
Lloyd,
Macaluso,
McLean (*Charlotte*),
Monteith,
More,
Morison,
Nesbitt,
Nowlan,
Nugent,
Olson,
Otto,
Pascoe,
Pilon,
Ryan,
Rynard,
Sauvé,
Scott,
Skoreyko,
Tardif,
Thomas,
Thompson,
Vincent,
Whelan—50.

Dorothy F. Ballantine,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

FRIDAY, November 22, 1963.
(15)

The Standing Committee on Banking and Commerce met at 9.10 a.m. this day. In the absence of the Chairman, the Vice-Chairman, Mr. M. J. Moreau, presided.

Members present: Messrs. Aiken, Bell, Flemming (*Victoria-Carleton*), Gelber, Kindt, Moreau, More, Nugent, Rynard, Skoreyko, Vincent, Whelan—(12).

In attendance: Mr. S. C. Barry, Deputy Minister of Agriculture and Mr. L. C. Rayner, Economics Division, Department of Agriculture.

The Committee, in accordance with its orders of the day, first dealt with three private bills, in respect of which verbatim evidence was not recorded.

The Committee then resumed consideration of Bill C-5, An Act to amend the Bankruptcy Act (Primary Products under Processing).

Mr. Nugent moved, seconded by Mr. Skoreyko, that the Chairman do now leave the Chair. He stated that this motion is not debatable and has the effect of killing the Bill.

The Vice-Chairman thereupon put the motion, which was resolved in the affirmative on the following division: Yeas, 8; Nays, 2.

The Committee thereupon adjourned to the call of the Chair.

FRIDAY, November 29, 1963.
(16)

The Standing Committee on Banking and Commerce met at 9.10 a.m. this day. The Chairman, Mr. Asselin (*Notre-Dame-de-Grâce*), presided.

Members present: Messrs. Armstrong, Aiken, Asselin (*Notre-Dame-de-Grâce*), Asselin (*Richmond-Wolfe*), Basford, Boulanger, Cameron (*Nanaimo-Cowichan-The Islands*), Côté (*Chicoutimi*), Flemming (*Victoria-Carleton*), Gelber, Gray, Habel, Irvine, Jewett (Miss), Klein, McLean (*Charlotte*), Moreau, More, Morison, Nugent, Olson, Pascoe, Ryan, Scott, Tardif, Thomas, Vincent, Whelan—(28).

In attendance: Dr. P. M. Ollivier, Parliamentary Counsel.

The Chairman stated that the Sub-Committee on Agenda and Procedure met on Tuesday, November 26th, at the call of the Chair, in order to discuss the course to be followed as a result of the resolution passed at the Committee's meeting on Friday, November 22, that "the Chairman do now leave the Chair."

While the Chairman was reading the report of the Sub-Committee, Mr. Nugent rose on a point of order, and stated that he did not feel that it was necessary to read the full report of the sub-committee, giving the citations which were quoted at that meeting, as the same citations would undoubtedly be quoted again at today's meeting. He requested that the Chairman read only the recommendation of the Sub-Committee.

29649-1—1½

The Chairman therefore read the recommendation of the Sub-Committee on Agenda and Procedure, which is as follows:

> That this Sub-Committee report to the Banking and Commerce Committee that its action last Friday is, in the opinion of this Sub-Committee, contrary to the rules; the Sub-Committee recommends that the matter be referred to the Banking and Commerce Committee for guidance.

After discussion, the Chairman read the full text of the report of the Sub-Committee. (*See "Evidence".*)

It was moved by Mr. Gray and seconded by Mr. Basford that:

(1) this Committee supports the opinion of the Sub-Committee on Agenda and Procedure that the action of this Committee on Friday, November 22, was contrary to the rules;

(2) this Committee should forthwith resume its examination of and enquiry into Bill C-5 in order that the Committee may report its observations and opinions thereon to the House of Commons in obedience to the Order of Reference of the said House dated June 27, 1963.

During discussion on the motion, the Chairman introduced Dr. Ollivier, who made a statement quoting citations from Beauchesne, 4th Edition: Bourinot, 4th Edition; and May's Parliamentary Practice, 16th Edition. He also cited a somewhat similar situation in the Senate Committee on Banking and Commerce in 1960-61. Dr. Ollivier was questioned at length by the members.

After further discussion, the Chairman put the question on the motion of Messrs. Basford and Gray, and the motion was carried on the following division: Yeas, 17; Nays, 5.

It was then moved by Mr. Aiken, seconded by Mr. Nugent that:

> This Committee report to the House that the Bill be not further proceeded with.

With the Committee's permission, the Chairman reserved decision on this motion.

The Chairman said that the Canadian Food Processors Association, who were to have appeared as witnesses at today's meeting, had filed copies of their brief with the Clerk.

On motion of Mr. Moreau, seconded by Mr. Ryan,

Resolved,—That the text of the submission of the Canadian Food Processors be printed as an Appendix to the Minutes of Proceedings and Evidence. (*See Appendix "A"*).

The decision as to whether representatives of the Canadian Food Processors Association should be asked to appear to be questioned on their brief was referred to the Sub-Committee on Agenda and Procedure for recommendation. The question of the appearance of other witnesses who had been invited and had not yet appeared was also referred to the Sub-Committee for recommendation.

At 11:00 a.m., on motion of Mr. Olson, seconded by Mr. Klein, the Committee adjourned to the call of the Chair.

Dorothy F. Ballantine,
Clerk of the Committee.

EVIDENCE

FRIDAY, November 22, 1963.

The VICE-CHAIRMAN: Gentlemen, at this time we will resume consideration of Bill C-5, an act to amend the Bankruptcy Act.

This morning we have Mr. S. C. Barry, the deputy minister of agriculture, as a witness. However, I understand Mr. Barry will not be here until 9:30.

As Mr. Nugent raised a point earlier perhaps we could hear what he has to say at this time.

Mr. NUGENT: It is a very simple point, Mr. Chairman.

I move, seconded by Mr. Skoreyko, that the Chairman do now leave the chair. That is an undebatable motion, and it has the effect of killing the bill.

The VICE-CHAIRMAN: Perhaps you would explain the purpose, Mr. Nugent, or is that asking too much?

Mr. NUGENT: I will, provided it will not be considered as debate.

As I say, this is an undebatable motion. Certainly the Chairman's own remarks last week indicated—and I will refresh your memory on this—that the purpose of this meeting is to consider C-5. I indicated last week I thought it was already obvious that this bill should not be passed as it was too broad in scope and causes more harm than good. While there may be some case for trying to protect these people, the Chairman's own remarks were to the effect the testimony will be of some value, whatever we do with the bill, in view of the fact it will be on the record and would be helpful in arriving at a suitable solution to the problem which the bill indicates exists. Mr. Chairman, that is the reason we have had the number of meetings we have. The reason we have had meetings is to consider Bill C-5. We are not a commission investigating this matter. I thought the debate in private members' hour was more time consuming that this bill was entitled to on its own virtues, and I would ask the Chair to dispose of this now.

The VICE-CHAIRMAN: We have no choice but to consider Mr. Nugent's question.

Mr. WHELAN: Mr. Chairman, I may be ignorant of parliamentary procedure. You will note that a good many members who are here this morning have not attended previously. This seems to me to be a plan to kill this bill regardless of what anyone says. Even Mr. Nugent has attended only three times at these meetings.

Mr. MORE: You are not entitled to direct criticism to a member's absence.

The VICE-CHAIRMAN: This is not a debatable motion, as Mr. Nugent has indicated. However, the bill can be revived by order of the house and the proceedings could then be resumed at the point they were interrupted.

Mr. AIKEN: You could hardly call it a conspiracy at 9:25 a.m. when the meeting is called for 9 a.m., unless the government has taken all its members off.

Mr. WHELAN: This is an injustice if there ever was one.

The VICE-CHAIRMAN: The motion is that the Chairman now leave the chair. All in favour? All opposed?

Motion agreed to.

FRIDAY, November 29, 196'.
9.10 a.m.

The CHAIRMAN: Gentlemen, I see a quorum. I now call the meeting to order. May I first state that I am very pleased to see so many of you here this morning at such an early hour. I have a report to make from the subcommittee on agenda and procedure to the standing committee on banking and commerce.

Your subcommittee on agenda and procedure met on Tuesday, November 26, at the call of the Chair, in order to discuss the course that is to be followed as a result of the resolution passed at the committee's meeting on Friday last, November 22, that "the Chairman do now leave the chair."

Dr. Ollivier, parliamentary counsel, was invited to be present to advise the subcommittee.

In support of his views, Mr. Nugent quoted Beauchesne's 4th edition, citation 412, which reads—

Mr. NUGENT: I think it is rather improper to repeat to this committee now the basic arguments given in the steering committee. So far as this committee is concerned, there is no business before us until the Chairman can give us a reason for it. I suggest the resolution from the steering committee calling us together is all that is required.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I move that the committee be resumed.

Mr. GRAY: I move, seconded by Mr. Basford, that this committee support the committee on agenda and procedure.

The CHAIRMAN: Mr. Nugent has raised a point of order. Does anybody wish to speak to it?

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I move, and I would point this out to start with, that the committee's proceedings on Bill C-5 were illegally interrupted, and that they should be resumed immediately this morning.

The CHAIRMAN: I think probably as far as the point of order is concerned, that the meeting of the committee on agenda and procedure and of this committee had been left to the call of the Chair. The purpose of this morning's meeting is to report to you on the last steering committee meeting, and that is what I am in the process of doing. The steering committee has a recommendation to make. If the committee prefers, I am prepared to read the recommendation first, and then to read the report of the meeting. I think actually it does not make an awful lot of difference. So with your permission I will continue in that order. I was going to do it, but if the committee prefers, I could read the recommendations that the steering committee has made.

Mr. NUGENT: We are still debating a point of order. Mr. Cameron could not be more out of order than in opposing the motion. I have never before heard of a chairman of a steering committee bringing in and reading a report. Usually you take some action because of a recommendation of the steering committee. All that is necessary here, I think, since there is no business before this committee—because we have disposed of the business at this time—is to indicate that the steering committee passed a motion, and I think this should be before us, before we have anything to talk about.

The CHAIRMAN: Your point may be well taken.

Mr. GRAY: I want to dispute Mr. Nugent's comment that we have no business before us. I do not think we should let it passed unnoticed.

The CHAIRMAN: I think this is the whole crux of the question, and I think that was the point Mr. Cameron was making.

Mr. GRAY: On a point of order, if we have an opportunity to hear Dr. Ollivier in due course, I have no objection to your reading the basic report or recommendation of the committee.

The CHAIRMAN: I think it might be simpler, with your permission, if I read the report or recommendation of the steering committee, and then I can give you the reasons why the steering committee did this.

After considerable discussion, your subcommittee passed the following resolution, on division:

> That this subcommittee report to the banking and commerce committee that its action last Friday is, in the opinion of this subcommittee, contrary to the rules; the subcommittee recommends that the matter be referred to the banking and commerce committee for guidance.
>
> The matter is therefore returned to this committee for decision.

I shall now go back to where I was at the beginning. This is the matter being discussed at the present time.

Mr. MOREAU: What about the recommendation of the subcommittee? I move that it be adopted.

The CHAIRMAN: I think we had better finish the whole report. In support of his views, Mr. Nugent quoted Beauchesne, 4th edition, page 412, which reads:

> The proceedings of a committee on a bill may be brought abruptly to a close by an order: "That the Chairman do now leave the Chair" or by a proof that a quorum is not present. The Chairman, in such cases, being without instruction from the committee, makes no report to the house. A bill disposed of in this manner disappears from the order paper, though it can be revived by an order of the house.

Dr. Ollivier is present today, and he pointed out:

> . . . that this citation from Beauchesne was from a chapter dealing with proceedings in committee of the whole;

On being asked to comment on the action of the committee, Dr. Ollivier stated that

> . . . he was of the opinion that it was applicable only in committee of the whole.

The motion was out of order because the committee has an obligation to report to the house on a bill referred to it. He supported his view with the following citations;

> May's Parliamentary Practice, 16th edition, page 655, under the heading: "Reporting of bills to the house before their consideration has been concluded":
>
> It is the duty of standing committees, as of all committees, to give the matters referred to them due and sufficient consideration. Accordingly, the chairman of a standing committee will not accept a motion that the committee do not proceed further with the consideration of a bill from a member who is not in charge of the bill, nor will he accept a motion for reporting a bill to the house before its consideration has been completed by the committee, or any other motion which conflicts with the obligations imposed on the committee by the house.
>
> Bourinot's Parliamentary Procedure, 4th edition, page 520.

Mr. NUGENT: Mr. Chairman, since we have Dr. Ollivier with us this morning, it is likely that someone will ask him to give some of these rulings or quotations, and it might save the time of the committee just to dispense with

the reading of what he gave us previously, because he will be repeating it here anyway, together with possibly some new ones.

The CHAIRMAN: Thank you. But I think you raised this on a point of order:

> Bourinot's Parliamentary Procedure, 4th edition, page 520, reads;
>
> > Every committee on a public bill is bound to report thereon. The house alone has power to prevent its passage or to order its withdrawal.
>
> Beauchesne, 4th edition, citation 506:
>
> > Every bill referred to the committee must be reported
>
> and
>
> It is the duty of every committee to report to the House the bill that has been committed to them.

These were the reasons your steering committee or subcommittee made the report which I read to you a few moments ago.

Mr. GRAY: I move, seconded by Mr. Basford, (1) that this committee supports the opinion of the subcommittee on agenda and procedure, that the motion of this committee on Friday, November 22, was contrary to the rules; (2) that this committee should forthwith resume its examination of and inquiry in connection with Bill C-5, in order that the committee may report its observations and opinions thereon to the House of Commons in obedience to the order of the House of Commons dated June 27, 1963. I submit this in writing, pursuant to the practice.

The CHAIRMAN: Is there a seconder?

Mr. BASFORD: I second the motion.

The CHAIRMAN: It has been moved by Mr. Gray and seconded by Mr. Basford:

> that this committee: (1) supports the opinion of the subcommittee on agenda and procedure that the action of this committee on Friday, November 22, was contrary to the rules; (2) that this committee should forthwith resume its examination of and inquiry into Bill C-5 in order that the committee may report its observations and opinions thereon to the House of Commons in obedience to the order of reference of the said House dated June 27, 1963.

You have heard the motion.

Mr. GRAY: I think ordinarily I am entitled to speak on the matter at this point. However I see we have parliamentary counsel with us. It is just that I would not want to lose my right to speak, for I would ordinarily speak pursuant to the motion at this point. However, I am prepared in view of the interest in Dr. Ollivier's comments, to defer to him.

The CHAIRMAN: Would it meet with the wishes of the committee to hear what Dr. Ollivier has to say, as a legal opinion?

Mr. BOULANGER: On a question of privilege, I am sorry to see that we do not have the interpretation system working today. As far as I am concerned, I excuse you for not being able to follow a previous motion that we should at all times have the services of simultaneous translation or interpretation. I just want to mention it so that you will be aware of the fact that we do not have the services of an interpreter or a translator this morning.

The CHAIRMAN: I am informed, Mr. Boulanger, that there is an interpreter present.

Mr. BOULANGER: That should cover it.

The CHAIRMAN: It covers both of us, shall we say. Would it be the wish of the committee to hear Dr. Ollivier first?

Mr. NUGENT: Dr. Ollivier is appearing as a witness in connection with this motion of Mr. Gray's, but we shall be able to ask him questions afterwards.

The CHAIRMAN: I think that Dr. Ollivier would have no objection to answering questions. He appears as an expert witness for the committee. He is a legal officer of the crown, legal counsel for this committee. Dr. Ollivier, it is agreed that Mr. Gray is giving up his right to speak, so that we may hear from you first.

Dr. P. M. OLLIVIER (*Law Clerk to the House of Commons*): In deference to Mr. Nugent, I do not think I should repeat the arguments which you have already read this morning. You have read them much better than I could have done. I would only refer to a distinction which I do not think has been made, between a committee of the whole and a standing committee.

I think the rules which Mr. Nugent invoked apply mainly to the committee of the whole. Rule No. 60 of the standings orders, to be found in Beauchesne at page 192, says:

> 60. A motion that the Chairman leave the Chair is always in order, shall take precedence of any other motion, and shall not be debatable.

You will notice in Beauchesne that this comes under the chapter heading "Deputy speakers; committees of the whole; supply; ways and means". The reason is that the committee of the whole, whether it be the committee of the whole itself, or the committee on supply or the committee on ways and means, it does not specify, would cease to exist and would have to be renewed. That is why in the House on every occasion when the committee is sitting a motion is always made that the Chairman leave the chair, and they ask for leave to sit again. But such a motion in a standing committee is never made.

When there is a motion that the Chairman do leave the chair you have one meaning in the House of Commons, and another meaning in a standing committee. After all, committees of the whole in the house are only an extension of the house. It is still the house sitting, but it is the house sitting in committee. The rule is that if the Chairman rises without asking for permission to report, or asking for the right to sit again, then the committee is extinct, and has to be revived. That is a point that I did not insist upon in the steering committee, if I may say so. That is my main objection to following the same procedure here. I do not object so much here. I noticed that it mentioned that we acted contrary to the rules. But I am not so much concerned, about whether we acted contrary to the rules as I am that they be disregarded; or, if it was not an action contrary to the rules, it would mean only that the committee should adjourn. I think that would be my main point.

I would like to read paragraph 410 from Beauchesne's Parliamentary Rules and Forms.

> 410. If the committee cannot go through the whole bill at one sitting the committee direct the chairman to report progress and ask leave to sit again. When the committee is about to rise, the chairman says: 'Shall I report progress and ask leave to sit again?' and, if there is no dissent, he immediately leaves the Chair, the Speaker resumes the Speaker's chair and the chairman reports as follows:

In this committee, as in any other standing committee, there is never a motion made that the Chairman leave the chair and that the committee report progress and ask leave to sit again. If you do that, it gets you nowhere.

Continuing the citation:

> 'Mr. Speaker, the committee of the whole are considering Bill No. X and have instructed me to report progress and ask leave to sit again.' The Speaker repeats the report and adds: "When shall the committee sit

> again? Next sitting of the house,' or if the committee is likely to take up the bill again on that day, he says 'At a later hour this day.

That again is under the committee of the whole and the deputy speaker.

Then at paragraph 230(2):

> A committee of the whole house has no power either to adjourn its own sittings or adjourn its consideration of any matter to a future sitting.

Well, the standing committee certainly has power to adjourn their meetings to another date or to the call of the Chair, which a committee of the whole house has not the right to do.

I will refer you to 275 :

> The committees of supply and ways and means are kept alive by an order that they shall meet again at the next sitting of the house. Should they report and not receive this permission, they would cease to exist and the house would have to set them up again. They consist of the whole house and are only a committee in the artificial sense of the word. They are appointed by merely naming a date for the house to resolve itself into committee. On that date, a motion is made to the Speaker to leave the chair.

If I might refer now to something that happened in 1960-61, I will give you an example of the same kind of question. You will remember in 1961 there was an act representing the Bank of Canada. It had only one clause. The clause was that from the coming into force of the act the position of the Governor of the Bank of Canada would cease to exist. This bill went through the house. It went to the Senate. Then, as usual, it went to one of the committees of the Senate. The committee to which it went was banking and commerce, as a matter of fact. Mr. Coyne appeared before that committee. Before the committee finished its procedure, Mr. Coyne had resigned. Therefore, it seemed there was no reason for the Senate to proceed with this bill. The Governor of the Bank of Canada having resigned, there was no useful purpose to be gained by going ahead with a bill that said that his position would be terminated on the coming into force of the bill. Nevertheless, the Senate committee decided they should report, and I will read the report of that standing committee as an example:

> The standing committee on banking and commerce to whom was referred the Bill C-114, intitled: 'An act respecting the Bank of Canada', has in obedience to the order of reference...

And I underline those words, "in obedience to the order of reference".

> ...of July 8, 1961, examined the said bill and now report as follows:
>
> Your committee recommends that this bill should not be further proceeded with...

and so forth. The rest is not important.

I think the report that should be made on the bill in this case, if you do not want it, is that it should not be proceeded with, not that the Speaker leave the chair.

The CHAIRMAN: Thank you, Dr. Ollivier.

Mr. NUGENT: There is one part not quoted so far by Dr. Ollivier in the volume he has in front of him there. (Bourinot's Parliamentary Procedure, 4th Edition) I would ask him to quote from page 527. I think there is a precedent there showing what the committee did last week was in order.

Mr. OLLIVIER: The heading of the top of that page is "Reports from the Committee of the Whole". I will read what 527 says, if you wish. I have read it before but I am not sure whether I gave you that reference myself.

> In this case no report is made to the house and the bill will disappear from the order book. The same will happen if it is found that there is not a quorum present in the committee. But the committee 'have no power to extinguish a bill, that power being retained by the house itself.' Consequently the bill may be subsequently revived by a motion, without notice, to fix another day for the committee, and the proceedings are resumed at the point where they were previously interrupted.

The bill will disappear from the order book. That means, of course, that was the procedure at the time. It means the order paper of the house. That, as I say again, is in the committee of the whole.

Mr. NUGENT: The witness tells us the rules of the committee of the whole apply to standing committees except where there are specific exceptions. Is this not true?

Mr. OLLIVIER: Yes, generally speaking it is true; but there are many cases—and the one which I gave you is one where it does not apply. In the committee of the whole you report and ask leave to sit again, and in standing committees you do not report and ask leave to sit again. That is just the difference. That is one case where it does not apply. If it is not provided for, then it does apply.

Mr. NUGENT: Let us establish some differences. Have you found rules that show that this rule you have just read does not apply to standing committees?

Mr. OLLIVIER: I would say it follows from the rules of the committee of the whole that the chairman has to report progress and ask leave to sit again. It follows from that you can move that the deputy speaker or chairman leave the chair, but it is of no consequence. When you move in this committee that this Chairman leave the chair, it is either an illegal motion or it is legal. If it is illegal, then it should not be put. If it is legal, it means only an adjournment.

Mr. NUGENT: Mr. Chairman, I wonder if the witness is aware of the citation in the Senate debates of 1886.

Mr. OLLIVIER: I have read that, and I think it still applies to committees of the whole.

Mr. NUGENT: That was a committee of the Senate, not a committee of the whole. It referred to a citation in the house where a similar thing had occurred and where in the Senate on that particular day they were making a motion to restore one item to the order paper. Is the witness aware of the previous case?

Mr. OLLIVIER: Yes, I have read that decision of 1886, but I would make a distinction there because in the Senate they do not proceed in committee of the whole as we do. All their bills are referred to those general committees and to a certain extent those committees are substituted for our committee of the whole. So I do not think it is a parallel on all fours. It is a very old one; we were just learning the procedure then.

Mr. NUGENT: Is that not true of all our committees to a certain extent? All committees substitute for a committee of the whole, do they not?

Mr. OLLIVIER: They do the preliminary work, but they do that in obedience to the order of the house. When you refer a bill from the House of Commons to a standing committee, the committee has received instructions. The order of reference is the bill itself that is sent to the committee, and in obedience to that order you have to report the bill.

Mr. NUGENT: I have one more question.

Mr. OLLIVIER: That is part of the order of reference.

Mr. NUGENT: Is a committee not master of its own proceedings?

Mr. OLLIVIER: According to the rules and according to the instructions it has received.

Mr. NUGENT: Surely the time to say this is out of order is at the time, and if the committee has accepted it as being in order and passed it, can the committee now turn around and reverse itself?

Mr. OLLIVIER: No, I am not saying necessarily that the committee could reverse itself; but I am saying that it has not the same meaning as it would have in the house.

As I said, the decision of the committee or the Chairman was either legal or illegal. I do not think the Chairman, any more than the Speaker in the House, should ever reverse his own decision. It is up to the committee or the house to reverse that decision. What I say is that that decision has not the same meaning or significance as it has in the House. If it is not legal to move that the Chairman leave the chair and it is still moved and passed, then it only means an adjournment of the committee.

Mr. NUGENT: The witness was not here when the motion was passed; but as I recall, it was made very manifest that this was not the intention of the committee. When the motion was introduced I suggested the purpose was to kill this bill—this very bad bill, I might add. So there could be no question that your interpretation of the rules must be that the committee did not mean what it said, that it merely meant an adjournment, because it was very plain from the motion what was meant.

Mr. OLLIVIER: Can we say probably that the committee did not exactly know what it was agreeing to?

Mr. NUGENT: The committee did know what it was agreeing to; that is the whole point. It may be that when I say "kill the bill" I am speaking a little strongly, because it did it effectively and practically but not technically, in that it could be revived in the house. Since it is a private member's bill, it is not likely to come up again this session. There is no doubt that the substantive motion passed last week was not a motion of adjournment and could not be argued to be such by anyone. Where does that leave us?

Mr. OLLIVIER: I will tell you where it leaves us, except this: The citation of 506 from Beauchesne governs, that every bill referred to the committee must be reported and that it is the duty of every committee to report to the house the bill that has been committed to it. Therefore, if you do something contrary to that, you have to come back to the main proposition.

Mr. NUGENT: Would the legal adviser not tell us that if this committee failed to report a bill the proper procedure would be for the house to bring it up on motions, or request the committee to do something? That is what has been done on occasions where the house has not agreed with the action of a committee; and there are many citations there.

Mr. OLLIVIER: Those occasions to which you refer I think are cases where the committee did report to the house and the bill was put back. I think Mr. Aiken had one the other day. The bill was reported to the house in an adverse manner, and Mr. Aiken moved that it be sent back to the committee. That was carried. However, a report had been made to the house before. You have to make a report.

Mr. NUGENT: There are cases where a committee adjourned for a considerable length of time and a motion was made in the house that they resit and report quickly. Is that not the procedure?

Mr. OLLIVIER: No, that is another question. If there are undue delays in the committee, if nothing has been done, it has not been killed, it has been in suspense, and the house orders the committee to meet again and to deal with it, but not because the thing has been killed. It has not been killed, it has been in suspense.

Mr. NUGENT: In other words, the house can, any time it disagrees with the action of the committee, give new direction or pass a motion or direct a committee to act in any way?

Mr. OLLIVIER: Yes, provided the committee has reported.

Mr. NUGENT: Certainly the failure to report is one of those things that can happen.

Mr. OLLIVIER: Yes, but it has not killed the bill then.

Mr. AIKEN: May I ask a supplementary question?

The CHAIRMAN: This is all on the same subject, and Mr. Cameron has indicated that he wishes to speak.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I do not think we should waste any more time. There is a perfectly clear citation which Dr. Ollivier has quoted again and again, but which has fallen on deaf ears:

> 304. (2). A committee is bound by, and is not at liberty to depart from, the order of reference. In the case of a select committee upon a bill—

and this, I take it, is a select committee—

> —the bill committed to it is itself the order of reference to the committee, who must report it with or without amendment to the house.

Mr. Nugent has suggested to this committee this morning—and it is an extraordinary suggestion—that actually his motion was not intended to merely get the Chairman to leave the chair, it was a motion to kill the bill. In other words, Mr. Nugent is trying to tell us that his attempt last week, on November 22, was an attempt to do illegally something that he was not prepared to do by the legal and appropriate method, which would be to report against the bill to the house.

MR. AIKEN: I am very interested in what Mr. Cameron is saying, but he is not asking a question of the witness.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I am going to ask Dr. Ollivier if that is not the case and if the action so far taken by the committee, if not rectified, does not constitute contempt of the House of Commons.

Mr. OLLIVIER: I would not go so far. You have cited something I have stated, and I am not ready to say that that was illegal. What I say is that it does not mean the bill has been killed; it only means the committee has adjourned.

The CHAIRMAN: Mr. Cameron, have you more questions?

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I take it your opinion now is that the committee should proceed at this sitting or at a future sitting to deal with Bill C-5, and that there is nothing to prevent us from doing so.

Mr. OLLIVIER: Yes, and not only that, I say the committee has to do it.

Mr. GELBER: I would like to ask Dr. Ollivier a question. He said that the intent of the motion was to kill the bill. Has a standing committee power to kill a bill?

Mr. OLLIVIER: No. The committee must report. They can report as they did in connection with the Bank of Canada Act, to say that they recommend that no further proceedings be taken, or something like that; but they have to make some kind of report.

Mr. GELBER: Regardless of what Mr. Nugent says is manifest, Mr. Nugent moved his motion and told the committee that the intent of his motion was to oppose the bill. But the bill would not have been opposed just because he said it was manifest. Am I correct?

Mr. OLLIVIER: I am not quite sure.

Mr. AIKEN: I would like to preface my remarks by stating that I have not seen the transcript of last week's meetings. I understand Mr. Nugent said something to this effect when he made his motion: I move that the Chairman do now leave the Chair, and that his intent was to kill the bill. In fact this is what was said. He used the expression, "kill the bill". I submit it is rather loose but I do not think there is any doubt about the intention. The motion last week was that the Chairman do leave the chair, with the intent that the bill would be terminated—that is, discussion of the bill. I am sure that we will find that these were the words used, and in the same sentence. It is my submission at this moment that the motion really was that the proceedings on the bill should come to an end and that the Chairman leave the chair, and that these words were in the motion when it was made; and if this is the case, then the committee should so report to the house.

Mr. OLLIVIER: That is correct, as to what was said in committee. If everybody read it as if it had been a rule which would apply to a standing committee instead of applying to the committee of the whole, it would have had that effect. But if you quote a wrong rule and try to apply it to a case where it does not apply, then it has to mean something else than would appear to be the manifest intention. There is one way in which to kill a bill, and that is it. That is the whole thing. You cannot pass a motion which disregards an order of reference.

Mr. AIKEN: Is it not our duty to report to the house that the bill was killed in committee?

Mr. OLLIVIER: No.

Mr. AIKEN: But that is what the motion was.

Mr. OLLIVIER: You say you intended to kill the bill, but you did not, because you did not follow the proper procedure.

Mr. AIKEN: I thought that was part of the substance of the motion; that the Chairman leave the chair in order that the bill should be killed.

The CHAIRMAN: Order, order, order.

Mr. OLLIVIER: I would like to answer this last question.

Mr. KLEIN: Let us hear the motion. What is the use of going about it by saying that one thing suggests another?

The CHAIRMAN: All right, if the questioner has no objection. Do you have the motion of last week?

Mr. AIKEN: I would like to hear what was actually said by Mr. Nugent when he made the motion. It was a verbal motion.

The CHAIRMAN: I have sent for it. We might continue with the questioning. It will be here in a minute or so.

Mr. MOREAU: The question is whether the committee intended to kill the bill or not. Mr. Aiken raised this. You have indicated to us that we do not have the power to kill, but we do have the power to recommend.

Mr. OLLIVIER: I think I agree with what Mr. Aiken says. He has reported correctly the motion that was made, and the intent of what was said. I do not disagree with that. But I find it contrary to what May has to say. I am

referring Sir T. Erskine May's Parliamentary Practice, 16th edition, on page 655 as follows:

> Reporting of bills to the house before their consideration has been concluded":
>
> It is the duty of standing committees, as of all committees, to give matters referred to them due and sufficient consideration. Accordingly, the Chairman of a standing committee will not accept a motion that the committee do not proceed further with the consideration of a bill from a member who is not in charge of the bill, nor will he accept a motion for reporting a bill to the house before its consideration has been completed by the committee . . .

And here I underline this, and repeat:

> . . . before its consideration has been completed by the committee, or any other motion which conflicts with the obligations imposed on the committee by the house.

Among the obligations of the committee to the house is the one that they should report the bill.

Mr. AIKEN: It would not matter what was done last week or at any meeting. We could not determine it.

Mr. OLLIVIER: No. I mean it is the same thing as a motion to adjourn.

Mr. OLSON: That is the point I was going to raise, too. It is argued here that the intent of the motion that the Chairman leave the chair was to kill the bill, and from the quotation that Dr. Ollivier just repeated it is quite clear that this was the intent of the motion, but that it was completely out of order. If the motion was in order at all, then the substantive nature of it was that the committee should adjourn.

Mr. OLLIVIER: I cannot answer that because you have just repeated what I have said.

The CHAIRMAN: At your request the clerk has got for us the evidence at the last meeting. I shall read it to you.

Mr. OLSON: I would like to hear the motion, not the evidence.

The CHAIRMAN: I shall read the secretary's report of the motion taken from the first page of the evidence at the last meeting as follows:

> Mr. NUGENT: It is a very simple point, Mr. Chairman.
>
> I move, seconded by Mr. Skoreyko, that the Chairman do now leave the chair. That is a undebatable motion, and it has the effect of killing the bill.

Mr. OLSON: That is an opinion, but it is not binding.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): It has nothing to do with the motion.

Mr. OLSON: That may be his opinion, but the motion is that the Chairman do now leave the chair. His opinion has no binding effect upon what passage of the motion would mean.

Mr. SCOTT: His opinion would be binding only on himself.

Mr. KLEIN: If I understood Mr. Nugent correctly, he is saying in essence today that even if the motion was illegal or out of order, the fact that it was adopted made it legal and in order. Therefore we cannot proceed today. I would say that even if it was illegal and out of order, we should not be prohibited thereby from doing something legal today, simply because something illegal was done last Friday. Furthermore, if the motion in effect was to kill the bill, the motion should have said, if I understand it correctly, that this

committee should report back to the house that the bill was rejected. That would be a proper motion, but this motion did not do that. Therefore I think we should proceed with our business.

The CHAIRMAN: We are still questioning the witness. Has anybody any questions?

Mr. WHELAN: I have one question. I am not a legal person, and I may not use the correct terminology. But would you not say that this motion was more of a delaying or mischievious nature than anything else?

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I think that is a leading question.

Mr. AIKEN: I think that was a facetious question. I would like to ask something serious.

Mr. NUGENT: I have one question. Whatever you may say about the legality or the effect of the motion last week, the witness has told us that there is no doubt about what the committee's motion indicated last week. The committee made a decision to proceed no further with this bill. Yet what is proposed today would be to reverse that decision, which is contrary to the rules. Is that not right?

Mr. OLLIVIER: It was the intention to do that last week, but it was not done in a proper fashion. You can renew your effort to do it by making a report to the house to the effect that the bill be not proceeded with.

Mr. NUGENT: It still has the effect of reversing a decision made last week, has it not, if we change it now?

Mr. OLLIVIER: It might, or it might not.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): We have already reversed the decision of last week by meeting here this morning. The meeting last week was that the committee adjourn, yet here we have met again this morning. Therefore we have reversed that motion. If there was anything to the motion, that is all there was to it.

The CHAIRMAN: Order, please.

Mr. AIKEN: I want to ask a rather serious question. If, as a result of what Dr. Ollivier said this morning, the committee cannot report so long as the sponsor does not agree—

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): That is not what he said.

Mr. AIKEN: I am sorry. This is in effect what he said: that we cannot report as long as the sponsor desires to continue with the bill.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): That is not what he said at all!

Mr. OLLIVIER: There is something in what Mr. Aiken says. If the sponsor of the bill does not want to proceed with the bill, he is not obliged to continue. But there would still have to be a report to the house. When it is a private bill the sponsor does not have to proceed with it. But it cannot be done simply by moving that the Chairman leave the chair. You have to report to the house.

Mr. AIKEN: I have not yet got to my question. I was prefacing it by saying that Dr. Ollivier said that the committee could not report until the sponsor of the bill had agreed to it, or until the committee had completed its examination.

Mr. OLLIVIER: No. I said that if the sponsor did not want to proceed, he has the right—he is the only one who can say "I do not want to go ahead with this bill." However the committee, if it agrees with him, may report that it should not be proceeded with further. But they still must make their report.

Mr. AIKEN: Just as long as Mr. Whelan wants to keep on bringing witnesses here, we have to go on and on and on?

Mr. OLLIVIER: It is up to the committee to decide how many witnesses it will hear. I agree that the committee is master of its own procedure. I agree with Mr. Nugent in that respect.

Mr. AIKEN: May we have citation 304 read again? The sponsor can call it off but the committee cannot? That is very well put.

The CHAIRMAN: No, I think not.

Mr. AIKEN: Do I have to sit here week after week?

The CHAIRMAN: Order, gentlemen. Please address the Chair. Would all the honourable members of this committee please address the Chair, and I shall recognize you in the order which I see you. If we continue in that fashion, we might get the business done this morning, more normally and equitably.

Mr. AIKEN: I am merely asking Dr. Ollivier if it is not a fact that while Mr. Whelan wants to continue bringing witnesses before the committee we have to proceed in accordance with citation 304 which he read to the committee this morning.

Mr. OLLIVIER: I have no objection to answering that question. Mr. Nugent said before that the committee is master of its own procedure within the rules of the house. As to those rules which apply in a committee of the whole or in any other matter, if you want to call witnesses *ad infinitum* to deal with the bill, you may do so. But if the committee decides that it does not want to hear any more witnesses, the committee can decide that it adjourn. It is purely a matter of procedure within the committee, and within the jurisdiction of the committee.

Mr. AIKEN: May we have the citation read?

The CHAIRMAN: You have asked that citation 304 be read.

Mr. OLLIVIER: Citation 304 reads as follows:

> 304. (1) A committee can only consider those matters which have been committed to it by the house. C.J., Vol. 65; 539,871.
>
> (2) A committee is bound by, and is not at liberty to depart from, the order of reference. (B.469). In the case of a select committee upon a bill, the bill committed to it is itself the order of reference to the committee, who must report it with or without amendment to the House. M.468.
>
> (3) When it has been thought desirable to do so, the house has enlarged the order of reference by means of an instruction or in the case of a select committee upon a bill by the committal to it of another bill. Mandatory instructions have also been given to select committees restricting the limits of their powers or prescribing the course of their proceedings, or directing the committee to make a special report upon certain matters.

For instance, if there is already one bill referred on a subject, the house might very well refer a second bill and ask the committee to amalgamate the two bills. Sometimes the committee may have to obtain leave from the house to make a special report when its order of reference is limited in scope. But in this case I do not think there is any limitation to the order of reference, which is the bill itself.

Mr. AIKEN: I took down citation 304. I thought that was the one.

The CHAIRMAN: I believe it is another citation you are referring to, and the citation as I regard it does not say what you think it says. I think that is what gave rise to that in your mind.

Mr. OLLIVIER: Which one is it?

The CHAIRMAN: I think it is in May's. Order, order, order. Would you please address the Chair.

Mr. BOULANGER: I was going to raise a point of order.

The CHAIRMAN: I believe it is in May, Citation No. 655. I shall ask Dr. Ollivier to read it.

Mr. OLLIVIER: I now read from 655 of May's Parliamentary Practice, 16th edition as follows:

> It is the duty of standing committees, as of all committees, to give the matters referred to them due and sufficient consideration. Accordingly, the Chairman of a standing committee will not accept a motion that the committee do not proceed further with the consideration of a bill from a member who is not in charge of the bill . . .

That is what I said, a member who is not in charge of the bill cannot ask that it be not proceeded with further. But that does not mean that the committee does not have the right.

Mr. AIKEN: But no one else can?

Mr. OLLIVIER:

> . . . nor will he accept a motion for reporting a bill to the house before its consideration has been completed by the committee, or any other motion which conflicts with the obligations imposed on the committee by the house.

What I am saying is that the motion that the chairman leave the chair is a motion in conflict with the obligations imposed on this committee by the house.

Mr. AIKEN: I was not arguing against Dr. Ollivier's opinion. I was asking the supplementary question: Do we have to go on with this bill, and on and on and on, until Mr. Whelan decides he has had enough? Mr. Whelan is the only one who can move that the committee shall no further proceed.

The CHAIRMAN: Is this a question you are addressing to Dr. Ollivier?

Mr. AIKEN: He has answered.

The CHAIRMAN: Mr. Whelan, Mr. Boulanger, Mr. Basford and Mr. Scott have indicated they wish to ask questions.

Mr. Boulanger, do you have a question you wish to ask?

Mr. BOULANGER: Mr. Chairman, if the committee wants to be serious for one second, surely we have already asked enough questions and have had enough answers from our legal adviser. If we want to show we are serious and we are ready to proceed on this motion and take a vote, there is a time, and that time is right now. The questions that will come up will all come back to the same arguments and answers that we have been listening to here for an hour. I am sure that it is not out of order for me to ask that this be closure.

Mr. AIKEN: We have not finished our discussion yet.

Mr. BOULANGER: I do not want to be acused of trying to enforce closure on the members, but I am sure that many of the members of the committee know what they are doing and—

Mr. AIKEN: You knew before you came here.

Mr. BOULANGER: You will see that there will be no difference between the state of the discussion in the next ten minutes and now.

Mr. AIKEN: Good for you. You can wait another ten minutes. That is ten minutes more than the Liberals generally give us.

Mr. HABEL: You did not give that last week.

Mr. BASFORD: I want to ask one question for Mr. Aiken's benefit. These standing committees can at any time say when they have considered a bill sufficiently to give an opinion; can they not?

Mr. OLLIVIER: Yes, by order to report.

Mr. BASFORD: By motion to the subcommittee on agenda.

Mr. OLLIVIER: Yes, you follow the instructions you have received from the house and you act in obedience to those instructions.

Mr. SCOTT: I want to ask one question because Mr. Aiken has raised a point that worries me also. From the citation you read to us, would you say at any time a private member of a committee can move a motion that we report non-concurrence with a bill?

Mr. OLLIVIER: I suppose you have to go through the process of the committee. You cannot do so before the bill has been discussed. The bill has to be given that serious consideration for which it was sent to the committee. You cannot just arrive in the committee and say "We will not consider it. I move we report immediately to the house."

Mr. SCOTT: Perhaps I am not making myself clear. We have been debating this bill for some weeks now.

Mr. GRAY: I want to raise a point of order. I do not think we have started debating it.

Mr. SCOTT: We have been considering this bill. Suppose I were to think that we had given due consideration and I then moved a motion that we report non-concurrence.

Mr. OLSON: The citation does say that the Chairman of the standing committee—

> —will not accept a motion reporting a bill to the house before its consideration has been completed by the committee.

Surely the committee itself would have the right to determine when it had completed its hearings?

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I would like to move that all further discussion on the report of the subcommittee now cease.

The CHAIRMAN: We have a motion before us.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): This has the effect of moving the previous question.

The CHAIRMAN: Yes, and you, with all your previous experience, realize this is not in order.

Mr. KLEIN: I submit that by so moving we are now back in committee and we proceed with the motion. If the Chairman has the right to move on this, then we are back in operation in this committee and we should move to the motion of Mr. Gray immediately.

The CHAIRMAN: Mr. Klein's opinion might fall into the same category as Mr. Nugent's opinion last week. All I have ruled is that I could not, at this time, accept a motion having the effect of putting the previous questions.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I submit Mr. Klein is perfectly right in that having made a ruling you have reinstated yourself in the chair; we have reverted to the position of last week.

Mr. MORE: I would like to raise a point of order while Dr. Ollivier is here. If the effect of our action last week was an adjournment, is another motion not out of order? We have our business; should we not be proceeding with it? Is a motion not out of order if all we did last week was to adjourn?

Mr. OLLIVIER: It had the effect of a motion of adjournment. You did adjourn. You did not fix a day when you should meet again. I suppose it was at the call of the Chair. If you do not set a date when you adjourn, you adjourn to the call of the Chair. The meeting has been called back; you have had your adjournment. The meeting has been called back, and you are proceeding as if you had just adjourned from day to day.

Mr. NUGENT: But we are not.

The CHAIRMAN: Are there any further questions anyone wishes to address to Dr. Ollivier?

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I have one question. If this situation is not as Mr. Klein and I suggested it was, is this a social gathering or is this a meeting of the committee.

The CHAIRMAN: This is certainly a committee meeting.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Then we have reversed the decision of last week.

Mr. BASFORD: We have called a meeting to discuss the report of the subcommittee.

The CHAIRMAN: That is right; we are making the report to the committee.

Mr. GRAY: Mr. Chairman, may I comment briefly on my motion?

If you look at Beauchesne's rules to see just exactly what the committee is, you will find it says, at page 236:

> 285. (1) .Originally the word 'committee' was used for the member to whom the study of a bill was entrusted.

I emphasize the word "study". I think the only difference today from the historical background of the committee is that there are more people in the committee than just one person, but the basic point is that the committee is still set up for the purpose of study. A comment was made about whether or not a standing or select committee is bound exactly by the rules of the house.

I would draw to the attention of this committee the citation of Beauchesne at page 237, paragraph 288:

> Committees are regarded as portions of the house and are governed for the most part in their proceedings by the same rules which prevail in the house.

And I emphasize the words "for the most part". I think Dr. Ollivier helped to make it clear that there cannot be exactly the same rules governing committees of the house or of the whole. He gave a good example about the Speaker leaving the chair. So it would appear that the primary object of a standing committee, in that the standing committee considers all subjects and a select committee studies particular subjects, is to study a bill pursuant to the reference of the house and to report to the house, and not make a final disposition of it. I think this is our primary obligation and our only real duty. I think this is amply demonstrated by Dr. Ollivier's citation. However, I would like to add another useful citation. Dr. Ollivier referred to paragraph 304(1) which says:

> A committee can only consider those matters which have been committed to it by the house.

However, there remains a quotation by Bourinot which says:

> . . . . this principle is essential to the regular despatch of business; for, if it were admitted that what the house entertained in one instance, and referred to a committee, was so far controllable by that committee that it was at liberty to disobey the order of reference, all business would be at an end, and as often as circumstances would afford a pretence, the proceedings of the house would be involved in the confusion.

I suggest that is a very useful and fair statement to supplement what Dr. Ollivier has already given us.

What Mr. Nugent is suggesting is that the committee, of its own volition, can in effect prevent a bill from being considered by the house simply by a motion of the type made by Mr. Nugent. There was a question, putting it in another way, of whether we can disregard the clear instructions given us by the order of reference.

I would suggest that even if these citations which I have read and which Dr. Ollivier has read were not available to us, it would surely only be common sense to suggest that we cannot act in disobedience of the order given to us by the House of Commons. If this were not so, a quorum of eight or ten men on a standing or select committee could in effect nullify the will of a majority of the whole House of Commons which had approved a measure in principle.

Therefore, if there is any conflict between any citation or standing order on which Mr. Nugent's motion is based, the will of the house, as expressed in its order of reference, must prevail because in reality one order of the house, the standing order, has in effect been superseded or suspended in a particular instance by another order of the house, its order in reference in respect to the bill in question.

I suggest the conflict is more apparent than real because, as Dr. Ollivier suggested, neither the standing order nor any citation on which Mr. Nugent's motion is based refers to a standing committee at all.

If you look at the place where standing order 60 comes, and as Dr. Ollivier says if you look at the chapters in Beauchesne, you will see they clearly refer to a committee of the whole house, the ways and means committee and the supply committee.

In citation 326, which is in similar terms to 412, there is clear proof that they could not possibly apply to standing committees, and I say that because, without reading the whole, it says that the chairman in such cases, being without instruction from the committee, makes no report to the house. It further says that a bill disposed of in this manner disappears from the order paper, though it can be revived by an order of the house.

If I am not mistaken, when something is referred to the committee of the whole, it remains on the order paper of the house; whereas when something refers to a committee of this nature I do not think it is on the order paper, and in fact a standing committee has no order paper as such.

It might be argued that the order of reference is in fact the order paper. If it is, this leads to the ridiculous conclusion that this committee can change, of its own volition, an instruction given to it by the House of Commons; and I think we will have to agree that we do not have the power to do anything like that. I think my comments help to show that on that basis, the motion that was made the other day, as Dr. Ollivier said, if it had any purpose at all, would merely have been to adjourn that particular meeting.

May I make another brief comment on the wider implications, implications other than that of the application of this narrow technical rule?

There are many in this house who have been concerned about the recent development that there should be a more active and useful role for members. It has been suggested that one way of carrying out this role has been by participation in committees considering legislation. I suggest if this motion is given the interpretation Mr. Nugent suggests, the effect will be to effectively cause any member of the House of Commons itself to want not to send any bill to the committee; and this particularly refers to government business. If this motion is allowed to stand, I think it will tend to draw narrower even the limited use that is presently being made of standing or select committees, and I think that will be very unfortunate.

Let me make one final comment. Mr. Nugent has suggested in the course of his questioning that this is a bad bill, that there is something wrong with it, and so on and so forth. It would seem to me that if he had such firm opinions on the bill, and if he had sound arguments to support his opinions, then he should have been willing to put his opinions to the test of debate and consideration at the proper and usual stage, which would be once all the witnesses had been heard and we began discussing and considering the bill itself, clause by clause. Then finally we would report to the house whether we were in favour or against the bill, or whether we should amend it, and so on. I can only suggest that by the use of this procedure Mr. Nugent himself had indicated he feels that his views on this particular subject are not as sound as he later stated to the press.

Mr. NUGENT: I will be heard on that.

Mr. GRAY: However, I would like to suggest, without going into further detail on this point, that I think it should be a basic principle of a democracy that before we come to a conclusion we hear all the evidence, discuss the bill on its merits, and then vote upon it. If we support this motion today, we will not only be in accord with the proper precedents and rules of the house but we will be carrying out the duties imposed upon us to give a proper study to legislation and report in a detailed way on the bill to the House of Commons.

Mr. NUGENT: I think Mr. Gray hit on a point that certainly is going to be considered very seriously here, that is the use of committees and the effect of our action upon it. That is exactly what prompted me to make my motion last week.

As I understand the situation, the only groups who were to come to give evidence on this bill, other than Dr. Barry, were two groups who were opposed to it. So we have had representation from all those who were sponsoring it.

There was no doubt in my mind that it is a very bad bill, and there is no doubt now. It seemed to me there was considerable opinion in the committee to that effect, and that we had given this bill more than ample discussion.

Since Mr. Gray has mentioned the use of committees, I merely point out that this is a private member's bill. Most private member's bills get one hour's discussion in the house. If they are very bad bills they get off with discussion, but this went past that stage even though in the house there were some doubts expressed on the effect it would have. The house now comes to this committee, where we have sat for meeting after meeting. The more we sit, the more obvious it becomes that the bill does not do what it is supposed to do; that in fact it is broader in scope than it purports to be; that it does more harm than good, and that we are going to continue to take up more and more time on it. I believe in the system of having everyone heard who wants to be heard, but just as in courts once the judge has heard one side and says the case is not proven, then it is stopped. I hoped by this procedure to save the committee the trouble of coming back for several more meetings. I know last week a lot of people thought it was more trouble. Mr. Cameron is very spirited this morning, very angry, and says we are taking time discussing this, but he could not take the time to be here last week. There were not very many members here last week. That being the case, I felt the way in which I put my motion last week was a good way. I felt the house made a mistake in bringing this to the committee. I felt we had gone on far too long with it. It was more and more obvious that the bill was hopeless. The method upon which I hit was, I thought, a way not only of disposing of the bill but of giving emphasis to the belief I found current in the committee that the less said about this the better, and the quicker we got rid of the bill the better. Therefore, if it had been

achieved and if it had been taken off the order paper we would not have had to bother with this bill any more.

As to the rules, I may say that while Dr. Ollivier has given us valuable testimony from his great experience, the most significant part in connection with the rules is that the rules in standing committees are governed for the most part by the rules in the house. Dr. Ollivier in his testimony has been very careful to point out those cases where this has been distinguished, where he wants or finds it useful. But it does strengthen my own belief that the rule in standing committee is the same in the house unless one can find a specific argument for excluding it; and since there is none here, since there has been no quotation to that effect, then the rule in the standing committee that a motion such as mine, a ruling in general of the house, the committee of the whole, having gone into effect still applies in the committee unless you can find authority saying directly it does not, and there has been no such authority. One can belabour the point, but I still think the disposition made last week was the soundest, the best, and would save us all a great deal of time. We are now going to be put in the curious position of reversing the considered opinion and voice of the committee last week, and we are now going to be in the position of saying it does not matter who has a majority one day, you can always correct it next week. It has never been done before.

If this committee ever looks really foolish in the eyes of the public, then I suggest this is going to be the time when we really will look foolish.

For that reason I cannot vote for the motion. I have to vote against it, because I think it is an abuse of the power inherent in a majority I think it is an abuse of the rule, that the steering committee brings it back again, and I think it is an abuse of the committee generally to go back to this matter.

The CHAIRMAN: Let us carry on with the questions.

Mr. MOREAU: I appreciate some of the points you have been making. I have no serious disagreement with them. Perhaps you can tell me this: why in the committee last week did not you make a motion that the bill should not be proceeded with, and that this be our report to the house. My conviction is that if we had taken a decision in that form last week, that would have been "it" as far as Bill C-5 is concerned, and that would be our report. I wonder why you proceeded with undebatable motion?

Mr. NUGENT: Such a report would have to go to the house. It would be purely a report of the committee, which would have to be adopted, and it might mean that this bill would get further debate. I was trying to find a method to get rid of it once and for all in order to show by the way it was handled just how bad I thought it was.

Mr. MOREAU: Would you not say that this was a form of closure which you were trying to apply?

The CHAIRMAN: Order. I have more people who wish to speak on the motion. I have Mr. Ryan, Mr. Olson, and Mr. Scott.

Mr. RYAN: Mr. Chairman, I thought I would say something. I think this committee is in much the same position as a court. I believe Mr. Nugent is confusing this committee and its terms of reference with an appeal or a magistrate's court. I think any civil court would hear all the evidence. I think there should be a fair hearing of this bill, whether we agree with all of its provisions or not. For myself, I think there is something very interesting in this bill, something which should be followed up, maybe not by the passage of the bill the way it is. But I think that the committee is really duty bound to examine it carefully and to make recommendations in respect of the proposition mainly outlined in the bill. The proposal itself may not be acceptable, but there are two or three other alternatives we could examine. I submit we should in our report back to the house make recommendations that we consider could

properly come from this bill. One such recommendation which should be considered, I submit, is to insure bank loans made to secondary producers in respect of the products of primary producers.

Mr. OLSON: First of all, I would like to say that the discussion which has taken place respecting the good or bad features of Bill C-5 are out of order, within the context of the motion before the committee now. I think that all we have to decide is the effect of the motion that was moved last Friday, (*a*) that it simply adjourned the meeting for that day, or (*b*) that it was intended to kill the bill. I am not going to go over the evidence and citations which Dr. Ollivier presented, but as far as I am concerned, I believe that this committee has no power to kill the bill. We must obey the instructions we get from the House of Commons, and that is to make a report. At the same time the report that is now under consideration by motion from the subcommittee asks whether what was done was contrary to the rules. Do you believe that the motion that the Chairman do now leave the chair is contrary to the rules? I think the motion was in order. It is the effect of the motion that I am concerned with. As far as I am concerned, it was simply that the meeting be adjourned for that day.

Mr. SCOTT: I have one brief word arising out of Mr. Nugent's remarks. No one quarrels with his right to use the rules in any way he wishes in order to achieve his purpose. But if by the use of the rules he does it in a way which the committee may later feel is not in accordance with the rules, I do not think it should be attributed by him that we are making fools of ourselves before the committee. He certainly should be given an "A" for effort in bringing up this idea. But because we may later feel that it is contrary to the rules, I do not think he should impute motives to the committee.

The CHAIRMAN: Are you ready for the question?

Mr. AIKEN: In reply to Mr. Olson, I think there is a distinction between a motion to adjourn and a motion that the Chairman leave the chair. To my mind the latter motion that was made is a technical motion which must have some effect. I think there is no problem if there is a motion to adjourn, if it is an adjournment which terminates the meeting for the day. But a technical motion that the Chairman leave the chair is always interpreted—certainly in committees in the house—that the Speaker leave the chair, and that it terminates the proceedings, or whatever we are discussing. So to that extent I cannot agree that it is merely a question to adjourn. I feel that it is a technical motion which surely must have some effect. If it has no effect at all, well then we have merely wasted our time. But I cannot believe that it has no effect, and I cannot feel that it has any other effect than what Mr. Nugent had in mind.

I respect Dr. Ollivier's opinions very much. As a matter of fact, I accept them, but I still will vote against the motion from the subcommittee, because it has not been clarified to my mind what the effect of the motion was that the Chairman leave the chair. Is it a technical terminating motion? What it determines is certainly not the proceedings of that day but merely that the committee adjourn. Maybe we did not make the motion in the committee, but if this is the case, we should make it clear. I have always understood that it terminated the proceedings.

The CHAIRMAN: Is the committee ready for the question? The question is on a motion made by Mr. Gray seconded by Mr. Basford:

(1) that this committee supports the opinion of the subcommittee on agenda and procedure that the action of this committee on Friday, November 22, was contrary to the rules;

(2) that this committee should forthwith resume its examination of and inquiry into Bill C-5 in order that the committee may report

its observations and opinions thereon to the House of Commons in obedience to the order of reference of the said house dated June 27, 1963.

All those in favour of the motion will please indicate by raising one hand.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Is there an implication in that, Mr. Chairman?

Mr. CHAIRMAN: You may lower your hands. All those contrary minded will indicate in the same fashion.

Mr. NUGENT: Just say all those opposed. Never mind the contrary minded.

The CHAIRMAN: I stand corrected. I declare the motion carried on division, by 17 to 5.

Motion agreed to.

Mr. AIKEN: I have a motion to make, if there are no others from the floor. Mr. Cameron made a motion, and Mr. Gray made a motion, I assume they were similar to what has already been made.

The CHAIRMAN: The motion just put was that this committee forthwith resume its examination of and inquiry in connection with Bill C-5. It is for an examination anyway into Bill C-5, and I presume we are still on Bill C-5. However it is now 25 minutes to 11. Ten minutes ago I suggested to the two witnesses who would have testified at this time, that they might leave because it was so close to eleven o'clock.

I think in the light of this, if there are no other motions in this connection, we might now discuss procedure from here on in, let us say, for the meeting next Friday, just in case you want to change the method we have been following.

Mr. AIKEN: My motion will be exactly on this point. I think the discussion which will come from it may terminate it. My motion will merely be—I have not phrased it yet—that the committee discontinue further discussion of Bill C-5, and that it report to the house that it not be further continued. That perhaps would bring the discussion to a close. What I am concerned about is still the effect of the citation that was given, and I am still confused about how long the committee, against its will, or against the will of the majority, can be dragged along with these hearings. I think we should be honest with ourselves and say that the bill is a good idea, and that some people have to be protected, but that this bill is not the way to do it, and that if it be carried, it will be much more damaging to these people whom it is the general intention to protect than it would be valuable. That is the opinion I have.

The CHAIRMAN: Do you want to make a motion to the effect—I think you would have to make a motion, to be in order—that the committee report to the house that the bill no longer be proceeded with?

Mr. AIKEN: May I ask Dr. Ollivier if the appropriate wording of such a motion should include "the preamble not proven"?

Mr. OLLIVIER: No, because that is a public bill. But I think your motion would be in order if you moved that the bill be not further proceeded with, and that it be reported to the house.

Mr. AIKEN: I make such a motion that we report to the house that the bill be not further proceeded with.

The CHAIRMAN: Do you have a seconder?

Mr. NUGENT: I second the motion.

The CHAIRMAN: Normally these motions should be in writing.

Mr. KLEIN: Is it not a rule that when a motion is passed one day saying that we could proceed, it is out of order to make a motion thereafter saying that we should not proceed?

Mr. OLLIVIER: It is just like when it is moved that the house go into committee, you always ask for permission to sit again at the call of the Chair and to report to the house. The fact that somebody has spoken after the motion was carried indicates that you have proceeded. So I think it is in order for you to move that the matter be not proceeded with.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I wondered if there is any method by which this committee in reporting to the house can at the same time urge study of this particular question with a view to further legislative action? I would be reluctant to see this bill reported out, just like that.

Mr. OLLIVIER: Yes, you can add a recommendation that this bill be not further proceeded with but that consideration should be given to further study of its implication.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): By whom?

Mr. OLLIVIER: That is up to you.

Mr. AIKEN: I moved a motion, and Mr. Cameron has moved one.

The CHAIRMAN: I have the motion here: moved by Mr. Aiken seconded by Mr. Nugent that this committee report to the house that Bill C-5 be not further proceeded with.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I move that there be a rider added to it recommending further study of the subject matter of this bill with a view to the introduction later on of further legislation.

Mr. OLLIVIER: By the government, if you like.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): That further study be made by the government.

Mr. OLSON: There is a point of order here in accepting that motion, and it arises out of the citation from the 16th edition of May's Parliamentary Practice at page 655 where it says:

> Accordingly, the Chairman of a standing committee will not accept a motion that the committee do not proceed further with the consideration of a bill from a member who is not in charge of the bill, nor will he accept a motion for reporting a bill to the house before its consideration has been completed by the committee . . .

It seems to me that this committee, or the Chairman cannot even accept this motion until the committee first decides that it has completed its study of the matter referred to it. I do not know how to get around this, but it seems to me that we are contravening this citation.

Mr. AIKEN: I agree with Mr. Olson on the point raised. But I thought it was clear that the committee could bring its deliverations to a conclusion at any time.

Mr. OLLIVIER: If the committee does not think it has completed its study, it can vote against the motion. But if you vote for the motion, it indicates that you consider that you have completed your studies.

The CHAIRMAN: We are now speaking to the point of order raised by Mr. Olson.

Mr. GRAY: I think Dr. Ollivier answered that if we can interpret this as meaning that we have finished our study, we can have one motion. That is Dr. Ollivier's opinion. But we may need two motions: one that we complete our consideration of the bill forthwith, or by a certain date, and if that passed,

then we would have the other motion made by Mr. Aiken. I think there is some merit on balance, so that we do not get into a useless argument.

Mr. OLLIVIER: The only thing you have to do is to vote against the motion and if you have considered the subject sufficiently, you can vote for the motion.

The CHAIRMAN: On a point of order, although Mr. Olson thought I must accept it, I think I would like to look into the point brought up by Mr. Olson, if the committee feels that this is feasible. We have had a very long discussion this morning on this question of procedure, much of which is unprecedented, as all members will well realize. Since this particular motion now touches on some points which were raised, I would not like to accept this motion until I was absolutely sure that I was doing the correct thing. So with the committee's permission, and in view of the time being a quarter to eleven with the house sitting at 11 o'clock, I would like to consult legal counsel on this and to look at the precedents and to report back at a meeting which the committee might permit to be held at the call of the Chair. I would also ask for another meeting of the steering committee in order to ascertain that we do not get into another long procedural discussion by accepting this motion. I would ask you to give me this permission.

Mr. GELBER: I would like to make a suggestion to Mr. Aiken. I agree generally with Mr. Aiken's motion. I also agree with what Mr. Cameron says. I agree that these hearings should not be interminable, and I think that is what is concerning Mr. Nugent; it is concerning others, and it is concerning me.

I wonder if you would include Mr. Cameron's amendment in this motion and also a schedule. There are two or three more witnesses it has been suggested we should hear. Why does he not say that we hear these witnesses and then report to the house?

Let us have an omnibus resolution. If we were to have such a resolution I would be prepared to vote for it.

As a courtesy to the sponsors and as a courtesy to the people who have said they would be prepared to be heard—and there are only two or three—I suggest we should hear the witnesses in one sitting and then terminate these discussions.

If Mr. Aiken could so phrase his resolution, I would be prepared to vote for it.

The CHAIRMAN: I may be a little out of order because we are still on a point of order, but I have a suggestion to make in relation to the people who have indicated that they would like to be heard. The Canadian food processors association were to be heard, at the suggestion of the committee; and the committee requested that they be asked to submit a brief. We asked them to come. They have submitted a brief. They were to have been heard today, but as some of their members come from as far away as Vancouver the steering committee took it upon themselves to suggest they should not come today in view of the situation that has arisen. However, they have sent a brief. We might suggest that their brief be incorporated as an appendix to the proceedings, and then the steering committee or the committee could decide, after having read the brief, whether or not we should have them appear as witnesses. I think this might be considered from common courtesy.

We had also requested the deputy minister of agriculture, Mr. Barry, to be here. He was here this morning but he had to leave.

The committee had also informed the bankers association that they would be given an opportunity to be heard again. In this particular case—and if you will allow me to make another suggestion—we might indicate to that association, if they have further things they would like to say, that they should put them in the form of a brief. This could also be printed as an appendix. This procedure would allow all members to take cognizance of their views.

At that time we could come to a decision as to the disposition of the bill and the type of report we would like to make. This would also permit us to do our business in a reasonably short time.

Mr. Nugent, Mr. Aiken and Mr. Klein have indicated to me that they wish to speak.

Mr. NUGENT: I thought Mr. Olson had merely raised a point, and Mr. Aiken agreed with him. It does seem to make sense that if the committee says wind it up, then we have finished the deliberations and there is no apparent disregard for the rules. The motion, as amended by Mr. Cameron, is likely to be be acceptable to the committee at large; all we have to do is put the motion. We would then be finished; I do not think there would be discussions. This actually is what we want to do.

Mr. AIKEN: Mr. Chairman, I wanted to point out a moment ago that my motion was made in order that we could discuss it and then vote upon it. Perhaps we may not be prepared to vote upon it today. If we are not, then we can vote upon it at the next meeting. I merely say that during the course of that discussion it would be in order for members to say we have not finished yet, that we want to hear other people. Or it would be in order to say that during that discussion if the committee unanimously agrees, the general intent of the brief you have sent could be read into the proceedings, and we could then conclude our determinations. My motion was merely to bring the discussion to a speedier conclusion.

Mr. KLEIN: It seems to me there is perhaps general agreement that some aspects of this bill have merit whereas the bill itself as it now stands does not have merit. I would suggest that you appoint a small committee, of perhaps four members.

The CHAIRMAN: A steering committee?

Mr. KLEIN: No, not a steering committee. Perhaps a legal committee could be appointed to redraft this bill or amend this bill, in consent with Mr. Whelan, in a form that might be more acceptable to the committee. In its present form it is not acceptable.

Mr. MOREAU: In connection with the time schedule—and I think this is what Mr. Nugent and Mr. Aiken were concerned with—I wonder if we might not print the brief of the processors as an appendix and ask the bankers association to have their brief ready. If we had a brief from them to include next week, and if then we heard from the deputy minister of agriculture, perhaps we might conclude the business in one meeting.

The CHAIRMAN: May I interrupt the proceedings again to say I had this in mind, and I think I sensed the wishes of the committee when I said that I would not accept this motion immediately, that I would like to obtain guidance to ensure that this was in order at the present time. In the meantime, while I am doing that, I would call a meeting of the steering committee. What we might do today is accept a motion for the Canadian food processors association brief to be printed as an appendix. Would this be the general wish of the committee?

Mr. MOREAU: I so move.

Mr. SCOTT: I second the motion.

The CHAIRMAN: It is agreed that we would not ask the Canadian food processors to send witnesses?

Mr. MCLEAN (*Charlotte*): I would like to hear from the processors. They have an antiquated system of doing business and I would like to hear from them.

The CHAIRMAN: The motion by Mr. Aiken will be held in abeyance pending legal opinion. It will be held under consideration by the Chair. We have a motion before us now by Mr. Moreau, seconded by Mr. Ryan, that the Canadian food processors' brief be printed as an appendix.

Mr. SCOTT: I would like to say that the only difficulty in not having them appear is that we are deprived of the right of cross-examination on the brief, which is often more useful than the brief itself. I think they should come and subject themselves to cross-examination by the members.

The CHAIRMAN: In that case, the motion is to the effect that the Canadian food processors' brief be printed as an appendix, and we can leave to the steering committee the question of witnesses.

Mr. MORE: I do not know who you are going to consult to ascertain that the motion is in order. We have had Dr. Ollivier's advice, and he says it is in order. I do not know how you hold this motion over and proceed in the steering committee to decide about the next meeting. You are going to invite processors to come to the meeting. This motion may carry and they might come, at great expense, and then not be heard. It seems to me that Dr. Ollivier's advice might be considered sufficient. If we want to hear witnesses, we defeat this motion now and then the steering committee is clear to set the agenda and call witnesses for our next meeting. If we do not do that, I do not know how the steering committee can call witnesses with any assurance that they are going to be heard.

Mr. AIKEN: If that is the general feeling of the committee, I am prepared to withdraw the motion and put it again next week.

Mr. NUGENT: Let us have it now and then we will be finished.

The CHAIRMAN: The mover has withdrawn his motion.

Actually, I have not accepted the motion yet and as the mover has withdrawn, I cannot accept it now.

Mr. WHELAN: It has been stated here this morning that I am going to continue bringing witnesses here. People who came here asked to come; I did not bring them here. I had no witnesses to bring. I had evidence given to me by legal and financial people that proved this bill was not ultra vires. I would like to present this to the committee. I still take that stand, as I did at the session before last.

If I was unfamiliar with democratic rights and principles, I would say "No, do not let them come"; but I say that this should be ironed out and settled, and the quicker the better so far as I am concerned.

The CHAIRMAN: We have a motion before us that the Canadian food processors association brief be printed as an appendix to the proceedings. The motion was moved by Mr. Moreau and seconded by Mr. Ryan.

Mr. GRAY: Does this mean the steering committee may still decide whether or not the processors will come to give evidence?

Mr. CHAIRMAN: We can decide that right now.

Mr. MOREAU: The purpose of putting the brief in as an appendix to the proceedings is that it will give all the members an opportunity to see the sort of testimony we are expecting. At the next meeting we might save time, if we did have witnesses here, because we would not have to hear them deliver their brief.

The CHAIRMAN: Are you ready for the question?

Motion agreed to.

It may be well, in the five minutes we have left, for the committee to indicate to the steering committee whether or not they would like to hear witnesses next Friday.

Mr. RYAN: I am interested in a fair hearing. I am interested in hearing all sides, in being in a proper position to complete this, and make a proper report with recommendations. I think it is quite possible that we should put a limitation on the time and the number of witnesses if we can. I think that is up to the steering committee.

The CHAIRMAN: I think the members of the steering committee who have been here this morning realize what the committee on the whole is thinking.

Mr. OLSON: In view of my obligation to be in the house, I move adjournment.

Mr. MORE: I want to raise one question. I am a layman, and I am frank to admit it. I voted against the motion to adopt the steering committee's recommendations because I did not think they were in accord with the facts. In my opinion, what Mr. Ollivier said was not that the motion was out of order. He said, that its effect was to adjourn this committee, but the committee's report did not accept this. They said further that illegal action had been taken. I think it is in the interests of correct procedure that we obtain some direction.

The CHAIRMAN: The committee has disposed of that matter and we are now considering Bill C-5.

Mr. KLEIN: May I say that we would be derelict in our duty if we did not hear witnesses who want to come here to be heard.

Mr. OLSON: I have moved adjournment.

Mr. KLEIN: I second the motion for adjournment.

Motion agreed to.

APPENDIX A

JOINT SUBMISSION

BY

THE CANADIAN FOOD PROCESSORS ASSOCIATION

THE ONTARIO FOOD PROCESSORS ASSOCIATION

THE WESTERN FOOD PROCESSORS ASSOCIATION

THE QUEBEC CANNERS ASSOCIATION

TO THE

STANDING COMMITTEE ON BANKING AND COMMERCE

OF THE

HOUSE OF COMMONS

IN RESPECT TO BILL C-5—AN ACT TO AMEND THE BANKRUPTCY ACT

The fruit and vegetable processors of Canada welcome this opportunity of presenting this submission to the Committee on behalf of their members.

The membership of these Associations, all of which are non-profit organizations, is made up of firms engaged in the canning, freezing, pickling, and preserving of fruit and vegetable products. Because of their operations our seasonal products are made available to Canadian consumers and others all year around. The membership of these organizations would account for over ninety percent of the Canadian production of processed fruits and vegetables. This submission is presented jointly on behalf of the following Associations.

The Canadian Food Processors Association
The Ontario Food Processors Association
The Western Food Processors Association
The Quebec Canners Association

The life-blood of a food processing firm is the raw product of the primary producer. Therefore, Bill C-5 is of particular concern to the fruit and vegetable processing firms even though the Bill applies to many other products and processing industries. This submission will confine itself to Bill C-5 as it affects the processors of fruits and vegetables.

We believe the Committee members may wish to question us on various points and so that this can be done on a national, as well as a regional basis, the witnesses here today are the Presidents, or their appointed representative, of the various Associations.

The intent of Bill C-5, as covered by the Explanatory Notes, is, "to prevent financial distress suffered by unpaid primary producers when the processor in possession of their products goes bankrupt". After studying the evidence placed before this Committee by the Canadian Banker's Association, Superintendent of Bankruptcy, The Canadian Credit Men's Association and the Clarkson Company, it becomes apparent that in their opinion Bill C-5, if adopted, would create some serious problems in the present control of credit.

We must be guided by those experienced and qualified in matters of legislation under the Bankruptcy Act and the Bank Act to make sure such legisla-

tion and Acts do not unduly restrict credit to a degree where this would have any adverse effect on the future development of this industry.

If the intent of Bill C-5 is to find some way to provide means whereby the grower's risk is on a sounder basis then we support the intent. We feel that an ounce of prevention is worth more than a pound of cure. If growers at present lack the means to secure proper credit information on which to decide whether or not they should contract with a processor certainly something should be done to correct this situation.

In Ontario, which is a major producing area for a number of processing crops, we feel there is ample provision in the Farm Products Marketing Act to permit satisfactory investigation of the financial responsibility of a processor. We feel growers can and should investigate the financial responsibility of each processor and, if not satisfied, they can have such a firm refused a licence.

You have the opportunity today to question witnesses from all areas in Canada on this subject of credit information available to growers or their Boards.

We fully appreciate the seriousness of the situation where a grower has been unfortunate enough to contract with a processor who goes into bankruptcy or liquidation prior to the grower having been paid for his goods. We fully concur that steps should be taken by the growers, or their appointed organization, that will provide some protection and relief in such circumstances. This might take the form of some plan of insurance or a levy to go into a pooled fund whereby such loss is provided for on a share basis.

In 1962 the total acquirements of Canadian fresh fruits and vegetables used in processing of food commodities amounted to:

(*a*) Fruits	tons	231,579
(*b*) Vegetables	tons	896,586
Total	tons	1,128,165

A very small levy per ton would soon create a very substantial fund to cover losses through bankruptcy.

The suggestion has been made that a contract between a grower and processor might contain a clause covering payment to the grower. In British Columbia there is a clause in their contract for peas, under which the processor must provide the grower with security for any unpaid balances after September 15th. This clause was brought into effect after a processor had gone into bankruptcy.

We have already pointed out the importance of the grower to the food processing industry. We look upon the grower as a very important segment of our industry, as a business man rather than a wage earner. It should be kept in mind that the processor's relation with the grower goes far beyond the mere contracting of acreage at a fixed price. The processor, in many instances, supplies the seed or plants and, through his fieldmen, provides the grower with a program for fertilizing, spraying and crop control.

Even though the grower and processor are so closely related in the production of processed foods, we feel that each segment of industry must be looked upon as a separate business and that when it comes to financial arrangements this is a matter of negotiation and agreement between those involved. To give preference to any particular creditor or class of creditor for goods

purchased or contracted for would create a situation that would prove very dangerous. We feel the following will illustrate and justify our concern in this regard:

This shows the value of purchases in 1961 for the specified items as compiled by the Dominion Bureau of Statistics in their report "Fruit and Vegetable Canners and Preservers, 1961":

Canadian grown fresh fruits	$ 17,254,000
Canadian grown fresh vegetables	34,265,000
Metal containers	55,538,315
Glass containers with cartons	10,384,310
All other (cartons, labels, caps, etc)	15,649,640

If any segment of industry becomes a preferred creditor for any reason it will certainly result in other creditors asking for the same treatment. In our opinion it would bring on a chain action that would result in confusion and discrimination with the result that credit would be restricted and the future development of the industry severely affected.

We believe that the sponsor of Bill C-5, Mr. Eugene Whelan, M.P. for Essex South, has rendered the processing industry a great service through his desire to improve the credit risk and security of primary producers. We feel much can and should be done to correct this situation. Other industries, such as the dairy and fish industries, have found a solution to this problem of payments. We respectfully submit that what others have done we can do and assure you of our earnest and sincere desire to cooperate in reaching a satisfactory solution.

HOUSE OF COMMONS

First Session—Twenty-sixth Parliament

1963

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: EDMUND ASSELIN, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 8

FRIDAY, DECEMBER 6, 1963

Respecting

Bill C-5, An Act to amend the Bankruptcy Act (Primary Products under Processing)

WITNESSES:

Mr. P. R. Robinson, Manager, Canadian Food Processors Association; Mr. Guy Limoges, President, Quebec Canners Association.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1963

29711-9—1

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: Edmund Asselin, Esq.

Vice-Chairman: Maurice J. Moreau, Esq.

and Messrs.

Addison,
Aiken,
Armstrong,
Asselin (*Richmond-Wolfe*),
Basford,
Bell,
Boulanger,
Cameron (*Nanaimo-Cowichan-The Islands*),
Chaplin,
Chrétien,
Côté (*Chicoutimi*),
Douglas,
Flemming (*Victoria-Carleton*),
Gelber,
Grafftey,
Gray,
Grégoire,
Habel,
Hahn,
Hamilton,
Irvine,
Jewett (Miss),
Kelly,
Kindt,
Klein,
Lloyd,
Macaluso,
McLean (*Charlotte*),
Monteith,
More,
Morison,
Nesbitt,
Nowlan,
Nugent,
Olson,
Otto,
Pascoe,
Pilon,
Ryan,
Rynard,
Sauvé,
Scott,
Skoreyko,
Tardif,
Thomas,
Thompson,
Vincent,
Whelan—50.

Dorothy F. Ballantine,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

FRIDAY, December 6, 1963.
(17)

The Standing Committee on Banking and Commerce met at 9:10 a.m. this day. The Chairman, Mr. Asselin (*Notre-Dame-de-Grâce*) presided.

Members present: Messrs. Aiken, Asselin (*Notre-Dame-de-Grâce*), Asselin (*Richmond-Wolfe*), Cameron (*Nanaimo-Cowichan-The Islands*), Chrétien, Côté (*Chicoutimi*), Douglas, Gray, Habel, Hahn, Kelly, Klein, Lloyd, McLean (*Charlotte*), Morison, Otto, Pascoe, Ryan, Rynard, Thomas, Vincent, Whelan—(22).

In attendance: Mr. P. R. Robinson, Manager, Canadian Food Processors Association; Mr. Guy Limoges, President, Quebec Canners' Association.

Also present: Dr. P. M. Ollivier, Parliamentary Counsel.

The Chairman stated that the Sub-Committee on Agenda and Procedure met on Tuesday, December 3, 1963, and read the report of the Sub-Committee, which is as follows:

"Your Sub-Committee noted that the following witnesses have been invited, but have not yet appeared before the Committee: The Canadian Food Processors Association, the Canadian Bankers' Association and the Deputy Minister of Agriculture, Mr. S. C. Barry.

Your Sub-Committee agreed to recommend as follows:

(1) That all the above-named witnesses be notified that, if they wish to make any further representations to the Committee, the Committee will hear such representations at the meeting of Friday, December 6th;

(2) That the meeting of Friday, December 13th, be devoted to clause by clause consideration of the Bill and preparation of the Committee's report to the House;

(3) That the Committee may be required to hold an extra meeting early next week to consider four Private Bills now on the House Order Paper."

On motion of Mr. Hahn, seconded by Mr. Lloyd, the report of the Sub-Committee was approved.

The Chairman stated that the Deputy Minister of Agriculture, Mr. S. C. Barry, had been contacted but because of a prior engagement he was unable to attend today. The Committee agreed to dispense with hearing Mr. Barry.

The Chairman then read a letter from the Secretary of the Canadian Bankers' Association stating that representatives of that Association were unable to attend today's meeting but would have a supplementary brief in the hands of the Clerk not later than Wednesday, December 11th. The Committee agreed to receive the brief of the Canadian Bankers' Association but not to invite them as witnesses.

Mr. Aiken referred to a motion which he had made at the last meeting to the effect that this Committee report to the House that Bill C-5 be not further proceeded with. He had later attempted to withdraw the motion but the

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seconder had not consented to its withdrawal. The Chairman pointed out that, in any event, he had not accepted the motion. The members gave unanimous consent for Mr. Aiken to withdraw his motion.

The members then resumed consideration of Bill C-5, An Act to amend the Bankruptcy Act (Primary products under Processing).

The Chairman introduced the witnesses and Mr. Robinson read a joint submission from the Canadian Food Processors Association, the Western Food Processors Association and the Quebec Canners Association.

Mr. Robinson was questioned, assisted by Mr. Limoges.

Mr. Whelan said he was preparing a brief which he would distribute to the members by Monday.

At 11:15 a.m., on motion of Mr. Kelly, seconded by Mr. Asselin, the Committee adjourned to the call of the Chair.

Dorothy F. Ballantine,
Clerk of the Committee.

EVIDENCE

FRIDAY, December 6, 1963.

The CHAIRMAN: Gentlemen, we have a quorum; will you please come to order.

I have a report of the subcommittee on agenda and procedure. This subcommittee met on Tuesday, December 3, 1963, and I would like to read the report into the record.

> Report of the subcommittee on agenda and procedure of the standing committee on banking and commerce.
>
> Your subcommittee on agenda and procedure met on Tuesday, December 3, 1963.
>
> Your subcommittee noted that the following witnesses have been called, but have not yet appeared before the committee: the Canadian Food Processors Association, the Canadian Bankers' Association and the Deputy Minister of Agriculture, Mr. S. C. Barry.
>
> Your subcommittee agreed to recommend as follows:
>
> (1) That all the above-named witnesses be notified that, if they wish to make any further representations to the committee, the committee will hear such representations at the meeting of Friday, December 6.
>
> (2) That the meeting of Friday, December 13, be devoted to clause by clause consideration of the bill and preparation of the committee's report to the house;
>
> (3) That the committee may be required to hold an extra meeting early next week to consider four private bills now on the house order paper.

It may be that there will be a fifth bill referred next week.

Could I have a motion to approve the recommendations of the subcommittee?

Mr. HAHN: I so move.

Mr. LLOYD: I second the motion.

Motion agreed to.

The CHAIRMAN: I understood Mr. Barry was to be with us this morning. Unfortunately, a prior and important engagement is preventing him from coming. Actually, it was not Mr. Barry who was pressing himself on the committee but the committee had requested Mr. Barry to come before us. Would the committee care to indicate at the present time whether or not it desires to question Mr. Barry on this subject? Perhaps then we might dispense with the hearing of Mr. Barry, unpleasant as that might be.

I have a letter from the Canadian Bankers' Association addressed to Miss Ballantine, the clerk of our committee.

Miss D. F. Ballantine,
Clerk,
Banking and Commerce Committee,
House of Commons,
Ottawa, Ontario.

Dear Miss Ballantine:

Bankruptcy Act — bill C-5

I appreciate your informing me of the plans which are being made for further committee hearings on this bill and wish to assure you that we are endeavouring to conclude our drafting of the association's supplementary brief to provide information which the committee requested during the course of our earlier appearance on July 26. We expect that the supplementary brief will be in your hands by Wednesday, December 11.

As I already have mentioned in telephone conversations it had been our expectation that there would be further time available to us before our next submission. This as you know is a particularly strenuous period for all of the banks through their pre-occupation with annual shareholders meetings, and this of course means that the senior executives at head offices have extra demands on their time.

It is of course the association's desire to assist the committee in every way possible. We shall be glad to make representatives available for the purpose of giving further evidence on any date commencing, say, with Wednesday evening of next week. If the committee wishes us to make such arrangements it will be appreciated if you will give me as much notice as possible to facilitate our attendance.

Yours truly,

(Sgd.) H. L. ROBSON,
Secretary.

If you recall, we did ask sometime ago—I believe it was at the beginning of our hearings on this bill—that the bankers association return for further questioning.

They will be preparing a supplementary brief and, I think, if I understood the feeling of the committee at the last meeting, it was your wish to end the hearing of witnesses as soon as possible on this bill.

It might be that the committee would like to see the brief or the supplementary brief which the bankers association have prepared and will send to us next Wednesday, without requesting that they come to be questioned about it, as we already have questioned them.

Would my suggestion meet with the approval of the committee?

Some hon. MEMBERS: Agreed.

The CHAIRMAN: Perhaps we might have the brief printed as an appendix to the report. Copies could be distributed next Friday morning. Is this agreeable?

Some hon. MEMBERS: Agreed.

The CHAIRMAN: Have you a question, Mr. Vincent?

Mr. VINCENT: Mr. Chairman, in respect of the importance of this bill, I do not think anyone in this committee was questioning the principle of it but some were questioning the wording of the bill. Due to the importance of this principle

do you think this bill will be reported to the house during this present session, and be adopted? Will it be possible to report the bill to the house at the end of this session?

The CHAIRMAN: Are you asking me to give my own personal opinion?

Mr. VINCENT: Yes.

The CHAIRMAN: Mr. Vincent, I do not think you were here a few minutes ago when we read the report of the subcommittee on agenda and procedure. This report was adopted.

The effect of this report was that we would hear witnesses today and next Friday we would devote the time of the committee to a clause by clause consideration of the bill and preparation of the committee's report to the house.

You have asked me whether we will be able to report it. As I said, the committee this morning agreed to the adoption of this report. We have agreed to try and prepare a report and to have it ready following next Friday's meeting. It is possible that we will be in a position to make a report on the following Monday.

In view of the adoption of this report, I will call the steering committee together early next week to discuss the kind of report that might be made and submit it following the discussion of the clause by clause discusssion of the bill next Friday.

What the house does with this bill I am afraid is beyond the scope of my prophetic powers.

Have you a question, Mr. Gray?

Mr. GRAY: In so far as the report which the committee will prepare and when it will leave this committee is basically within the power of this committee and, of course, after that it is up to the house.

Mr. AIKEN: I think Mr. Vincent is concerned over the possibility of not getting a report forwarded by this committee before the session ends. Also, I think he is concerned that if this report is not forwarded within a reasonable length of time this bill may just disappear.

The CHAIRMAN: Yes, I understood that, and I understand his concern.

As I said, the subcommittee's report was adopted just before Mr. Vincent arrived. I think it deals with the situation quite adequately. I am hopeful we will be able to deal with the report next Friday with enough celerity to give the house time to act on it before the recess.

Gentlemen, we will resume consideration at this time of bill C-5, to amend the Bankruptcy Act.

We are happy to have with us this morning Mr. P. R. Robinson, President of the Canadian Food Processors Association. Mr. Robinson is sitting on my immediate right.

Next to Mr. Robinson is Mr. Guy Limoges, president of the Quebec Canners Association. These gentlemen are representing their organizations and are prepared, I believe, to make a submission to us this morning and then to be questioned on their submission.

Mr. Robinson, would you be prepared at this time to read your brief?

Mr. P. R. ROBINSON (*President, Canadian Food Processors Association*): Yes, Mr. Chairman, if that is your wish.

Mr. AIKEN: Mr. Chairman, before Mr. Robinson proceeds I believe we left the meeting last week somewhat confused over this whole situation.

The CHAIRMAN: Yes, Mr. Aiken, and I suggest we do not at this time return to the state of confusion which existed at that time.

Mr. AIKEN: As I said, Mr. Chairman, there was confusion over what happened. I want to go ahead with the witnesses this morning but I would like to have it cleared up for the sake of the record. I have not seen the transcript.

There was a motion with an amendment by Mr. Cameron which, in effect, would have referred the bill back to the government for re-consideration. In order to facilitate things I offered to withdraw this motion but my seconder did not consent. Mr. Cameron's amendment, I presume, stands. I think there should be some clarification of where we stand now with that.

Mr. GRAY: In respect of the comments made by Mr. Aiken, in my opinion, I do not think strictly speaking, you need a seconder on a motion made in committee, so the fact your seconder did not consent is irrelevant.

I think we have cleared up the matter by adopting the report of the steering committee. In effect, we have adopted the procedure which is somewhat alternate to what you proposed at the last meeting, but which will have a similar effect in bringing this matter to a speedy conclusion.

The matters in issue were discussed fully and I would suggest we proceed to the study of the bill, based on the evidence we have heard over the preceding weeks, at the next meeting. In doing what we did at the beginning of this meeting I think we have clarified the point concerned.

Mr. AIKEN: I requested a ruling from the Chairman but I think maybe Mr. Gray has given it.

The CHAIRMAN: Is it all cleared up to your satisfaction?

Mr. AIKEN: Yes, as long as the record is clear.

The CHAIRMAN: I did not consider I had actually received the motion in that you had withdrawn it, and while I did during the course of the long and labourious discussion we had at the last meeting reserve at one point my decision on the motion I have not gone into the study of it that I might have had you not withdrawn it.

Mr. AIKEN: My only concern was the lack of unanimous consent but I assume there is unanimous consent at this time.

The CHAIRMAN: The report of the subcommittee was adopted unanimously.

Would you proceed now, Mr. Robinson.

Mr. ROBINSON: Mr. Chairman, I would like to make one point clear before I read the submission to you.

This submission had been prepared with the hope that it would be presented to you a week ago. However, this did not happen. At that time I had witnesses who would have been representative of processing firms and associations across Canada. I felt this was very important because in my own office we do not deal with negotiations. This is all done at the provincial rather than the national level and, therefore, that was the purpose of bringing these witnesses before you at that itme for questioning.

However, gentlemen, I will do my best, with the help of Mr. Limoges, who is the president of Quebec canners. As I said, other than Mr. Limoges, you have not as good witnesses this morning as we would have had last week, if we appeared when scheduled.

I shall now read the brief.

The fruit and vegetable processors of Canada welcome this opportunity of presenting this submission to the committee on behalf of their members.

The membership of these associations, all of which are non-profit organizations, is made up of firms engaged in the canning, freezing, pickling, and preserving of fruit and vegetable products. Because of their operations our seasonal products are made available to Canadian consumers and others all year around. The membership of these organizations would account for over ninety percent of the Canadian production of processed fruits and vegetables. This submission is presented jointly on behalf of the following associations:

The Canadian Food Processors Association
The Ontario Food Processors Association

The Western Food Processors Association
The Quebec Canners Association

The life-blood of a food processing firm is the raw product of the primary producer. Therefore, bill C-5 is of particular concern to the fruit and vegetable processing firms even though the bill applies to many other products and processing industries. This submission will confine itself to bill C-5 as it affects the processors of fruits and vegetables.

We believe the committee members may wish to question us on various points and so that this can be done on a national, as well as a regional basis, the witnesses here today are the presidents, or their appointed representative of the various associations.

The intent of bill C-5, as covered by the explanatory notes, is, "to prevent financial distress suffered by unpaid primary producers when the processor in possession of their products goes bankrupt". After studying the evidence placed before this Committee by the Canadian Bankers' Association, superintendent of bankruptcy, The Canadian Credit Men's Association and the Clarkson company, it becomes apparent that in their opinion bill C-5, if adopted, would create some serious problems in the present control of credit.

We must be guided by those experienced and qualified in matters of legislation under the Bankruptcy Act and the Bank Act to make sure such legislation and Acts do not unduly restrict credit to a degree where this would have any adverse effect on the future development of this industry.

If the intent of bill C-5 is to find some way to provide means whereby the grower's risk is on a sounder basis then we support the intent. We feel that an ounce of prevention is worth more than a pound of cure. If growers at present lack the means to secure proper credit information on which to decide whether or not they should contract with a processor certainly something should be done to correct this situation.

In Ontario, which is a major producing area for a number of processing crops, we feel there is ample provision in the Farm Products Marketing Act to permit satisfactory investigation of the financial responsibility of a processor. We feel growers can and should investigate the financial responsibility of each processor and, if not satisfied, they can have such a firm refused a license. You have the opportunity today to question witnesses from all areas in Canada on this subject of credit information available to growers or their Boards.

We fully appreciate the seriousness of the situation where a grower has been unfortunate enough to contract with a processor who goes into bankruptcy or liquidation prior to the grower having been paid for his goods. We fully concur that steps should be taken by the growers, or their appointed organization, that will provide some protection and relief in such circumstances. This might take the form of some plan of insurance or a levy to go into a pooled fund whereby such loss is provided for on a share basis.

In 1962 the total acquirements of Canadian fresh fruits and vegetables used in processing of food commodities amounted to:

(*a*) Fruits	tons	231,579
(*b*) Vegetables	„	896,586
Total	"	1,128,165

A very small levy per ton would soon create a very substantial fund to cover losses through bankruptcy.

The suggestion has been made that a contract between a grower and processor might contain a clause covering payment to the grower. In British Columbia there is a clause in ther contract for peas, under which the processor must provide the grower with security for any unpaid balances after September, 15th. This clause was brought into effect after a processor had gone into bankruptcy.

We have already pointed out the importance of the grower to the food processing industry. We look upon the grower as a very important segment of our industry, as a business man rather than a wage earner. It should be kept in mind that the processor's relation with the grower goes far beyond the mere contracting of acreage at a fixed price. The processor, in many instances, supplies the seed or plants and, through his fieldmen, provides the grower with a program for fertilizing, spraying and crop control.

Even though the grower and processor are so closely related in the production of processed foods, we feel that each segment of industry must be looked upon as a separate business and that when it comes to financial arrangements this is a matter of negotiation and agreement between those involved. To give preference to any particular creditor or class of creditor for goods purchased or contracted for would create a situation that would prove very dangerous. We feel the following will illustrate and justify our concern in this regard:

This shows the value of purchases in 1961 for the specified items as compiled by the Dominion Bureau of Statistics in their report "Fruit and Vegetable Canners and Preservers, 1961"

Canadian grown fresh fruits	$17,254,000
Canadian grown fresh vegetables	34,265,000
Metal Containers	55,538,315
Glass Containers with cartons	10,384,310
All other (cartons, labels, caps, etc.)	15,649,640

If any segment of industry becomes a preferred creditor for any reason it will certainly result in other creditors asking for the same treatment. In our opinion it would bring on a chain action that would result in confusion and discrimination with the result that credit would be restricted and the future development of the industry severely affected.

We believe that the sponsor of bill C-5, Mr. Eugene Whelan, M.P. for Essex South, has rendered the processing industry a great service through his desire to improve the credit risk and security of primary producers. We feel much can and should be done to correct this situation. Other industries, such as the dairy and fish industries, have found a solution to this problem of payments. We respectfully submit that what others have done we can do and assure you of our earnest and sincere desire to cooperate in reaching a satisfactory solution.

The CHAIRMAN: Thank you very much, Mr. Robinson.

Would the members of the committee wish to hear Mr. Limoges' submission at this time.

Mr. ROBINSON: Mr. Chairman, his submission has been embodied in the one I read.

The CHAIRMAN: In that case I would ask the members at this time to direct any questions which they feel may be helpful to either of these two gentlemen.

Mr. GRAY: Mr. Chairman, before beginning with the few questions I have I think we should thank these witnesses, even in advance of our questioning them, for coming today after arrangements were made for them to be here last week, when a broader segment of their industry would have been present.

We do appreciate their interest in presenting to us this information.

First of all, I would like to ask the witness some questions touching on his comments and his study of the evidence of the Canadian Bankers Association and so on.

Is it not correct, sir, that if the farmers are, in fact, paid for their crops they would then have no priority over the banks if Mr. Whelan's bill went through. Am I correct in saying that the situation would be no different from what it was before.

Mr. ROBINSON: Mr. Gray, I did not follow your question.

Mr. GRAY: As I understand it, if Mr. Whelan's bill is passed the farmer who is not paid for his crop would be given a priority over that held by the banks now under section 88, in the event of a processor going bankrupt.

Mr. ROBINSON: Yes.

Mr. GRAY: Now, even if this bill is passed would you not agree that if the particular processor had paid the farmers and went bankrupt the bank would still be in no different position?

Mr. ROBINSON: I would think that was sound reasoning. Do you mean if there is no debt there?

Mr. GRAY: Yes.

Mr. ROBINSON: You mean if prior to his going into liquidation there is no debt there? If that is the case, certainly the banks' position probably has not been altered.

Mr. GRAY: I am sure you will notice, in studying the brief of the bankers association, that they make the point that these bankruptcies are not all that frequent in your industry.

Mr. ROBINSON: I think that is correct.

Mr. GRAY: As already mentioned, they are lending $100 million a year.

Mr. ROBINSON: We are selling over $1 million a day so I would expect we will have to have a little bit of financing.

Mr. GRAY: I am not criticizing the amount but, as I recall it, they were making quite substantial profits in respect of interest. Do you recall that?

Mr. ROBINSON: No. I would think this would be a battle between you and the banks rather than with the processor.

Mr. GRAY: I am directing your mind to a certain aspect of their brief in order to lead up to this question which I am going to put to you.

Mr. ROBINSON: Yes.

Mr. GRAY: Could you say as a businessman and a student in your industry, if these bankruptcies do not occur too often and if the banks are lending substantial amounts of money on which they are making very substantial amounts of earnings through interest, why the passage of this bill would lead to a serious reduction of credit.

Mr. ROBINSON: I would have to reply that you have pointed out if the growers' bills had been paid then the bank's position under section 88 has not been changed. Now, I am not here in defence of the bank, as you can well understand, but we do find this, with all the experience we have had—and I will leave it to Mr. Limoges to comment on this—that when a bankruptcy occurs we seldom find the situation where the whole range of creditors is not involved. The point with which we are concerned is what could easily happen to a processor's credit limits if there are changes in the Bankruptcy Act. This is the thing which would disturb us.

Mr. GRAY: So, if you are assured by students of these matters and other experts in these lines that this was unlikely to happen you would not have the same concern that you exhibit in your brief in respect of Mr. Whelan's bill.

Mr. ROBINSON: I cannot see how you are going to change either the Bankruptcy Act or section 88 of the Bank Act without it having a very serious effect.

Now, let us take a look at this first and then perhaps we can argue it. I cannot see how this can be done without affecting the credit situation. I think we all realize, particularly Mr. Whelan, the sponsor of the bill, that it is not the big processing companies that are too much involved here; it is the smaller companies, the newer ones coming along, and they would be the ones that might have serious difficulties in getting sufficient from the bank if there are any drastic changes made.

Now, these small processors in the areas in which they operate are just as essential to that area as the big giants are in the area in which they operate. I may get my knuckles rapped for using the words "big giants". But, no matter whether he is big or small he is playing an important part with the local farmers.

Mr. GRAY: Can you tell me why the farmers are bearing the brunt of establishing new firms in your industry?

Mr. ROBINSON: I have never said he was bearing the brunt. Who made this statement?

Mr. GRAY: Well, that is the impression I got. You indicated the problem would be most serious for a smaller and newer processor, the ones who have just started and who, in your opinion, if this bill was passed, would find it very hard to obtain credit. In other words, this would seem to me to indicate that if a small processor, that is, a new man, went bankrupt having obtained credit under section 88, then the farmer who presented him his crop would, in effect, bear the brunt of the problems of this new fellow getting started and not being able to make it.

Mr. ROBINSON: I think I can go along with that only a very short distance.

Mr. Limoges, in addition to being the president of the Quebec Canners Association is closely connected with the financing, much more so than I am, and I am going to ask him to pick up after I have made this comment on your question.

A processor who is going to operate in a given area will sit down and decide what his objectives are going to be, so many cases of peas, beans, corn or what have you, and then I would assume— and, this is where I would like Mr. Limoges to take over—this processor goes to his bank to arrange a line of credit for that year's operation based on his program. Now, if he just goes in there and it happens to be a sunny day and he has caught the fellow after a big meal and he says: O.K., I need $100 million and gets it without any further ado than that I would think your point would be well taken.

I would now ask Mr. Limoges to add something to what I have said.

Mr. GUY LIMOGES (*President, Quebec Canners' Association*) (*Interpretation*): Mr. Robinson was saying a moment ago that my field was rather that of financing. I perhaps should mention that my particular field is chairman of the association of canners of Quebec and more concerns my relations with farmers concerning contracts of canning fruits and vegetables. Therefore, as a representative of the Quebec association I would rather wish to confine myself to the matter of contracts rather than to loans from banks.

Mr. Robinson is correct in what he says in respect of the small canners or conditioners, as we call them, in that they present a balance sheet and then obtain the amounts required in proportion to what is represented.

Mr. GRAY: Did you not express a view on page 2 of your brief, the third paragraph that there is ample provision in the farm products marketing act to permit satisfactory investigation of the financial responsibility of a processor? As you are no doubt aware, we had witnesses before us from all the provincial fruit and vegetable marketing boards and, on page 189, in response to a question by me, this was not possible at this time, in their view.

Mr. ROBINSON: I have referred, of course, in the brief, to the fact that under the farm marketing board the growers' representative is permitted to go in and examine books and if there is any reasonable doubt as to the integrity or status of that firm a licence can be withheld.

I have here in my hand copies of agreements for peas, tomatoes and other products under the Ontario board and I am sure that you are aware—I would be surprised if you are not—that there are provisions here in respect to what has been discussed. If I may, I will read the provision under "tomatoes":

> Every processor shall pay to the grower the amount of the purchase price due and owing the grower for tomatoes delivered by the grower to the processor in each two weeks deliveries on the Friday of the week immediately following such two weeks period.

Each contract has definite clauses which does give, in my opinion—and, I will not say 100 per cent protection because nothing connected in business ever affords 100 per cent protection—reasonable protection.

In other words, if the grower does not make demands for his payment is he not a little lax in the very tools which have been put in his hands?

Mr. GRAY: What would the processor say to him if he asked for weekly payments?

Mr. ROBINSON: The processor would either have to pay him or he would be in trouble.

Mr. GRAY: Even if he was a smaller new man?

Mr. ROBINSON: This goes back again to faith in one another in the conducting of business. Now, faith sometimes can lead us down the garden path, but we all know these things are unfortunate and, as you know, they are not planned. We certainly would hate to see any grower hurt because of bankruptcy, and we are aware that it reflects on us; not only does it reflect on us, it hurts us. We do not like this any more than the grower does, but we feel there is a provision under the farm marketing act; perhaps it is not all being used as well as it might be or as fully, but these are things which we looked at and explored. I think this is much more practical for both the processor and the grower than any change in the Bankruptcy Act or Bank Act.

Mr. GRAY: How would greater licensing which you say is possible, help the growers of apples and potatoes who are not covered by the marketing boards in Ontario?

Mr. ROBINSON: This is true. There is a variation in marketing boards across Canada.

I am sorry we have not the witnesses from British Columbia and the Annapolis valley. However, there is no such thing as a processor going bankrupt in the Okanagan valley. Anyway, if a farmer has fruit the processor does not buy it from the farmer but from the farmer's agent. I believe this same thing applies here in Ontario in respect of asparagus. I do not believe in this case they make their payments direct to the farmers.

Mr. WHELAN: But this is a different thing because you can identify your fruit and asparagus. It is not processed to the same level. You are referring to the fresh markets.

Mr. ROBINSON: No, I am speaking of processed.

Mr. WHELAN: These are not processed apples to which you are referring. Asparagus, as a rule, goes in a freezer and is then packaged.

Mr. GRAY: Mr. Chairman, I would ask that Mr. Whelan await his turn as I would like to finish my questions.

Mr. ROBINSON: I hope you do not wear me out before his turn comes.

Mr. GRAY: I am sure Mr. Whelan will add a lot of useful information to the meeting by his questions. But, I take it from your last comment, sir, that you would agree with me when I suggest in every province of Canada there are great variations in what products are covered by what boards. As you know, some products are covered in Ontario and are not covered in another province, or vice versa, and some powers that are in effect in British Columbia by legislation may or may not exist in Ontario.

I want to direct your attention to a particular question, page 189. I asked Dr. Brown who brought the brief on behalf of the Ontario Growers Association this question:

> They have no prelicensing powers; they do not operate any prelicensing or preselling?

The answer given by Mr. Brown was:

> No. In connection with the licensing, may I ask Mr. Fisher to answer that because our association is not directly involved.

Then Mr. Brown made some comments, and ended up with saying:

> We do not have the power to license.

I gather there is quite a sharp difference in point of view between your idea of what could be done in Ontario and what these people think.

Mr. ROBINSON: I see the point you are trying to establish here. I was here at the hearing when Mr. Brown and Mr. Fisher gave evidence. Possibly the answer is they are looking at the powers they have under their board and if they feel they need broader powers they can request them.

Mr. GRAY: Even with prelicensing is it not correct that if a fellow is licensed on January 1, with a guarantee as of September 1, his financial position must have deteriorated drastically by the time the crop was delivered.

Mr. ROBINSON: That is true. We recognize this. This could happen. But, let us take, for instance, the peas or beans that we are talking about. Suppose he is contracting in March for "X" acres. These peas are going to be harvested down in the Essex and Kent area in July. Now, he is certainly not going to wait until September and October to get his payment because under here he can go in two weeks afterwards and ask for payment, and if he does not get payment I would think something is going to start to happen.

Mr. GRAY: Well, why in Ontario has this problem arisen if all these people have the right to ask for such prompt payments?

Mr. ROBINSON: Why do they want the power to ask for it, you mean?

Mr. GRAY: Why do these people come here in support of Mr. Whelan's bill, saying it is needed if, through their contracts they are able to receive prompt payments? I will go further than this: if occasions have arisen in which farmers have not been paid for their entire crop or most of it why are these provisions in the contracts so useful?

Mr. LIMOGES (*Interpretation*): It may be because of those who have waited too long or who want to have a reasonable payment, whether they be paid once every week or once every two weeks, and if these people receive their payments every 15 days, let us say, I think they would not be satisfied with this procedure.

In respect of the growing of tomatoes in Quebec, our marketing board pays the farmers every two weeks under contracts, and, in the case of several companies, if certain farmers wish a certain amount for some reason in advance we are ready to give them that amount. There might be one farmer or no farmers who benefit from this privilege. Therefore, I do not see a serious problem here in respect of the farmer when they are paid every 15 days or so.

Mr. GRAY: I will continue on to several other questions and then I will turn the subject over to other members who have questions they want to ask. I am happy to accord the others here the same privilege of questioning. Let me ask this question: do you think it is possible to have a fund of the type you request on a national basis in view of divided constitutional jurisdiction in agriculture?

Mr. ROBINSON: I would think you would find that the growers in Prince Edward Island, the Saint John valley or the Annapolis valley, along with the various other areas, would like to have their fund confined to themselves. I would think a national fund would be much more desirable if it could be worked out. This is something which would have to be given a good deal of study.

Mr. GRAY: Your association has not had advice on the constitutional aspects of this?

Mr. ROBINSON: No, we have not because, as I say, our association as a national body has never been involved with negotiations between the processor and grower; this always has been done at the provincial level.

Mr. GRAY: I notice at page 3 near the end of your brief you compare the producer to a businessman. Are there really many businessmen who sell the entire efforts of their year's labour to one customer as the farmer sells to the processor?

Mr. ROBINSON: I appreciate your question and, believe me, I will repeat what I have said many, many times, not here but everywhere else, when I have had occasion to talk on this point. We have to have successful farmers in order to have successful processors. We like to look upon our farmers as business associates. We feel he is not waiting all year. I know what you mean; if he contracts for 100 acres of peas that is a good part of his farm and, as far as I know, it may be all of his farm. I know what you mean. If he contracts for a hundred acres that might be a good piece of his farm; it might even be all his farm. You are saying to me: if he has all his eggs in one basket, should we not put some extra handles on that basket.

Mr. LIMOGES: In the province of Quebec not more than one or two per cent have a contract with only one firm; they mostly divide their contracts.

Mr. GRAY: Are you aware that this is not the situation in other parts of Ontario? I know you suggested it would be dangerous to give preference to any particular creditor or class of creditor. Would you then oppose the continuance of the preference now given to wage earners?

Mr. ROBINSON: No. We were not considering that Bill C-5 touched the wage earner.

Mr. GRAY: I asked that because you are stating a general principle.

Mr. ROBINSON: No, I am talking about creditors in the sense of materials.

Mr. GRAY: Assuming your clients do sell their entire crop to only one processor, does that put him in the class of the manufacturer of labels and cans and so on?

Mr. ROBINSON: In a sense we are coming back to the man with all his eggs in one basket. Perhaps he has only one basket at his disposal; I do not know.

But certainly before he puts those eggs in that basket he has a moral right, as a farmer or a businessman, to make investigations to ensure that he is putting his eggs in a sound basket, not in one out of which the bottom is going to fall.

Mr. GRAY: What steps are available to him to make these investigations?

Mr. ROBINSON: If he has no other way of going about it, he can always walk into a lawyer's office, can he not?

Mr. GRAY: And he can walk right out again.

Mr. ROBINSON: I cannot imagine a man who is sceptical about credit not being able to obtain the information he requires.

Mr. GRAY: If a man walked into the office of a man who was the only processor and said, "Do you mind showing me your books so that I can see you are in good shape", do you think he is going to be told?

Mr. ROBINSON: Here I am at a disadvantage because the Ontario man would know this. But I am told they can go in and look at the books. The farmers marketing act gives that power.

Mr. GRAY: I am talking about the farmer. Do you think the individual farmer has himself the training to make this investigation?

Mr. ROBINSON: No, I would not say so. He probably would not know what he was looking at. I do not think he would do it. He would appoint someone to do it for him. I would not go in and do it because I would not know.

Mr. GRAY: Is it not correct to say that the bank has no right to give this information?

Mr. ROBINSON: Are you talking about the farmers going into the bank to find out what money the processor has on deposit or are you talking about his accounts receivable and payable in his own office? The bank cannot do anything about that.

Mr. GRAY: The banker of a processor often has a pretty good idea how his customer is doing financially, because he is lending money to him. You would agree, would you not, that if the farmer went to the banker as the potential source of information he would not get very far?

Mr. ROBINSON: I would rather the banker answer that.

Mr. GRAY: They have done so already.

Another potential source might be Dun and Bradstreet, but that is not too valuable. The processor might not want to tell Dun and Bradstreet's man about his situation.

Mr. ROBINSON: These things can be made difficult. It depends on the attitude of the party being questioned. I still feel—and I say this in all sincerity—that ways and means can be worked out and a great deal of the risk that has cropped up can be eliminated. However, I think this matter rests with the farmer; he is not exercising all the rights he has. I am even told that there are instances where the farmer has been given the cheque and has held the cheque, that he has not cashed it. What reason did he have for doing this?

Mr. GRAY: Maybe the processor told him he was in good shape.

Mr. ROBINSON: I would doubt that. I would be more inclined to think the end of the year was approaching.

Mr. GRAY: You make an interesting statement here. You say:

> Other industries, such as the dairy and fish industries, have found a solution to this problem of payments.

Can you tell us what these solutions are?

Mr. ROBINSON: I believe Dr. McLean said himself that on receipts of raw fish they paid every two weeks, and I understand in the meat packing industry they are paid every week.

Mr. AIKEN: Mr. Robinson, I just have three or four questions to put to you. I will precede them by the statement that my concern about this bill has been that while it is stated that it is only to apply on bankruptcy, its effect will be immediate in connection with credit for both processors and producers. This is the background of my questions and this is the line along which I would like to ask these questions.

In your opinion, if this bill were passed as presented, would it have an immediate effect on the credit of the processor and of the producer?

Mr. ROBINSON: I do not know how you want to interpret the word "immediate". Do you mean if it went through now would it affect next year's credit?

Mr. AIKEN: Yes, rather than bankruptcy.

Mr. ROBINSON: I would certainly feel that if the bill were to be passed now, before processors were able to set up their line of credit from 1964 crops, they would find in some areas, because of this change, they would be facing a problem they have not had to face in previous years.

Mr. AIKEN: Would this affect the small processors more than the large?

Mr. ROBINSON: Very definitely. This is the whole point. The big fellow with plenty of financing has no problem. However—and I am very happy about this—he endorses what we are doing because he recognizes that we are doing it on behalf of the small man. We feel the small processor is essential to the community.

Mr. AIKEN: Is it not a fact that at least some of the money which the banks advance to processors on credit is paid to the producer in payment of his crops as they are brought in?

Mr. ROBINSON: Some of the credit under section 31 goes to pay growers.

Mr. AIKEN: I am trying to relate this to the growers.

Mr. ROBINSON: I would have to agree. I would certainly think that when he asks for his line of credit he is asking for money to do certain things, to buy goods, to buy cans, to buy labels and to pay wages.

Mr. AIKEN: And to pay the grower?

Mr. ROBINSON: I said to pay for goods and I meant by that the growers' product.

Perhaps Mr. Limoges would like to add something to what I have said on that.

Mr. LIMOGES: I think what you have said is correct.

Mr. MCLEAN (*Charlotte*): It seems to me that the crux of the whole matter is section 88. It is a case of the bank coming in and asking the primary producer to put up collateral. You say the life blood of the food processing firm is the raw product of the primary producer, and I agree with that. We have to have fisherman in our business and we have to keep them going or we would not be in business. Do you feel it is fair that the primary producer, whom you have to have, should put up collateral for the processor? That is the crux of the whole matter as I see it.

Mr. KLEIN: I agree; that is the crux of the whole matter.

Mr. ROBINSON: Is there not another way of getting around this? Is he actually putting up collateral for the processor?

Mr. MCLEAN (*Charlotte*): Yes, he is. When he goes into bankruptcy the end product belongs to the bank. The bank has paid the sugar people and the can people but not the producer; he goes on long term credit. A licence would

not be issued unless he had to make his payments to the primary producer within ten days or every week in other industries.

Mr. ROBINSON: I have said that I feel there is an area here in which negotiation can be conducted to overcome some of this risk.

Mr. McLEAN (*Charlotte*): Not only do we have to supply the fishermen with things they need but we have to pay them every week too. Even if the processors have to give an advance on the crop, as I imagine sometimes they do, could they not pay them every week just the same?

Mr. ROBINSON: I would certainly be inclined to think this should be looked at with the idea that something could be arrived at that would be more satisfactory than the present arrangement.

Mr. McLEAN (*Charlotte*): It seems to me that all the primary producer is asking is to be put on the same footing as the rest of them. If he was doing business in a business way and getting his payment every week, I do not see why they would need anything.

Mr. ROBINSON: Mr. McLean, I know you have experience of handling this sort of thing and the methods by which you pay for the product. Am I not correct in saying that the can manufacturers will put cans into warehouses for processors months before the cans will even be touched? Would you not say that they are also there for financing the processor? This is the whole point. If you start playing around with one, where do you quit?

Mr. McLEAN (*Charlotte*): I agree with that. We put cans in the warehouse seven months beforehand, but they are our cans; we make them. We do sometimes buy cans, we buy round cans; but then it is always 10 days.

Mr. ROBINSON: I am told that the can manufacturers will anticipate the number of cans they have to produce for the peak crop, let us say, in a certain area where they have four or five customers, and as long as they have the contract—not the money, the contract,—they will put in the cans.

Mr. Limoges, would you know about this?

Mr. McLEAN (*Charlotte*):But they still continue to own the cans.

Mr. LIMOGES: They put up the cans and deliver them months and months ahead.

Mr. McLEAN (*Charlotte*): But they retain ownership. Even if they do put them in, they retain the ownership.

Mr. THOMAS: Mr. Chairman, some of my questions have been partially answered but perhaps it will do no harm to get this information worded in a different way.

On page 2 of the brief it is suggested that the growers might do something to protect themselves by way of a levy on the goods which are furnished to the canners. I am not quite clear about this. Is the witness suggesting that the processors should set up this fund or is it suggested that the producer should do so?

Mr. ROBINSON: No, I had in mind that this would be like a growers' pool to which they would contribute to help to equalize any loss some of their members may be unfortunate enough to sustain.

Mr. KLEIN: To pay for their own losses.

Mr. ROBINSON: Yes. I am not saying you could not sell the processor on coming part way into this.

Mr. THOMAS: Have the processors given consideration to setting up a fund?

Mr. ROBINSON: I would not be able to answer that because I am not sure whether they have or not. But here again, I would say that if we work together we will find a solution to this. We have this bill in front of us. We know there are problems. We know there are unhappy situations.

Mr. THOMAS: Would Mr. Robinson say that the processors might be willing to guarantee these payments to producers or set up an organization for this purpose, and would that be preferable to this amendment to the Bankruptcy Act? Would an organization whereby the processors would guarantee these payments to the producers be preferable to an amendment to the Bankruptcy Act which might affect the credit of all processors?

Mr. ROBINSON: I would not be able to answer that question as openly and honestly as I would like until I have discussed it. I would not know.

Mr. THOMAS: In regard to the position of the strength of the producers' bargaining position as against the processors' and bankers' position, and that of others interested in the canning process, would Mr. Robinson say that a farmer who spends his time producing crops rather than on business arrangements and on business technicalities is in as favourable a position in the business world to protect himself against such things as bankruptcy as is a man who spends all of his day and all of his time in a business office dealing with business problems?

If I may depart a little here, I think this is the crux of the matter. Bill C-5 aims to provide protection for a producer on the same basis as protection is provided for a wage earner and as protection is provided for suppliers of building materials under the Mechanics Lien Act. I think we could admit, if I may speak a little on the side, that anything that interferes with the natural economic laws acts as an advantage to some and as a disadvantage to others. The question here is whether the passage of this bill would do us more good through protecting the primary producer than it would do harm through possible restrictions to credit. That is our point and that is why I am asking this question.

Does the witness feel that the producer who spends his time growing crops and not being associated with business has the same chance of protecting himself as the businessman who spends all day in an office and is trained in the field of business?

Mr. ROBINSON: I think all of us who have been in industry any length of time have seen a great many changes. Conditions that applied 20 years ago are quite different from those of today. I think growers are getting fewer in number and bigger in size, that they are more experienced and know their way around a great deal better than the growers of 20 years ago. I think this is good for the grower and I think it is good for the processor. We have always found the grower a pretty hard fellow to negotiate with. We have never found him wet behind the ears, if you want to use that expression. He knew what he was doing. The situations at which we are looking are unfortunate; they are matters about which none of us is happy. I would never have the effrontery to sit here and say that a farmer out in the back concession has the same access to credit information as a man sitting on St. James street or Bay street. Nobody in his right mind could say that. However, I say the information is there for them and it is their duty to find it.

Mr. THOMAS: I have one more question, Mr. Chairman.

Could Mr. Robinson say whether the protection of wages to wage earners, now contained in the Bankruptcy Act, has curtailed credit, and does he feel that the operation of the Mechanics Lien Act, which protects suppliers of building materials when new buildings are erected, has curtailed credit?

Mr. ROBINSON: I would not know. I am not trying to duck the question; I just would not know. You would have to ask someone who has a great deal more knowledge of these things than I.

Mr. THOMAS: I think it is an honest answer, Mr. Chairman. I doubt if anyone knows.

Mr. ROBINSON: Let me come back to a point you made. I would be very reluctant to see Bill C-5 enacted as an experiment, to find out whether it is going to work or not, because I think there are things there that could work the wrong way. I feel we can find a solution to this problem in some mutually satisfactory manner.

Mr. THOMAS: Mr. Chairman, would the witness agree, then, that in considering Bill C-5 we have to weigh any possible advantages against any possible disadvantages and come to a conclusion.

Mr. ROBINSON: Somebody has to do so, yes.

The CHAIRMAN: Mr. Cameron.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*):Mr. Robinson, I would like to come back again to the question Mr. Thomas asked you just now with reference to your suggestion on page 2 of your brief about the establishment of a pool for the rescue of growers who have been damaged by the bankruptcies of processors. In your opinion, would the members of your organization be prepared to contribute a levy to the establishment of such a pool.

Mr. ROBINSON: I had not been thinking of it from the standpoint of a levy from the members of our association; I was thinking of it from the standpoint of the growers themselves doing something to spread any loss. You are just asking 50,000 growers to pick up the chips from 1,000 processors. I am not saying the processors will not sit down and talk over some ideas with you. I am not saying they will not; I do not know. We have not had an opportunity to go into these things as deeply as I would like.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Then can you answer this question? You and your organization came to oppose Bill C-5. We, of course, apologize to you for the inconvenience you were put to through not being able to come on the day it was first suggested. However, you were able to overlook that inconvenience, and the fact that you have done so and that you have come today suggests to me you were anxious to come here and oppose this bill. Would you and your organization come with equal alacrity to oppose legislation to enforce a pool to which processors and growers would contribute?

Mr. ROBINSON: I think I would have been better to stay at home! As a matter of fact, I live in Ottawa so it did not inconvenience me at all. I do not know how to answer your question.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): In your opinion, Mr. Robinson, is it fair to ask the growers to assume full responsibility for rescuing their members from the bad judgment or the bad faith of processors without having the general body of processors contributing to a protective fund.

Mr. ROBINSON: If you were buying group automobile insurance or group life insurance would you expect the automobile manufacturer to participate? Would you expect anyone to participate in the plan other than those who set up the plan in order to protect themselves! Would you think that the automobile manufacturer would do this? I believe there are little groups all around the country who get together and say "We'll just have our own little insurance policy among ourselves." I think this is quite a common procedure. Surely you do not expect the man from whom you buy the car or the man who manufactures the car to chip in on this deal.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): No, but in that case we expect and receive also the support of the public authorities through legislation which prevents the purchasers of cars from being victimized by producers of the cars. I am suggesting perhaps the same principle should be introduced with regard to producers vis-a-vis the processors. Policing in

this way would enable you to call on the policemen to act if they are not prepared to act themselves.

Mr. ROBINSON: We do not want to see growers victimized; this is something no processor wants to see.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): I notice you once or twice suggested that there was an area for negotiation in this field. Would you not agree that there is perhaps an area for legislation in this field too? Quite obviously the negotiations have not been successful or we would not have this bill before us.

Mr. ROBINSON: I would think legislation might be the outcome of negotiations between industries. It might not be in the form of the present bill. I am sure, gentlemen, that we are both searching for the same thing. You want to see the grower protected; we do not want to see him harmed. Surely there is common ground on which we can get together without upsetting all the credit structure of the country.

Mr. VINCENT: I wanted to ask some questions in French, but I will proceed in English.

As I said at the beginning, the principle of this bill is accepted by everyone. There is a problem, however, and we should find a solution to protect primary producers. This brings me to my first question.

Mr. Robinson, are you aware of the fact that all farmers' associations in Canada are supporting the principle of the bill and, furthermore, that they are supporting the bill in its present form? Are you aware of the fact that they want this bill adopted in this present session? Are you aware of this?

Mr. ROBINSON: This would not surprise me.

Mr. VINCENT: You agree with the principle, and you would like to have something done about this problem by the government or by negotiation?

Mr. ROBINSON: What do you mean saying that I agree with the principle?

Mr. VINCENT: You agree that there are problems?

Mr. ROBINSON: We recognize the problems, yes.

Mr. VINCENT: And you would like to see something done about it by legislation or negotiation?

Mr. ROBINSON: Preferably by negotiation.

Mr. VINCENT: As long as we cannot find some other way of protecting the primary producer I will support this bill, and I think the majority of the members of the committee will support it. However, if something else can be suggested, we should have it right away. For example I was reading in the brief that in British Columbia there is a clause in the contracts of the primary producer with the processor which provides the grower with security for an unpaid balance after September 15; and this clause was brought into effect after a processor had gone into bankruptcy.

Mr. ROBINSON: Yes.

Mr. VINCENT: I would like to ask some questions of Mr. Limoges. Would it be possible in the relations between farmers and processors and the companies for the contracts to include a clause which will give a privilege to the primary producer to have security on his product after a certain date? Is it possible to include such a clause in each contract for produce which is not paid before a certain date?

Mr. LIMOGES: May I ask you a question on this? There are two kinds of contracts, one which is between the marketing board and the association and the other between a firm and a grower. Are you talking about contracts between firms and growers?

Mr. VINCENT: Yes.

Mr. LIMOGES: I was not expecting a question of this type, therefore I do not know what the firms would say about it. I can tell you that most of the contracts include a clause to the effect that if any grower needs an advance it is given to him.

Mr. VINCENT: Yes, for advance money, but I am talking of bankruptcy.

Mr. LIMOGES: I would have to ask our members.

Mr. VINCENT: This type of clause has solved the problem of British Columbia now, a problem which has arisen here and has resulted in this bill.

Mr. LIMOGES: I will discuss this with our members.

Mr. VINCENT: I have another question. You spoke in the brief about the insurance plan. Would it be possible for all the food processors' associations, the Canadian, Ontario, western and Quebec associations, to group together as for example the packers grouped together? For hogs they were charging one-half of one per cent on the price of hogs so that if one hog or two hogs were dead in the yard or the market they were able to give to the farmer the total amount of money which the hog would have brought on the market. They have created a fund of many millions of dollars for this purpose. When the fund is big enough to reimburse all the farmers who have to support an accident like that, they stop collecting this half of one per cent; and when the fund is low they start it again. Therefore, one year they may not collect any money and another year they may start collecting again. They keep enough money to provide for all these losses. This is not exactly the same subject as bankruptcy, but it is one thing that was done in this business and all the farmers have profited from it. Would it be possible to create some kind of organization of all these companies which would provide a fund especially for bankruptcies in order to protect the primary producers? What do you think of that, Mr. Robinson?

Mr. ROBINSON: I would only be able to answer it in this way. We would have to put the problem to the associations and the associations would put it to their members to see what could be done. I am sure neither Mr. Limoges, or I, whatever our personal feelings might be, would be able to say "yes, this is the answer." I think there are many areas that can be examined, and this is one of them.

Mr. VINCENT: Mr. Chairman, as I said a few minutes ago, we have to do something right now to help the primary producer, and if we do not have anything else in front of us, then we will have to support the bill in its present wording. Something has to be done, and now is the time for legislation on it.

Mr. PASCOE: Mr. Chairman, I had some questions with regard to page 2 about the possibility of insurance or a levy, but I think most of the questions have been answered. Perhaps I could just follow it up to a certain extent.

As other witnesses have said, we are all very much in favour of the principle of more protection for the producer, and I was quite impressed with Mr. Robinson's statement that he thought it was possible to find a solution to the problem in a mutually satisfactory manner. I believe those were his words. I just wonder if he could explain what contract there could be between the processors and producers. What sort of direct contract could be worked out?

Mr. ROBINSON: It would be most difficult to try to have individual growers sit down with individual processors. I think this is something which must be done through growers' bodies, such as the marketing boards or the council, and our provincial associations and the national association. I think this is where this would have to be done.

Mr. PASCOE: But there is a direct contact somewhere?

Mr. ROBINSON: Yes.

Mr. PASCOE: May I follow that up a little more?

Page 3 shows that the purchases of fresh fruits and fresh vegetables for 1961 amount to around $51 million or a little more. As a western wheat man, I just received a cheque yesterday for some wheat from which a one per cent levy was taken. That levy against the grower, which the grower pays, is taken out before he gets his cheque. A one per cent levy on this year's figure of $51 million would be $500,000. It seems to me there should be some way worked out between the producer and the processor whereby they would perhaps pay half of one per cent into a fund which would produce half a million dollars a year, a fairly substantial sum, for the protection of the producer. Do you not think that could be worked out?

Mr. ROBINSON: I think all these things can be worked out.

Mr. PASCOE: The report from 1961 shows $51 million for fresh fruit and vegetables and $81 million for metal containers, glass containers, cartons and so on. Is that an average year or is it an exception?

Mr. ROBINSON: I would say that was an average year. It must be remembered that I have used only the Canadian-grown fruits and Canadian-grown vegetables here. There are always some imported fruits and vegetables, but I did not include them.

Mr. PASCOE: There is another question which I would like to ask in regard to purchases of metal containers and glass containers. How are those manufacturers paid? When are they paid?

Mr. ROBINSON: Mr. Limoges, I believe, could answer this because he is a buyer and I am not.

Mr. PASCOE: Is it cash on delivery?

Mr. LIMOGES: No, it is mostly 30 days, and 10 days one per cent.

Mr. PASCOE: There is one other question which I asked before but it seems that the answer is a little different on page 3 where it is stated that:

> The processor, in many instances, supplies the seed or plants and, through his field men, provides the grower with a program for fertilizing, spraying and crop control.

Is that the general practice?

Mr. ROBINSON: Yes. In the province of Quebec that is the general practice. We do supply the seed and they are retained at the end of the season.

Mr. WHELAN: Mr. Chairman, first of all I would like to ask if the witness can give me any idea how many companies who buy the 1,130,000 tons of fruit and vegetables operate under section 88. Do you have any idea?

Mr. ROBINSON: I do not know. I would think the vast majority.

Mr. WHELAN: The large majority of the big companies do not operate under section 88, and they would be the big users. I thought you might have a breakdown.

Mr. ROBINSON: No, I have not.

Mr. WHELAN: Have you checked the accuracy of the number of times a process has gone into bankruptcy when, in the year of bankruptcy, his pack was increased?

Mr. ROBINSON: This would have to be checked.

Mr. WHELAN: We have checked several bankruptcies and we have found that in the year of bankruptcy their packs have increased nearly always by 50 per cent over any other year. Therefore, more assets would have been accumulated for the bank in that year.

You said it was easy for marketing boards to check with the banks. I do not know if you are aware of the evidence which we have heard here contrary to this. We heard that in the case of the main bankruptcy in Ontario last year there was a letter written to the marketing group by the bank shortly before the bankruptcy to the effect that the firm that went into bankruptcy was in good financial shape. This letter was written by the bank which put the firm into receivership. Therefore, I do not think what you say is true.

With regard to cans, do you not think this is a different product? You say that these people would be requesting this same protection under section 88, but cans are not perishable and cans can be identified, therefore the manufacturers can retrieve their stock because these cans can be identified by their serial numbers.

Mr. ROBINSON: What good would that be?

Mr. WHELAN: They could sell them to someone else because they are mostly standard-pack cans.

With regard to a fund, I cannot see why we as primary producers should set up an insurance fund for the inefficient processors just to make them more inefficient. If the growers were to set up such a fund the inefficient processors would know that if they went into bankruptcy someone would look after their negligence and inefficiency. I think this would be the feeling of a great many primary producers. If you as processors want to set up a fund for your inefficient partners in this game, I can see the point because it would be an advantage to your organization. However, I do not think you will do that until something like Bill C-5 is passed to force you to do so, to force you to guarantee the credit of the financial institutions of this nature.

Mr. ROBINSON: Would you not think, Mr. Whelan, that the point Mr. Pascoe touched might be the answer if it were explored? In British Columbia they have found an answer to this by securing the unpaid amounts as of a certain date.

Mr. WHELAN: I am not sure what they have done in British Columbia but I do know that we have a letter from the British Columbia association of agriculture endorsing Bill C-5 to take care of primary producers. I am aware and I am sure you are aware that they obtained legal advice before they endorsed Bill C-5. They did not come here and say "We are going to endorse it because we think it is a good thing." I know how their organizations are set up and I know they obtain legal advice.

I would say this also, Mr. Chairman. In Ontario, the licensing system is a fragile way of trying to protect the primary producers. I am aware of this because I happened to sit on a board in Ontario which recommended that a licence be not given to a buyer of a licensed product, but it was given over and above the recommendation of the licensing board. This sort of thing has happened in a good many cases. I know a processor of primary products who went into bankruptcy and I know that his wife now has a licence and is processing fruit and vegetables in the Niagara area.

Mr. ROBINSON: You are suggesting that licensing is not as rigid and strict as it should be?

Mr. WHELAN: It is not rigid and strict.

I see no way in which Bill C-5 would impair the operation of the financial institutions, because these figures are minute in comparison with the $131 million with which they are dealing. They are not going to cancel this overnight when they are making $60 million a year. The losses have been negligible to them but they have meant a great deal to the primary producers.

Mr. RYAN: To your knowledge, Mr. Robinson, have the processors approached any insurance company, such as Lloyds of London or similar com-

panies, with a request that they insure the present loans that processors obtain under section 88 of the Bankruptcy Act against bankruptcy or insolvency?

Mr. ROBINSON: As far as I know, there has been no move in this direction.

Mr. RYAN: As far as you know that field is entirely unexplored?

Mr. ROBINSON: As far as I know, yes.

Mr. RYAN: Do you believe that the processors would object to paying an insurance premium for such insurance by, say, a deduction from their loans under section 88 of the Bankruptcy Act at the time they obtain the loans, this premium to be put into a fund to pay off the loan in full in the event of insolvency of the processor? Would they object to half of one per cent or one per cent being taken off?

Mr. ROBINSON: I would like to transfer that question to Mr. Limoges who is a processor. If any of these things are done, no matter at what level, they have to be built in to the price somewhere.

Mr. LIMOGES: I think this question will have to be put to our members. We will be able to give an answer later when it has been put to them.

Mr. RYAN: You would not like to give an answer now?

Mr. LIMOGES: No.

Mr. ROBINSON: No.

Mr. RYAN: Would you agree, Mr. Robinson, that if this bill went through it would not hurt the credit of the big processors in the industry, but just the shaky ones?

Mr. ROBINSON: From what information I have had, I think the large corporate bodies feel it would not affect their credit at all.

Mr. RYAN: Then it is just the shaky ones who are worried about it?

Mr. ROBINSON: They may not be shaky; they may be of a medium size and trying to operate on $\$\frac{1}{2}$ million credit.

Mr. DOUGLAS: They are trying to operate on someone else's credit.

Mr. RYAN: Would you agree it would be likely to be the borderline companies that would be affected?

Mr. ROBINSON: I cannot help but feel personally—and I cannot speak for the industry—that it would be a hardship to the smaller, less well financed operators.

Mr. RYAN: Do you feel these people are people who should be shaken out of the industry?

Mr. ROBINSON: That is a little difficult to answer. I would think that could be so.

Mr. RYAN: What sort of operators have caused this trouble? Give an analysis of what seems to have created this situation.

Mr. ROBINSON: You might find one set of conditions that has brought about hardship one year and an entirely different set of conditions the next year.

Mr. RYAN: What about your own experience?

Mr. ROBINSON: I am not a processor. I never have been a processor. That is why I find it so difficult to answer some of the questions. I am only employed as the manager of the national association.

Mr. RYAN: Is this a tightly knit association or rather a loose one?

Mr. ROBINSON: What do you mean?

Mr. RYAN: What is the service you render to the processor? Maybe that would be a better way to put it.

Mr. ROBINSON: Our service to the processor is on all types of federal legislation affecting grades, containers, food and drug regulations, import-export, transportation costs, quality control, sanitation in plants, and things of this nature.

I think I prefaced my remarks at the outset this morning by saying the area in which you are dealing here, in negotiations, is an area within the province. None of these contracts is a national contract; they are down at the provincial level.

Mr. RYAN: But the Bankruptcy Act, of course, is a federal act.

Mr. ROBINSON: The Bankruptcy Act is national; this is not.

Mr. RYAN: Has your organization been giving consideration to this problem for any length of time or has it just come to you recently?

Mr. ROBINSON: It has only come to us since the introduction of Bill C-5.

Mr. RYAN: I had gained the impression earlier that you told Mr. Thomas that the association would be unwilling to set up a fund because maybe it would be too much bother for it or it may be unable to handle such a fund. Is this the case or is it not? Would your association be able to handle such an indemnity fund?

Mr. ROBINSON: If such a fund was created it would not be handled through the association, if by handling you mean the mechanics of receiving the contributions and paying out. I think this would be done through whoever underwrites the fund.

Mr. KLEIN: Could you tell us if there is a breakdown, percentage-wise, of the prime material that goes into the finished product. Do you break it down so much for material, so much for work, so much for overhead and so on?

Mr. ROBINSON: You are talking of a cost factor breakdown?

Mr. KLEIN: Yes. I would like to know the percentage of the primary producers' product in your finished product.

Mr. ROBINSON: It will vary. I will just give a very rough guess and say that in the factory cost of the end product the raw product will vary anywhere from 20 per cent to 30 per cent of that cost. This would be my guess.

Mr. KLEIN: Twenty per cent to thirty per cent? What about the workmen? What about the labour? What is the cost of labour?

Mr. ROBINSON: The management and labour, if I remember my figures correctly, including administration and warehousing, is grouped into one figure which comes in roughly at around 20 per cent or 25 per cent.

Mr. KLEIN: And materials?

Mr. ROBINSON: Materials, cans, cartons, labels—pretty soon you are going to say to me that it does not add up to 100 per cent.

Mr. KLEIN: No.

Mr. ROBINSON: I have always said very roughly—and I do not think I am too far out, but Mr. Limoges would know better than I—that our raw product was 20 per cent to 25 per cent or 30 per cent of the factory cost of the finished product. That is for the cans, cartons and labels, which would represent roughly a third. Administration, wages in the factory, and the warehouse cost would be the balance.

There is one point I would like to make if I am not out of order.

The CHAIRMAN: Are you answering Mr. Klein's question?

Mr. ROBINSON: I am answering another question.

The CHAIRMAN: Go ahead.

Mr. ROBINSON: If a processor, even a shaky one, were shaken out through some more strict enforcement of regulations, I think we would find whenever this did happen that all the growers in that region would be affected. I think we have to realize this. I think also, gentlemen, that it is just one of the things to which serious consideration should be given when Bill C-5 is being considered. Is it going to result in that processor's growing more of his own product? This might be something which you would want to look at carefully.

I still feel there is a better way to solve these problems.

Mr. KLEIN: May I take it that approximately one-third or very nearly one-third—between 25 per cent and 33⅓ per cent is contributed by the primary producer to the end product?

Mr. ROBINSON: The value of the product, yes; that would be contributed. You mean if it was never paid for?

Mr. KLEIN: Your argument right through your evidence seemed to amount to two things. First, the terror or fear that this legislation is going to open the door to destroy section 88.

Mr. ROBINSON: Yes.

Mr. KLEIN: And, secondly, that it will affect credit and do more harm than good.

Mr. ROBINSON: This is what we think.

Mr. KLEIN: Do you not think, if we were to give protection to the primary producer in this case, that the bank and the processor would adjust to it because the processor would then be a more solid businessman and would be obliged to put more of his own money into the project if this money was given to the primary producer?

Mr. ROBINSON: It could be so.

Mr. KLEIN: You do not think so?

Mr. ROBINSON: It could be.

Mr. KLEIN: Do you not think the processor would be obliged to put more capital, more of his own money into the business rather than continue to toil along on the sweat of the farmer?

Mr. ROBINSON: I do not know whether it would or not.

Mr. KLEIN: You know the workmen and the salesmen have protection against section 88, which did not destroy section 88 at the time that was involved.

Mr. ROBINSON: Yes.

Mr. KLEIN: When you speak about the farmer not being wet behind the ears, would you not say that even in the best of business circles with the best of information, the best of legal opinion, firms do get caught in bankruptcy.

Mr. ROBINSON: Yes, very definitely.

Mr. CÔTÉ (*Chicoutimi*) (*Interpretation*): Do you not feel that the primary producer has priority rights in the case of bankruptcy of a processor because, after all, he is the one who serves humanity best, through the middleman, because he provides consumer goods that are necessary to life. Do you feel the primary producer has priority rights because he is the one who benefits humanity most by providing the consumer goods necessary to life?

Mr. ROBINSON: To a certain extent, yes.

Mr. CÔTÉ (*Chicoutimi*) (*Interpretation*): Do you know that credit advanced to the consumer and to the processor is merely script money and that the banks do not take any risks because they lend their customers' money as was explained?

Mr. ROBINSON: The answer to that is no.

Mr. CÔTÉ (*Chicoutimi*) (*Interpretation*): Do you not feel that if the banks were to restrict credit by virtue of the adoption of Bill C-5, then parliament could or should transfer the privilege of creating credit or script money to the Bank of Canada only by increasing the rate to 100 per cent from the present rate?

The CHAIRMAN: Mr. Côté, I believe I should intervene at this point. I do not believe the witnesses who have come here to represent processors' associations are capable of answering those questions at this time.

Mr. CÔTÉ (*Chicoutimi*) (*Interpretation*): I admit they are difficult questions.

The CHAIRMAN: I do not believe this type of question is within the competence of the witness. It is not for this purpose that the witnesses have come here today; they have come here to give their views on Bill C-5, which is under discussion at the present time. I would suggest it would be more in order to put these questions next Friday when we will be studying the bill clause by clause.

Mr. CÔTÉ (*Chicoutimi*) (*Interpretation*): May I add a personal view? Is it not obvious from all the questions that have been put to the witness that primary producers should be protected by the adoption of Bill C-5, Mr. Whelan's bill, because it is a ridiculous thesis that bankruptcies are essential for the proper operation of the economic life of this country?

The CHAIRMAN: Would it be in order for me to ask a very short question? Can you tell the committee, Mr. Robinson, how processors would feel if legislation were enacted which required the processors to produce proof that the grower or the primary producer had been paid, and if it was encumbent upon the banks to obtain this information before loans could be made under section 88?

Mr. ROBINSON: I do not know.

The CHAIRMAN: For instance, if before the bank could make a loan under section 88 to the processor, proof of the grower having been paid or of the grower having waived his right was required, what would be the feeling of the industry?

Mr. ROBINSON: I am just wondering how the processor—

Mr. WHELAN: Perhaps Mr. Robinson will allow me to answer that for him. If Bill C-5 is passed they will do that.

The CHAIRMAN: I would like to know what the processors would feel. I do not want to intrude into the debate, but I feel it is a question which is useful.

Mr. GRAY: It is a constructive question.

The CHAIRMAN: It would be useful for us to have the industry's feelings about this.

Mr. ROBINSON: In order to give the industry's feeling on that I would have to go back to the industry for their views. I do not think I could answer that off the cuff.

The CHAIRMAN: Are there any further questions?

Mr. WHELAN: May I make just one comment? I will have a written brief in the office on Monday.

The CHAIRMAN: Mr. Whelan suggests that he will send us a copy on Monday of the evidence he wishes to give, and we will be discussing the bill clause by clause next Friday. At that time, if you have evidence you wish to give, I think the committee would be glad to hear you, Mr. Whelan.

We will adjourn to the call of the Chair.

HOUSE OF COMMONS

First session—Twenty-sixth Parliament

1963

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: EDMUND ASSELIN, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 9

FRIDAY, DECEMBER 13, 1963

Respecting

Bill C-5, An Act to amend the Bankruptcy Act (Primary Products under Processing)

INCLUDING THIRTEENTH REPORT TO THE HOUSE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

29713-5—1

STANDING COMMITTEE
ON
BANKING AND COMMERCE

Chairman: Edmund Asselin, Esq.

Vice-Chairman: Maurice J. Moreau, Esq.

and Messrs.

Addison,
Aiken,
Alkenbrack,
Armstrong,
Asselin (*Richmond-Wolfe*),
Bell,
Cameron (*Nanaimo-Cowichan-The Islands*),
Chaplin,
Chrétien,
Côté (*Chicoutimi*),
Crossman,
Douglas,
Ethier,
Flemming (*Victoria-Carleton*),
Gelber,
Grafftey,
Gray,
Grégoire,
Habel,
Hahn,
Hamilton,
Irvine,
Jewett (Miss),
Kelly,
Kindt,
Klein,
Lloyd,
Mackasey,
Matte,
McLean (*Charlotte*),
Monteith,
More,
Morison,
Nowlan,
Nugent,
Olson,
Otto,
Pascoe,
Ryan,
Rynard,
Sauvé,
Scott,
Skoreyko,
Tardif,
Thomas,
Thompson,
Vincent,
Whelan—50.

Dorothy F. Ballantine,
Clerk of the Committee.

ORDERS OF REFERENCE

WEDNESDAY, December 11, 1963.

Ordered—That the name of Mr. Alkenbrack be substituted for that of Mr. Nesbitt on the Standing Committee on Banking and Commerce.

THURSDAY, December 12, 1963.

Ordered—That the names of Messrs. Mackasey, Matte, Ethier and Crossman be substituted for those of Messrs. Macaluso, Pilon, Boulanger and Basford respectively on the Standing Committee on Banking and Commerce.

Attest

LÉON-J. RAYMOND,
The Clerk of the House.

29713-5—1½

REPORT TO THE HOUSE

DECEMBER 16, 1963.

The Standing Committee on Banking and Commerce has the honour to present its

THIRTEENTH REPORT

Your Committee has considered Bill C-5, An Act to amend the Bankruptcy Act (Primary Products under Processing), and has agreed to report it with the following recommendations:

Your Committee has heard evidence on Bill C-5 from farm organizations and other interests and is of the opinion that the evidence presented to the Committee has underlined the necessity of legislative action to achieve the purposes of the Bill, and has demonstrated that primary producers—especially primary producers of agricultural products—suffer genuine hardship, have a legitimate grievance, and need protection beyond that now available in the event of bankruptcy of the processors of their products.

Your Committee therefore recommends to the Government that the grievances disclosed by its study of this Bill be dealt with in appropriate amendments to the bankruptcy act and other relevant legislation at the next Session of the House.

A copy of the Minutes of Proceedings and Evidence respecting the Bill (Issues 1 and 2, and 4 to 9 inclusive) is appended.

Respectfully submitted,

EDMUND T. ASSELIN,
Chairman.

(NOTE: The Eleventh and Twelfth Reports deal with Private Bills in respect of which no Proceedings were published.)

MINUTES OF PROCEEDINGS

FRIDAY, December 13, 1963.
(19)

The Standing Committee on Banking and Commerce met at 9.00 a.m. o'clock this day. The Chairman, Mr. Asselin (*Notre-Dame-de-Grace*), presided.

Members present: Messrs. Armstrong, Aiken, Asselin (*Notre-Dame-de-Grace*), Asselin (*Richmond-Wolfe*), Bell, Cameron (*Nanaimo-Cowichan-The islands*), Côté (*Chicoutimi*), Crossman, Douglas, Ethier, Flemming (*Victoria-Carleton*), Gelber, Gray, Irvine, Mackasey, Matte, Morison, Otto, Pascoe, Ryan, Rynard, Thomas, Vincent, Whelan—(24).

The members resumed consideration of Bill C-5, An Act to amend the Bankruptcy Act (Primary Products under Processing).

On motion of Mr. Cameron, seconded by Mr. Gray,

Resolved,—That this Committee go into closed session to discuss its report to the House.

Sitting *in camera* the Committee proceeded to discuss the form of report which it should present to the House.

The Committee then resumed sitting in open session.

On motion of Mr. Gray, seconded by Mr. Vincent,

Resolved,—That the Supplementary Submission of the Canadian Bankers Association and the brief prepared by Mr. Whelan entitled "Memorandum on the Constitutional Validity and Other Aspects of Bill C-5" (*See Appendices "A" and "B"*).

The Chairman read into the record the report to the House, which is as follows:

> The Standing Committee on Banking and Commerce has the honour to present its
>
> THIRTEENTH REPORT
>
> Your Committee has considered Bill C-5, An Act to amend the Bankruptcy Act (Primary Products under Processing), and has agreed to report it with the following recommendations:
>
> Your Committee has heard evidence on Bill C-5 from farm organizations and other interests and is of the opinion that the evidence presented to the Committee has underlined the necessity of legislative action to achieve the purposes of the Bill, and has demonstrated that primary producers—especially primary producers of agricultural products —suffer genuine hardship, have a legitimate grievance, and need protection beyond that now available in the event of bankruptcy of the processors of their products.
>
> Your Committee therefore recommends to the Government that the grievances disclosed by its study of this Bill be dealt with in appropriate amendments to the bankruptcy act and other relevant legislation at the next Session of the House.

On motion of Mr. Gray, seconded by Mr. Thomas, the report was unanimously adopted.

Ordered,—That the Chairman present the Report to the House.

The Chairman thanked the members for the co-operation given to him during the lengthy consideration of this Bill.

At 10:15 a.m., the Committee adjourned to the call of the Chair.

Dorothy F. Ballantine,
Clerk of the Committee.

EVIDENCE

FRIDAY, December 13, 1963.

The CHAIRMAN: Gentlemen, we will now resume consideration of bill C-5, an act to amend the Bankruptcy Act.

Could I have a motion to print as an appendix the supplementary submission of the Canadian Bankers' Association and the memorandum on the constitutional validity and other aspects of Bill C-5, as submitted by Mr. Whelan.

I believe both the supplementary submission and the memorandum on the constitutional validity and other aspects have been distributed to members of the committee.

Mr. GRAY: I so move.

Mr. VINCENT: I second the motion.

Mr. THOMAS: I second the motion.

The CHAIRMAN: It is a dead heat between Mr. Vincent and Mr. Thomas. All those in favour? Contrary, if any?

Motion agreed to.

The CHAIRMAN: Shall clause 1 carry?

Mr. GRAY: Mr. Chairman, I believe when we were meeting in closed session we adopted a report; would it not be appropriate for you to put on the record the formal report on this bill which we have adopted at this time, and then perhaps someone may wish to comment on it?

The CHAIRMAN: Yes. It was agreed at a committee meeting held in camera a few moments ago that this committee would submit the following report in connection with bill C-5 to the house.

Some hon. MEMBERS: Dispense.

Mr. GRAY: If it is not read out it will not go on the record. I think it should be read into the record.

Some hon. MEMBERS: Agreed.

The CHAIRMAN: I will read it:

(*See Minutes of Proceedings*)

The meeting is now open for discussion.

Mr. GRAY: Mr. Chairman, I may say that in my own opinion the procedure we have followed in adopting the report you have just read to us I think, the best way we could choose at this time to bring about a more speedy and positive solution to the definite grievances that have been demonstrated to us in the evidence to date before this committee. In my opinion at least I think it will lead to some effective action at the earliest possible date.

At this time I think it would be only right for me and I think for the whole committee to pay tribute to our colleague, Eugene Whelan, far having presented this bill to the house and to have put it forward in such an effective and forceful manner before this committee. I think we should recognize that through his efforts he has brought about something which I am convinced will soon end in a definite and positive solution to this problem that is concerning so many primary producers in our country.

Mr. THOMAS: Mr. Chairman, I would like to agree with the sentiments which have been expressed by Mr. Gray and to say it has been a pleasure to work in this committee with representatives from the rural ridings and those

representatives of all parties who have taken a special interest in agricultural matters. They have done their best to sift through the evidence that has been submitted, and were unanimous in this report.

We certainly hope the government will find it possible to bring some relief to the farmers who are caught in the bankruptcy proceedings of processors who handle their products.

Mr. GRAY: Mr. Chairman, on a question of order, it occurred to me I should have terminated my remarks by moving the adoption of the report which you read, which I inadvertently did not do; therefore, I propose to make up for this by so moving at this time.

Mr. THOMAS: I second the motion.

The CHAIRMAN: It has been moved by Mr. Gray and seconded by Mr. Thomas that the report be adopted.

Mr. CAMERON (*Nanaimo-Cowichan-The Islands*): Mr. Chairman, I would like to add my commendations to Mr. Whelan in respect of this project of his. It is stubborn creatures like Mr. Whelan who get adequate legislation placed on the books and we should pay tribute to him for at least the limited success he has had in this case.

Mr. WHELAN: Mr. Chairman, as sponsor of this bill may I say that the proceedings of this committee have been very enlightening to me. I have learned a great deal about bankruptcy and improved my knowledge in respect of procedures. It has been most educational.

I do have the utmost feeling of confidence, whether it be in Bill C-5 or by some other means, that something will be done to correct this situation. I would like to thank the members of the committee for their co-operation in this matter.

The CHAIRMAN: Gentlemen, in the warm spirit that has been prevailing in this committee for the last little while I would like to join as well and thank the committee for the close co-operation it has given the Chair in respect of the sometimes difficult procedural points with which the Chair has had to deal.

You gentlemen have been most diligent in the discussions. As you realize we have had several meetings in regard to this particular bill. We have been sitting for some months now. We have heard a great number of witnesses.

May I say that at all times all members of the committee have given me the very closest co-operation and I would like to put on the record my appreciation for this.

If there is not anyone else who would like to comment at this time I would entertain a motion.

Mr. GRAY: I beg your pardon, Mr. Chairman, but are you going to put my motion to a vote?

The CHAIRMAN: I am sorry, Mr. Gray. Gentlemen, we have a motion before us.

Mr. Gray has moved the adoption of the report.

Mr. THOMAS: And I seconded the motion.

The CHAIRMAN: Are you ready for the question?

Mr. RYAN: Mr. Chairman, in respect of the motion should you not start to call the bill clause by clause?

The CHAIRMAN: I think the report covers that.

Are you ready for the question?

All those in favour? Contrary if any? It is unanimously adopted.

Motion agreed to.

Mr. WHELAN: Mr. Chairman, I have just one more comment to make, bonne santé à tous.

The CHAIRMAN: May I wish you all a happy recess during the holiday period.

APPENDIX "A"

Supplementary submission of the Canadian Bankers' Association to the Standing Committee on Banking and Commerce of the House of Commons, Ottawa, Respecting Bill C-5—An Act to Amend the Bankruptcy Act

Statistics

When we appeared before the Committee on July 26th last, the banks were asked to submit statistics on their lending under Section 86 and Section 88 of the Bank Act to processors who purchase from primary producers. For this information the Exhibit attached shows the banks' experience during the period 1960/62 inclusive.

One of the problems in collecting these statistics was to determine who was a "producer". This definition problem can best be illustrated by indicating the kind of question which arises in the following industries:

(*a*) Is a fishing company which owns its own trawlers and processes its own fish a producer or a processor?

(*b*) Is a lumber company which cuts sufficient timber from its own limits for, say, 70% of its requirements, a producer or a processor?

(*c*) Are steel and aluminum companies which are vertically integrated from the mine to the final production of metal producers or processors?

The important point is that the financing of the purchases from the above types of companies might be affected by Bill C-5 if the companies were ruled to be producers. To gather our statistics we kept in mind that the purpose of Bill C-5 is to protect those in the front line of primary resource production. Nevertheless, in practice there are cases where we found it impossible to make a clear distinction between producer and processor.

The wide variety of "processing" industries borrowing under Section 86 and Section 88 of the Bank Act will be noted from the statistics herewith which also indicate the general importance of this form of security in extending bank credit.

Credit Information

In the course of our preparing to give further evidence before the Committee, we were of course conscious of the fact—and our legal advisers have emphasized the point—that a bank is under a legal duty arising out of its relationship with its customers to maintain secrecy with respect to the affairs of each customer and that it is not permissible therefore for a bank to disclose details of the financial position of a customer of the bank—as in the case of a request by a producer for particulars about the affairs of a processor—unless that customer specifically authorizes disclosure of Balance Sheet figures.

Loss of Identity of Products

Some members of the Committee enquired about the legal aspects of the loss of identity of products in the hands of a processor or dealer as in the McClean Grain case referred to by Mr. K. A. Standing in the brief he presented on behalf of the Ontario Soya Bean Growers' Marketing Board.

The fact that a primary producer's products may lose their identity when delivered to an elevator or to a processor is only of importance when a question arises as to whether the products were delivered under a contract of sale or under a contract of bailment. If, as is generally the case, the contract between the producer and the processor or, say, an elevator operator is one of sale, title to the products will normally pass to the processor on delivery and it will make no difference whether the products do or do not lose their identity on delivery. If, however, it is not clear whether the contract is one of sale or one

of bailment, the fact that the products lose their identity on delivery, as in the McClean Grain case, is a strong indication that the parties intended the contract to be one of sale and, therefore, that the producer did not retain title to the products.

In the McClean Grain bankruptcy, the Trustee asked the Courts for advice in respect to the ownership of certain grain and soya beans delivered by various farmers prior to bankruptcy and also with respect to certain purchases thereof from McClean Grain by other parties.

This application was adjourned pending the taking of a reference before His Honour Judge McCallum in London, Ontario, as to the ownership and this reference specifically excluded any determination of the validity of the bank's Section 88 security. Title to all but a relatively small amount of the grain and soya beans was found to have passed from the farmers to McClean Grain Ltd. and none was found to have passed in the purchase thereof from McClean Grain Ltd. by other parties. All the parties other than the Trustee in Bankruptcy and the bank appealed Judge McCallum's findings but eventually a settlement agreed to by the creditors was submitted to and approved by the Court providing in effect for a preference among the general creditors to the farmer claimants and also to the certain purchasers of grain previously mentioned.

The bank took no part in the settlement discussions, made no contribution to the settlement, and received nothing from it as loans were repaid from other sources. No part of moneys received by the Trustee on disposition of grain and soya beans immediately after the bankruptcy was in any way received by the bank and, no doubt, a portion of such proceeds was used by the Trustee in Bankruptcy to make the preferential payments agreed upon in the creditor's settlement.

Mechanics' Lien Legislation

The view has been expressed that while the terms of Bill C-5 are of course not completely identical with the provisions of Mechanics' Lien Act legislation in effect in certain provinces, there is an analogy. Based upon that view, the question was asked whether when the Mechanics' Lien Act was introduced in the respective provinces, The Canadian Bankers' Association raised any objections.

Generally speaking, mechanics' lien legislation gives the workman or materialman a lien against land, subject to various stipulations. When the legislation was introduced many years ago banks were not permitted to lend against the security of land and, of course, this is still the case. Therefore, banks were not in the class of lenders affected by such legislation and would have had no cause to object to it. In passing it should be noted that mechanics' lien legislation recognizes and preserves the security of a lender who has a prior mortgage, and such lender, when advancing money under his mortgage, is able to protect his priority against liens.

The question no doubt also relates to the trust provisions of the Mechanics' Lien Acts which are found in the Acts for the Provinces of New Brunswick, Ontario and British Columbia. Similar provisions are found in the Builders' and Workmen's Act of Manitoba. There are no such provisions in the Acts of the other provinces as far as we are aware.

The trust provisions, which have had a serious effect on the banks, were added in more recent years (Manitoba—1932, Ontario—1942 and British Columbia—1948). These provisions did not go unnoticed and, to illustrate, the C.B.A. counsel in 1942 warned the banks of the implications and difficulties that might arise for the banks in financing contractors. While the banks were on the alert because of this warning, in point of practical experience the

situation that was warned against actually did not become a problem until 1955 when there was the adverse decision of the Courts in the Honeywell case which led to a long line of cases in the ensuing years.

As the full impact of adverse Court decisions was felt, the banks began to protest the inequities of these trust provisions:

Ontario

The Board of Trade of Metropolitan Toronto convened a conference in Toronto to consider amendments to the Mechanics' Lien Act of Ontario, with particular emphasis on some revision of the trust provisions of this Act. Leading associations involved in the construction industry were represented as was the C.B.A. After two years of deliberations the report of this conference was submitted to the Attorney-General of Ontario, proposing many changes in this Act, including a 60-day time limitation for claiming under these trust provisions.

British Columbia

In 1961 the C.B.A. filed a Brief with the Select Legislative Committee of British Columbia objecting to the trust provisions in the British Columbia Act.

In June last the British Columbia Federation of Construction Associations filed a Brief with the British Columbia Government along similar lines to that submitted in Ontario. The following is an excerpt from that Brief:

> The end result of the above Court decision is that lenders can no longer safely rely for the security of their advances on moneys receivable under construction contracts, and as a result this tends to interfere with the normal extension of credit to this industry and to deny assistance by banks to financing a substantial volume of construction by making money less available and inevitably placing the burden of financing this business on the material supplier and subcontractors.

We emphasize that the view expressed in the foregoing quotation was put forward not on behalf of the banks but on behalf of an organization of contractors.

Saskatchewan

In 1962 the Saskatchewan Government formed a Royal Commission to enquire into the Mechanics' Lien Act. The C.B.A. submitted a Brief opposing trust provisions. The Honourable H. F. Thomson, Q.C., Commissioner, appointed under the Public Inquiries Act to investigate and inquire into the effect and operation of the Mechnics' Lien Act, Saskatchewan, under conditions then (1962) existing in the Province, and other matters made an extensive examination of other Canadian Statutes and Court cases based upon a consideration of them. His report contains the following paragraph recommending against the adoption of trust provisions in Saskatchewan's Mechanics' Lien Legislation:

I have therefore carefully considered all of the arguments submitted on this question and have come to the conclusion that Saskatchewan would be unwise to adopt trust provisions such as presently exist in New Brunswick, Ontario, Manitoba and British Columbia. I am not convinced that the recommendations of the Joint Conference of the Board of Trade of Metropolitan Toronto would provide an acceptable alternative. If Ontario can find a solution which works it can easily be adopted by amendment to our Saskatchewan Act. In the meantime our Act is working very well. It is really surprising how many of

those who appeared before the Commission thought that it was really better than any of the others. Under the circumstances I recommend that nothing be done at this time about these trust provisions.

Based upon the suggestion of analogy between the provisions of a Mechanics' Lien Act and what is intended to be attained by Bill C-5, we were also asked whether "under the circumstances and in view of the fact that the Mechanics' Lien Act is established and has been accepted for years, the terms of this Bill are inconsistent and unreasonable in view of the general acceptance of the principles of the Mechanics' Lien Act."

So far as the trust provisions of mechanics' lien legislation are concerned, it is pointed out that they have had an unsettling effect on the construction business. Their scope and meaning still have not been finally settled by the courts, even though the Honeywell case was decided as long ago as 1955. There has been judicial comment as to the adverse effect of the trust provisions upon the ability of contractors to finance their operations. It has also been pointed out by the Honourable Mr. Thomson in the course of his report that the trust provisions of mechanics' lien legislation have resulted in a lot of litigation especially in Ontario and British Columbia. Accordingly, we cannot agree with the statement that the legislation has met with general acceptance.

Alternative Proposals

To enlarge upon the suggestions offered in our first presentation for alternatives to the proposals in Bill C-5, if there are processing industries with a record of insolvencies resulting in grievous financial misfortunes for primary producers, the producer organizations might give consideration to establishing standards of financial responsibility for that class of processor which standards would of themselves effectively reduce the credit risk. When under such standards a processor's financial position is not as strong as it is felt it should be, conditions of sale by the producer could call for the providing of an appropriate form of payment insurance or bonding to supplement the processor's own resources.

In principle such measures are now availed of in the construction industry through the use of bonding arrangements; in Ontario, contractors are required to meet prequalification financial requirements when bidding on Government contracts. Another example of establishing financial standards is in the licensing and bonding of livestock commission houses and dealers who operate at stockyards.

Where producers are organized as a group a reserve fund for credit losses built up by levying a small percentage of sales could provide relief when processor failures occur. Associations of producers undoubtedly have officials who are as well qualified by experience and knowledgeability, as their counterparts in other business fields, to have an awareness of credit risks in their dealings with processors. When doubt exists as to financial responsibility, the element of risk must either be accepted, cash demanded upon delivery, or another outlet found for the produce. In making this statement we recognize fully that when only one processor services a local area growing perishable crops, the farmer is in a serious position should the processor collapse financially during the harvest season. As mentioned previously, it should be possible to limit these hazards through the use where desirable of a bonding or insurance arrangement.

Since our last appearance, evidence given at the hearings has emphasized the plight of the farmer who suffers financial loss through the insolvency of a processor of his crops perhaps to the extent of the value of an entire season's harvest. These happenings, while fortunately infrequent in terms

of the overall volume of such business, are certainly matters of real distress and do call for preventative measures. The difficulty is to find remedies that do not carry with them damaging side effects. In this respect, we feel strongly that the intention underlying Bill C-5 should not be accomplished by means entailing a change in the whole concept of Section 88 which the passage of the Bill would bring about. The useful place in Canadian financing held by Section 88 over the years indicates that remedial measures for the problem under consideration should be compatible with the broad general interests of the producer sectors as a whole and should be of a nature that will permit the small processor to continue to obtain the credit he needs while at the same time affording added safeguards for the credit risk to which the farmers are exposed. The banks are convinced from experience that Section 88 as it now stands serves the essential needs of many businesses in circumstances where other financing, if available, would probably be more costly.

Legislation Affecting Banking Generally

Finally, we would like to record our general view that legislation, such as Bill C-5, which would affect established powers and procedures for the carrying on of banking in Canada as laid down in the Bank Act should always be a matter that is acknowledged to fall for consideration within the scope of the decennial revision of that Act. We, of course, recognize that the Standing Committee on Banking and Commerce now considering Bill C-5 is the Committee which will have the responsibility next year of dealing with the revision of the Bank Act. These decennial revisions look into all aspects of banking at the one time and this has the merit of ensuring that proposed changes are examined in the context of the subject as a whole. On occasion Bank Act revisions are preceded by special studies of the nature now being made by the Royal Commission on Banking and Finance which Commission has had presented to it by the public at large a broad range of viewpoints.

Respectfully submitted on behalf of
The Canadian Bankers' Association

H. L. Robson
Secretary.

December 10th, 1963

EXHIBIT

Loans under Section 86 and/or Section 88 of the Bank Act to processors who purchase from primary producers. The figures indicate the Banks' experience during the period 1960/62 inclusive

Classification	*Number of Accounts in Classification*	*High Point of 86 and 88 loans made to borrower in each year—Totals*		
		Year 1960 $'000	Year 1961 $'000	Year 1962 $'000
(i) Fruit and Vegetable Packers and Canners	245	40,535	46,291	52,808
(ii) Grain Dealers & Flour & Feed Mills	335	368,224	409,728	301,544
(iii) Meat Packers and Canners	118	16,168	23,080	24,156
(iv) All Dairy Products	242	13,471	15,753	16,947
(v) Sea Product Processors	198	36,909	42,083	49,787
(vi) Lumbering	1,335	147,149	150,869	180,990
(vii) Fur Dealers	56	3,638	3,783	3,928
(viii) Smelters or Other Processors of Minerals	196	25,787	35,222	43,870
(ix) Others (mainly includes manufacturers and wholesalers)	897	99,204	122,385	139,355
Total	3,622	751,085	849,194	813,385

Total of Section 86 and Section 88 loans to this group of borrowers at December 31, 1962 $617,915,000

Banks' experience during the three-year period 1960-1962 in taking recourse of recovery provided for under Section 86 or 88 security in the account of a processor who made purchases from a primary producer

Number of Accounts	110
Amount of loans when difficulties encountered	$8,554,929

APPENDIX "B"

MEMORANDUM ON THE CONSTITUTIONAL VALIDITY AND OTHER ASPECTS OF BILL C-5

1. CONSTITUTIONAL VALIDITY

It is alleged, albeit not strenuously, that Bill C-5 is an invasion of the provincial power to legislate on "Property and Civil Rights in the Province".

As pointed out by the Judicial Committee of the Privy Council in *Cushing vs. Dupuy,* (1880) 5 Appeal Cases 409 at page 415:

Judicial comment.

"It would be impossible to advance a step in the construction of a scheme for the administration of insolvent estates without interfering with and modifying the ordinary rights of property, and other civil rights, nor without providing some mode of special procedure for the vesting, realization and distribution of the estate, and the settlement of the liabilities of the insolvent."

Parliamentary precedent.

Bankruptcy Act, s. 52.

Bank Act ss. 88 & 89.

Bill C-5 utilizes a mode of special procedure that already has been twice approved of and used by Parliament. Section 52 of the *Bankruptcy Act* rewrites the law of contract in order to legally protect an author's equitable but not legal rights in a manuscript in the hands of a bankrupt publisher. Section 89 of the *Bank Act* gives a bank a first and preferential lien and claim on a loan under section 88: but section 88(5) provides that, if the debtor goes bankrupt, then the debtor's employees get a priority ahead of the bank's preferential lien to the extent of three months' wages. The method used in Bill C-5 and the Bank Act's section 88(5) are identical in principle. The debtor-creditor rights *inter partes* are defeasible in part upon a condition subsequent—the bankruptcy of the debtor.

2. LEGAL PRACTICALITY

It is alleged that the Courts would be totally unfamiliar in dealing with those parts of the assets affected that are perishable, uncanned, etc. The Courts are not unused to this problem. The Ontario Supreme Court has a Rule similar to that of the Supreme Courts of other provinces:

Ontario Supreme Court Rule of Procedure No. 370.

"The Court may, at any time, order the sale, in such manner and on such terms as may seem just, of any goods, wares, or merchandise which may be of a perishable nature or likely to be injured from keeping, or which for any other reason it may be desirable to have sold at once."

Parliamentary Precedents.

Parliament itself has delegated similar powers in the *Fisheries Act,* 1960-61, c. 23, s. 10 to Department of Fisheries employees; and in the *Customs Act,* 1952 R.S., c.58 s. 157, to Port Collectors.

Inclusion of all primary producers.

It is also alleged that Bill C-5 is legally too wide in including the producers of forest, quarry and mine, seas, lakes and rivers products as well as those of agriculture inasmuch as representatives of these other producers have not been represented at the committee hearings. These are the classes included in section 88 of the *Bank Act;* it would appear discriminatory for Bill C-5 to exclude any of them. None of these non-agricultural primary producers—with the possible exception of the B.C. fishermen, who are not likely to be affected, have strong organizations.

3. FINANCIAL PRACTICALITY

Tight money.

It is suggested that the effect of Bill C-5 would be to tighten credit facilities available to processors and so affect adversely the

primary producers and the community. No disinterested expert opinion was produced to so testify: nor to discredit the specific testimony of the witnesses who supported the Bill that, on the balance of public convenience and inconvenience, the present state of the law produces a greater adverse effect on the individual and on the community.

Credit investigation of processors by producers.

It was suggested that the primary producers should set up their own investigation service. The publication of credit investigation results, unless carefully controlled and restricted, can give rise to civil litigation damaging to the publisher. The wide publication that the primary producers would have to give to such information negatives the idea of such a practice; in this regard, the producers are in a different position entirely from the banks and processors. Furthermore, some primary producers—under provincial laws—have no option as to whom they can sell. It was also suggested that the provinces might conduct such investigations and advise the primary producers of the credit ratings of the processors. This would be a reprehensible practice on the part of any government and it is unlikely any provincial government would accede to such an invasion of the private citizen's right to privacy.

4. ALTERNATIVES SUGGESTED

Provincial action.

It was suggested that provincial legislation would be preferable.

Ultra vires.

1) The answer is that provincial legislation to cover this particular grievance, in the manner that Bill C-5 does, would probably be *ultra vires* of a province as infringing the federal government's jurisdiction over "Bankruptcy and Insolvency."

Impracticality.

2) Such legislation, if constitutionally possible, would have to be approved and adopted by 10 provincial legislatures and the federal government for the Territories. Efforts to obtain such unanimity on other subjects by the Committee on Uniformity of Legislation have, at best, taken years—and, at worst, have not been successful.

Private arrangement between producers and processors.

It was further suggested that a private arrangement between processors and primary producers might be negotiated to remedy the grievance.

The only remedy equal to the coverage given by Bill C-5 would be for the processors, by insurance or otherwise, to cover possible losses by primary producers. No commitment by the processors has been made to any degree in that direction. And, in any event, if put into effect it could be revoked at the will of the processors. Bill C-5, when enacted, can only be repealed by Parliament. And, when other creditors have their rights on a bankruptcy protected by the provisions of the *Bankruptcy Act,* there is no reason why the primary producers should be dependent upon a private agreement outside the protection of the *Bankruptcy Act.*

The primary producer is presently a banker—without security—for the processor: at the same time he provides the security for the banker's loan to the processor. The effect of Bill C-5 is to give the primary producer the security of his own product on a bankruptcy without undue diminution of the bank's security or of the rights of other creditors.

Respectfully submitted by
Eugene Whelan on behalf of the
Primary Producers of Canada.