To His Excellency the Governor General of
Canada in Council.

May it please Your Excellency:

On the 22nd day of May, 1926, the Board of Toronto Harbour Commissioners passed a resolution requesting the Corporation of the City of Toronto to apply for an Order-in-Council under the Inquiries Act, appointing the undersigned a Commissioner to inquire into, examine and investigate, the various transactions of the Toronto Harbour Commissioners in acquiring or disposing of property, the revenues and expenditures of the said Commissioners, the performance of their duties by the members, officials, servants and agents from time to time of the said Commissioners, the extent of the work done by them, and the cost of the same; and generally all matters pertaining to the business of the Toronto Harbour Commissioners from its institution in 1911 until the present time.

The Corporation of the City of Toronto decided to ask for such inquiry and presented a petition to Your Excellency in Council, praying that such a Commission might issue for the purpose aforesaid.

The prayer of such petition was granted, and by Royal Commission dated the 15th day of June, 1926, your

Commissioner is authorized to conduct such inquiry and is directed to report the result of such investigation, together with the evidence taken and any opinion he may see fit to express thereon.

I have conducted the inquiry authorized by the said Commission and have the honour to report thereon as follows:

At the inception it appeared to me that a comprehensive and complete inquiry could not be conducted without the assistance of a firm of chartered accountants whose duty would be to make a thorough financial survey of the transactions of the Harbour Commission from 1911 to date, and to report to me from time to time any matters that seemed to them to call for explanation. I accordingly appointed the well-known firm of Price, Waterhouse and Company to make such survey. Their work did not involve a detailed audit but included an inspection of all tenders, contracts, plans and documents and a general review of all the transactions of the Board. This firm have reported to me from time to time and have made complete reports on each section of the harbour, and have prepared a final summary and balance sheet. The information furnished by them will be referred to from time to time in this report.

Owing to the delay of the City in appointing its Counsel to represent it in the inquiry, the taking of

evidence was not begun until the 1st November, 1926, when our first session for hearing evidence was held.

On that date the Rt. Hon. Sir Thomas White, K.C. appeared as counsel for the City; R. S. Robertson, K.C. for the Dominion Government, and J. M. Bullen for the Harbour Board. The counsel named were in constant attendance at our sittings. In addition other counsel appeared representing individual clients on days when matters affecting their clients were dealt with. J. R. Robinson appeared for T. L. Church, one of the Harbour Commissioners, and John Jennings, K. C. for John Russell, one of the contractors; and R. H. Greer, K. C. for the Warren Bituminous Paving Company Limited.

SCOPE OF THE INQUIRY

It will be observed that the inquiry is confined to the transactions, revenues and expenditures and business of the Toronto Harbour Commissioners, and the performance of their duties of the Commissioners, their officials, servants and agents. The Dominion Government has expended large sums of money on Toronto Harbour, but the Government let their own contracts and paid their own contractors. These contracts and the work done under

them and the monies paid by the Government to its contractors do not come within the purview of this Commission. The Dominion Government is, however, interested in this inquiry in these three respects:

1. It appoints two of the Commissioners, one of whom is upon the nomination of the Toronto Board of Trade, and is entitled to know how they have performed their duties.

2. It is entitled to know how the Toronto Harbour, on which so much Government money has been spent, is being managed.

3. It was on their constitutional and official advice that the Royal Commission was issued, though on the petition of the City of Toronto.

The matters coming within the scope of the inquiry may be classified as follows:

1. The transactions involving the purchase or sale of property.

2. Revenues and expenditures.

3. Performance of their duties by the members, officials, servants and agents of the Board.

4. The extent of the work done and the cost of the same.

5. All matters pertaining to the business of the Board not coming within the other classifications.

CONDITIONS BEFORE 1911

Before reporting on any matters in detail it is

necessary for a better understanding of what follows that a short historical sketch of the harbour should be given, and the conditions prevailing before 1911 stated.

Before 1911 the Toronto Harbour was governed under an Act passed by the Parliament of Canada on the 10th of August, 1850, 13 & 14 Victoria, Chapter 80, as amended by 25 Victoria, Chapter 26. This Act authorized the Council of the City to appoint two persons as Commissioners and for the Toronto Board of Trade to appoint two more, and for the majority of such Commissioners to recommend another person to be the fifth Commissioner, who should upon such recommendation be appointed by the Governor of the Province; and if such majority should report that they cannot agree, the Governor should appoint such fifth Commissioner. These five Commissioners were appointed a body corporate with power to manage such property as it owned, and such other property as the Council might acquire and convey to them. The Board had also power to acquire such property as might be requisite to enable it to execute improvements for the harbour, but as the borrowing powers of this Commission were limited, very little headway could be made in creating an adequate harbour. As a matter of fact the Board's powers were practically confined to management only.

Before 1911 the conditions along the water front of Toronto were as follows: There was, with The Island in front, a natural land-locked harbour, a large portion of which was useless for marine purposes on account of its shallowness. There was an inner harbour water front of about 2½ miles in extent, but only a very small portion of this, chiefly between York and Yonge Streets, was available for development, the balance being privately owned or publicly owned and under lease. With the exception of the power given by 25 Victoria, Chapter 26, for a railway running down to a grain elevator on the pier, there was no provision for the co-ordination of rail and water traffic; in other words, no provision for cargoes being transferred from rail to steamer or vice versa. Outside the inner harbour as far as the Humber River to the west and Woodbine Avenue to the east, there was a stretch of about seven miles of water front, a large portion of which was controlled by the City or the Harbour Commission. There were over a thousand acres of waste land and water in Ashbridge's Bay awaiting development. Between the water front and the business and industrial centres of the City there was the hazard of having to cross several steam railway tracks at street level.

In 1909, on the application of the City and the Board of Trade, the Dominion Board of Railway Commissioners made an order which provided for the Toronto Viaduct or track elevation across the water front from Bathurst Street to Logan Avenue, which meant in effect that when the Viaduct was completed, any water front improvements which might be undertaken from Bathurst Street easterly, would be made comparatively easy of access.

About the same time the new Welland Canal was projected, which when completed, would permit of large passenger and cargo steamers being made accessible to Lake Ontario. The navigation of the Upper St. Lawrence was under discussion at the time, but nothing had been done. Added to this is the fact that Toronto, in 1910, was growing rapidly in population and in the number of its industries.

The conditions of the water front at that time, the fact that the Viaduct had been ordered to be built, that the new Welland Canal was projected, and the navigation of the Upper St. Lawrence discussed, led to an agitation for a larger, more modern and better harbour for Toronto. On the 1st of January, 1911, the following question was submitted to the ratepayers of Toronto, entitled to vote on such questions: "Are you in favour of the control and

development of Ashbridge's Bay and the water front in the City's interest by a Commission having a majority of its members appointed by the City?" The ratepayers answered affirmatively in a vote of more than three to one. The question was presented in a form very attractive for those who wished the improvements made, but with that we are not here concerned. There are some ratepayers, however, who would like to know by whom and by what methods public opinion was created in favour of this large harbour undertaking. Such an inquiry would not only be futile, but beyond the scope of my authority. The vote was followed by an application to the Dominion Parliament for new legislation. This is found in 1 & 2 George V, Chapter 26, an Act called The Toronto Harbour Commissioners Act of 1911. Under this Act the Harbour Commissioners, therein called the Corporation, is to consist of five Commissioners, three of whom shall be appointed by the Council of the City of Toronto, one by the Governor-in-Council and one by the Governor-in-Council upon the recommendation of the Board of Trade of the City of Toronto. All property held or controlled by the then Commissioners of the harbour are vested in the new corporation. Ample powers are given to the Corporation to hold, sell, expropriate, lease or dispose of real estate,

buildings, or other property, as it may deem necessary or desirable for the development, improvement, maintenance and protection of the harbour. Power is also given to develop Ashbridge's Bay when conveyed by the City, and to construct, acquire by purchase, lease or otherwise maintain railways within the boundaries of the port and harbour, and to enter into any agreements with the Railway Companies for the maintenance by the company of such railways and to make arrangement with the Railway Compa ies and Navigation Companies for facilitating traffic to and from the harbour, or for making connection between such lines or vessels and those of the Corporation. For the purposes aforesaid the Corporation is given ample borrowing powers. This Act was followed by an Act of the Ontario Legislature, 1 George V, Chapter 119, Section 4, which gave authority to the City to grant and convey to the Harbour Commissioners the ownership of the land covered by water known as Ashbridge's Bay and all the land owned by the Corporation bordering upon the waters of the Bay and harbour, and of the lake shore within the limits of the City together with all water lots owned by the City Corporation within such limits. Authority is also given to the City by this Act to enter into an agreement with the Harbour Commissioners granting to the said Commissioners the control and management of all the docks,

shores and beaches of the Corporation's Island property. This Statute also provides that the Corporation of the City may guarantee all debentures which may be issued by the said Commissioners in carrying out the provisions of the Act.

The first Commissioners appointed under the Dominion Act of 1911 were Lionel H. Clarke, Chairman (deceased); T. L. Church, R. Home Smith representing the City of Toronto; R. S. Gourlay appointed by the Dominion Government on the nomination of the Toronto Board of Trade, and F. S. Spence (deceased) representing the Dominion Government. The Commissioners are appointed for a three year term, subject to removal, and serve without remuneration.

The Commissioners decided that in order to plan and develop the water front in a comprehensive way, control was the first essential, and they set about to obtain complete control of all water front property by purchase, expropriation, exchange or otherwise.

——In December of 1911 the City transferred to the Harbour Commissioners most of the water front property owned by the City in 1911, with the exception of -

(1) Street extensions.
(2) Princess Street yard.
(3) The water works property at John Street.
(4) The Toronto Island.

The property transferred by the City at this time consisted of about two thousand acres of land and land covered by water. During 1913 negotiations were commenced with the two railway companies with the object of securing the riparian rights of their companies between York and Bathurst Streets. These negotiations resulted in agreements whereby the companies relinquished their riparian rights to about 4,700 feet of water frontage property.

On the 1st of February, 1912, the Board appointed E. L. Cousins, its Chief Engineer, whose work will be many times referred to and commented upon in this report.

Before deciding upon the plan of the work the Harbour Commission sent Mr. Cousins to visit other cities and observe the character of the development of their harbours, and in the preparation of the plans he had a large staff of engineers and had also the advantage of the services of Mr. J. G. Sing, as Consulting Engineer of the Harbour Board. Mr. Sing was then District Engineer for the Department of Public Works at Toronto.

The Commissioners decided that the water front improvement plans should embrace --

1. The co-ordination of the rail and water traffic to the fullest extent.

2. All structures, where practicable, should be designed for an ultimate draft of 30 feet.

3. Adequate provision for the industrial and commercial expansion of Toronto including the reclamation of Ashbridge's Bay.

4. Service from all the railways free of interswitching charges on tracks controlled by the Commissioners.

5. Provision for the reclamation of approximately 894 acres of park lands distributed as follows: 190 acres between the western channel and the Humber; 352 acres on Toronto Island proper; 352 acres between the eastern channel and Woodbine Avenue.

6. Provision for a fast traffic cross-town vehicular artery from the Humber easterly; this traffic to be the marginal way and structural back bone of the water front improvements.

7. Provision as far as practicable for a fast traction or semi-rapid transit right-of-way, the opinion being that ultimately fast traction would be necessary to the outlying districts of the city to the north, northeast and northwest.

8. A boulevard drive should be constructed across the entire water front in order that the park lands of the City might be made easy of access.

With these main objects before them the officials prepared eleven studies, with estimates, and the original study Number One, with some minor modifications, was adopted in the Fall of 1912.

As inquiries have been made as to why the area of Toronto Bay was lessened by carrying the docks so far out

into the Bay, it will be convenient here to give the reason alleged by the officials. It was found impossible to adhere to the established windmill line because of the fact that rock was encountered at a depth of 13 feet below mean water level at Bathurst Street and 24 feet at Parliament Street. The erection of new dock structures thereon and making provision for an ultimate draft of 30 feet was prohibitive owing to the excessive cost of rock excavation and structures in relation to the areas of land to be reclaimed and later available for lease. It was therefore deemed advisable to move the windmill line approximately 1300 feet southerly, and to erect all new dock walls along and northerly therefrom and reclaim about 200 acres of additional land. By doing this, it was thought that costly rock excavation would be eliminated. In reclaiming this land it was thought that valuable properties would accrue to the City and Harbour Commissioners for the purpose of light manufacturing, warehousing and modern terminal properties. They were aided in coming to this decision by the fact that the material dredged in the deepening of the inner harbour which had formerly been dumped into Lake Ontario, could be used for reclamation purposes.

As there had theretofore been considerable trouble as to shore erosion on the east, centre and west foreshores, and

as the Dominion Government had expended considerable sums for shore protection, and as the whole scheme was designed not only as an improvement of the harbour but as a reclamation and park scheme as well, it was thought that these improvements should be undertaken jointly by the Dominion Government, the City of Toronto and the Toronto Harbour Commissioners.

In the autumn of 1912 the Harbour Commission officially presented their proposed plan of the water front improvements, to the Dominion Government and the City. These proposals covered the following: -

The Dominion Government to provide for the construction of -

(1) Western breakwater, Humber to the Western Channel.

(2) Eastern sea wall, Woodbine Avenue to the Eastern Channel.

(3) Ship channel, eastern harbour terminals; marginal way wall, eastern harbour terminals; dock walls and circulating channels, eastern harbour terminals.

(4) Eastern and western channel bridges.

(5) Northern slip, River Don retention work, eastern harbour terminals.

The City of Toronto's share of the work was to be as follows:

(1) Construction of Boulevard Drive from Humber River to Woodbine Avenue.

(2) Construction of Exhibition sea wall extension.

(3) Construction of sidewalks, vehicular and pedestrian bridges and park improvements, for the park lands to be reclaimed and to pay the Harbour Commissioners the interest and carrying charges on the capital expenditures of the Commissioners for reclaiming the above park lands, which was estimated to cost $3,270,571.42, with annual ~~interest~~ charges on completion of $196,234.28.

The Toronto Harbour Commissioners' share of the work was to be as follows:

(1) All reclamation work involving the pumping by means of hydraulic dredges of some 33,000,000 cubic yards of material to reclaim an estimated area of 1791 acres.

(2) The construction of docks, warehouses and freight sheds between Yonge and York Streets.

(3) The construction of modern terminal facilities and warehouses in the eastern harbour terminals.

(4) The acquisition for the purposes of development of all inner harbour water front properties between ~~Bathurst Street and Cherry Street.~~

The estimated cost of all these improvements was -

Dominion Government	$6,123,284.66
Harbour Commission	11,215,920.85
City of Toronto	1,802,883.40
	$19,142,088.91

The above proposals were presented to the Dominion Government and an Order-in-Council was passed on June 10,1913,

setting forth the work to be undertaken by the Dominion Government. By this Order-in-Council the Government undertook as its share of the improvements the following works which were estimated to cost $6,400,000 :

(a) The excavation to a depth of 24 feet of a channel and basin in Ashbridge's Bay, the channel to be approximately 6,000 feet long and 400 feet wide, and the basin 1100 x 1100 feet square, and along both sides of the channel and around the basin are to be constructed pile work retaining walls that will accommodate the traffic which is intended to develop this new industrial area.

(b) The construction of crib work breakwater approximately 18,600 feet long to protect the lake shore west of the western entrance to the harbour.

(c) The construction of a sea wall and pile work approximately 17,925 feet long to protect the lake shore on the east side of the eastern entrance of the harbour.

(d) The building of two basoule bridges, one over the eastern entrance and the other over the western entrance to the harbour.

Though it is not in chronological order, it is convenient here to refer to the agreement entered into with the City with regard to the work which they should undertake. The agreement is dated the 26th November, 1914. Briefly, the Harbour Commissioners agreed that as the initial retaining walls were built by the Government, and as the retaining and sea wall was built by the Commissioners for the

City, that they would fill in and reclaim the land shown on the plan to a height to be approved by the Parks Commissioner as to the lands on Toronto Island and to a height at least eight feet above zero as to the lands on the mainland. The City agreed in return to pay to the Commissioners half-yearly for a period of 40 years from the date of the expenditure, interest at 6% on the amount expended in respect of the improvements menticned, plus 10% to cover overhead expenses which expenditure was estimated to be not greater than $3,270,571.42; and after 40 years the payments were to cease and thereafter the City should forever be entitled to the use and enjoyment of the said lands upon payment of the annual sum of one dollar to the Commissioners.

The Harbour Commissioners agreed to build at the expense of the City a highway bridge at Cherry Street and a retaining wall and sea wall opposite the Exhibition at an estimated cost of $289,520. The Commissioners also agreed as part of the water front parks system, and at the expense of the City Corporation, as the lands are reclaimed or acquired or expropriated, to construct a boulevard drive, walks and bridle paths and other improvements. The estimated cost of this latter work to be $1,325,783.80.

The City Corporation agreed to pay to the Commissioners

the two last named sums, plus 10% to cover overhead expenses, such payments to be made on progress certificates issued from time to time. The City undertook also to expropriate or provide a strip of land having a minimum width of about 200 feet measured northerly at right angles from the top of the bank along the lake shore through South Parkdale, from the west limit of Exhibition Park and thence in a westerly direction to a point opposite the end of Cliff Road for the purpose of providing a location for the said Boulevard Driveway.

This agreement between the City and the Harbour Commissioners was ratified and confirmed by the Legislature, 5 George V, Chapter 76.

After, and as a result of, the agreements with the railway companies already referred to whereby the riparian rights were acquired, the Harbour Commissioners applied to the Dominion Government for its approval of the new Harbour Head line from Bathurst to Yonge Streets and for patents of the water lots at the Queens Wharf and the Western Channel and the water lots from Bathurst to Yonge Streets. The application was approved upon the Commission agreeing to convey to the Government 2.34 acres of property at the foot of Spadina Avenue for the purpose of a marine yard for the Department of Public Works.

After appeals were taken by the railway companies from the Viaduct order of 1909 a final appeal was taken to the Governor General-in-Council. It was followed by a conference with all parties which resulted in an agreement dated July 29th, 1913, and a validatory order dated July 31st, 1913. The effect of this settlement was that the Harbour Commissioners were placed in control of all the water front properties south of the Esplanade between Yonge Street and Parliament Street save and except the 230 foot strip right-of-way required for Viaduct purposes. The Commission now found themselves in control of over 90 percent of the water front from the Harbour to Woodbine Avenue. It is common knowledge that the Viaduct was not constructed under this agreement, but that after long and embarrassing delays a new agreement was entered into in November, 1924, under the terms of which the Viaduct is now in course of construction.

Having arrived at the agreements with the Dominion Government in 1913 and the City, and having acquired control of so much of the water front the next step to be taken before any contracts were let or obligations assumed was to arrange for the financing of the enterprise.

FINANCES

The decision ultimately arrived at between the City

and the Harbour Commissioners was that the bonds to be issued should be 40-year bonds bearing 4½% interest and that the issue should not exceed $25,000,000. Up to the end of 1925 bonds to the extent of $23,000,000 had been issued and sold under the guarantee of the City, but owing to conditions over which the Harbour Board and the City had little (if any) control, the amount realized for these bonds was only $19,661,445.00. In the summer of 1913 the Board decided to sell the first series amounting to $1,000,000. Mr. R. Home Smith, having had more experience in financial matters than his colleagues on the Board, was authorized by the Board to conduct the negotiations for the sale. It was not long after Price, Waterhouse and Company began their work in this inquiry that they made an interim report to me in which they pointed out that the first, second, third, fifth and a portion of the fourth series of bonds had been sold by private negotiations and without tender. The first $1,000,000 in 1913 was sold to William A. Reid and Company of New York, who were represented in Toronto by The Dominion Securities Corporation. This was sold at 89.50 on a 5-10 yield basis. It appears from correspondence in the hands of the Board that while Reid and Company were the only firm who were asked for quotations, two other firms made bids, one Stimson and Company at 90 for sale on the London market, the other from A. E. Osler and Company at 89.50, also

for sale on the London market. As William A. Reid and Company purchased several of these issues by private sale conducted by Mr. Home Smith, and as Mr. Smith is known to be friendly with many of the members and officials of the Dominion Securities Corporation, it was thought necessary that these sales should be closely scrutinized. The reason for rejecting Stimson and Company's higher offer was stated to be that the City authorities objected to any harbour bonds going on the London market at that time, as thereby the price of City bonds might be affected.

The evidence shows that the City did raise this objection and as a result the sale was made to William A. Reid and Company of New York at 89.50 for the first million. It may be asked why limit the inquiries to William A. Reid when there are a great many other bond houses in Toronto? The answer given by Mr. Smith is that he believed there was an advantage in having a connection with one strong house in New York which would act as bankers, so to speak, for the Commission and would be under a moral obligation to see the Board through with its financing. Mr. George Morrow, of the Dominion Securities Corporation, whose company profited to some extent from the sale, needless to say, took the same view.

In July, 1914, the Board invited tenders for the second series and when The War broke out on the 4th of August, 1914,

recalled their invitations. The second series was sold to William A. Reid and Company, $1,000,000 at 86. The third series for $1,000,000 was sold to the same firm in 1915 at 80.78. During this year there are on file with the Board letters from other bond houses asking for the privilege of tendering, but no attention seems to have been paid to them. Apparently Mr. Home Smith thought that he would stick to his friends, the Dominion Securities Corporation. But while the sale to Reid and Company in 1915 at 80.78 was the lowest price reached for any of the harbour bonds, it is only fair to point out that on July 5th, 1915, Mr. Smith got an offer from Reid and Company to purchase these bonds at 88 and that owing to the delay of the City Treasury Board in giving its consent the sale was lost and the same bonds were sold in September, 1915, at 80.78. The slump in the financial market was the cause. While the City Treasury Board can scarcely be blamed for delaying their decision (The City in July was selling its own bonds on more favorable terms) yet Mr. Smith is entitled to credit for having been able to foresee the slump on the market. Certain it is that if his advice had been followed in July the Harbour Commissioners would have realized $75,000 more.

In 1917 a portion of the fourth series, amounting to $1,500,000 was sold at 83.07. This was sold with the approval of Mr. Bradshaw, who in 1916 became City Finance Commissioner.

The reasons for the sale at this figure are set forth in a letter he wrote at the time setting out the unusual conditions prevailing. Mr. Bradshaw had not been long installed in office when he decided that as the City was guaranteeing the bonds it should have some say in the method of their disposal. He accordingly put a stop to the sale to one firm without tender and thereafter all the bonds (with the exception of series five in 1919, amounting to $3,000,000, sold to another bond house at 84.71) were sold to the lowest tenderers. The series five referred to were sold under the following circumstances: An option had been granted to The Dominion Securities Corporation and William A. Reid and Company at 84.71. They submitted a counter proposal to purchase $1,000,000 instead of $3,000,000, but the other bond house took the whole $3,000,000 at the option price. It would seem that the so-called moral obligation did not, in this instance, stand the test.

Owing to so many dealings by Mr. Home Smith with one bond house without tender, it became necessary to go carefully into the prices obtained for other comparable bonds on corresponding dates. In August, 1913, when the harbour bonds sold at a price which yielded 5.10, it has been shown that in the same month, the City sold a much larger block of bonds on which they realized practically the same price. This, I think, proves conclusively that Mr. Home Smith made a very

good sale of the first $1,000,000. As to the later bonds sold without tender to Reid and Company there is no evidence of other sales at dates that exactly correspond, and as The War was on and the market fluctuated from time to time, it is quite impossible to find upon the evidence that a larger price could have been obtained if inquiries had been made from other bond houses. As Mr. Bradshew points out in his evidence, there are times when it is not advisable to ask for tenders, but when it is decided not to ask for tenders, it does not follow that inquiries should be confined to one bond house. If these had been bonds of a private industrial corporation, the dealing with one bond house would not have been open to the same objection. But this is a public enterprise, a public issue. The evidence shows that with such an issue the dealing with one house to the exclusion of all others is an objectionable practice. To sum up, Mr. Home Smith got a good price for the first issue. As to the later issues sold privately, while it has not been shown that he could have got a better price if he had widened the scope of his inquiries, it is not improbable that as to some of these later issues he might have got a slightly better price. The most that can be said against Mr. Smith's method of financing is that in the sale of these public bonds in which all the ratepayers of Toronto were interested, he confined his attention to his own friends

to the exclusion of other bond houses who asked for the privilege of doing business with the Board.

Needless to say, there is not the slightest evidence to show, nor is there any reason to believe, that Mr. Smith profited in any way by the method he adopted. Furthermore, the sales were made with the approval of the City authorities.

THE CANADIAN STEWART COMPANY CONTRACT

In May, 1913, the Harbour Board called for tenders for the dredging. Five tenders in all were received. The two lowest were from the Canadian Stewart Company Limited whose tender was 19-3/4 cents per cubic yard, and from the Sir John Jackson (Canada) Limited at 19½ cents a cubic yard. The specifications called for an accepted bank cheque for 5 percent of the amount of the contract as based upon the approximate quantities given, accompanying the tender, and that the cheque of the tenderer, to whom the contract should be awarded, would forthwith be deposited by the Commissioners in a chartered bank of Canada and interest on the amount thereof of 3% per annum allowed. The Jackson tender was made on the understanding that the deposit would not be locked up and that if this was insisted upon their tender was 20½ cents. Four days after the date of their tender, that is to say, on the 31st May, but before the tenders were opened, the Jackson Company wrote to the Harbour Commissioners stating

that they did not wish the provision as to locking up the security to be misunderstood, and stated that should the contract be awarded to them on the tendered price of 19½ cents per cubic yard, they would not ask for the cheque to be handed back to them, that the cheque duly certified by the bank could remain in the hands of the Commissioners as security, but not to be cashed unless the forfeiture of the deposit was justified under the circumstances as set forth in the specifications, the Commissioners paying no interest in the meantime. The Jackson tender contained another provision that it was made subject to a formal contract being approved on their behalf.

These tenders were opened by the Board on June 3, 1913. The Canadian Stewart Company got the contract at 19-3/4 cents and the reason given for accepting this tender is stated in the letter of June 9th from the Board to The Sir John Jackson Company. This reason was that the tender of 19½ cents was accompanied by certain conditions which did not comply with that part of the specifications, which called for the cheque being deposited and the Commissioners paying interest thereon. Another reason given was that the Jackson tender was made subject to a formal contract being approved, and that their solicitor had advised them that this left the whole matter open. When the Jackson tender is read in the light of their letter of May 31st there is a distinction, but very little, if any difference, between it and the tender of the Canadian Stewart Company so far as related

to the special deposit. In the one case the certified cheque was to remain in the hands of the Commission until the forfeiture was justified by a breach of the specifications, the Commission paying no interest thereon; in the other it was to be deposited in the name of the Commissioners as security for the carrying out of the contract, and bank interest being allowed thereon. Whether this trifling difference was sufficient to justify the Commission in awarding the contract at a figure that made the dredging cost at least $50,000 more, is open to question. If the Commissioners had been really desirous of giving the contract to the Jackson Company, it is probable that these minor differences could have been adjusted. The Commissioners, however, in their judgment considered that the Canadian Stewart Company tender was the lowest and awarded the contract to them. Their judgment would not have been called in question but for the matters to which allusion must now be made.

At or about the time that the tenders were being considered, the Stewarts of the Canadian Stewart Company met Mr. Boyd Magee at the King Edward Hotel in Toronto and entered into a contract with him (a pencil memorandum at the time, subsequently confirmed by letter) by which they agreed, if they got the contract with the Harbour Board, to pay Boyd Magee the sum of $100,000 and pay him a salary of $500 a month as advisory engineer, for the term of five years as the dredging work went on.

The $100,000 was not to be paid in one lump sum, but as the work progressed. In the Fall of 1913, when the contract with the Stewarts was actually entered into, $5,000 of this $100,000 was paid. Mr. Magee received his salary at the rate of $500 a month during the five years. The Stewarts did not pay the balance, $95,000, and in 1921 Magee brought an action in the Supreme Court of Ontario, against the Canadian Stewart Company to recover the $95,000. This action was settled by the payment to Magee of 35 one-thousand-dollar bank notes, which were placed by Magee in a safety deposit box in the Dominion Bank. This was in settlement of the action. In view of the evidence of Mr. Cousins that he saw very little of Magee at the time that the tenders were received and considered, and that he did not do any work during the progress of the contract that would entitle him to $500 a month salary, it appeared incumbent upon me to examine Mr. Boyd Magee. This was done at Mount Clemens, Michigan, where he is taking the baths. Having in mind that my jurisdiction is limited in this inquiry to the contract with the Toronto Harbour Commissioners and has nothing to do with the contract the Canadian Stewart Company had with the Dominion Government, I find upon the evidence that no part of the $5,000 or of the $35,000 or of the $500 a month was paid to any member of the Harbour Commission or to any official or employee of the Board. Whether any part of it was paid to any other person

or fund to induce the other contract which the Canadian Stewart Company obtained with the Dominion Government, is not within my province to determine. Mr. Magee has denied that he shared any part of this money with any other person, and there is no evidence to the contrary; and it is difficult to see any reason for his parting with any part of the $35,000 eight years after the contract was entered into. However, this inquiry is limited to the affairs of the Harbour Board, and I am satisfied that no part of the monies reached the Commissioners, their officers, or employees.

The contract with the Canadian Stewart Company was entered into in the Fall of 1913 and as soon as practicable thereafter, the dredging was begun. The delay in entering into the contract is accounted for by the fact that the Canadian Stewart Company also got the contract with the Dominion Government, and it was deemed advisable that the two contracts should go on together. The Canadian Stewart Company proceeded with the work until 1920 when a new arrangement was made whereby the Harbour Board released them from their contract, paid them for their work to date and purchased their dredge The Cyclone for $675,000. One of the inducements which led to the Board entering into this arrangement was the fact that the Hydro Electric Commission wanted a dredge for their work at Chippewa, and it could be loaned to them at a handsome rental; as a matter

of fact, the Hydro Commission paid the Harbour Board $250,000 for the use of this dredge from November, 1920, to September 1921, when the dredge was brought back and has since been operated in the Harbour by the Harbour Board. Before 1920 the Canadian Stewart Company had had a difference with the Dominion Government over the work they had done for the Government. They were made to do considerable work over again which entailed a loss. Their work, however, done for the Harbour Commission was in the main, not unsatisfactory.

The question has been raised, why, in 1914, when The War broke out, the Board did not close down and suspend operations. The answer given is that had they done so they would have subjected themselves to an action for damages for breach of contract. Looked at from a patriotic viewpoint the continuance was not so objectionable because the number of men engaged in dredging operations is comparatively small. The chief expense is in the plant and fuel. Moreover, as everyone knows, in the first year of The War few people believed that the struggle would last as long as it did. As matters have since turned out it would have cost the Board more had the dredging contract been cancelled and the dredging done under a new contract at the end of The War.

CONTRACTS FOR HARBOUR HEAD WALLS

These were large contracts, involving the expenditure

of more than $3,000,000. These Harbour Head Walls were divided into seven sections. In May, 1916, the Board let the contracts for sections one and two, and in April, 1917, for sections three, four and five, and in 1920 for sections six and seven. In the case of sections one to five inclusive, tenders were received which quoted lower prices than those in the accepted tenders. All these tenders are referred to in detail in Exhibits D and E of Appendix "C" to this report. The reasons given for awarding the contracts to others than the lowest tenderers are contained in the reports of the Chief Engineer and Manager dated May 3, 1916, and April 11, 1917. The Board in its judgment thought it better not to award more than one section to one contractor at the same time. The facilities for doing the work and the responsibility of the contractors entered into their consideration. Upon the evidence that has been heard, it does not appear that the Board is open to criticism for anything they did in letting the original contracts. The Harbour Commissioners tendered at the same time and their tender was higher than that of the successful tender. Special reference however, must be made to the later contracts with reference to sections three, four and five. In 1917 the contract for section three was awarded to Roddick and Russell; section four to R. Weddell and Company; and section five to the Port Arthur Construction Company Limited. These three contractors had not been long on their work when the

Commissioners decided in August of 1917 to either postpone or terminate the work covered by these contracts, owing to the financial situation caused by The War. After some negotiations with these contractors an agreement was arrived at, dated August 22, 1917, which contained the two following main provisions:

> " (a) The Commissioners agree to purchase and take over from the contractors all supplies which the contractors are under liability to pay for and which they have purchased with a view to the performance of the contracts, to be paid for at bona fides prices agreed to be paid by the contractor for said material. The Commissioners also agree to pay to the contractors in addition such reasonable amount for their loss as may be agreed upon by the contractors and the Chief Engineer of the Commissioners.
>
> (b) If it is decided later to continue with the work, the Chief Engineer and the contractors are to endeavour to agree as to what changes there have been in the prices of material required in connection with the contract, and the cost of labour since 1917 and to agree upon a unit price which it would be fair to charge under the changed conditions. If this agreement can be come to the contractors are to be allowed to proceed and complete the contracts at such unit price without calling for outside tenders. "

An agreement was arrived at under (a) and the contractors paid. Russell and Roddick were paid for section three, $16,508.22; R. Weddell and Company for section four, $32,727.92; and the Port Arthur Construction Company Limited for section five, $71,482.50.

Of the amounts so paid the sum of about $37,000 represents the dead loss due to the suspension of the contracts brought about by The War.

In the Spring of 1919, The War having ended, it was decided to continue with the work on sections three, four and five. Russell and Roddick, and the Port Arthur Construction Company Limited were willing to proceed and complete the contracts at unit prices to be agreed upon without calling for outside tenders, pursuant to the arrangement made in 1917. R. Weddell and Company, who had the contract for section four, notified the Board in a letter dated Saturday, the 1st of March, 1919, that they would not complete the work. This letter arrived in Toronto on Monday, March 3rd. Previous to March 1st, Weddell and Company had written intimating that they might not, for personal reasons, go on with the work, but asking for more time to consider it. On the receipt on the 3rd of March of Weddell and Company's letter, the Harbour Board was perfectly free to deal with any other contractor for section four. On Sunday, March 2nd, Mr. Weddell, who lives in Trenton, was visited by Mr. John E. Russell, and an arrangement arrived at whereby Russell was to tender for section four in the name of Weddell and Company; in other words, get the advantage that Weddell had under the arrangement made in 1917. For this privilege he agreed to pay the Weddell

Company 2% of the amount of the contract. Russell returned home and then arranged his prices with the Harbour Board officials without any tender. In other words, the Harbour Board gave the work to Russell without advertising for or inviting outside tenders which the Board was undoubtedly at liberty to do. If they had asked for other tenders, lower prices might have been obtained. And without asking for tenders they might have negotiated with the Port Arthur Construction Company Limited, who were doing the work on section five. It is not unfair to assume that the latter Company would have been able tosave the Board the 2% which Russell had to pay. Negotiations, however, were confined to Russell. As Russell has done very much work for the Harbour Board and was more in intimate touch with the officials, having his office in the Harbour Administration Building, it was incumbent upon us to compare the unit prices paid for section four with the corresponding prices paid for sections three and five. This has been done, and while there is some variation, the difference is not so great as to call for any comment. It has not been proved that the Harbour Board or any of its officials knew that Russell was paying Weddell 2%. The chief criticisms that can be offered of this transaction are (first) tenders might have been called for section four and

(second) favoritism was shown to Russell in preferring him to the Port Arthur Construction Company Limited.

In view of the evidence given as to Russell's contracts, the auditors, Price, Waterhouse and Company, were instructed to inspect his books. In going through these books they discovered three payments all made to one Norman R. Nicoll as follows: October 31, 1917, $100; November 22, 1917, $100; and on May 29, 1919, $1,000. This Norman R. Nicoll was inspector in charge of the work that Russell was doing. The first two payments of $100 each were made after the first contracts in 1917 had been abrogated, but before the amount to be paid to Russell under the arrangement of that year had been arrived at. The third payment in May of 1919 was made shortly after his contract for the harbour head walls was resumed. The first two payments are entered in Russell's cash book and are charged to an account in Nicoll's name. This account was written off at December 31, 1917. The payment of $1,000 also appears in Russell's cash book, but was written off in full at December 31, 1920, and charged to contract account, which is the account recording the expenditures on the different contracts. Mr. Russell was asked to explain these payments. He admitted that Nicoll was an inspector on his work, and that the money had not been repaid.

His explanation of the first two payments is that he thinks they were for services rendered by Nicoll to him in making estimates in 1913 and 1914, when he was an employee. The third payment of $1,000 he explains by saying that Nicoll was in urgent need of money to make a payment on a house. As a matter of fact, it was paid on the house.

Mr. Russell is said to be very generous to people who are in distress, but it is very difficult to remove the impression one forms that the payments were not unconnected with the circumstance that Nicoll was inspector in charge of the work that Russell was doing. It was an improper transaction.

The auditors have reported that from an inspection of Russell's books it appears that the net profit derived by him on his two contracts from the harbour head walls was $66,549.62, which is approximately 12% of the amount received under the contracts, $528,123.26. This profit is arrived at after deducting $54,638.45, representing the rental for and the cost of operating the contractor's plant and $3,600 for the use of the contractor's yard.

SALE AND LEASE TO THE DUFFERIN CONSTRUCTION COMPANY LIMITED

One of the transactions under criticism and into which inquiry has been made, is the sale made in February, 1924, by the Board to the Dufferin Construction Company, Limited, of a building known as the machine shop of the Dominion Ship Building Plant, and the lease to the Company of the land on which this building stands. The only charge (if such it can be called) made in connection with this transaction was suggested in the evidence of Commissioners Gourlay and Mackendrick, and was against Mr. Church, but it was found necessary in addition to dealing with Mr. Church's part in it, to inquire as to whether the sale was not an improvident one. The building sold was one of a group of buildings known as the Dominion Ship Building Company plant. This Company went into liquidation. The Harbour Commissioners had a claim against the Company for ground rent, taxes and other matters aggregating about $102,000. The Board took over these buildings in lieu of their claim, so that this group of buildings had cost the Commissioners $102,000, to say nothing of accumulated interest. The Commissioners had for a long time been trying to dispose of these buildings and have the land return a revenue. They had not been successful. Efforts of various kinds were made, and in

the Fall of 1923 the Dufferin Construction Company made a proposal to the Board. This was during the Chairmanship of Mr. R. Home Smith. Nothing came of these negotiations. Mr. Smith, who was about to retire, desired that the matter be left over for consideration by the new Board.

Early in January of 1924 negotiations were renewed. Leaving out earlier offers, the Company then made an offer of $25,000 cash for the building and to take a lease of 2½ acres, on which the building stands on a rental basis of 5% on a valuation of $35,000 per acre. It was later sold to the Company for $40,000, and a lease taken of approximately 2.5 acres of the land for 21 years, renewable at a rental of 5% on the valuation of $35,000 per acre. What Mr. Gourlay and Mr. Mackendrick contend is that during the negotiations between the Company and the Board, Mr. Church, who was then Chairman, not only was willing to sell the building for $25,000, but showed some unbusinesslike desire to have this transaction go through at this figure. Mr. Franceschini was the President of the Company at the period in question and Mr. Thomas Murphy was the General Manager. There is no doubt on the evidence, in fact it is conceded that both Franceschini and Murphy saw Mr. Church at times and places other than at Board meetings. There would not necessarily

be anything improper about that. Mr. Church denies positively that he ever did anything or said anything to help Murphy or Francoschini to purchase the property at the lower figure. Inasmuch as it was suggested that Mr. Murphy was a political friend of Mr. Church, I have gone into this evidence with considerable care, with a view to ascertaining Mr. Church's attitude of mind towards this transaction, and whether he was a help or a hindrance to getting the sale through at the higher figure. The only conclusion that can fairly be come to on the evidence is that at the final Board meeting when Mackendrick and Gourlay were trying their best to get Francoschini up to the higher figure, Mr. Church did not then and there contend that the price asked them was too high. In other words, he did not interfere with or obstruct them in their efforts to get the higher price. But the evidence is too convincing to admit of any reasonable doubt that but for the presence on the Board of Messrs Gourlay and Mackendrick the price of $40,000 would probably not have been obtained.

As to the adequacy of the price paid, there is very little to be said. The Board was very anxious to make a sale of these buildings and welcomed the offer. While the price realized for this building, added to the price realized or to be realized from the other buildings in the group may

not recoup the Board for its loss, it is impossible to say that the sale to the Dufferin Construction Company Limited was, under the circumstances, an improvident one. On the contrary, it was I think a business-like, though not necessarily a profitable, transaction.

SALE AND LEASE TO THE WARREN BITUMINOUS PAVING COMPANY LIMITED

Another building in the group of Dominion Ship Building buildings was sold to the Warren Bituminous Paving Company Limited and a lease given of the land on which this building stands. Mr. W. G. Mackendrick is the President of the Warren Bituminous Company and he and the members of his family hold about 8% of the stock. Though he is not General Manager of the Company and has other outside interests, he still takes an interest in the affairs of this Company. As Mr. Mackendrick was one of the Harbour Commissioners when this transaction was negotiated and completed, it is necessary to state the facts in detail.

The correspondence opens on June 8, 1925, with a letter from the Manager of the Company to the Harbour Commission, in which he states that owing to the construction of the Viaduct and railway terminals, his Company is asked to vacate the site they then occupied on Fleet Street, east of Spadina Avenue; that they have examined the shipyard

buildings and find that part of it will be suitable for their requirements. They then make an application for permission to lease and occupy this building for two years, the rental for land and buildings to be $2440 per annum. On June 23, by letter, they withdrew this application on the ground that they had decided that a larger area would suit their purposes better and they make application for the lease of larger premises. This application was for a lease of about one acre at a rental of $2,000 per acre, the lease to run for a period of two years with an option of extending it for a longer period at the above rental. This proposal was recommended to the Board by the General Manager, for acceptance, and on June 30th, 1925, the Board approved of the application and also gave the Company the first refusal of additional property to the south. The lease was duly prepared and forwarded to the Company for execution. Instead of executing the lease the Company wrote to the Commissioners on August 7th, stating that as they would probably be allowed to finish the paving season on their present site and as they did not wish to pay rental for two sites they would request that the matter of the lease be allowed to stand until they received definite word that they would have to vacate, which they presumed would be about the end of the year. This letter was taken up by the Board, which must have been in an accommodating mood, for they agreed that the lease might be dated as of January 1st,

1926. This transaction did not go through, but on December 23, 1925, the Company made a new proposal to the Board to rent the area in question at a rental of 5% on $35,000 per acre for three years with the option of extending the lease to 21 years, and to buy the building for $25,000 cash. This new proposal was dealt with at a meeting of the Board on January 5, 1926. Mr. Mackendrick was not present when this was considered, but the other members (Church, O'Connor, Hogg and Mulholland) were unanimous in their decision to accept the offer. In reporting upon the application to the Board, the General Manager states that the officials have always felt that this building had a value of $30,000 but in view of the fact that the difference between this figure and the offer, namely $5,000, would, if the property were to remain idle for a further eleven months, be absorbed in carrying charges, it would seem advisable to accept the offer of the Warren Company. The later correspondence refers to details relating to the formal lease. The transaction went through substantially on the terms stated.

There are two matters to be considered in this transaction, each being related to the other. The first is the propriety of the Board entering into a transaction of this kind with a Company of which Mr. Mackendrick, one of the Commissioners, was President, and in which he had an interest; and the conduct of Mr. Mackendrick in allowing his Company to

ask for and obtain the lease and building. The other is the adequacy or inadequacy of the price and rental. The Harbour Commissioners Act of 1911, by Section 29, provides that:

> "The Corporation (meaning the Harbour Commission) shall not have any transactions of any pecuniary nature either in buying or selling with any members thereof, directly or indirectly."

Upon the legality of this sale and lease, nothing need be said by me. That is a question which, if ever raised, must be dealt with in the Courts of law. But there is more than a question of law involved. Mr. Mackendrick takes the position that this was not a sale and lease to him, but to a Company which was a separate entity; that his Company had a perfect right to contract with the Commissioners as they did. In other words, he lays great stress upon the virtue of the dry letter of the law. Questioned further about the matter he said that even if he held 99% of the stock of the Company, it would make little if any difference, so long as the transaction itself could be justified from a business standpoint. He states that he has the type of mind that does not permit him or his Company to take any advantage of the fact that he was a Harbour Commissioner. He says that no influence was brought to bear upon the Commissioners to induce this sale and lease. How does he know that? How does he know that the General Manager, in recommending the sale of the building at $25,000 instead of $30,000 which he

thought was the real value, was not influenced by the knowledge that Mr. Mackendrick was standing over him as one of the Harbour Commissioners? How can Mr. Mackendrick tell what was in the mind of his colleagues when they decided upon the sale? Can he be certain that these Commissioners were not influenced (unconsciously no doubt, if at all) by the knowledge that Mackendrick was one of their colleagues? How does he know that the accommodation granted to his Company on its first proposal was not given because he was a member of the Board? Influence may be used in other ways than the written or spoken word.

There cannot be much doubt that the spirit, if not the letter, of the law has been broken in this case, and Mr. Mackendrick cannot well complain if the view taken by the public and by the authorities who have the appointment of Harbour Commissioners is that the affairs of the harbour will be safer in the hands of Commissioners who do not entertain the view to which Mr. Mackendrick has given expression.

As to the adequacy of the rental and purchase price, the rental agreed upon is on the same basis as that paid by the Dufferin Construction Company almost adjoining. While the price paid for the building was less than the sum at which the Commissioners were holding it, it had been on their hands a long time and was not in the best state of repair. The Commissioners are not open to much criticism

on the ground of the price. Needless to say, no Commissioner or official profited in any way by the transaction, although the Company in which Mr. Mackendrick has a small interest may have profited by the presence of Mr. Mackendrick on the Board.

THE STADIUM TRANSACTION

Much evidence was taken relating to the lease to Mr. Solman of the land on which he has built the baseball Stadium. The facts are that Mr. Lawrence Solman is the head and front of the baseball movement in Toronto in so far as the Toronto Baseball Team in the International League is related to it. He wished, or had been called upon, to remove the stadium from The Island to the mainland. In choosing a new site he was not confined to the waterfront, but the Harbour Board was desirous that the Stadium should be located on their property. Negotiations between Solman and the Board lasted for over a year. Different sites were looked at, different acreages considered and different rentals discussed. All negotiations failed to result in any agreement except those carried on in August and September of 1925, when Mr. Solman made an application for a lease of 15 acres at the foot of Bathurst Street at a rental of 5% based upon a valuation of $10,000 per acre. In his

application dated August 13th, 1915, Mr. Solman advised the Commissioners that he was employing Mr. E. L. Cousins as consulting engineer for the new Stadium. His application was considered at a meeting of the Board on August 14, 1925, and the Minute of what took place states that the Commissioners authorized the preparation of a draft lease to be placed before the next meeting of the Board for their consideration. It is quite clear that no definite bargain was arrived at at this time; all that was done was to authorize a draft lease to be placed before the Board at the next meeting. In other words, while the Board did not reject his offer at that time, there was no binding acceptance of it. The next meeting to consider the matter was held on the 28th of August. In the meantime a valuation from Mr. Poucher, the Board's valuator, was obtained. This is dated August 27th. Some of the witnesses were confused as to dates but it is abundantly clear on the evidence that at this meeting on the 28th, with all the members of the Board present and Mr. Solman waiting outside, the question was taken up and discussed. It is also clear that part of this discussion took place before Mr. Poucher's valuation was made known to all the Commissioners, and during this early discussion it is clear that Mr. Church spoke in favour of granting the lease on the $10,000 basis. It is equally clear that after the valuation was made known to all the

Commissioners neither Mr. Church nor Mr. O'Connor did anything or said anything to interfere with the efforts of their colleagues to get a higher rental. On the same morning of the 28th, before the meeting, all the Commissioners met on the property and made a personal inspection. They came to the meeting with a clearer view of the situation. At this meeting Col. Mackendrick at first thought $25,000 an acre should be asked, but later came down to $20,000. Commissioners Mulholland and Hogg adhered to $15,000, and I find on the evidence that when the valuation was made known Solman was called in and was told of it, and also told that he could not have it for less than the amount of the valuation. Mr. Solman at first said that he thought he could not pay it, but afterwards went as high as $12,500, but the Commissioners held out for the $15,000 and Mr. Solman was told that he could not have it for less, whereupon Solman said that he would have to consult his associates before giving a final answer. At this meeting on the 28th the Commissioners made up their mind and in that sense came to a decision that $15,000 was the lowest price that they would consider. As Mr. Solman was not able to conclude the bargain then the matter was deferred until the next meeting. On the 31st August he made an offer in writing to lease from the Commissioners approximately 10 acres (not 15) for 21 years renewable, at a rental of

5% per annum based upon a valuation of $15,000 per acre, the property to be used for stadium and baseball purposes, he, Solman, to have an option on 7 acres more for parking purposes. This application was considered at a meeting of the Board held on September 4th when authority was given for the execution of the lease on the above terms with some modifications that need not be referred to. The option was also given to Solman for a lease of 7 acres more at the foot of Bathurst Street for car parking purposes in connection with the new stadium, the option to expire July 1st, 1926. At this meeting all the Commissioners were in agreement except Mr. Mackendrick, who still insisted upon $20,000 an acre and was opposed to giving the option. The complaint made by Commissioners Mulholland, Hogg and Mackendrick is that at the meeting when the lease was decided upon (by which is meant the meeting on the 28th) Chairman Church was in favour of accepting the offer of $10,000 per acre and that the majority opposed the Chairman's view, which resulted in Mr. Solman raising his offer to $15,000 an acre. In addition to this complaint there is the general criticism that even at $15,000 an acre the transaction was an improvident one. Dealing first with the complaint as to Mr. Church's conduct, it is clear that at the meeting when the terms of the lease were actually settled, that is to say on September 4th, Mr. Church was

not in favour of accepting $10,000 an acre. But the complaining Commissioners manifestly were confused in their dates. Their complaint about Mr. Church had reference to what took place at the meeting of the 28th of August, and it is equally clear that upon this date there was some discussion about the rental before Poucher's valuation was made known to all the Commissioners and that in this discussion Mr. Church expressed himself as willing to let Mr. Solman have the property on the basis of his offer, of $10,000. But it has also been shown that after Poucher's valuation was opened and read he did not advocate the sale at the lower figure. Had the evidence rested at this point there was nothing to complain of in Mr. Church's conduct, as he was entitled to his own opinion as to value, but curiously enough after the other Commissioners had given their evidence Mr. Church went on the witness stand and swore that before this meeting on the 28th he knew of Poucher's valuation; that he had been in telephonic communication with Mr. Cousins the night before and was informed of it. If this be true it puts another complexion altogether upon the transaction, for it shows that he had information that others did not have and with that information advocated the lower rental. Mr. Church apparently did not hear all the evidence that had been given against him or he would have appreciated the point they were trying to make. Later

on, the next day I think it was, Mr. Church went on the witness stand again and corrected his former evidence by saying that he was mistaken as to the date, that it must have been before the meeting of September 4th that he had this communication with Cousins or had acquired this knowledge about the valuation, and not before the meeting of the 28th August. But in this he is clearly in error. The evidence establishes the fact that this valuation was opened and made known to all the Commissioners at the meeting of the 28th. There could, therefore, be no object in telephoning him about it before the meeting of September 4th. Although Mr. Church did say that he knew of this valuation before the meeting on the 28th, I refrain from making a definite finding against him for the reason that due allowance must be made for the fact that his hearing is not good. There is a possibility that he was confused in his dates. I am satisfied that he did not hear all that went on on the 28th. Mr. Solman has sworn that after he was called in and after he made the offer of $12,500 Mr. Church still talked as if he, Solman, was still insisting upon getting the property on the $10,000 basis. The only finding that can safely be made on the evidence relating to this transaction is that but for the efforts of Mackendrick, Mulholland and Hogg, assisted by the valuation

that had been obtained, the higher rental got from Solman, would probably not have been realized.

But there is another angle from which this transaction can be viewed, assuming of course that there was no collusion. It is this: If Mr. Solman had refused to pay the rent demanded and had built his Stadium in another part of the City the other three Commissioners might have been blamed for losing this lease.

Then as to the adequacy of the rental. It is said that in comparison with other properties in the neighborhood too low a valuation was placed upon the land because the land on which the Dufferin Construction Company building stands not far away was valued at $35,000 an acre and Block A on the other side of Fleet Street, but near the stadium property, at $30,000 an acre. It is only fair to say however, that the Dufferin Construction Company property has dockage facilities, whereas the stadium has none and that Block A has a large frontage on Fleet Street whereas the Stadium property is triangular in shape and has only a very small frontage on Fleet Street. Moreover, the Commissioners considered it to be a great advantage to have the Stadium on the water front, as it would draw many visitors there who might not otherwise come. Then in addition the property on which the Stadium has been built had been reserved for park purposes and special permission

had to be obtained from the Government for its use as a Stadium. At all events, the Commissioners exercised their honest judgment in the matter and it is not for me to say that their judgment was unsound. The Stadium has since been built and is proving a success, drawing tens of thousands of people every Summer to the water front.

With a desire to give all the Commissioners the credit to which they are entitled, it should be stated that Commissioners Church and O'Connor were, I think, more active in getting Solman on the water front than were the other Commissioners.

Reference has been made to the fact that in Solman's letter of the 13th August before the negotiations were concluded, he informed the Commissioners that he was retaining Mr. E. L. Cousins as consulting engineer for the Stadium, Mr. Cousins being at the same time consulting engineer for the Harbour Board. Mr. Church objected to Mr. Cousins being so employed and it is impossible to say that his objection was not well taken. It is true that Mr. Cousins has sworn that he took no part in negotiating the terms of the lease, that he refused to do so, and that he was retained purely and simply in connection with the erection of the building. Accepting Mr. Cousins' statement at its full value, it does not altogether remove the impression that one forms that Mr. Solman in retaining

Mr. Cousins' services, expected to derive some benefit from his connection with the harbour and from the influence he has always had with the Harbour Board. Nor does it remove another impression that it was Mr. Cousins' connection with the Harbour Board that probably helped him to get this retainer from Solman.

After the terms of the lease were settled Mr. Solman organized the Company known as the Toronto Baseball and Athletic Company, Limited. (The charter was issued before the lease). The list of shareholders of the Company was produced and this shows that no Commissioner holds any stock. Mr. Cousins had five shares ($100 par value each) transferred to him in order that he might qualify as a director but beyond this has no financial interest in it. Mr. Poucher holds 50 shares in his own right, but these were subscribed for in 1926.

THE AQUATIC LEASES

Before the harbour improvements were undertaken, nearly all the aquatic clubs were located in the section that is now the inner or central harbour. One exception was the Parkdale Canoe Club, which was located in the Sunnyside area. Before the work was begun at Sunnyside the Parkdale Canoe Club had a lease of some ground on the old lake shore on which they had their club house. This club house was

burned down and the Club had this lease on its hands, which had some years to run. Whether the lease had much value has not been shown, but an arrangement was made with the Board whereby, when the land was reclaimed this Club should have a lease of part of the reclaimed land. It will be seen from the auditors' report in the Sunnyside area, Appendix "A", Schedule B, that the cost of reclaiming the lands in the Sunnyside area including some improvements but not including any buildings thereon was over $17,000 per acre. After the land was reclaimed the Parkdale Canoe Club was granted a lease of about 3½ acres about half an acre of which was land covered by water. The Commissioners also undertook to construct the necessary crib work in order to give the foundation on which the new Club house could be erected. This crib work cost $32,462.88. The cost of reclaiming the land leased to the Parkdale Canoe Club was over $51,000, which with the $32,462.88 makes an expenditure well over $80,000. The lease granted by the Board to this Canoe Club was for 21 years at a rental of $565 per annum. If it had been rented on the basis of 5% on the cost, the rental would have been over $4,000. The present rental brings about three-quarters of one percent on the investment. As will be seen later, Messrs Poucher and Bosley, in valuing the harbour land, considered the lease

as an incumbrance to the extent of $66,000.

In dealing with these aquatic leases the Harbour Board distinguished, and I think properly so, between leases given on reclaimed land and leases given on land covered by water. The lease to the Parkdale Canoe Club already referred to is an illustration of a lease of reclaimed land. The policy of the Board with regard to leases of land covered by water was to call only for a nominal rental. The lease to the Argonaut Boat House Club Limited is an illustration of the latter. The Argonaut Club's premises were formerly in the Inner Harbour. These premises were taken over and expropriated and the Club paid by the Harbour Board the sum of $80,000 therefor. The Club then acquired new premises in what is now known as the Western Section. On the 1st June, 1922, before Mr. Church became Chairman of the Board, but when he was a member, a lease was granted to this Club, more accurately to the Argonaut Boathouse Company Limited, of the water lot in front of their premises for the term of 21 years from the 1st June, 1922, at a rental of $204 per annum. They built their club house so that most of it is on the land which they own but part of it is on the water. In the Fall of 1924 when Mr. Church was President of the Club, and also Chairman of the Harbour Board, representations were made by the Club that they could not pay the rental demanded, nor the

arrears of rent which then amounted to about $500, and they asked that they might be allowed to surrender the present lease and get a new lease at a nominal rental, and for cancellation of the arrears. This was actively supported by Mr. Church and was apparently agreed to by the other members of the Board, for there is no record in the Minutes of any dissenting vote. Accordingly the Club surrendered the old lease and got a new lease for the remainder of the term (18 years and 6 months) at the nominal rental of one dollar a year. At the same time the Board cancelled the arrears of rent. When the new lease was produced it was found to be executed by Mr. Church in a dual capacity, first as President of the Argonaut Boathouse Company Limited, and secondly as Chairman of the Toronto Harbour Commissioners. The reason given by Mr. Church for this action is that other aquatic clubs had received leases at a nominal rental and he thought the Argonaut Club should be placed upon the same basis. His argument is that before the harbour improvements were made, the policy of the City was to call for nominal rentals only; but surely the conditions are not comparable. Since the Harbour Board took possession of the water front enormous sums of public money have been spent to protect the shores. One can understand differentiating between a lease of business premises for business purposes and a lease for the purpose of an aquatic club. In the latter

case the encouraging of sport enters into the consideration; but the reason given for exacting only a nominal rent is not apparent. This Argonaut Boat Club transaction has not a pleasant look. Clearly Mr. Church's interest as President of the Argonaut Club (whether he had much financial interest makes little difference) was in direct conflict with his interest as Chairman of the Harbour Board. The transaction was a most improper one. It is not unreasonable to infer from this transaction, after making due allowance for the desire to help the Club in the interest of sport, that another question presented to the Board and especially to Mr. Church for consideration was probably this: Which profiteth the more, the obtaining or retaining the good will and support of the hundreds of members of the Argonaut Club, or the preservation to the Harbour Board of its rights under the lease of 1922, under which they were entitled to a rental of $204 a year for twenty-one years and the $500 arrears? This Argonaut transaction is a good illustration of the evil that results from having members on the Board, who of necessity cannot overlook the popular side. By this transaction the Argonaut Club was presented with the equivalent of more than $2500. If the policy of granting these aquatic leases at a nominal rental had been submitted to, and approved by, the City authorities and the

ratepayers had known of the concessions being given to these clubs, it would not have been so objectionable. The ratepayers of Toronto, whose guarantee financed these harbour improvements, should have some say in such matters. There is nothing in the records to show that any official action was sought from or taken by the City, or that they were even made acquainted in any official way with what was going on with regard to these aquatic leases. In the Argonaut case it doth not yet appear why the members of the Club should not have been asked to put their hands in their own pockets, instead of the pocket of the Harbour Board.

The following sums were paid by the Harbour Board to the following clubs for their old premises in the inner harbour:

Argonaut Boat House Company	$80,000.00
Queen City Yacht Club	15,000.00
Toronto Canoe Club	61,000.00 and interest.

They all acquired premises in the Western Section. We know that millions of dollars of public money have been spent in erecting the breakwater in front of these premises to protect the shores and afford other facilities for aquatic purposes. The evidence taken in this inquiry leads to the belief that all these aquatic clubs have been treated with a tender solicitude for their interests that is not consistent with any reasonable business

administration. Mr. Church, as Chairman of the Board and as one who has always taken an active interest in sports in Toronto, was the leader in the policy which resulted in the granting of these leases, but he is not alone responsible. Mr. Mackendrick was away when one of these leases was negotiated, but with this exception all were present and all the members of the Board, so far as the Minutes show, concurred in this policy. Mr. Mackendrick says that they were talked into their decision by Mr. Church. That surely is a very weak answer. All the members must assume full responsibility even although they did raise, as they probably did, objections at the meetings.

The other Yacht Clubs under lease in the Western Section are the Alexandra Yacht Club who have a lease that expires in 1941 of a little over half an acre at the rental of $100; the National Yacht and Skiff Club have a lease which expires in 1945 of about one and a half acres the rental being $250. I make no comment upon the lease to the Royal Canadian Yacht Club at the Island because it seems to stand in a somewhat different position. It, in a sense is in part a renewal of a former lease granted by the City and the use is limited to mooring purposes only in connection with the Yacht Club. Moreover the Yacht Club agrees to maintain buoys or lights.

ALLEGED ALTERATION IN MINUTES

One of the complaints that three of the Commissioners (Mackendrick, Hogg and Mulholland) have is that Mr. Church, when Chairman of the Board, altered the Minutes of a meeting of the Board held on July 24th, 1924, at which a long discussion took place and some action was taken with regard to disposing of some motor cars and closing up the garage. The Minutes of a meeting are generally understood to be the Minutes that have been read and confirmed at a subsequent meeting of the Board; and if Mr. Church changed such Minutes without the consent or knowledge of his colleagues, it would be a serious offence. But nothing of that kind took place. When the evidence as to what occurred is given, it will be seen that the matter has a different complexion. What happened was this: Before the meeting on July 24th, 1924, the matter of disposing of cars had been up several times. It was in a sense an old subject of discussion. At this meeting on July 24th, Mr. Church, the Chairman presided. It was a very noisy meeting; sharp differences of opinion arose and angry discussion ensued; and to use Mr. Church's own language the Board Room was 'A Tower of Babel'. The Secretary who tried to take down the Minutes was Mr. Jardine. Mr. Mackendrick was evidently the leader in the movement to get rid of

some of these cars, while some of the other members were not so keen about it. Among these cars were two large McLaughlin Sedans that had been kept for the Commissioners' use. One fact is well established in the evidence; that Mr. Mackendrick left this meeting under the impression that these two cars had been ordered sold and the garage closed. After the meeting Mr. Jardine had great difficulty in preparing his Minutes. He prepared a draft as best he could and rang up Commissioner O'Connor to get his understanding as to what had actually occurred, but Mr. O'Connor was not able to give him much assistance. Later on Mr. Jardine got a telephone message from Mr. Church asking him to send him the draft Minutes. This he did, and Mr. Church made some alterations in it in lead pencil in order, as he says, to make it a correct record he thought of the decision actually arrived at and incidentally to conform to his own wishes. It has not been proved that at the meeting of the 24th a motion was carried to sell these two large sedans. The memorandum kept by Mr. Jardine, partly in shorthand and partly in longhand, of what occurred, shows, I think, that while there was a discussion about it, the decision to sell them was not arrived at. The chief change made by Mr. Church in these draft Minutes was with reference to these two cars. As to these he altered the Draft to read as follows:

> "Some discussion took place over the sale of the two cars and the leasing of the garage, if possible, and reserving space for cars kept, and it was suggested that they be sold to the highest tenderer. There was a considerable discussion on the matter, but as no motion was seconded, no action was taken or motion declared carried. "

Except in one particular the change made by Mr. Church was not substantially different from the draft Minutes kept by the Secretary. In one respect, however, it is not correct. It was moved by Mr. Mackendrick and seconded by Mr. Mulholland and adopted that the General Manager be instructed to lease the garage, if possible, reserving storage space for those cars which were being kept. That resolution was passed at the meeting on July 24th, and was changed by Mr. Church. For some time before this meeting it had been the custom, though not always follo[illegible] the Secretary, after each meeting, to send to each Co[illegible]ssioner his draft Minutes of the meeting just held. This was done in order that each Commissioner would know what had taken place and what they would be called upon to confirm at the next meeting. It is not clear on the evidence whether the draft Minutes of this meeting were sent to the Commissioners. I incline to the view that they were not.

The Minutes of the meeting of July 24th, as revised and submitted to the next meeting on August 15th, contain

this reference to the two cars in question:

> "Some general discussion ensued as to the policy of disposing of the Commissioners' cars tendered for, including both of the large McLaughlin Sedans previously used by the Commissioners; also as to the policy in vogue since the Board bought the Commissioners cars in 1913 for general use by the Commissioners and to the leasing of the garage and reserving space for cars kept. It was suggested by Commissioner Mackendrick that these two cars be sold at once to the highest bidder and the garage leased and space reserved for all cars retained. The discussion as to the policy past, present and future, was general but as no motion was seconded or declared carried, it is not further recorded. "

The next meeting of the Board was held on August 15th and the very first entry in the Minutes of that meeting states that the Minutes of the meeting of July 24th were read and on the motion of Commissioners Mulholland and O'Connor were approved. Mr. Church says that at the meeting of August 15th the Minutes of the previous meeting were read in the usual way and the entry made by the Secretary would appear to confirm that view. Mr. Mulholland's evidence, if he is clear in his dates which I very much doubt, would corroborate Mr. Church; but the one man who has a clear recollection of whether they were read or not was the witness Egan, who was the Secretary and took the Minutes of the August meeting. He has a special reason for remembering what took place because the Secretary,

Jardine, was away and he was called in on this special occasion to take his place. He has a very clear recollection that the Minutes of the meeting of July 24th were not read. Mr. Egan's evidence on this point weighs more in the judicial scale than that of any of the Commissioners, who are busy men and may not have so clear a memory. To confirm Egan's testimony it must be said that Mackendrick was at the August meeting, and it is impossible to believe that he would hear the Minutes read without objecting. He was determined to have these cars disposed of, and not long after the August meeting he discovered that the garage was still being kept open and the cars in question unsold. He protested and in an interview with the Secretary discovered the change made in the draft Minutes. At a later meeting, Mr. Jardine, the Secretary, has told us that in explaining the Minutes he had to say that they had been altered by Mr. Church. Mr. Church denied having done so. In saying this he had evidently forgotten the incident, for when the altered draft Minutes were produced, had to admit it. At the meeting held on September 5, 1924, Mr. Mackendrick moved, seconded by Mr. Hogg, that these two cars be sold at the prices tendered for same forthwith. This motion was supported by Mackendrick, Hogg and Mulholland, and was opposed by Mr. Church and Mr. O'Connor. The motion was declared

carried. At the same meeting it was decided that the Minutes should be read at every meeting thereafter. What later happened about the motor cars has no bearing upon the question of the alleged alteration of the Minutes. To sum up, it should be made clear that Mr. Church did not alter any confirmed Minutes of any meeting. What he did alter or revise was the rough draft made by the Secretary of the Minutes of the meeting at which there was so much noise and angry discussion that it was with great difficulty that the Secretary could make out what had actually been decided. The change made in these draft Minutes by Mr. Church, so far as the sale of the Commissioners' cars is concerned, was a substantially correct account of what had been done at the meeting. There is no doubt that the Board did decide (though the Chairman might not have so understood it) to lease the garage, reserving storage space for the cars which were being kept; and owing to the change in the draft by Mr. Church, this was not recorded in the Minutes.

The chief criticism of the Chairman's conduct under this head is that he allowed the Minutes which he himself had revised and changed to some extent, to be confirmed at the next meeting without being read, when he knew that there was doubt about what had actually been decided upon at the July meeting, and knew so well Mr. Mackendrick's views on the question.

STAFF REDUCTION

In the letter addressed to His Worship The Mayor, dated May 12, 1926, and signed by Commissioners Mackendrick, Hogg and Mulholland, one of the grievances set forth is that the Chairman, Mr. Church, from time to time stated that the staff was greatly overloaded and complained of too many engineers for the work being done; that the staff should be reduced; that Messrs Mulholland and Mackendrick were appointed by the Board in March, 1926, to bring in a written report; that when this report reducing the staff was presented in detail estimating a saving of about $30,000 annually, the Chairman strongly opposed the same unless the head of departments approved of it, which he knew they would not do. While the evidence given shows that in part the statement contained in this letter is true, it does not state the whole facts.

During the years 1922 and 1923, before the work on the Viaduct was begun and while Mr. R. Home Smith was Chairman and Mr. R. J. Fleming for part of the time, was one of the Commissioners, the staff was substantially reduced more than once. We therefore approach the renewed effort towards reduction made in March, 1926, with the knowledge that the staff had been considerably reduced in previous years. Since the former reductions the Viaduct work began

and a new situation arose. In March, 1926, Mackendrick and Mulholland were requested by the Board to make a written report relative to the staff, with a view to reduction. Their report made on March 26, 1926, recommended that certain members of the staff should be released from the service, making a reduction in the salary list of about $30,000 per annum. This was presented at the next meeting of the Board when all the Commissioners were present, Messrs Church, Mackendrick, O'Connor, Mulholland and Hogg. The report was adopted on the motion of Mr. Hogg, seconded by Mr. Mulholland, but was opposed by the Chairman, Mr. Church, and Mr. O'Connor, who wished it left over for further consideration at the next meeting. Several of the men whose services were recommended to be dispensed with had been in the service of the Board for a long time. Their terms of employment, methods of payment and salaries differed and the General Manager, Mr. Mitchell, asked the opinion of the solicitor, Mr. A. C. McMaster, K. C. as to the length of notice to which each of these employees was entitled before his services could be dispensed with, without incurring a further liability. The solicitor's opinion was presented to the next meeting of the Board held on April 23rd, 1926. The solicitor having advised that as to several officials more than one month's notice was required, the Board decided, on

the vote of Mackendrick, Mulholland and Hogg, that 30 days' notice be given, notwithstanding the solicitor's opinion, and the General Manager was instructed to issue the necessary notices. This was done, but at the meeting on May 5th, 1926, it was moved by Mr. Mackendrick and seconded by Mr. Hogg, that the Manager and Consulting Engineer report in writing on a method they proposed that would save money without taking the drastic measure that had already been decided upon. It appears that at this meeting the Consulting Engineer and General Manager were present and opposed this drastic cut, but stated that if the Board was determined upon the reduction they could, they thought, recommend some reduction that could be put in force without interfering so seriously with the efficiency of the organization. On May 17th, 1926, the officials made a report in which they expressed the belief that the staff at present employed was required to properly and efficiently carry on the work, but if the Board still insisted upon reduction they recommended a different adjustment. The adjustment they proposed would have affected a saving of about $27,000. At the meeting on May 17th, 1926, it was moved by Mr. Hogg and seconded by Mr. Mackendrick that the former Minutes relating to staff reduction be reconsidered. This motion was carried, thereby opening up the whole question. About this

time Mr. Church and Mr. O'Connor resigned from the Board and Mr. Mackendrick ceased to be a member, and a new Board consisting of His Worship The Mayor, Mr. Sam T. Wright, Mr. Robert Luxton, Mr. Mulholland and Mr. Hogg began to function.

To shorten the story, the original recommendation of Mr. Mulholland and Mr. Mackendrick was not acted upon. The whole question was re-opened and revisions made from time to time; motions made to rescind as one man and then as to another, until the new Board was appointed.

So that while the charge made by Mackendrick, Mulholland and Hogg in their letter to the Mayor of May 12th, 1926, is in part true, it does not tell the whole story and when the whole story is told there is not so much to complain about in the action of either Mr. Church or Mr. O'Connor. The most that can be said on the question of staff reduction is that the will and determination to reduce the staff was more in evidence in the case of these three Commissioners than in the other two. One can hardly expect a drastic reduction in the staff to meet with the approval of the staff itself, or even of the heads thereof. Realizing this, the three Commissioners started out with the determination to make the reduction despite the opposition of the officials. On the other hand, it seems reasonable

that the General Manager and Consulting Engineer who were more familiar with the work and the qualifications and record of each official would be better qualified to name the men whose services could be dispensed with. Messrs Church and O'Connor took the view of the officials. Their view, I think, was honestly held and criticism of their conduct in this regard is not justified.

It is not for me to say whether any further reductions in the staff can or should be made. Obviously the amount and character of the work on hand or about to be undertaken, the season of the year, the qualifications, & length of service are matters that must enter into the consideration of that question. And these can best be dealt with by the Board.

Some members of the staff entertain the view that they belong in a sense to the Civic Service and should be placed in the category of Civic officials, with a permanency attached to their positions. But that view is entirely wrong. When the harbour is completed and has taken definite shape with a settled and greatly increased revenue, it may be proper to regard certain members in that light. But that time has not arrived and is not likely to arrive for many years.

MOTOR CARS AND BOATS

The policy of the Board for some years past has been to have enough motor cars and motor boats on hand not only for the use of officials in connection with the work in the harbour, but also for the purpose of showing such representative men, societies and organizations as might wish to make an inspection of the harbour, the progress that was being made. Reference has been made elsewhere in this report in a general way to the efforts that were made in recent years to obtain a reduction in this motor fleet, and as it has now been reduced to what appears to be the minimum so far as the demands of the harbour officials are concerned, it seems unnecessary to make any further reference to that portion of the subject. The chief criticism offered was in connection with the use made of the cars that were kept for the Commissioners. Years ago under the Chairmanship of the late Mr. Clarke, it was decided to keep on hand as part of the motor car fleet enough cars so that whenever a Commissioner wished the use of one for harbour purposes, he might have it. The Toronto Harbour covers an immense area and stretches along a distance of over ten miles. In view of the fact that the Harbour Commissioners served without any remuneration it was not unreasonable that a Commissioner who wished a car on harbour business might have the privilege of using one. But as years went on this privilege, if so it may be called, was abused.

The use of what were called the Commissioners' cars was no longer limited to harbour purposes. All these cars were kept in a garage of which Mr. Curtis, an employee of the Board was in charge. The practice at the garage was that whenever a car was ordered a slip or card was prepared showing the person from whom the instructions were received for the car, the time it left the garage and the time when it was returned, and the places visited. These cards were signed by the garage foreman, Curtis, and also by the chauffeur who had charge of the car. These cards were all produced, many hundreds of them and with a view to shortening the evidence as much as possible Mr. Bogart, who was assisting Sir Thomas White, went over them in the presence of Mr. J. R. Robinson, counsel for Mr. Church and of Mr. Robertson, K. C. A great many of these cards, in truth a large majority of them, do not show any use was being made of the cars except for harbour purposes. But some were selected as indicating improper use. These have all been gone over and they, together with other original records and statistics prepared, show that considerable use was made of these cars for entertaining public men who came to visit Toronto, such as Ministers and ex-Ministers of public works, Ministers of Marine and Fisheries, and other cabinet ministers from Ottawa who were taken over the harbour and driven to different places. They were not used for the purpose of entertaining the members of one

political party only. It appears that members of both political parties have been favoured in this way, so that it is quite incorrect to say, if it is said, that the members of one party used the cars to the exclusion of the others. If motor cars are to be kept for the purpose of entertaining visitors one could not imagine any better use they could be put to than taking public men such, for instance, as the Ministers of Public Works, on a tour of the harbour. But that is not all. The records also show that these cars have been used by the members of the family or members of the household of some of the Commissioners for their own private purposes. A record was filed showing that in one month alone a member of the household of one of the Commissioners used one of these cars on five different days, and the record shows that it was used for no other purpose than shopping at the different stores and for making social calls. Nor was this confined to the family of one Commissioner. The practice seems to have grown up that whenever a Commissioner wanted a car either for harbour purposes or for his own purposes or for the purpose of his family, it was available to him. The Commissioners who were members of the Board when this practice was carried on on a more extensive scale seek to justify it by stating that they have always given their services as Commissioners without remuneration and that the public owed this much to them. Whether this is a sufficient justification for the use made

of the cars in this way is a matter of opinion, but there was one use made of them which clearly cannot be defended under any circumstances. Mr. Church was Mayor of the City for seven years, from 1915 to 1921, both inclusive. The Municipal Elections are held in Toronto on the 1st January each year. The records show that on the 1st January, 1918, Mr. Church had a Harbour Board car from 8:30 in the morning until 5:30 at night and that it was used in visiting the different polling booths; and that on the 1st January, 1921, Mr. Church had a car out from 9 in the morning till 6 at night visiting polling booths. Not only that, but the cards produced show that Mr. Church used several cars in the Fall of 1921 in the Dominion Election campaign then in progress. The Election Day was on December 6th of that year. The cards show that on October 31, November 3, November 4, November 5, November 15 and November 17 Mr. Church had a car which was used in his campaign. The cards mention polling booths and poll clerks. Mr. Church explains these by saying that he thinks they have reference to the registration of voters. At that time the registration of voters was taking place, and no doubt Committee Rooms were in use, and when the chauffeur speaks of visiting polling booths he probably means these committee rooms. Then on Election Day, December 6th, 1921, Mr. Church had a car from 7 a.m. until 9:30 p.m. In addition to that, Hall, one of the chauffeurs, has sworn that he

drove Mr. Church around on the day of the election held in 1925. Mr. Church frankly admits that cars may have been used in this way, although he was not necessarily an occupant of the cars himself. It is difficult to see how the use of cars for election purposes can possibly be defended. It was not only an improper use to make of them, but people who are not of the same political faith as Mr. Church, or who are not his supporters, had a right to resent such use.

These cards or slips also show that on 55 different occasions the Argonaut Rowing Club had the use of harbour motor boats. Of these, 46 were in the Summer of 1924. There is nothing to show on the slips who gave permission for these boats to be used by the Rowing Club. It is significant, however, that it was in the Fall of the same year, 1924, when Mr. Church was the President of the Rowing Club that the Club obtained remission of $500 arrears of rent, the cancellation of their lease under which they were paying $204 a year and obtained a new lease at a nominal rental.

In order that an idea may be formed of the use made of these cars by Commissioners, statements have been prepared by the officials and verified in evidence, of the use made of them by Commissioners in 1924, 1925, and that part of 1926 up to 1st May. These records show the number of passengers, carried, the number of hours the cars were

in use, and the mileage. The record is as follows:

	Number of Passengers.	Hours	Miles
A. O. Hogg, 1924	None	½	2
" " , 1925	None	None	None
" " , 1926	2	1	3
	2	1½	5
John O'Connor, 1924	8	4	14
" " 1925	73	128	699
" " 1926	98	141	988
	179	273	1701
T. L. Church, 1924	479	463	2886
" " 1925	1269	1711	11109
" " 1926	293	428	2211
	2041	2602	16206
A. A. Mulholland, 1924	None	None	None
" " 1925	9	17	143
" " 1926	28	58	601
	37	75	744

Mr. Mackendrick's name does not appear on these lists as having used a car at any time.

These figures do not necessarily mean that the Commissioner who ordered the car was in the car himself when the trips were taken, but it does show that the car was ordered in his name and was occupied either by himself or by others with his consent. Some of these trips, perhaps several, were taken on harbour business.

STEAM YACHT BETHALMA

At a meeting of the Board held on August 14th, 1919, presided over by the late L. H. Clarke, Chairman, Mr. Cousins was requested to report on the purchase of a proper yacht for the Commissioners for the purpose of taking the citizens and delegates of various organizations on inspection trips over the harbour works. The Board was of the opinion that the motor boats then on hand were not sufficiently commodious to serve this purpose. At the meeting held on October 8th, 1919, with the Chairman, Mr. Clarke, and Mr. John Laxton and Mr. R. Home Smith present, Mr. Cousins reported that he had the opportunity to purchase the yacht Bethalma at a cost of $7,000 and had taken advantage of the same. The purchase was approved and it was directed that the yacht be put in proper shape for the Commission for the Spring of 1920. As the Commissioners have been criticized for their extravagance in the purchase and operation of this yacht, it is necessary to state the cost thereof and the purposes for which it was used from time to time. The yacht was purchased on October 6, 1919, from Mr. Matthews for $7,000. The repairs and additions to put it in shape for use in 1920 cost $13,438.45, making a total of $20,438.45. The total cost of operation in 1920, 1921, 1922 and part of 1923 was $60,732,56, making a total cost to the Board of

$81,171.01. It was sold in 1923 to the Montreal Harbour Commission for $25,000, leaving a net cost to the Board of $56,111.01. A record was kept of the trips made over the harbour and the associations, delegates, schools, etc. that took trips therein. Speaking generally it was used for advertising purposes to show the harbour to various associations who might wish to make a tour of the harbour -- ratepayers' associations, citizens' committees, traffic league, deep waterway delegates, colleges, City Council and Board of Control, including parties composed of public and other influential men, including Hon. W. L. Mackenzie King and his party and Hon. Arthur Meighen and his party. In July, 1921, several distinguished members of the Great Lakes Tide Water Association made use of it in inspecting the harbour. The yacht also made a few trips outside of Toronto. One was on the occasion when the Lieutenant-Governor of the Province made official visits to Port Hope, Belleville and Kingston. All the expenses, however, of this trip were paid by the Lieutenant-Governor. Another trip outside of the harbour was made to the Henley Regatta at St. Catharines on July 27, 1921. The expenses of this trip were not paid. As it was alleged or suggested during the taking of the evidence that some unreasonable uses had been made of this yacht, Mr. Bemrose, the captain, was called. He said that he kept no regular log of the trips. He did, however, keep a diary, in

which he made entries of the visits he made and of the people or some of the people who were on board. This diary is missing but he remembers that before it was lost a reporter of the Evening Telegram called upon him and was given some information as to the contents. With the exception of the trip to the Henley Regatta no reasonable exception can be made to the use made of the yacht. Mr. Church, who has always taken a great interest in aquatic sports was an influential member of the Board and had much to do with the trip to the Regatta and attended with many others. The purchase of the yacht was made in good faith by the Commissioners who thought that it would be valuable for advertising purposes, and the most that can be urged by way of criticism is that it was an extravagant use of public money. Whether the benefit that accrued from advertising the harbour was sufficient to justify the expenditure is something that no one can answer with certainty. If blame attaches to anyone, it attaches to all the members of the Board during the years of its purchase and operation. The fact that the captain's diary has been lost may give rise to suspicion in the mind of some that it contains entries that cast a reflection upon some member of the Board. But there is no evidence that leads to the belief that the captain's statement that he

mislaid the diary and cannot find it, is incorrect. Nor should any unfavourable inference be drawn from the fact that the reporter of one of the papers saw the diary and copied extracts therefrom.

DESIGN OR METHOD OF CONSTRUCTION

The Commission under the authority of which this inquiry was conducted, does not specifically authorize an inquiry into the design or method of construction; in other words, whether from an engineering standpoint, the best method was adopted. But the subject may be regarded, I think, as coming under the general classification of business pertaining to the Harbour Commissioners. Any inquiry of this kind meant retaining engineers not in any way connected with the harbour, to study the plans and specifications and examine the work that has been done. This would add to the cost of the inquiry very considerably and inasmuch as much of the work is under water, might also mean delaying the inquiry until The Bay is clear of ice. Before incurring any such expenditure it seemed to me to be necessary first to inquire as to what claims have been made against the Harbour Commission, in respect of defective construction. Accordingly Mr. Bonn, who was dredging engineer and now superintendent of construction of the harbour, was

called as a witness; so also was Mr. Wainwright, the engineer. While it is true that some complaints of defective construction have been made, and accidents have happened, they have not been of such a serious nature as to justify the expense of obtaining engineers for the purpose mentioned. The largest claim made against the Harbour Board arises out of the fact that a dock in the Eastern Terminals broke down and that the Weaver Coal Company, who had a quantity of coal on the dock is alleged to have sustained considerable loss. This loss is the subject of litigation in the Supreme Court of Ontario, and the evidence in this action, if tried, will reveal or should reveal any defective construction, if any, there was. On the question of the design of construction, Mr. Walter B. Chapman, a civil engineer was called. Mr. Chapman has always taken a deep interest in harbour matters, and has been a severe critic of the whole harbour improvements. He has sent communications to His Worship the Mayor in which his complaints are set out in detail. While Mr. Chapman is an engineer of many years' experience, he is not a marine engineer. His experience has been generally in railway construction and bridges. With respect to the design of construction adopted, Mr. Chapman thinks that reinforced concrete harbour head walls would have been more permanent

and better construction than the one adopted of concrete on timber and stone. In cross-examination Mr. Chapman, Mr. Chapman had to admit that when the harbour scheme was first launched and the studies worked out, concrete crib structure such as he now advocates had not been proven and found satisfactory. It follows that Mr. Chapman's criticism under this head would have been of more value if the design or method of construction had been decided upon after the concrete crib structure design had been proved by experience. Whether the concrete crib structure should be used in the completion of the inner harbour is a matter that will deserve the consideration of the engineering department.

Under the head of design of construction and defective construction it is, however, necessary to make special reference to the fact that during the filling operations in 1921, behind the harbour head walls, there was a movement of part of these walls at the foot of John Street and at the foot of York Street, and as a result the tops had to be blasted off, and the filling had to be dug up to get at the wires to reset them. Sections three, four and five of the harbour head walls were completed about the same time and the reclamation behind was begun early in the Spring of 1920, and it is claimed by the officials that it was the filling or dredging operations that moved the wall. The Canadian Stewart Company were doing this dredging. There

was no movement to speak of in the walls in any respect between Bathurst Street and John Street. In this region it was rock with very little silt or sewerage, but at John Street the silt mixed with the quicksand against the structure and caused a terrific pressure against the wall. It is claimed by the officials that the Canadian Stewart Company were ordered to shut down the dredge, but delayed it, and this movement of the harbour walls was caused in consequence. Another movement of a similar kind took place about the foot of York Street. This was repaired at considerable expense. The contractors for these harbour head walls had guaranteed the work, but they claimed, and the harbour officials conceded, that the fault was not theirs; that if there was any fault at all, it was the Canadian Stewart Company's fault in failing to comply with the orders given them. The movement or damage caused at the foot of John Street was not repaired, but instead on April 13th, 1921, Mr. Cousins, in view of the criticism that the harbour authorities had been subjected to for not having made suitable provision in the harbour improvements for taking care of the needs of owners of pleasure craft of various kinds, recommended to the Board the cutting of an opening through the wall about 40 feet wide and 12 feet deep and dredging out an

area behind of 225 feet by 300 feet, to the same depth, and thus provide a lagoon around the edge of which could be constructed about 50 small slips for small craft. Mr. Cousins, in his report, estimated the annual rental that could be obtained therefrom at $5,593. This location is called the motor boat mooring basin, and the following are the particulars of the investment by the Harbour Commissioners in this basin:

Dredging		$18,725.75
Walls, boathouses, etc. (per books)	$88,255.33	
Less - Amount included therein which represents the cost of rectifying the wall in front of the basin	23,571.60	64,683.73
Total investment		$83,409.48

A return on the above amount at the effective rate of interest paid on the bonds would require an annual revenue of $4,519.13. Assuming that the mooring basin is merely a temporary arrangement and that it will require to be filled in again, say in 1932, in order to meet the demand for dockage space, then, the auditors have reported, the cost to the Commissioners will have been :

Interest on investment for ten years	$45,191.30
Less - Rental for ten years on 1926 basis	28,200.00
	$16,991.30
and there will be no value left to the Commissioners in the investment of (subject to any salvage value of materials)	83,409.48
making a total loss of	$100,400.78

In addition there would be the cost of filling in the basin again.

The suggestion has been made that as the movement at the foot of John Street occurred in Section four, for which Russell had the contract, the contractor should have been called upon to pay for the rectification, as he had guaranteed his work. If however, it was not caused by defective construction, but by the negligence of the Canadian Stewart Company and this was the only evidence offered, the contractor of course, would not be liable. It is suggested also that this proposal of the mooring basin, was made to hide or keep from the public this expensive accident, if such it can be called. The fact that the expenditures in connection with the rectification of the wall are charged in the books under the head of "buildings, boat houses or motor boat mooring basin," instead of capital harbour head wall, would lend some colour to this view. It is true, I think, that the mooring basin would not have been put in if the movement had not taken place in the harbour head walls. On the other hand it is difficult to find, upon the facts proved, that the work was done for the purpose of covering up or keeping from the public what had happened. How could that movement in the harbour head wall be kept from the public? It was bound to leak out at some time. The movement and loss was the

subject of a conference with the Board of Control, and a letter from Mr. Cousins to The Mayor at that time, dated November 29th, 1922, in which all the facts are set out.

The movement in the wall at the foot of York Street was in Section Five, for which the Port Arthur Construction Company Limited had the contract. This rectification cost $13,496.39. What has been shown is that out of an expenditure, which up to that time amounted to about $13,000,000, less than $50,000 was actually spent in rectification. In saying this, I do not include, of course, any work that was done by the Canadian Stewart Company for the Dominion Government. Moreover if the whole loss sustained, or to be sustained by the construction of the mooring basin is added, the total loss is increased by the figure given.

PURCHASE OF MATERIALS AND SUPPLIES

The auditors were asked to make an inquiry into the methods followed in the placing of orders for materials and supplies and to report thereon, bringing to my attention anything that appeared to be the subject of comment or criticism. The auditors have made their report, which will be found as Appendix "F" hereto. The procedure that has been adopted and carried out by the officials is as follows:

In the case of materials required for construction works, a detailed bill of materials is prepared and approved by the Engineering Department, and then forwarded to the purchasing agent, together with a purchase requisition. On receipt of this document, the purchasing agent proceeds to call for quotations, usually by letter, from the concerns on his list who deal in the particular materials required. These quotations come through the mailing department in the ordinary course, and are finally received by the purchasing agent, who makes a summary of quotations received in each case. In the case of the standard supplies, such as stone, sand and cement, it would appear to have been the practice for the orders to be placed by the purchasing agent after the receipt of quotations, without further authority; but in the case of materials for special jobs, such as lumber, the evidence is that there were many occasions when reference back to the engineer was made before the orders were finally placed. As a test of the purchases for the period from the beginning to December 31st, 1925, the auditors selected the year 1917 and the five years, 1919 to 1923, and have listed all individual purchases in excess of $1,000. In these years, with the exception of sand purchases, concerning which the figures appear elsewhere in this report, all quotations were produced for inspection, with the exception of a few

unimportant cases. The summary of the results of the inspection appears in Exhibits A, B, C, D and E to Appendix "F". In connection with this, special reference must be made to a few matters that call for explanation. It will be noticed that in the year 1920 cement to the amount of $42,925 was purchased from Mr. John E. Russell, the contractor who did so much work on the harbour. At this time the quotations received from the various cement dealers were, in every case, exactly the same. In the year 1921, Russell supplied cement to the extent of $18,707.74, the quotations all being alike again. It is a matter of comment that whereas before 1920, the orders for these materials were distributed between a number of concerns, yet in these two years, 1920 and 1921, Russell seems to have got all the business.

Another subject that should be mentioned is the purchase of lumber, especially the pine for the Sunnyside Board Walk. It appears that in 1919 requests for quotations were dated July 18th, the quotations to be in by July 21st. This time was very short. These requests were addressed to eight local concerns. In 1920 requests for the Board Walk were furnished some months ahead of the required delivery date and in this case a much wider inquiry for quotations was made, requests being addressed to 22 concerns, and as a result of this inquiry the quotation of the successful

tenderer was the only one received covering the full specification. The price in 1920 was 40% in advance of 1919. This is explained by the scarcity of lumber in the latter year. The contracts for this lumber went to Mr. Samuel McBride, who during most of the years in which he did business with the Board, was either an Alderman or Controller of the City. The Commissioners and officials have been criticized for dealing with Mr. McBride at all, and Mr. McBride has come under criticism for doing business with the Harbour Board. It is said that there should have been no dealings between them. The question of the legality of the contracts between Mr. McBride and the Harbour Board need not detain us, for the reason that the lumber has been supplied by McBride, and accepted, use and paid for by the Harbour Commissioners. No question can therefore arise between them. But that does not allay the criticism. There are two sections of the Municipal Act, to which reference should be made. One is Section 54, which provides that any contract made between a member of the Council and the Corporation shall be void. That Section is clearly not applicable to Mr. McBride's case. He had no contract with the City Corporation. The other Section, 53, deals with the subject of disqualification for membership in the Council. Among those who are disqualified is:

(Section 53, (1) p)

> A person having himself, or by or with or through another, an interest in any contract with the Corporation or with any Commission or person acting for the Corporation, or in any contract for the supplying of goods or materials to a contractor for work for which the Corporation pays, or is liable directly or indirectly to pay, or which is subject to the control or supervision of the Council, or of an officer of the Corporation or who has an unsatisfied claim for such goods or materials.

Mr. McBride has sworn that he took legal advice as to his right to deal with the Harbour Board without coming under the penalty of disqualification, and that he was advised that this subsection did not apply to him. The subsection is designed to disqualify not only a person who has a contract with the Municipal Corporation, but also any person who has a contract with any commission acting for the Corporation. The Harbour Commission is not, of course, created by the City Council, though a majority of its members are appointed by the City Council. Nor can it be said to be acting solely for the Municipal Corporation, and on this ground the legal advice given to Mr. McBride may be sound, but one cannot read this subsection without coming to the conclusion that what the Legislature had in mind was to prohibit the entering into contract between a member of the Council and any commission over which he, as a member of the Council, could exercise

any influence or control or upon which he could bring any pressure to bear in his office as member of the Council. Three of the members of the Commission are appointed every three years by the City Council, and Mr. McBride had something to say as to the person appointed. It seems to me that while as a matter of legal construction, Mr. McBride may be and probably is in the right, yet the spirit of the section has been broken. Mr. McBride must not be surprised if many people think that it is a mistake for a public man to rely alone upon the dry bones of the law in a case of this kind. Since the Harbour Board, as now constituted, first began to buy lumber down to the end of 1925, they have purchased from Mr. McBride lumber to the value of about $298,000, an average of over $20,000 a year. The largest items appear in the years when the lumber was required for the board walk at Sunnyside. In fairness to Mr. McBride, it must be said that there is no evidence that there was any discrimination in his favour by the officials of the Board in the matter of prices, and there is evidence that the Board have found all their dealings with McBride eminently satisfactory.

Another matter that requires special mention is the purchase of coal. It was essential that a continuous supply of coal for the operation of the Commissioners' dredge Cyclone should always be on hand. The Century Coal

Company, who are lessees of the Harbour Board of property in the east end of the harbour, undertook to carry in stock at all times, sufficient to meet the Commissioners' needs, and to deliver the coal as required on board scows for direct transport to the dredges. In the years 1920, 1921 and 1922 orders were placed with the Century Coal Company for coal which aggregated in price $207,433.09 for 25,737 tons. In 1920, 3009 tons were bought from them at prices which ranged from $8.50 to $15 a ton, the average being $12.90 a ton. In March of 1920, the Commissioners asked for quotations from ten different firms for an order for 3,000 tons to be supplied on an average monthly quantity of 250 tons. The only unqualified quotation received was that of F. A. Fish Coal Company at $9 per ton f.o.b. cars or scows at Toronto. Four firms stated that they were unable to quote owing to unsettled conditions and the other quotations received contained qualifications. The Century Coal Company quoted a price of $8.50 a ton delivered on board the Commissioners' scows, with the following proviso:

> "Our offer is based on the present scale of wages being paid the miners and is subject to any increase or decrease that may become effective during the period of shipment. "

The average price paid to the Century Coal Company in 1920 was $12.90 a ton. The only explanation of the high price paid is found in a letter on file wherein reference is made to the shortage of cars, owing to railway strikes and of the necessity for the company going to the open market and purchasing coal at any price which could be procured. In 1921, up to September, 700 tons more had been bought from the Century Coal Company without calling for further quotations, but in September of that year quotations were asked for 1800 tons from 18 firms, all of whom quoted. The Century Coal Company's price of $7.75 a ton f.o.b Commissioners' scows was the highest quotation received, the other prices ranging from $7.74 down to $7.02 f.o.b. Commissioners' siding. Notwithstanding that the Century Coal Company's price was the highest, they got the contract. In March, 1922, quotations were received from 17 firms on 3,000 tons of coal, the quoted prices running from $7.30 down to $6.30 per ton. The highest figure mentioned was quoted by the Century Coal Company, who were awarded the order. Summarizing these figures, it appears that of the 23,737 tons of coal supplied by the Century Coal Company in the three years, 1920, 1921 and 1922, quotations were requested covering 10,800 tons. The explanation given by the officials is that the only

object they had in view in asking for quotations was to check up the price being charged by the Century Coal Company, the intention being to continue the orders with this company so long as their price was within one dollar per ton of the lowest quotation received. The Century Coal Company's quotations were in every case for delivery on board the Commissioners' scows day by day as required by the dredges. All the other quotations were f.o.b. Commissioners' siding, which would entail handling into a stock pile, and a second handling onto the scow, at a total cost which was estimated by the officials at about 65 cents per ton. The officials contend that the other 55 cents would be absorbed in the cost of providing storage space, etc. Looked at from the standpoint of the Century Coal Company, it must be conceded that they would have to meet the cost of handling the coal twice, once off their boats into a stock pile and again from the stock pile to the Commissioners' scows.

With reference to the general purchase of supplies, it will be noted that in February, 1920, the Board decided that all tenders of $1,000 and over awarded from time to time be reported to the Commissioners. In August of the same year this regulation was amended so as to include all purchases of $500 or over. For further information as of purchases over $1,000 the reader is referred to the Exhibits annexed to Appendix "F".