

Sessional Papers

1861.

Legislative Assembly.

NEW SOUTH WALES.

No. 1.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE HOUSE.

(EXTRACTED FROM THE MINUTES.)

SESSION OF 1861.

THURSDAY, 31 JANUARY, 1861.

No. 1.

WAYS AND MEANS.

(Resolution proposed on Financial Statement.)

Question proposed,—That the following Resolution be agreed to, viz.:—

(1.) Resolved, That it is the opinion of this Committee that, in lieu of the duties now payable under the Act 19 Vic., No. 14, on the several descriptions of imported spirits, there shall be levied duties on spirits or strong waters of any strength not exceeding the strength of proof by Syke's Hydrometer, and so in proportion for any greater or less strength than the strength of proof, at the following rates for every gallon, that is to say:—Brandy, Gin, Whisky, Rum, and all other spirits—Ten Shillings.

On spirits, cordials, liqueurs, or strong waters sweetened or mixed with any article so that the strength thereof cannot be ascertained by Syke's Hydrometer, for every gallon—Ten Shillings.

On perfumed spirits, for every gallon—Ten Shillings.

On wine containing more than 25 per cent. of Alcohol, of a specific gravity of .825 at the temperature of 60 degrees of Fahrenheit's Thermometer, for every gallon in proportion to strength—Ten Shillings.

That the duties on spirits, made or distilled in the Colony from imported sugar, shall be for every gallon—Nine Shillings and five-pence.

That the duties on spirits, when made or distilled from grain or other material not subject to duty, shall be for every gallon—Ten Shillings.

That in lieu of the duties of Customs now chargeable on Tea imported into this Colony the following duties shall be charged, that is to say,—upon every pound of Tea, from and after the 31 March, 1861, to 30 September, 1861, inclusive,—Two-pence.

From and after 30 September, 1861, to 31 December, 1861, inclusive,—One penny.

After which date the duties on Tea shall cease and determine. (*Mr. Weekes.*)

Motion made, and Question put,—That the Chairman do now leave the Chair. (*Mr. Lucas.*)

Committee

Committee divided.

Ayes, 16.

Mr. Parkes,
 Mr. Lackey,
 Mr. Egan,
 Mr. Smart,
 Mr. Mate,
 Mr. Rusden,
 Mr. Hannell,
 Mr. Cummings,
 Mr. Daniel,
 Mr. Scott,
 Mr. Ailen,
 Mr. Piddington,
 Mr. Hoskins,
 Mr. Dick,
 Mr. Windeyer, } Tellers.
 Mr. Lucas, }

Noes, 37.

Mr. Cowper, Mr. Sutherland,
 Mr. Robertson, Mr. Stewart,
 Mr. Weekes, Mr. Terry,
 Mr. Arnold, Mr. Meston,
 Capt. Moriarty, Mr. Markham,
 Mr. Driver, Mr. Ryan,
 Mr. Peisley, Mr. Walsh,
 Mr. Douglas, Mr. J. Garrett,
 Mr. Cunneen, Mr. Morris,
 Mr. Wilson, Mr. Rotton,
 Mr. McArthur, Mr. Macleay,
 Mr. Dalgleish, Mr. Leary,
 Mr. T. Garrett, Mr. Eckford,
 Mr. Lewis, Mr. Haworth,
 Mr. Caldwell, Mr. Atkinson,
 Mr. Laycock, Mr. Hay, } Tellers.
 Mr. Buchanan, Mr. O'Brien,
 Mr. Flett, Mr. Love, }
 Mr. C. Cowper,
 junior,

Original Question put.

Committee divided.

Ayes, 30.

Mr. Cowper, Mr. Dalgleish,
 Mr. Robertson, Mr. Stewart,
 Mr. Arnold, Mr. Meston,
 Mr. Weekes, Mr. Sutherland,
 Capt. Moriarty, Mr. Cunneen,
 Mr. O'Brien, Mr. Atkinson,
 Mr. Markham, Mr. Flett,
 Mr. Lewis, Mr. Eckford,
 Mr. Caldwell, Mr. Peisley,
 Mr. Love, Mr. Laycock,
 Mr. McArthur, Mr. Buchanan,
 Mr. Haworth, Mr. T. Garrett,
 Mr. J. T. Ryan, Mr. Driver,
 Mr. C. Cowper, Mr. Wilson, } Tellers.
 junior, Mr. J. Garrett, }
 Mr. Leary,

Noes, 23.

Mr. Morris, Mr. Scott,
 Mr. Dick, Mr. Hay,
 Mr. Rusden, Mr. Macleay,
 Mr. Douglas, Mr. Rotton,
 Mr. Piddington, Mr. Walsh, } Tellers.
 Mr. Lackey, Mr. Parkes,
 Mr. Mate, Mr. Egan, }
 Mr. Cummings,
 Mr. Windeyer,
 Mr. Smart,
 Mr. Hannell,
 Mr. Hoskins,
 Mr. Daniel,
 Mr. Terry,
 Mr. Allen,
 Mr. Lucas,

Resolution reported,—to sit again.

1861.

Legislative Assembly.

NEW SOUTH WALES

No. 2.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE HOUSE.

(EXTRACTED FROM THE MINUTES.)

SESSION OF 1861.

WEDNESDAY, 6 FEBRUARY, 1861.

No. 1.

DUTIES OF CUSTOMS BILL OF 1861.

SCHEDULE.

	s.	d.
" Brandy," " Gin," Whiskey, Rum, and all other Spirits—for every gallon thereof	10	0
Spirits, Cordials, Liqueurs, or Strong Waters, sweetened or mixed with any article so that the strength thereof cannot be ascertained by Sykes' Hydrometer—for every gallon thereof	10	0
Perfumed Spirits—for every gallon thereof	10	0
Wine containing more than 25 per cent. of Alcohol, of a specific gravity of .825 at the temperature of 60 degrees of Fahrenheit's Thermometer—for every gallon in proportion to strength	10	0
Wine not containing more than 25 per cent. of Alcohol of a specific gravity of .825 at the temperature of 60 degrees of Fahrenheit's Thermometer—for every gallon thereof	2	0
Ale, Porter, and Beer of all sorts in wood—for every gallon thereof	0	1
Ale, Porter, and Beer of all sorts in bottle—for every gallon thereof	0	2
Tea—for every pound thereof—		
Until the " 31st " day of March next	0	3
Thereafter, and until the 30th day of September next	0	2
Thereafter, and until the 31st day of December next	0	1
Sugar—Refined and Candy—" for every hundredweight "	6	8
Unrefined—for every hundredweight	5	0
Treacle and Molasses—for every hundredweight...	3	4
Coffee and Chicory—for every pound	0	2
Cigars—for every pound	3	0
Tobacco and Snuff—for every pound	2	0

(Read.)

Question proposed,—That the Schedule as read stand the Schedule to the Bill.

(Mr Weekes.)

Amendment proposed,—That the word “and” be inserted in line 1 thereof, between the word “Brandy” and the word “Gin.” (*Mr Parkes.*)

Question put,—That the word proposed to be inserted be so inserted.

Committee divided.

Ayes, 19.			Noes, 30.	
Mr. Watt,	Mr. Parkes,	} Tellers.	Mr. Robertson,	Mr. Meston,
Mr. Lucas,	Mr. Morris,		Mr. Arnold,	Mr. Cunneen,
Mr. Egan,	Mr. Walker,		Mr. Weekes,	Mr. Stewart,
Mr. Hay,			Mr. Redman,	Mr. Sutherland,
Mr. Windeyer,			Mr. Markham,	Mr. Hoskins,
Mr. Allen,			Mr. J. Garrett,	Mr. Hart,
Mr. Piddington,			Mr. Haworth,	Mr. Eckford,
Mr. Shepherd,			Mr. Love,	Mr. Buchanan,
Mr. Rotton,			Mr. McArthur,	Mr. Laycock,
Mr. Mate,			Mr. O'Brien,	Mr. Gray,
Mr. Rusden,		Mr. Dalglish,	Mr. Wilson,	
Mr. Cummings,		Mr. Leary,	Mr. T. Garrett,	
Mr. Macleay,		Mr. Lucas,	Capt. Moriarty,	
Mr. Hannell,		Mr. Caldwell,	Mr. C. Cowper,	
Mr. Lackey,		Mr. Morrice,	junr.,	
Mr. Raper,		Mr. Atkinson,		

No. 2.

Original Question stated.

Amendment proposed,—That the date “31st,” in line 15 thereof, be omitted, with a view to the insertion in its stead of the date “30th.” (*Mr Parkes.*)

Question put,—That the date proposed to be omitted stand part of the Schedule.

Committee divided.

Ayes, 34.			Noes, 17.	
Mr. Robertson,	Mr. Buchanan,	} Tellers.	Mr. Watt,	
Mr. Weekes,	Mr. Eckford,		Mr. Egan,	
Capt. Moriarty,	Mr. C. Cowper,		Mr. Piddington,	
Mr. O'Brien,	junr.,		Mr. Parkes,	
Mr. Morrice,	Mr. Wilson,		Mr. Hannell,	
Mr. Leary,	Mr. Arnold,		Mr. Lewis,	
Mr. J. Garrett,	Mr. T. Garrett,		Mr. Dalglish,	
Mr. McArthur,	Mr. Terry,		Mr. Walker,	
Mr. Caldwell,	Mr. Love,		Mr. Cummings,	
Mr. Meston,	Mr. Hoskins,		Mr. Shepherd,	
Mr. Stewart,	Mr. Haworth,		Mr. Lackey,	
Mr. Atkinson,	Mr. Dick,		Mr. Macleay,	
Mr. Sutherland,	Mr. Gray,		Mr. Mate,	
Mr. Hart,	Mr. Douglas,		Mr. Windeyer,	
Mr. Morris,	Mr. Plett,		Mr. Rusden,	
Mr. Raper,	Mr. Redman,		Mr. Cunneen,	
Mr. Allen,	Mr. Markham,		Mr. Lucas,	
Mr. Laycock,				

No. 3.

Original Question stated.

Amendment proposed,—That the words “for every hundredweight,” in line 18 thereof, be omitted, with a view to the insertion in their stead of the words and figures,—

“ Until 1st day of March	...	...	...	...	...	6	8
“ 30th „ September	...	...	...	...	...	4	6
“ 31st „ December	...	...	...	...	...	2	3”

(*Mr. Lucas.*)

Question put,—That the words proposed to be omitted stand part of the Schedule.

Committee divided.

Ayes, 33.			Noes, 15.	
Mr. Wilson,	Mr. Daniel,	} Tellers.	Mr. Lucas,	
Capt. Moriarty,	Mr. Douglas,		Mr. Cummings,	
Mr. O'Brien,	Mr. Plett,		Mr. Egan,	
Mr. Markham,	Mr. Terry,		Mr. Love,	
Mr. Morris,	Mr. T. Garrett,		Mr. Lackey,	
Mr. Leary,	Mr. Redman,		Mr. Parkes,	
Mr. J. Garrett,	Mr. Weekes,		Mr. Shepherd,	
Mr. Caldwell,	Mr. Meston,		Mr. Cunneen,	
Mr. Dalglish,	Mr. Morris,		Mr. Allen,	
Mr. Stewart,	Mr. Gray,		Mr. Lewis,	
Mr. Atkinson,	Mr. Hart,		Mr. Macleay,	
Mr. Hoskins,	Mr. Buchanan,		Mr. Mate,	
Mr. Dick,	Mr. Eckford,		Mr. Windeyer,	
Mr. Rotton,	Mr. C. Cowper,		Mr. Rusden,	
Mr. Haworth,	junr.,		Mr. Watt,	
Mr. Sutherland,	Mr. Robertson,			
Mr. Driver,	Mr. Arnold,			

No. 4.

Original Question put.
Committee divided.

Ayes, 35.

Mr. Robertson,	Mr. Shepherd,	} Tellers.
Mr. Weekes,	Mr. Laycock,	
Mr. Rodman,	Mr. Flett,	
Capt. Moriarty,	Mr. Daniel,	
Mr. O'Brien,	Mr. Allen,	
Mr. Morrice,	Mr. Hoskins,	
Mr. Leary,	Mr. Dick,	
Mr. J. Garrett,	Mr. Markham,	
Mr. Caldwell,	Mr. T. Garrett,	
Mr. Lewis,	Mr. Eckford,	
Mr. Dalgleish,	Mr. Buchanan,	
Mr. Stewart,	Mr. Driver,	
Mr. Atkinson,	Mr. Hart,	
Mr. Lackey,	Mr. Gray,	
Mr. Haworth,	Mr. Meston,	
Mr. Love,	Mr. C. Cowper,	
Mr. Sutherland,	junr.,	
Mr. Cunneen,	Mr. Wilson,	

Noes, 10.

Mr. Morris,	} Tellers.
Mr. Raper,	
Mr. Mate,	
Mr. Macleay,	
Mr. Terry,	
Mr. Watt,	
Mr. Egan,	
Mr. Walker,	
Mr. Cummings,	
Mr. Lucas,	

Bill reported without amendment.

THURSDAY, 7 FEBRUARY, 1861.

No. 5.

CROWN LANDS ALIENATION BILL OF 1861.

Clause VI. Crown Lands held under lease or promise of "lease" issued or made previously to the twenty-second day of February one thousand eight hundred and "fifty-eight" shall during the currency of such lease be exempt from sale under this Act except where such lands have been or may hereafter be lawfully withdrawn from the holding of the lessee in accordance with the Orders in Council. Provided that the lessee may be permitted to exercise a pre-emptive right of purchase over one portion and no more of an area not exceeding six hundred and forty acres out of each block of twenty-five square miles and at a value to be determined by appraisement not being less than one pound per acre. Provided that such appraisement shall not include any value for improvements. (*Read.*)

Question proposed,—That the Clause as read stand part of the Bill. (*Mr. Robertson.*)

Amendment proposed,—That all the words after the word "lease," down to the words "fifty-eight," inclusive, be omitted. (*Mr. Rotton.*)

Question put,—That the words proposed to be omitted stand part of the Clause.

Committee divided.

Ayes, 36.

Mr. Weekes,	Mr. Hoskins,	} Tellers.
Mr. Robertson,	Mr. Windeyer,	
Mr. Arnold,	Mr. Dalgleish,	
Capt. Moriarty,	Mr. J. T. Ryan,	
Mr. Love,	Mr. Redman,	
Mr. Lucas,	Mr. Caldwell,	
Mr. Haworth,	Mr. T. Garrett,	
Mr. Lewis,	Mr. Markham,	
Mr. Terry,	Mr. Laycock,	
Mr. J. Garrett,	Mr. Cunneen,	
Mr. Sutherland,	Mr. Atkinson,	
Mr. Stewart,	Mr. Raper,	
Mr. Hannell,	Mr. Peisley,	
Mr. Parkes,	Mr. Buchanan,	
Mr. Flett,	Mr. Eckford,	
Mr. Morrice,	Mr. Gray,	
Mr. Leary,	Mr. Dick,	
Mr. Dickson,	Mr. Driver,	

Noes, 21.

Mr. O'Brien,	Mr. Lesley,	} Tellers.
Mr. Piddington,	Mr. Morris,	
Mr. Egan,	Mr. Walker,	
Mr. Watt,		
Mr. Rusden,		
Mr. McArthur,		
Mr. Douglas,		
Mr. Meston,		
Mr. Daniel,		
Mr. Lackey,		
Mr. Cummings,		
Mr. Mate,		
Mr. Shepherd,		
Mr. Hay,		
Mr. Wilson,		
Mr. Lord,		
Mr. Rotton,		
Mr. Macleay,		

No. 6.

Motion made, and Question put,—That the Chairman do now leave the Chair, report progress, and ask leave to sit again to-morrow. (*Mr. Dickson.*)

Debate ensued.

And the Committee continuing to sit until after midnight.—

FRIDAY,

FRIDAY, 8 FEBRUARY, 1861, A.M.

Committee divided.

Ayes 39.

Mr. Watt,	Mr. Markham,
Mr. O'Brien,	Mr. Leary,
Mr. Arnold,	Mr. Hay,
Capt. Moriarty,	Mr. Hoskins,
Mr. Love,	Mr. Douglas,
Mr. Haworth,	Mr. Atkinson,
Mr. Caldwell,	Mr. Morrice,
Mr. McArthur,	Mr. Peisley,
Mr. Lewis,	Mr. Raper,
Mr. Morris,	Mr. Buchanan,
Mr. Walker,	Mr. Driver,
Mr. Lackey,	Mr. Dick,
Mr. Shepherd,	Mr. Rotton,
Mr. Stewart,	Mr. Robertson,
Mr. Cunneen,	Mr. Wilson,
Mr. Flett,	Mr. J. T. Ryan,
Mr. Piddington,	Mr. Cummings,
Mr. Hannell,	Mr. Lucas,
Mr. Mate,	Mr. Dickson,
Mr. Rusden,	

} Tellers.

Noes 10. *

Mr. J. Garrett,
Mr. Redman,
Mr. Terry,
Mr. Sutherland,
Mr. Windeyer,
Mr. T. Garrett,
Mr. Parkes,
Mr. Dalgleish,
Mr. Watt,

} Tellers.

Progress reported,—to sit again.

* So in Tellers' List.

FRIDAY, 8 FEBRUARY, 1861.

No. 7.

COMPENSATION TO THE FAMILY OF THE LATE MRS. DE COURCY.

Question proposed,—That the Committee agree to the following Resolution:—
 Resolved,—That an Address be presented to the Administrator of the Government,*
 praying that His Excellency will cause to be placed upon the Supplementary
 Estimates for 1861, a sum not exceeding “£104,” in addition to the sum
 already placed upon the Estimates-in-Chief, as compensation to the family
 of the late Mrs. De Courcy, to be continued for five years. (Mr. Hart.)
 Amendment proposed,—That the figures “104” be omitted, with a view of insert-
 ing in their stead the figures “52.” (Mr. Parkes.)
 Question put,—That the figures proposed to be omitted stand part of the Resolution.
 Committee divided.

Ayes, 7.

Mr. Buchanan,
Mr. Raper,
Mr. Dick,
Mr. Hart,
Capt. Moriarty,
Mr. Markham,
Mr. Terry,

} Tellers.

Noes, 40.

Mr. Robertson,	Mr. Hay,
Mr. Arnold,	Mr. Macleay,
Mr. Weekes,	Mr. Haworth,
Mr. Lord,	Mr. Atkinson,
Mr. Morris,	Mr. Morrice,
Mr. Leary,	Mr. Dickson,
Mr. Piddington,	Mr. Stewart,
Mr. Hannell,	Mr. Laycock,
Mr. J. T. Ryan,	Mr. Lackey,
Mr. O'Brien,	Mr. Flett,
Mr. Windeyer,	Mr. Mate,
Mr. Parkes,	Mr. Cunneen,
Mr. Wilson,	Mr. Love,
Mr. Caldwell,	Mr. Dalgleish,
Mr. Lewis,	Mr. Lucas,
Mr. Allen,	Mr. Cummings,
Mr. Sutherland,	Mr. Meston,
Mr. T. Garrett,	Mr. Shepherd,
Mr. Hoskins,	Mr. Rotton,
Mr. Rusden,	Mr. Watt,

} Tellers.

No. 8.

Question put,—That the figures proposed to be inserted be so inserted.
 Committee divided.

Ayes, 39.

Capt. Moriarty,	Mr. Macleay,
Mr. O'Brien,	Mr. Rusden,
Mr. Leary,	Mr. Cummings,
Mr. Wilson,	Mr. Atkinson,
Mr. Parkes,	Mr. Hay,
Mr. Windeyer,	Mr. Shepherd,
Mr. Lewis,	Mr. Sutherland,
Mr. Morrice,	Mr. Raper,
Mr. J. T. Ryan,	Mr. Dick,
Mr. Markham,	Mr. Hart,
Mr. Lord,	Mr. Hoskins,
Mr. Stewart,	Mr. Dalgleish,
Mr. Hannell,	Mr. Piddington,
Mr. Mate,	Mr. Caldwell,
Mr. Flett,	Mr. T. Gairrett,
Mr. Lackey,	Mr. Love,
Mr. Cunneen,	Mr. Terry,
Mr. Allen,	Mr. Lucas,
Mr. Laycock,	Mr. Morris,
Mr. Driver,	

} Tellers.

Noes, 9.

Mr. Robertson,
Mr. Weekes,
Mr. Arnold,
Mr. Meston,
Mr. Buchanan,
Mr. Haworth,
Mr. Dickson,
Mr. Rotton,
Mr. Watt,

} Tellers.

Resolution, as amended, reported.

1861.

Legislative Assembly.
NEW SOUTH WALES.

No. 3.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE HOUSE.

(EXTRACTED FROM THE MINUTES.)

SESSION OF 1861.

TUESDAY, 12 FEBRUARY, 1861.

No. 1.

CROWN LANDS ALIENATION BILL OF 1861.

Clause 6. Crown Lands held under lease or promise of lease issued or made previously to the twenty-second day of February one thousand eight hundred and fifty-eight shall during the currency of such lease be exempt from sale under this Act except where such lands have been "or may hereafter be" lawfully withdrawn from the holding of the lessee in accordance with the Orders in "Council" Provided that the lessee may be permitted to exercise a pre-emptive right of purchase over one portion and no more of an area not exceeding six hundred and forty acres "out of each block of twenty-five square miles and" at a "value to be determined by appraisalment not being less than" one pound per "acre" Provided that such appraisalment shall not include any value for "improvements." (Read.)

(And the clause having been amended by omitting the words "or may hereafter be," and the insertion after the word "Council" of the words "or may hereafter be lawfully withdrawn from such holding")—

Motion made,—That the Clause, as amended, stand part of the Bill. (Mr. Robertson.)

Amendment proposed,—That the words "out of each block of twenty-five square miles and" be omitted. (Mr. Windeyer.)

Debate ensued.

And the Committee continuing to sit until after midnight,—

WEDNESDAY, 13 FEBRUARY, 1861, A.M.

Question put,—That the words proposed to be omitted stand part of the Clause. Committee divided.

Ayes, 30.

Mr. Robertson,	Mr. Flett,	
Mr. Watt,	Mr. Piddington,	+
Mr. Arnold,	Mr. C. Cowper,	
Mr. Weekes,	junr.,	
Mr. Morrice,	Mr. T. Garrett,	
Mr. O'Brien,	Mr. Rotton,	
Mr. McArthur,	Mr. Atkinson,	
Mr. Cummings,	Mr. Irving,	
Mr. Mate,	Mr. Hay,	
Mr. Love,	Mr. Daniel,	
Mr. Morris,	Mr. Douglas,	
Mr. Meston,	Mr. Allen,	
Mr. Egan,	Mr. Rusden,	
Mr. Gray,	Mr. Dick,	} Tellers.
Mr. Suttor,	Mr. Dickson,	
Mr. Laycock,		

Amendment negatived.

83—A

Noes, 15.

Mr. Parkes,	Mr. Caldwell,	
Mr. Wilson,	Mr. Buchanan,	
Mr. Driver,	Mr. Cunneen,	
Mr. Dalgleish,	Mr. Sutherland,	
Mr. Windeyer,	Mr. Raper,	
Mr. Peisley,	Mr. Hoskins,	} Tellers.
Mr. Lewis,	Mr. Lucas,	
Mr. Stewart,		

No. 2.

No. 2.

Question proposed,—That the Clause, as amended, stand part of the Bill. (*Mr. Robertson.*)

Amendment proposed,—That the following proviso be inserted after the words "miles and"—"Provided also that not more than one such portion shall be sold to any lessee holding two or more such blocks contiguous to each other."
(*Mr. Windeyer.*)

Question put,—That the words proposed to be inserted be so inserted.

Committee divided.

Ayes, 15.

Mr. Raper,	Mr. Stewart,	} Tellers.
Mr. Lucas,	Mr. Sutherland,	
Mr. Windeyer,	Mr. Cunneen,	
Mr. Caldwell,	Mr. Hoskins,	
Mr. Wilson,	Mr. Buchanan,	
Mr. Peisley,	Mr. Driver,	
Mr. Lewis,	Mr. Parkes,	
Mr. Dalgleish,		

Noes, 28.

Mr. Robertson,	Mr. T. Garrett,	} Tellers.
Mr. Weekes,	Mr. Daniel,	
Mr. Arnold,	Mr. Gray,	
Mr. Watt,	Mr. Flett,	
Mr. Egan,	Mr. Piddington,	
Mr. Hay,	Mr. Atkinson,	
Mr. Love,	Mr. Rotton,	
Mr. O'Brien,	Mr. Irving,	
Mr. Morrice,	Mr. Dickson,	
Mr. Mate,	Mr. Douglas,	
Mr. McArthur,	Mr. Allen,	
Mr. Suttor,	Mr. Dick,	
Mr. Meston,	Mr. Rusden,	
Mr. Cummings,	Mr. Morris,	

Amendment negatived.

No. 3.

Question proposed,—That the Clause, as amended, stand part of the Bill. (*Mr. Robertson.*)

Amendment proposed,—That the words "a value to be determined by appraisal not being less than" be omitted. (*Mr. Dickson.*)

Question put,—That the words proposed to be omitted stand part of the Clause.

Committee divided.

Ayes, 26.

Mr. Weekes,	Mr. Cunneen,	} Tellers.
Mr. Robertson,	Mr. Atkinson,	
Mr. Arnold,	Mr. Flett,	
Mr. Dick,	Mr. Allen,	
Mr. Driver,	Mr. Sutherland,	
Mr. Raper,	Mr. Parkes,	
Mr. T. Garrett,	Mr. Suttor,	
Mr. Caldwell,	Mr. Buchanan,	
Mr. McArthur,	Mr. Hoskins,	
Mr. Peisley,	Mr. Morris,	
Mr. Dalgleish,	Mr. Douglas,	
Mr. Lewis,	Mr. Windeyer,	
Mr. Stewart,	Mr. Lucas,	

Noes, 17.

Mr. Rotton,	Mr. Wilson,	} Tellers.
Mr. Irving,	Mr. Daniel,	
Mr. Piddington,	Mr. Dickson,	
Mr. Gray,	Mr. Rusden,	
Mr. Cummings,		
Mr. Watt,		
Mr. Egan,		
Mr. Hay,		
Mr. Love,		
Mr. O'Brien,		
Mr. Morrice,		
Mr. Mate,		
Mr. Meston,		

Amendment negatived.

No. 4.

Question proposed,—That the Clause, as amended, stand part of the Bill. (*Mr. Robertson.*)

And the Clause having been further amended by inserting after the word "acre," the words "Provided nevertheless that any land purchased under the Orders in Council previously to the passing of this Act shall be estimated in the six hundred and forty acres aforesaid and"—

Amendment proposed,—That there be inserted after the words "aforesaid and," in the last amendment, the words "Provided that such purchase shall contain improvements the property of such lessee to the value at least of twenty shillings per acre." (*Mr. Lucas.*)

Question put,—That the words proposed to be inserted be so inserted.

Committee divided.

Ayes, 17.

Mr. Love,	Mr. Driver,	} Tellers.
Mr. Caldwell,	Mr. Sutherland,	
Mr. Windeyer,	Mr. Allen,	
Mr. Peisley,	Mr. Raper,	
Mr. Stewart,	Mr. Lucas,	
Mr. Lewis,	Mr. T. Garrett,	
Mr. Cunneen,		
Mr. Parkes,		
Mr. Dalgleish,		
Mr. Buchanan,		
Mr. Hoskins,		

Noes, 22.

Mr. Robertson,	Mr. Morrice,	} Tellers.
Mr. Arnold,	Mr. Cummings,	
Mr. Weekes,	Mr. Morris,	
Mr. Watt,	Mr. O'Brien,	
Mr. Mate,	Mr. Irving,	
Mr. Wilson,	Mr. Gray,	
Mr. Hay,	Mr. Piddington,	
Mr. Suttor,	Mr. Rotton,	
Mr. Flett,	Mr. Dick,	
Mr. Atkinson,	Mr. Egan,	
Mr. Daniel,	Mr. Rusden,	

Amendment negatived.

No. 5.

Question proposed,—That the Clause, as amended, stand part of the Bill, (*Mr. Robertson.*)

Amendment proposed,—That there be added after the word "improvements," the words "And provided that every application for the purchase of land under these conditions shall be advertised in the *Government Gazette* for the period of one calendar month before the sale is completed." (*Mr. Hoskins.*)

Question

Question put,—That the words proposed to be added be so added.
Committee divided.

Ayes, 22.		Noes, 16.	
Mr. Weekes,	Mr. Lewis,	Mr. Watt,	Mr. Piddington,
Mr. Robertson,	Mr. Cunneen,	Mr. O'Brien,	Mr. Rotton,
Mr. Arnold,	Mr. Sutherland,	Mr. Mate,	Mr. Dick,
Mr. Love,	Mr. Atkinson,	Mr. Rusden,	Mr. Egan,
Mr. Raper,	Mr. Flett,	Mr. Morris,	Mr. Hay,
Mr. T. Garrett,	Mr. Wilson,	Mr. Parkes,	} Tellers.
Mr. Caldwell,	Mr. Gray,	Mr. Suttor,	
Mr. Lucas,	Mr. Dalgleish,	Mr. Cummings,	
Mr. Peisley,	Mr. Buchanan,	Mr. Morrice,	
Mr. Stewart,	Mr. Hoskins,	Mr. Daniel,	
Mr. Windeyer,	Mr. Driver,	Mr. Irving,	
} Tellers.			

Amendment carried.

No. 6.

Motion made and Question put,—That the Clause, as amended, stand part of the Bill. (*Mr. Robertson.*)

Committee divided.		Ayes, 25.		Noes, 14.	
Mr. Weekes,	Mr. Daniel,	Mr. Dalgleish,	Mr. Windeyer,	} Tellers.	
Mr. Robertson,	Mr. Atkinson,	Mr. Sutherland,	Mr. Lucas,		
Mr. Arnold,	Mr. Love,	Mr. Driver,			
Mr. Watt,	Mr. T. Garrett,	Mr. Stewart,			
Mr. O'Brien,	Mr. Parkes,	Mr. Peisley,			
Mr. Raper,	Mr. Gray,	Mr. Lewis,			
Mr. Caldwell,	Mr. Piddington,	Mr. Cunneen,			
Mr. Cummings,	Mr. Irving,	Mr. Buchanan,			
Mr. Egan,	Mr. Rotton,	Mr. Hay,			
Mr. Morrice,	Mr. Rusden,	Mr. Morris,			
Mr. Mate,	Mr. Allen,	Mr. Wilson,			
Mr. Suttor,	Mr. Dick,	Mr. Hoskins,			
Mr. Flett,					
} Tellers.					

Clause, as amended, carried.

No. 7.

NEW SOUTH WALES CENSUS BILL FOR 1861.

Clause 6. Schedules shall be prepared under the direction of the Colonial Secretary for the purpose of being filled up by or on behalf of the several Occupiers of Dwellings as hereinafter provided with particulars of the Name Sex Age "Religion" Education Rank Profession or Occupation Condition Relation to Head of Family and Birth Place of every living Person who abode in every Dwelling on the night of the said seventh day of April one thousand eight hundred and sixty-one and also whether any were Blind or Deaf and Dumb And the Enumerators shall in the course of the week ending on Saturday the sixth day of April one thousand eight hundred and sixty-one leave or cause to be left at every Dwelling within their respective districts one or more of such Schedules for the Occupier or Occupiers thereof or of any part thereof and upon every such Schedule shall be plainly expressed that it is to be filled up by the Occupier of such Dwelling (or where such Dwelling is let in different stories or apartments and occupied distinctly by different persons or families then by the Occupier of each such distinct story or apartment) and that the Enumerator or Collector will collect all such Schedules on the Monday then next following And every Occupier of any Dwelling or of any distinct story or apartment in any Dwelling with or for whom any such Schedule shall have been left as aforesaid shall fill up the said Schedule to the best of his or her knowledge and belief so far as relates to all persons abiding in the dwelling story or apartment occupied by him or her and shall sign his or her name thereunto and shall deliver the Schedule so filled up or cause the same to be delivered to the Enumerator or Collector when required so to do.—(*Read.*)

Motion made,—That the Clause as read stand part of the Bill. (*Mr. Cowper.*)

Amendment proposed,—That the word "Religion" be omitted. (*Mr. Wilson.*)

Question put,—That the word proposed to be omitted stand part of the Clause.

Committee divided.		Ayes, 36.		Noes, 11.	
Mr. Suttor,	Mr. Weekes,	Mr. Love,			
Mr. Shepherd,	Mr. Arnold,	Mr. T. Garrett,			
Mr. Flett,	Mr. Watt,	Mr. Piddington,			
Mr. Sutherland,	Mr. Robertson,	Mr. Lewis,			
Mr. Torry,	Mr. Cowper,	Mr. Hoskins,			
Mr. Rusden,	Mr. Mate,	Mr. Caldwell,			
Mr. Lucas,	Mr. Smart,	Mr. Markham,			
Mr. Daniel,	Mr. Rotton,	Mr. Dalgleish,			
Mr. Lackey,	Mr. Allen,	Mr. Dickson,			
Mr. Hart,	Mr. Buchanan,	Mr. Wilson,			
Mr. Walsh,	Mr. Ryan,	Mr. Windeyer,			} Tellers.
Mr. Morris,	Mr. Laycock,				
Mr. Lord,	Mr. Hay,				
Mr. Blake,	Mr. Macleay,				
Mr. Morrice,	Mr. Cummings,				
Mr. Peisley,	Mr. Irving,				
Mr. McArthur,	Mr. Douglas,				
Mr. O'Brien,	Mr. Parkes,				
} Tellers.					

Amendment negatived.

No. 8.

No. 8.

CROWN LANDS ALIENATION BILL OF 1861.

Clause 11. The Governor may with the like advice by a memorandum in writing under his hand declare that any reservation of any water frontage or land adjoining such frontage contained in any Crown grant shall be rescinded wholly or to such extent as shall be specified in such memorandum and subject to such conditions or restrictions as shall be therein specified and such reservation shall be so rescinded accordingly and the land shall by virtue and according to the terms of such memorandum on payment of an adequate money consideration to be determined by appraisement being not less than the minimum upset price per acre of the class of land as set forth in section twenty of this Act become vested in the owner of the land conveyed in such Crown grant Provided that nothing in this clause contained shall empower the Governor to interfere with any land heretofore used as a public thoroughfare or with any land already set apart and dedicated for any public purpose Provided also that for four consecutive weeks notice shall be given in the *Gazette* previous to issuing such memorandum.—(*Read.*)

Motion made and Question put,—That the Clause as read stand part of the Bill.
(*Mr. Robertson.*)

Committee divided.

Ayes, 41.

Mr. Robertson,	Mr. Leary,
Mr. Arnold,	Mr. Douglas,
Mr. Weekes,	Mr. Shepherd,
Mr. C. Cowper,	Mr. Rotton,
junr.,	Mr. Markham,
Mr. Lord,	Mr. Lewis,
Mr. Watt,	Mr. J. T. Ryan,
Mr. T. Garrett,	Mr. O'Brien,
Mr. Raper,	Mr. Neston,
Mr. Morrice,	Mr. Piddington, +
Mr. Love,	Mr. Flett,
Mr. Caldwell,	Mr. Hart,
Mr. Walker,	Mr. Lesley,
Mr. Dickson,	Mr. Laycock,
Mr. Cummings,	Mr. Buchanan,
Mr. Smart,	Mr. Gray,
Mr. Peasley,	Mr. Hoskins,
Mr. McArthur,	Mr. Atkinson,
Mr. Daniel,	Mr. Wilson,
Mr. Parkes,	Mr. Egan,
Mr. Lackey,	Mr. Windeyer, } Tellers.

Noes, 14.

Mr. Dick,
Mr. Rusden,
Mr. Mate,
Mr. Redman,
Mr. Cunneen,
Mr. Stewart,
Mr. Sutherland,
Mr. Allen,
Mr. Dalgleish,
Mr. Suttor,
Mr. Hay,
Mr. Lucas,
Mr. Walsh,
Mr. Morris, } Tellers.

No. 9.

" Clause " 12. " Crown Lands " within the first or second class Settled Districts or which have been or may be legally withdrawn from lease or promise of lease within the Unsettled Districts and not " being " town lands or suburban lands and not being within a proclaimed Gold Field and not being within areas bounded by lines bearing north east south and west and distant ten miles from the outside boundary of any city or town containing according to the then last Census ten thousand inhabitants or five miles to the outside boundary of any town containing according to the then last Census five thousand " inhabitants " or two miles from the outside boundary of any town or village containing according to the then last Census one hundred inhabitants and not reserved for the site of any town or village or for the supply of " water or " for any " other " public purpose and not containing improvements and not excepted from sale under " section " six of this Act shall be open for conditional sale by selection in the manner following that is to say Any person may upon any Land Office day tender to the Land Agent a written application for the conditional purchase of any such lands not less than forty acres nor more than three hundred and twenty acres at the price of twenty shillings per acre and may pay to such Land Agent a deposit of twenty-five per centum of the purchase money " thereof " And if no other like application and deposit for the same land be tendered at the same time such person shall be declared the conditional purchaser thereof at the price aforesaid Provided that if more than one such application and deposit for the same land or any part thereof shall be tendered at the same time to the Land Agent he shall unless all such applications but one be immediately withdrawn forthwith proceed to determine by lot in such manner as may be prescribed by regulations made under this Act which of the applicants shall become the purchaser.—(*Read.*)

Amendment proposed,—That all the words after the words " Crown Lands," down to the word " being," inclusive, be omitted, with the view of inserting in their stead the words " other than." (*Mr. Robertson.*)

Question put,—That the words proposed to be omitted stand part of the Clause.

Committee

Committee divided.

Ayes, 11.

Mr. Watt,	
Mr. Mate,	
Mr. Lord,	
Mr. Meston,	
Mr. Walker,	
Mr. Shepherd,	
Mr. Hay,	
Mr. Piddington,	++
Mr. Rotton,	
Mr. Rusden,	
Mr. Morris,	} Tellers.

Noes, 44.

Mr. Robertson,	Mr. Markham,	
Mr. Arnold,	Mr. Egan,	
Mr. Weekes,	Mr. Cummings,	
Mr. T. Garrett,	Mr. Allen,	
Mr. O'Brien,	Mr. Suttor,	
Mr. Redman,	Mr. Atkinson,	
Mr. J. T. Ryan,	Mr. Buchanan,	
Mr. Walsh,	Mr. Caldwell,	
Mr. Morrice,	Mr. Sutherland,	
Mr. Cunneen,	Mr. Gray,	
Mr. Lewis,	Mr. Hoskins,	
Mr. Peisley,	Mr. Hart,	
Mr. Lackey,	Mr. Irving,	
Mr. Leary,	Mr. Parkes,	
Mr. Dickson,	Mr. Lucas,	
Mr. Dalgleish,	Mr. Windeyer,	
Mr. Daniel,	Mr. Douglas,	
Mr. Stewart,	Mr. Wilson,	
Mr. Lesley,	Mr. C. Cowper, junr.,	
Mr. Flett,	Mr. Raper,	
Mr. Laycock,	Mr. Love,	
Mr. Smart,	Mr. Dick,	} Tellers.

Amendment carried.

And the Clause being further amended, by the insertion of the words "other than,"—also, by inserting after the word "inhabitants," the words "or three miles from the outside boundary of any town containing according to the then last census one thousand inhabitants,"—also, by inserting after the words "water or" the words "from sale,"—and by the omission of the word "other."

No. 10.

Question proposed,—That the Clause, as amended, stand part of the Bill. (*Mr. Robertson.*)

Amendment proposed,—That the word "section" be omitted, with the view of inserting the word "sections." (*Mr. Rotton.*)

Question put,—That the word proposed to be omitted stand part of the Clause.

Committee divided.

Ayes, 43.

Mr. Robertson,	Mr. Cummings,	
Mr. Weekes,	Mr. Flett,	
Mr. Arnold,	Mr. Daniel,	
Mr. Lucas,	Mr. Lackey,	
Mr. Love,	Mr. Leary,	
Mr. Dick,	Mr. Irving,	
Mr. Morrice,	Mr. Markham,	
Mr. Caldwell,	Mr. Stewart,	
Mr. O'Brien,	Mr. Smart,	
Mr. Raper,	Mr. Parkes,	
Mr. J. T. Ryan,	Mr. Driver,	
Mr. Walsh,	Mr. Hart,	
Mr. Lewis,	Mr. Lesley,	
Mr. Redman,	Mr. Buchanan,	
Mr. Windeyer,	Mr. Gray,	
Mr. Cunneen,	Mr. Hoskins,	
Mr. Sutherland,	Mr. Wilson,	
Mr. Peisley,	Mr. C. Cowper,	
Mr. Laycock,	junr.,	
Mr. T. Garrett,	Mr. Douglas,	
Mr. Dalgleish,	Mr. Egan,	
Mr. Meston,	Mr. Atkinson,	} Tellers.

Noes, 6.

Mr. Rotton,	
Mr. Shepherd,	
Mr. Mate,	
Mr. Rusden,	
Mr. Watt,	} Tellers.
Mr. Morris,	

Amendment negatived.

No. 11.

Motion made and Question put,—That the Chairman do now leave the Chair, report progress, and ask leave to sit again to-morrow. (*Mr. Rotton.*)

Committee divided.

Ayes, 13.

Mr. Mate,	
Mr. Lord,	
Mr. Walsh,	
Mr. Morrice,	
Mr. Shepherd,	
Mr. Cummings,	
Mr. Rusden,	
Mr. Smart,	
Mr. Suttor,	
Mr. Hay,	
Mr. Wilson,	
Mr. Rotton,	
Mr. Egan,	} Tellers.

Noes, 35.

Mr. Robertson,	Mr. Ryan,	
Mr. Arnold,	Mr. Stewart,	
Mr. Weekes,	Mr. Flett,	
Mr. Driver,	Mr. Markham,	
Mr. Dick,	Mr. Dalgleish,	
Mr. T. Garrett,	Mr. Redman,	
Mr. O'Brien,	Mr. Lucas,	
Mr. Hart,	Mr. Windeyer,	
Mr. Caldwell,	Mr. Gray,	
Mr. Leary,	Mr. Raper,	
Mr. Buchanan,	Mr. Hoskins,	
Mr. Peisley,	Mr. Atkinson,	
Mr. Lackey,	Mr. Douglas,	
Mr. Lesley,	Mr. Lewis,	
Mr. Cunneen,	Mr. Love,	
Mr. Parkes,	Mr. Morris,	
Mr. Laycock,	Mr. C. Cowper,	
Mr. Sutherland,	junr.,	} Tellers.

No. 12.

No. 12.

Motion made and Question put,—That the Chairman do now leave the Chair.
(*Mr. Rotton.*)

And the Committee continuing to sit until after midnight,—

THURSDAY, 14 FEBRUARY, 1861, A. M.

Committee divided.

Ayes, 16.

Mr. Rotton,
Mr. Egan,
Mr. Dick,
Mr. Lesley,
Mr. Lord,
Mr. Morrice,
Mr. Mate,
Mr. Cummings,
Mr. Watt,
Mr. Rusden,
Mr. Shepherd,
Mr. Smart,
Mr. Suttor,
Mr. Hay,
Mr. Walsh,
Mr. Walker, } Tellers.

Noes, 34.

Mr. Robertson, Mr. Laycock,
Mr. Arnold, Mr. Cunneen,
Mr. Weekes, Mr. Stewart,
Mr. T. Garrett, Mr. Flett,
Mr. O'Brien, Mr. Markham,
Mr. Hart, Mr. Love,
Mr. Douglas, Mr. Windeyer,
Mr. Leary, Mr. Sutherland,
Mr. Parkes, Mr. Raper,
Mr. Lewis, Mr. Caldwell,
Mr. J. T. Ryan, Mr. Hoskins,
Mr. Peisley, Mr. Wilson,
Mr. Lucas, Mr. Atkinson,
Mr. Redman, Mr. Gray,
Mr. Lackey, Mr. C. Cowper, junr.,
Mr. Buchanan, Mr. Driver, } Tellers.
Mr. Dalgleish, Mr. Morris, }

No. 13.

Motion made and Question put,—That the Chairman do now leave the Chair,
report progress, and ask leave to sit again to-morrow. (*Mr. Walsh.*)

Committee divided.

Ayes, 18.

Mr. Morris, Mr. Rotton,
Mr. Cummings, Mr. Wilson, } Tellers.
Mr. Morrice, Mr. Walker, }
Mr. Mate,
Mr. Egan,
Mr. Windeyer,
Mr. Walsh,
Mr. Meston,
Mr. Watt,
Mr. Busden,
Mr. Laycock,
Mr. Shepherd,
Mr. Smart,
Mr. Suttor,
Mr. Hay,

Noes, 28.

Mr. Robertson, Mr. Markham,
Mr. Weekes, Mr. Cunneen,
Mr. Arnold, Mr. Stewart,
Mr. Driver, Mr. Flett,
Mr. O'Brien, Mr. Lackey,
Mr. Terry, Mr. Atkinson,
Mr. Lewis, Mr. Raper,
Mr. Peisley, Mr. Love,
Mr. Dalgleish, Mr. Hoskins,
Mr. Buchanan, Mr. Gray,
Mr. Caldwell, Mr. Lesley,
Mr. Douglas, Mr. T. Garrett, } Tellers.
Mr. Redman, Mr. C. Cowper, }
Mr. Parkes, junr., }
Mr. Sutherland,

And a further Motion, that the Chairman do now leave the Chair, having been put
and negatived, the Chairman, on motion of Mr. Robertson, left the Chair to
report progress, and ask leave to sit again to-morrow.

THURSDAY, 14 FEBRUARY, 1861.

Same Bill:—

No. 14.

Motion made,—That Clause 12, as amended, stand part of the Bill. (*Mr. Robertson.*)

Amendment proposed,—That there be inserted after the word "thereof," the
words "and the balance if the land has been previously surveyed within one
" year from the date of selection otherwise on the completion of the survey
" of such selection Provided that the survey thereof shall be made by the
" Government within one year from the date of selection Provided neverthe-
" less that if within one year from the date of selection the selector or his
" alienee shall have cleared and cultivated one-half of the land or made
" improvements thereon to the value of fifteen shillings per acre to be deter-
" mined by appraisement the balance of the purchase money shall be remitted."
(*Mr. Rotton.*)

Question put,—That the words proposed to be inserted be so inserted.

Committee divided.

Ayes, 3.

Mr. Piddington,
Mr. Rotton, } Tellers.
Mr. Watt, }

Noes, 27.

Mr. Robertson, Mr. Laycock,
Mr. Weekes, Mr. Cunneen,
Mr. O'Brien, Mr. T. Garrett,
Mr. Morris, Mr. Wilson,
Mr. Dalgleish, Mr. Cummings,
Mr. Suttor, Mr. Lucas,
Mr. Lesley, Mr. Walsh,
Mr. Sutherland, Mr. Raper,
Mr. Parkes, Mr. Hoskins,
Mr. Lewis, Mr. Windeyer,
Mr. Morrice, Mr. Smart,
Mr. Leary, Mr. M'Arthur, } Tellers.
Mr. Flett, Mr. Love, }
Mr. Terry,

Amendment negatived.

No. 15.

No. 15.

Clause 15. If at the time of conditional purchase of any Crown Land under sections twelve and thirteen of this Act such land shall not have been surveyed by the Government temporary boundaries thereof "may" be determined by the conditional purchaser who shall within "one month" occupy the land And any dispute between such purchaser and any other "person" claiming any interest therein respecting such boundaries shall be settled by "arbitration."—(Read.)

Motion made,—That the Clause as read stand part of the Bill. (Mr. Robertson.) (And the Clause having been amended by substituting the word "shall" for the word "may")—

Amendment proposed,—That the words "one month" be omitted, with the view of inserting the words "six months." (Mr. Sutherland.)

Question put,—That the words proposed to be omitted stand part of the Clause. Committee divided.

Ayes, 37.

Mr. Weekes,	Mr. Flett,	} Tellers.
Mr. Robertson,	Mr. Laycock.	
Mr. Arnold,	Mr. Lesley,	
Mr. Cowper,	Mr. Macleay,	
Mr. Redman,	Mr. Hay,	
Mr. O'Brien,	Mr. Mate,	
Mr. Haworth,	Mr. Hart,	
Mr. Dickson,	Mr. Irving,	
Mr. Wilson,	Mr. Meston,	
Mr. Morrice,	Mr. Piddington,	
Mr. Walker,	Mr. Smart,	
Mr. J. T. Ryan,	Mr. Suttor,	
Mr. Atkinson,	Mr. Gray,	
Mr. Hoskins,	Mr. Morris,	
Mr. Leary,	Mr. Rusden,	
Mr. Parkes,	Mr. Raper,	
Mr. Shepherd,	Mr. Rotton,	
Mr. Stewart,	Mr. Daniel,	
Mr. Lackey,		

Noes, 16.

Mr. Love,	} Tellers.
Mr. Windeyer,	
Mr. Walsh,	
Mr. Caldwell,	
Mr. Egan,	
Mr. Cunneen,	
Mr. Sutherland,	
Mr. Dalgleish,	
Mr. Peisley,	
Mr. Lewis,	
Mr. Allen,	
Mr. Buchanan,	
Mr. Lucas,	
Mr. Cummings,	
Mr. McArthur,	
Mr. T. Garrett,	

No. 16.

Motion made,—That the Clause, as amended, stand part of the Bill. (Mr. Robertson.)

Amendment proposed,—That there be inserted after the word "person," the words "other than a holder in fee or his alienee." (Mr. Walsh.)

Question put,—That the words proposed to be inserted stand part of the Clause. Committee divided.

Ayes, 39.

Mr. Robertson,	Mr. Parkes,	} Tellers.
Mr. Weekes,	Mr. Hay,	
Mr. Walsh,	Mr. Hart,	
Mr. Haworth,	Mr. Smart,	
Mr. O'Brien,	Mr. Suttor,	
Mr. Morrice,	Mr. Morris,	
Mr. Lewis,	Mr. Gray,	
Mr. Atkinson,	Mr. Mate,	
Mr. Peisley,	Mr. Egan,	
Mr. Stewart,	Mr. Hoskins,	
Mr. Piddington,	Mr. Wilson,	
Mr. Windeyer,	Mr. Rusden,	
Mr. Flett,	Mr. Daniel,	
Mr. Allen,	Mr. Cowper, junr.,	
Mr. Rotton,	Mr. Irving,	
Mr. Laycock,	Mr. J. T. Ryan,	
Mr. Lesley,	Mr. Leary,	
Mr. Cummings,	Mr. Dickson,	
Mr. Shepherd,	Mr. Walker,	
Mr. Meston,		

Noes, 9.

Mr. Raper,	} Tellers.
Mr. Sutherland,	
Mr. T. Garrett,	
Mr. Redman,	
Mr. Buchanan,	
Mr. Love,	
Mr. Dalgleish,	
Mr. Caldwell,	
Mr. Lucas,	

Clause, after further amendment, carried.
Progress reported—to sit again.

1861.

Legislative Assembly.

NEW SOUTH WALES.

No. 4.

WEEKLY REPORT OF DIVISIONS
IN
COMMITTEE OF THE WHOLE HOUSE.

(EXTRACTED FROM THE MINUTES.)

SESSION OF 1861.

WEDNESDAY, 20 FEBRUARY, 1861.

No. 1.

SUPPLY.—ESTIMATES-IN-CHIEF.

Department of Public Works.

Question proposed,—That there be granted to Her Majesty, a sum not exceeding £4,167 (being less than Estimate by £700—reduction in Salary of Under Secretary and Commissioner for Internal Communication), to defray the Salaries and Contingencies of the Department of Public Works, for the year 1861. (*Mr. Arnold.*)

Motion made and Question put,—That the item £1,500, for Salary to Secretary for Public Works, be reduced by £300. (*Mr. Lucas.*)

Committee divided.

Ayes, 8.
Mr. Lewis,
Mr. Terry,
Mr. Piddington,
Mr. Shepherd,
Mr. Love,
Mr. Raper,
Mr. Dalglish, } Tellers.
Mr. Lucas, }

Noes, 34.
Mr. Cowper, Mr. Allen,
Mr. Robertson, Mr. Laycock,
Mr. Weekes, Mr. Lesley,
Mr. Parkes, Mr. Markham,
Mr. Mate, Mr. Hart,
Mr. O'Brien, Mr. Windeyer,
Capt. Moriarty, Mr. Rotton,
Mr. Driver, Mr. Morris,
Mr. Stewart, Mr. Dickson,
Mr. Caldwell, Mr. Hannell,
Mr. Leary, Mr. T. Garrett,
Mr. Lackey, Mr. McArthur,
Mr. Peasley, Mr. Cummings,
Mr. Flett, Mr. Watt,
Mr. Buchanan, Mr. C. Cowper, } Tellers.
Mr. Douglas, junr., }
Mr. Sutherland, Mr. Hoskins, }
Mr. Morrice,

Question, as first proposed, put and carried.

No. 2.

Department of Internal Communication.

Question proposed,—That there be granted to Her Majesty, a sum not exceeding £3,620 (being less than Estimate by £100—reduction in Salary of the Accountant), to defray the Salaries and Contingencies of the General Establishment of the Railway Branch, for the year 1861. (*Mr. Arnold.*)

Motion made and Question put,—That the item £500, as reduced, for Salary for the Accountant, be further reduced by the sum of £100. (*Mr. Lucas.*)

Committee

Committee divided.

Ayes, 12.

Mr. Lewis,
Mr. Leary,
Mr. Irving,
Mr. Terry,
Mr. Raper,
Mr. Sutherland,
Mr. Stewart,
Mr. Shepherd,
Mr. Love,
Mr. T. Garrett,
Mr. Dalglish, } Tellers.
Mr. Lucas, }

Noes, 29.

Mr. Arnold, Mr. Laycock,
Mr. Weekes, Mr. Morrice,
Mr. Hoskins, Mr. Hart,
Mr. McArthur, Mr. Walker,
Mr. Haworth, Mr. Rusden,
Mr. Piddington, Mr. Lord,
Mr. O'Brien, Mr. Rotton,
Mr. Allen, Mr. Morris,
Capt. Moriarty, Mr. Dickson,
Mr. Redman, Mr. C. Cowper,
Mr. Peisley, junr.,
Mr. Lackey, Mr. Cummings,
Mr. Markham, Mr. Douglas,
Mr. Lesley, Mr. Hannell, } Tellers.
Mr. Caldwell, Mr. Windeyer, }

Question, as first proposed, put and carried.

No. 3.

Existing Lines—Establishments.

Question proposed,—That there be granted to Her Majesty, a sum not exceeding £44,725 (being less than Estimate by £200 for one Goods Clerk, and £13,000 for materials and general stores, firewood, oil and waste), to defray Salaries and Contingencies of Existing Lines—Establishments, for the year 1861. (*Mr. Arnold.*)

Motion made and Question put,—That the item £350, Salary for Traffic Inspector, Southern and Western Lines, be omitted. (*Mr. Dalglish.*)

Committee divided.

Ayes, 25.

Mr. Dalglish, Mr. Sutherland,
Mr. Peisley, Mr. T. Garrett,
Mr. Piddington, Mr. Caldwell,
Mr. Hannell, Mr. Love,
Mr. Walker, Mr. Lucas,
Mr. Cummings, Mr. Windeyer,
Mr. Egan, Mr. Parkes,
Mr. Daniel, Mr. Hart,
Mr. Gray, Mr. Raper,
Mr. Leary, Mr. Lewis, } Tellers.
Mr. Stewart, Mr. Lesley, }
Mr. Cunneen, Mr. Wilson, }
Mr. Hoskins, }

Noes, 25.

Mr. Arnold, Mr. Irving,
Mr. Weekes, Mr. Hay,
Mr. O'Brien, Mr. Walsh,
Capt. Moriarty, Mr. Rusden,
Mr. Dickson, Mr. Rotton,
Mr. Allen, Mr. Sutor,
Mr. Redman, Mr. Morris,
Mr. Buchanan, Mr. C. Cowper,
Mr. Neston, junr.,
Mr. Markham, Mr. Watt,
Mr. Flett, Mr. Mate,
Mr. Laycock, Mr. Atkinson, } Tellers.
Mr. Morrice, Mr. Lackey, }

Whereupon the Chairman gave his casting vote with the Ayes, and the item was accordingly omitted.

No. 4.

Question, as amended, proposed.

Motion made and Question put,—That the item £500, contingent sum to cover 1 per cent. on net receipts to Managers, be omitted. (*Mr. Caldwell.*)

Committee divided.

Ayes, 21.

Mr. Caldwell, Mr. Piddington,
Mr. Dalglish, Mr. Windeyer,
Mr. Allen, Mr. Hoskins,
Mr. Cummings, Mr. Lewis,
Mr. Parkes, Mr. Sutherland,
Mr. Egan, Mr. T. Garrett,
Mr. Lesley, Mr. Lucas, } Tellers.
Mr. Lackey, Mr. Love, }
Mr. Leary,
Mr. Cunneen,
Mr. Stewart,
Mr. Wilson,
Mr. Raper,

Noes, 23.

Mr. Robertson, Mr. Peisley,
Mr. Arnold, Mr. Hart,
Mr. Weekes, Mr. Gray,
Mr. O'Brien, Mr. Irving,
Mr. Hannell, Mr. Rotton,
Capt. Moriarty, Mr. Sutor,
Mr. Redman, Mr. Watt,
Mr. Atkinson, Mr. Mate, } Tellers.
Mr. Morrice, Mr. C. Cowper, }
Mr. Buchanan, junr., }
Mr. Markham, Mr. Morris, }
Mr. Flett,
Mr. Laycock,

Question, as previously amended, put and carried.

THURSDAY, 21 FEBRUARY, 1861.

No. 5.

INTERNAL COMMUNICATION.

New Works.

Motion made and Question put,—That there be granted to Her Majesty, for the service of the year 1861, a sum not exceeding £20,000, for extension of Northern Railway Terminus at Morpeth. (*Mr. Arnold.*)

Committee

Committee divided.

Ayes, 15.

Mr. Robertson,
Mr. Arnold,
Mr. Douglas,
Mr. Rusden,
Mr. O'Brien,
Mr. Markham,
Mr. Love,
Mr. Caldwell,
*Mr. Morrice,
Mr. Parkes,
Mr. Allen,
Mr. Buchanan,
Mr. Driver,
Mr. Dickson,
Mr. Blake, } Tellers.

Noes, 35.

Mr. Mate,
Mr. J. T. Ryan,
Mr. McArthur,
Mr. Suttor,
Mr. Leary,
Mr. Lesley,
Mr. Lewis,
Mr. Redman,
Mr. Terry,
*Mr. Morrice,
Mr. Atkinson,
Mr. Laycock,
Mr. Peisley,
Mr. Irving,
Mr. Wilson,
Mr. Lord,
Mr. Piddington,
Mr. Macleay,
Mr. Watt,
Mr. Hoskins,
Mr. Windeyer,
Mr. Hay,
Mr. Raper,
Mr. Rotton,
Mr. Cummings,
Mr. Lucas,
Capt. Moriarty,
Mr. Cunneen,
Mr. Stewart,
Mr. Smart,
Mr. Shepherd,
Mr. Suttor,
Mr. Egan,
Mr. Allen,
Mr. Dalgleish, } Tellers.

* So in Tellers' List.

† So in Tellers' List.

Motion negatived.

No. 6.

Public Buildings.

Question proposed,—That there be granted to Her Majesty, a sum not exceeding £58,202 (being less than Estimate by item £750 for the erection of a Custom House at Albury, and item £750 for the erection of a Custom House at Moama,—withdrawn), to defray the cost of Erection and Repairs of Public Buildings, for the year 1861. (Mr. Arnold.)

Motion made and Question put,—That the item £25,000, for providing Court Houses, Lock-ups, and Gaols, under the District Courts Act, be postponed. (Mr. Hart.)

Committee divided.

Ayes, 5.

Mr. Parkes,
Mr. Windeyer,
Mr. Morris,
Mr. Walsh,
Mr. Hart, } Tellers.

Noes, 25.

Mr. Robertson,
Mr. Arnold,
Mr. Redman,
Mr. Dalgleish,
Mr. Mate,
Capt. Moriarty,
Mr. O'Brien,
Mr. Leary,
Mr. Lesley,
Mr. Suttor,
Mr. Daniel,
Mr. Lewis,
Mr. Peisley,
Mr. T. Garrett,
Mr. Sutherland,
Mr. Cummings,
Mr. Lucas,
Mr. Markham,
Mr. Hannell,
Mr. Buchanan,
Mr. Caldwell,
Mr. Driver,
Mr. C. Cowper,
junr.,
Mr. Rotton,
Mr. Hoskins, } Tellers.

Amendment negatived.

And the Committee continuing to sit until after midnight,—

FRIDAY, 22 FEBRUARY, 1861, A.M.

No. 7.

Question again stated.

Motion made and Question put,—That the Chairman do now leave the Chair, report progress, and ask leave to sit again at a later period of the day. (Mr. Hart.)

Committee divided.

Ayes, 9.

Mr. Mate,
Mr. Hart,
Mr. Cummings,
Mr. Daniel,
Mr. Morris,
Mr. Sutherland,
Mr. Lucas,
Mr. Parkes,
Mr. Windeyer, } Tellers.

Noes, 17.

Mr. Robertson,
Mr. Arnold,
Mr. Cowper,
Mr. Lesley,
Capt. Moriarty,
Mr. O'Brien,
Mr. Leary,
Mr. Suttor,
Mr. Lewis,
Mr. Hannell,
Mr. Markham,
Mr. Buchanan,
Mr. Peisley,
Mr. T. Garrett,
Mr. Driver,
Mr. Dalgleish,
Mr. Hoskins, } Tellers.

Motion negatived.—And the item £6,000, for Addition to Lunatic Asylum, Tarban Creek, having been withdrawn, Question—that £52,202 be granted—put and carried.

Progress reported; to sit again.

No. 8.

CHURCH AND SCHOOL LANDS BILL OF 1861.

Clause 1. All the Lands originally granted to the Church and School Corporation and known as the "Church and School Lands" shall be deemed to be and are and shall be Public Lands of the Crown to all intents and purposes in like manner as if the same had never been granted as aforesaid or granted or dedicated to any Corporation or person or to or for any public or other purpose whatsoever anything in the said Charter or in any Act or other instrument or document to the contrary notwithstanding.—(Read.)

Question proposed,—That the Clause, as read, stand part of the Bill. (Mr. Wilson.)

Amendment

Amendment proposed,—That the following proviso be added at the end of the Clause, "Provided that nothing herein contained shall be held to affect existing contracts." (*Mr. Rotton.*)

Motion made and Question put,—That the Chairman do now leave the Chair, report progress, and ask leave to sit again on Friday next. (*Mr. Dickson.*)
Committee divided.

Ayes, 29.

Mr. Cowper,	Mr. Allen,	
Capt. Moriarty,	Mr. Rotton,	
Mr. Morrice,	Mr. Flett,	
Mr. Markham,	Mr. Atkinson,	
Mr. Walsh,	Mr. Leary,	
Mr. Lackey,	Mr. Suttor,	
Mr. Dickson,	Mr. Hart,	
Mr. Stewart,	Mr. J. T. Ryan,	
Mr. Mate,	Mr. Caldwell,	
Mr. Lucas,	Mr. Dick,	
Mr. Shepherd,	Mr. Rusden,	
Mr. Egan,	Mr. Daniel,	
Mr. Douglas,	Mr. Blake,	} Tellers.
Mr. Sutherland,	Mr. Redman,	
Mr. Love,		

Noes, 15.

Mr. O'Brien,	
Mr. Watt,	
Mr. Cummings,	
Mr. Piddington,	
Mr. Wilson,	
Mr. Smart,	
Mr. Buchanan,	
Mr. Driver,	
Mr. Hoskins,	
Mr. Laycock,	
Mr. Lewis,	
Mr. Hay,	
Mr. Raper,	} Tellers.
Mr. Dalglish,	
Mr. Parkes,	

Progress reported ; to sit again.

1861.

Legislative Assembly.

NEW SOUTH WALES.

No. 5.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE HOUSE.

(EXTRACTED FROM THE MINUTES.)

SESSION OF 1861.

WEDNESDAY, 27 FEBRUARY, 1861.

No. 1.

SUPPLY—ESTIMATES-IN-CHIEF.

Harbors and River Navigation—Public Works—(To be provided for by Loan.)

Question proposed,—That there be granted to Her Majesty, a sum not exceeding £51,515, to defray the cost of Public Works in the Department of Harbors and River Navigation (to be provided for by Loan), for the year 1861. (Mr. Arnold)

Motion made and Question put,—That the item £15,265, for new Wharf at Wolloomooloo Bay, be omitted. (Mr. Dickson.) Committee divided.

Ayes, 7.

- Mr. Mate,
 - Mr. Hart,
 - Mr. Rusden,
 - Mr. Cummings,
 - Mr. Lucas,
 - Mr. O'Brien,
 - Mr. Dickson,
- } Tellers.

Noes, 37.

- Mr. Robertson,
 - Mr. Arnold,
 - Mr. Driver,
 - Mr. C. Cowper,
 - junr.,
 - Mr. Hoskins,
 - Capt. Moriarty,
 - Mr. Watt,
 - Mr. Windeyer,
 - Mr. Terry,
 - Mr. McArthur,
 - Mr. Stewart,
 - Mr. Dalgleish,
 - Mr. Parkes,
 - Mr. Leary,
 - Mr. Lackey,
 - Mr. J. T. Ryan,
 - Mr. Hannell,
 - Mr. Lewis,
- Mr. Poisley,
 - Mr. Daniel,
 - Mr. Raper,
 - Mr. Buchanan,
 - Mr. Walsh,
 - Mr. Irving,
 - Mr. Sutherland,
 - Mr. Laycock,
 - Mr. Flett,
 - Mr. Caldwell,
 - Mr. Wilson,
 - Mr. Suttor,
 - Mr. Morris,
 - Mr. Walker,
 - Mr. Piddington,
 - Mr. T. Garrett,
 - Mr. Hay,
 - Mr. Rotton,
 - Mr. Egan,
- } Tellers.

Original Estimate put and carried.

No. 2.

Dry Dock Establishment.

Question proposed,—That there be granted to Her Majesty, a sum not exceeding £8,135, to defray salaries, works, and materials for the Fitz Roy Dock Establishment, for the year 1861. (Mr. Arnold.)

Debate ensued.

Motion made and Question put,—That the Estimate be postponed. (Mr. Arnold.) Committee

Committee divided.

Ayes, 18.			Noes, 23.		
Mr. Robertson,	Mr. Mate,	} Tellers.	Mr. Raper,	Mr. Flett,	} Tellers.
Mr. Arnold,	Mr. Lucas,		Mr. Hoskins,	Mr. Suttor,	
Capt. Moriarty,	Mr. Love,		Mr. Terry,	Mr. Morris,	
Mr. O'Brien,	Mr. T. Garrett,		Mr. Irving,	Mr. Walker,	
Mr. Caldwell,	Mr. Driver,		Mr. Parkes,	Mr. Cummings,	
Mr. McArthur,	Mr. Egan,		Mr. Walsh,	Mr. Rusden,	
Mr. Lewis,			Mr. Lackey,	Mr. Hay,	
Mr. Peisley,			Mr. Hannoll,	Mr. Sutherland,	
Mr. Wilson,			Mr. C. Cowper,	Mr. Windeyer,	
Mr. Leary,			junr.,	Mr. Stewart,	
Mr. Dalgleish,			Mr. Rotton,	Mr. Watt,	
Mr. Hart,			Mr. Laycock,	Mr. Daniel,	

Original Estimate put and carried.

No. 3.

CROWN LANDS ALIENATION BILL.

Clause XVI. Crown Lands conditionally purchased under sections twelve and thirteen of this Act shall if measured previously to such purchase be taken in portions as measured if not exceeding three hundred and twenty acres and if unmeasured and having frontage to any river creek road or intended road shall if within the first class Settled Districts have a depth of not less than twenty chains and otherwise shall have a depth of not less than forty chains and shall have their boundaries other than the frontages directed to the cardinal points by compass and if having no frontages as aforesaid shall be measured in square blocks and with boundaries directed to such cardinal points Provided that should it seem to the Minister to be expedient the boundaries of portions having frontages may be made approximately at right angles with the frontage and otherwise modified and the boundaries of portions having no frontages may be modified and necessary roadways and water reserves excluded from such measurement.—(*Read.*)

Question proposed,—That the Clause, as read, stand part of the Bill. (*Mr. Robertson.*)

Motion made and Question put,—That the Chairman do now leave the Chair, report progress, and ask leave to sit again to-morrow.

Committee divided.

Ayes, 29.			Noes, 16.		
Mr. Sutherland,	Mr. Meston,	} Tellers.	Mr. Robertson,	Mr. Lesley,	} Tellers.
Mr. Raper,	Mr. Daniel,		Mr. Arnold,	Mr. Windeyer,	
Mr. O'Brien,	Mr. Leary,		Mr. Rotton,	Mr. J. T. Ryan,	
Mr. Dickson,	Mr. Lucas,		Mr. Cummings,	Mr. Terry,	
Capt. Moriarty,	Mr. Watt,		Mr. Parkes,	Mr. Laycock,	
Mr. Haworth,	Mr. Hannell,		Mr. Peisley,	Mr. Flett,	
Mr. Caldwell,	Mr. Mate,		Mr. Lewis,	Mr. Dalgleish,	
Mr. Walsh,	Mr. Allen,		Mr. Buchanan,	Mr. T. Garrett,	
Mr. Love,	Mr. C. Cowper,				
Mr. Stewart,	junr.,				
Mr. Hoskins,	Mr. Suttor,				
Mr. Lackey,	Mr. Hay,				
Mr. Piddington,	Mr. Markham,				
Mr. McArthur,	Mr. Rusden,				
Mr. Egan,	Mr. Morris,				

No. 4.

PITT-STREET TRAMWAY BILL OF 1861.

Clause IV. For the purposes of this Act so much of the surface of the land over which the said Tramroad shall pass as is required for the construction repair and completion thereof together with all necessary rights of ingress and regress for all such purposes shall by virtue of this Act and without any other assurance in the law vest in the said Commissioner of Railways for the time being.—*Read.*

Question proposed,—That the Clause, as read, stand part of the Bill. (*Mr. Arnold.*)

Afterwards proposed,—That the Clause be amended by adding at the end thereof the following proviso:—"Provided that nothing herein contained shall prevent the Municipal Council of the City of Sydney from entering on the said land and making excavations for the purpose of laying maintaining repairing and making of any sewers water mains or pipes or other works under the management or control of the said Municipality being thereunder Provided also that the said Municipality shall at their cost and charges restore such surface to its state and condition before such entry Provided also that no such entry shall be made unless twenty-four hours notice in writing of such intended entry shall have been previously given to the said Commissioner of Railways." (*Mr. Windeyer.*)

Motion

Motion made and Question put,—That the Chairman do now leave the Chair, report progress, and ask leave to sit again on Wednesday next. (*Mr. Windeyer.*)
Committee divided.

Ayes, 22.

Mr. Sutherland,	Mr. Mate,	} Tellers.
Mr. McArthur,	Mr. Shepherd,	
Mr. Dalgleish,	Mr. Walsh,	
Mr. Raper,	Mr. Parkes,	
Mr. Windeyer,	Mr. Rusden,	
Mr. Stewart,	Mr. Piddington,	
Mr. Cummings,	Mr. Lucas,	
Mr. Allen,	Mr. Caldwell,	
Mr. Lesley,	Mr. O'Brien,	
Mr. Hannell,	Mr. Walker,	
Mr. Lewis,	Mr. Driver,	

Noes, 25.

Mr. Robertson,	Mr. Laycock,	} Tellers.
Mr. Arnold,	Mr. Lackey,	
Capt. Moriarty,	Mr. Rotton,	
Mr. T. Garrett,	Mr. Dick,	
Mr. Leary,	Mr. Hoskins,	
Mr. Atkinson,	Mr. Daniel,	
Mr. Love,	Mr. Wilson,	
Mr. Peisley,	Mr. Hart,	
Mr. Terry,	Mr. Dickson,	
Mr. C. Cowper,	Mr. Suttor,	
junr.,	Mr. Buchanan,	
Mr. Markham,	Mr. Hay,	
Mr. Flett,	Mr. Morris,	

No. 5.

Debate on proposed amendment resumed ;—

And a Motion, That the Chairman do now leave the Chair, having been put and negatived,—

Motion made and Question put,—That the Chairman do now leave the Chair, report progress, and ask leave to sit again on Wednesday next. (*Mr. Dalgleish.*)
Committee divided.

Ayes, 24.

Mr. O'Brien,	Mr. Driver,	} Tellers.
Mr. Lucas,	Mr. Mate,	
Mr. Raper,	Mr. Walsh,	
Mr. Sutherland,	Mr. Shepherd,	
Mr. McArthur,	Mr. Piddington,	
Mr. Dalgleish,	Mr. Lewis,	
Mr. Stewart,	Mr. Cummings,	
Mr. Walker,	Mr. Hannell,	
Mr. Parkes,	Mr. Rusden,	
Mr. Windeyer,	Mr. Allen,	
Mr. Douglas,	Mr. Love,	
Mr. Lesley,	Mr. Caldwell,	

Noes, 26.

Mr. Robertson,	Mr. Laycock,	} Tellers.
Mr. Arnold,	Mr. Lackey,	
Mr. C. Cowper,	Mr. Rotton,	
junr.,	Mr. Daniel,	
Mr. Dick,	Mr. Wilson,	
Capt. Moriarty,	Mr. Hart,	
Mr. Buchanan,	Mr. Morris,	
Mr. Irving,	Mr. Dickson,	
Mr. Leary,	Mr. Suttor,	
Mr. Peisley,	Mr. Hay,	
Mr. Terry,	Mr. Hoskins,	
Mr. Watt,	Mr. T. Garrett,	
Mr. Markham,	Mr. Flett,	

After further Debate, progress reported,—to sit again.

No. 6.

COMMISSIONER AT NEWCASTLE APPOINTMENT BILL.

Clause 1. It shall be lawful for the Chief Justice of the Supreme Court to appoint from time to time by Commission under his hand and the Seal of the said Court some fit "person" residing at Newcastle or within five miles thereof to be a Commissioner of the said Court for the purposes of this Act which Commissioner shall at the instance of any Plaintiff have power to issue Writs of Summons and of *Capias ad respondendum* in the said Court against any Defendant about to depart out of the Colony from the said Port of Newcastle in cases where by law an arrest upon *mesne* process is now allowed in an action in the said Court and every such Writ of *capias* shall (except where hereby otherwise provided) have the same force and effect as an ordinary Writ of *Capias ad respondendum* issued out of the said Court at Sydney directed to the Sheriff.—(*Read.*)

Question proposed,—That the Clause, as read, stand part of the Bill. (*Mr. Walsh.*)

Motion made and Question put,—That the Chairman do now leave the Chair. (*Mr. Hart.*)

Committee divided.

Ayes, 11.

Mr. T. Garrett,	} Tellers.
Mr. Dalgleish,	
Mr. Markham,	
Mr. Gray,	
Mr. Raper,	
Mr. Cummings,	
Mr. Buchanan,	
Mr. Hoskins,	
Mr. Blake,	
Mr. Hart,	
Mr. Driver,	

Noes, 23.

Mr. Robertson,	Mr. Gunneen,	} Tellers.
Mr. Arnold,	Mr. Flett,	
Mr. O'Brien,	Mr. Leary,	
Mr. Sutherland,	Mr. Parkes,	
Mr. Love,	Mr. Lucas,	
Mr. Meston,	Mr. Walsh,	
Mr. Lesley,	Mr. Mate,	
Mr. Caldwell,	Mr. Hay,	
Mr. McArthur,	Mr. Suttor,	
Mr. Terry,	Mr. Hannell,	
Mr. Smart,	Mr. C. Cowper,	
Mr. Lackey,	junr.,	

No. 7.

Question proposed,—That the Clause, as read, stand part of the Bill. (*Mr. Walsh.*)

Amendment proposed,—That the word "person" be omitted, with the view of inserting the word "persons." (*Mr. T. Garrett.*)

Question—That the word proposed to be omitted stand part of the Clause—put and carried in the *negative*.

Question—That the word proposed to be inserted be so inserted—put.

Committee

Committee divided.

Ayes, 19.

Mr. Robertson,	Mr. McArthur,	} Tellers.
Mr. Walsh,	Mr. T. Garrett,	
Mr. Lesley,	Mr. C. Cowper,	
Mr. Arnold,	junr.,	
Mr. Sutherland,	Mr. Terry,	
Mr. Love,	Mr. Suttor,	
Mr. Mate,	Mr. Caldwell,	
Capt. Moriarty,	Mr. Hannell,	
Mr. Parkes,		
Mr. Smart,		
Mr. Piddington,		
Mr. Hay,		

Noes, 12.

Mr. Blake,	} Tellers.
Mr. Cummings,	
Mr. Cunneen,	
Mr. Stewart,	
Mr. Markham,	
Mr. Hoskins,	
Mr. Raper,	
Mr. Laycock,	
Mr. Lucas,	
Mr. Buchanan,	
Mr. Hart,	
Mr. Driver,	

And the Clause being further amended, extending its operations to the Port of Eden and the Town of Albury,—

No. 8.

Motion made and Question put,—That the Clause, as amended, stand part of the Bill. (*Mr. Walsh.*)

Committee divided.

Ayes, 16.

Mr. Robertson,	Mr. Stewart,	} Tellers.
Mr. Arnold,	Mr. Piddington,	
Mr. Mate,	Mr. Terry,	
Mr. Sutherland,	Mr. Suttor,	
Mr. Hannell,	Mr. Love,	
Mr. Caldwell,	Mr. T. Garrett,	
Mr. Parkes,	Mr. Walsh,	
Mr. Smart,	Mr. Lesley,	

Noes, 12.

Mr. Cunneen,	Mr. Hoskins,	} Tellers.
Mr. Hart,	Mr. Gray,	
Mr. Markham,	Mr. Cummings,	
Mr. Dickson,	Mr. Lucas,	
Mr. Raper,	Mr. Blake,	
Mr. Dalgleish,	Mr. Driver,	

And the Bill having been further amended in Clause 2, and in the Preamble, and the Title having been altered,—

No. 9.

Motion made and Question put,—That the Chairman do now leave the Chair, and report the Bill with amendments, and specially that the Title had been amended, so as to read thus:—" *A Bill to authorize the appointment of Commissioners to issue Writs of Summons and Arrest at Newcastle Eden and "Albury."* (*Mr. Walsh.*)

Committee divided.

Ayes, 31.

Mr. Walsh,	Mr. Shepherd,	} Tellers.
Mr. Watt,	Mr. Hoskins,	
Mr. Mate,	Mr. Markham,	
Mr. Wilson,	Mr. Laycock,	
Mr. Robertson,	Mr. Sutherland,	
Mr. Caldwell,	Mr. Terry,	
Capt. Moriarty,	Mr. Douglas,	
Mr. Lewis,	Mr. T. Garrett,	
Mr. Daniel,	Mr. Love,	
Mr. Piddington,	Mr. Suttor,	
Mr. Hannell,	Mr. Irving,	
Mr. Peisley,	Mr. Buchanan,	
Mr. Raper,	Mr. Rotton,	
Mr. J. T. Ryan,	Mr. Lesley,	
Mr. Parkes,	Mr. Dick,	
Mr. Leary,		

Noes, 3.

Mr. O'Brien,	} Tellers.
Mr. Egan,	
Mr. Lucas,	

The Chairman left the Chair accordingly.

No. 10.

CHURCH AND SCHOOL LANDS BILL, 1861.

Clause 1. All the Lands originally granted to the Church and School Corporation and known as the "Church and School Lands" shall be deemed to be and are and shall be Public Lands of the Crown to all intents and purposes in like manner as if the same had never been granted as aforesaid or granted or dedicated to any Corporation or person or to or for any public or other purpose whatsoever anything in the said Charter or in any Act or other instrument or document to the contrary notwithstanding. (*Read.*)

And the following proviso, on motion of Mr. Rotton, having been added to the Clause, viz. :—" Provided that nothing herein contained shall be held to affect "existing contracts."

Motion made and Question put,—That the Clause, as amended, stand part of the Bill. (*Mr. Wilson.*)

Committee divided.

Ayes, 32.

- | | | | |
|-----------------|-----------------|---|----------|
| Mr. Robertson, | Mr. Lesley, | } | Tellers. |
| Mr. Rotton, | Mr. Hoskins, | | |
| Mr. Dick, | Mr. Macleay, | | |
| Mr. O'Brien, | Mr. Shepherd, | | |
| Capt. Moriarty, | Mr. Piddington, | | |
| Mr. Leary, | Mr. Daniel, | | |
| Mr. Lewis, | Mr. Suttor, | | |
| Mr. Markham, | Mr. Buchanan, | | |
| Mr. Hannell, | Mr. Wilson, | | |
| Mr. Peisley, | Mr. Murray, | | |
| Mr. J. T. Ryan, | Mr. Lucas, | | |
| Mr. Parkes, | Mr. T. Garrett, | | |
| Mr. Moston, | Mr. Sutherland, | | |
| Mr. Love, | Mr. Cummings, | | |
| Mr. Raper, | Mr. Dalglish, | | |
| Mr. Flett, | Mr. Caldwell, | | |

Noes, 4.

- | | | |
|--------------|---|----------|
| Mr. Terry, | } | Tellers. |
| Mr. Douglas, | | |
| Mr. Egan, | | |
| Mr. Smart, | | |

Bill reported with Amendments.

Sydney: Thomas Richards, Government Printer.—1861.

[Price, 2d.]



1870

1871

1872

1873

1874

1875

1876

1877

1878

1879

1880

1881

1882

1883

1884

1885

1886

1887

1888

1889

1890

1891

1892

1893

1894

1895

1896

1897

1861.

Legislative Assembly.

NEW SOUTH WALES.

No. 6.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE HOUSE.

(EXTRACTED FROM THE MINUTES.)

SESSION OF 1861.

WEDNESDAY, 6 MARCH, 1861.

No. 1.

CROWN LANDS ALIENATION BILL OF 1861.

Clause 17. At the expiration of three years from the date of conditional purchase of any such land as aforesaid or within three months thereafter the balance of the purchase money shall be tendered at the office of the Colonial Treasurer together with a declaration under the Act "twentieth" Victoria number nine to the effect that "permanent improvements have been made upon such land" to the value of at least *per centum of the entire cost price thereof* and that such land has been from the date of occupation "the *bonâ fide*" "residence" either continuously of the original purchaser or of some alienee or successive alienees of his whole estate and interest therein and that no such alienation has been made by any holder thereof until after the *bonâ fide* residence thereon of such holder for one whole year at the least And upon the Minister being satisfied by such declaration and the certificate of the Lands Sales Agent or other proper officer of the facts aforesaid the "Colonial Treasurer shall receive and acknowledge the remaining purchase money and "a grant of the fee simple" but with reservation of any minerals which the land may contain shall be made to the then rightful owner Provided that should interest at the rate of *per centum* on the balance of the purchase money be paid within the said three months to the Colonial Treasurer the payment of such balance may be deferred to a period within three months of the first day of January then next ensuing and may be so deferred from "year to year" by payment of such interest during the first quarter of each year But on default of a compliance with the requirements of this section the land shall revert to Her Majesty and be liable to be sold and the deposit shall be forfeited Provided that when any such sale shall result in payment to the Government of more money than would have been payable under the original conditions of purchase the surplus after paying the expenses of sale shall be paid to the party who was entitled to purchase without competition.—

(Read.)

Question proposed,—That the Clause, as read, stand part of the Bill. (Mr. Robertson.)

And the Clause having been amended by substituting the word "ninth" for the word "twentieth,"—

Amendment proposed,—That the words "permanent improvements have been made upon such land" be omitted. (Mr. Lucas.)

Question put,—That the words proposed to be omitted stand part of the Clause.

117—A

Committee

Committee divided.

Ayes, 36.		Noes, 11.	
Mr. Robertson,	Mr. Dalgleish,	Mr. Hay,	
Mr. Weekes,	Mr. Love,	Mr. Morris,	
Mr. Haworth,	Mr. Markham,	Mr. Hart,	
Mr. Arnold,	Mr. T. Garrett,	Mr. Walsh,	
Mr. Hannell,	Mr. Shepherd,	Mr. Piddington,	
Capt. Moriarty,	Mr. Suttor,	Mr. Cunneen,	
Mr. Lewis,	Mr. Douglas,	Mr. Watt,	
Mr. O'Brien,	Mr. Lackey,	Mr. Lucas,	
Mr. Leary,	Mr. Hoskins,	Mr. Stewart,	
Mr. Morrice,	Mr. Buchanan,	Mr. Mate,	} Tellers.
Mr. Caldwell,	Mr. Dickson,	Mr. Rusden,	
Mr. Egan,	Mr. Gray,		
Mr. Lesley,	Mr. Wilson,		
Mr. Flett,	Mr. Raper,		
Mr. Laycock,	Mr. Allen,		
Mr. Terry,	Mr. Parkes,		
Mr. Cummings,	Mr. Driver,		
Mr. Sutherland,	Mr. Dick,		

And the Clause having been further amended by omitting the words "to the value of at least per centum of the entire cost price thereof,"—

No. 2.

Question proposed,—That the Clause, as amended, stand part of the Bill. (Mr. Robertson.)

Amendment proposed,—That the word "in" be inserted before the words "the bona fide" with a view of afterwards substituting the word "occupation" for the word "residence." (Mr. Rusden.)

Question put,—That the word proposed to be inserted be so inserted.

Committee divided.

Ayes, 5.		Noes, 36.	
Mr. Driver,		Mr. Robertson,	Mr. Buchanan,
Mr. Terry,		Mr. Weekes,	Mr. Allen,
Mr. Piddington,		Mr. Morris,	Mr. Raper,
Mr. Hannell,	} Tellers.	Mr. Walsh,	Mr. Hoskins,
Mr. Rusden,		Mr. Mate,	Capt. Moriarty,
		Mr. O'Brien,	Mr. Dick,
		Mr. J. T. Ryan,	Mr. Arnold,
		Mr. Lackey,	Mr. T. Garrett,
		Mr. Wilson,	Mr. Dalgleish,
		Mr. Egan,	Mr. Lucas,
		Mr. Lesley,	Mr. Parkes,
		Mr. Walker,	Mr. Watt,
		Mr. Leary,	Mr. Lewis,
		Mr. Laycock,	Mr. Sutherland,
		Mr. Atkinson,	Mr. Caldwell,
		Mr. Stewart,	Mr. Markham,
		Mr. Suttor,	Mr. Love,
		Mr. Morrice,	Mr. Driver,

No. 3.

Question proposed,—That the Clause, as amended, stand part of the Bill. (Mr. Robertson.)

Amendment proposed,—That the words "Colonial Treasurer shall receive "and acknowledge the remaining purchase money and a grant of the fee simple" be omitted, with a view of inserting, after further amendment in a subsequent part of the Clause, the words "balance of purchase money so tendered shall thereupon be remitted, and the grant of the fee simple shall be made to the then rightful owner, without any other condition whatever." (Mr. Parkes.)

And the Committee continuing to sit until after Midnight,—

THURSDAY, 7 MARCH, 1861, A.M.

Question put,—That the words proposed to be omitted stand part of the Clause.

Committee divided.

Ayes, 39.		Noes, 11.	
Mr. Raper,	Mr. Dick,	Mr. Parkes,	
Mr. Watt,	Mr. Weekes,	Mr. Piddington,	
Mr. Lesley,	Mr. Robertson,	Mr. Walker,	
Mr. Driver,	Mr. Morris,	Mr. Terry,	
Mr. Flett,	Mr. Walsh,	Mr. Gray,	
Mr. Markham,	Mr. Douglas,	Mr. McArthur,	
Mr. Lucas,	Mr. Buchanan,	Mr. Lewis,	
Mr. Hoskins,	Mr. Allen,	Mr. Sutherland,	
Mr. Haworth,	Mr. Hannell,	Mr. Rusden,	
Mr. Cunneen,	Mr. Leary,	Mr. Dickson,	} Tellers.
Mr. Laycock,	Mr. Hart,	Mr. Wilson,	
Mr. Lackey,	Mr. Atkinson,		
Mr. Egan,	Mr. Stewart,		
Mr. Cummings,	Mr. Dalgleish,		
Mr. Caldwell,	Mr. T. Garrett,		
Mr. Morrice,	Mr. Shepherd,		
Mr. Redman,	Mr. Suttor,		
Capt. Moriarty,	Mr. J. T. Ryan,		
Mr. O'Brien,	Mr. Love,		
Mr. Arnold,			

No. 4.

No. 4.

Question proposed,—That the Clause, as amended, stand part of the Bill. (*Mr. Robertson.*)

Amendment proposed,—That the words "but with reservation of any minerals which the land may contain" be omitted. (*Mr. Dick.*)

Question put,—That the words proposed to be omitted stand part of the Clause.

Committee divided.

Ayes, 32.

Mr. Robertson,	Mr. Lucas,
Mr. Weekes,	Mr. Watt,
Mr. Arnold,	Mr. Flett,
Capt. Moriarty,	Mr. McArthur,
Mr. J. T. Ryan,	Mr. Cunneen,
Mr. O'Brien,	Mr. Stewart,
Mr. Cummings,	Mr. Wilson,
Mr. Hoskins,	Mr. Haworth,
Mr. Raper,	Mr. Buchanan,
Mr. Egan,	Mr. Lackey,
Mr. Douglas,	Mr. Hart,
Mr. Laycock,	Mr. Leary,
Mr. Meston,	Mr. Morris,
Mr. Atkinson,	Mr. Suttor,
Mr. Love,	Mr. Redman,
Mr. T. Garrett,	Mr. Dalglish,

} Tellers.

Noes, 19.

Mr. Dickson,	Mr. Dick,
Mr. Gray,	Mr. Walsh,
Mr. Hay,	Mr. Rusden,
Mr. Mate,	
Mr. Irving,	
Mr. Hannell,	
Mr. Allen,	
Mr. Morrice,	
Mr. Caldwell,	
Mr. Parkes,	
Mr. Lesley,	
Mr. Terry,	
Mr. Lewis,	
Mr. Sutherland,	
Mr. Driver,	
Mr. Piddington,	

} Tellers.

And the Clause having been further amended by filling up the blank by the insertion of the word "five,"—

No. 5.

Question proposed,—That the Clause, as amended, stand part of the Bill. (*Mr. Robertson.*)

Amendment proposed,—That there be inserted after the words "year to year," the words "during ten years from the date of selection." (*Mr. Walsh.*)

Question put,—That the words proposed to be inserted be so inserted.

Committee divided.

Ayes, 19.

Mr. Caldwell,	Mr. Wilson,
Mr. McArthur,	Mr. Walsh,
Mr. Walker,	Mr. Dick,
Mr. Piddington,	
Mr. Egan,	
Mr. Lesley,	
Mr. Morrice,	
Mr. Rusden,	
Mr. Cummings,	
Mr. Sutherland,	
Mr. Mate,	
Mr. Terry,	
Mr. Suttor,	
Mr. Parkes,	
Mr. Hay,	
Mr. Dickson,	

} Tellers.

Noes, 31.

Mr. Robertson,	Mr. Cunneen,
Mr. Weekes,	Mr. Flett,
Mr. Arnold,	Mr. Laycock,
Mr. Dalglish,	Mr. Hannell,
Mr. Driver,	Mr. Douglas,
Mr. O'Brien,	Mr. Gray,
Capt. Moriarty,	Mr. Atkinson,
Mr. Morris,	Mr. J. T. Ryan,
Mr. Raper,	Mr. Hoskins,
Mr. Markham,	Mr. Irving,
Mr. Lackey,	Mr. Haworth,
Mr. Lewis,	Mr. Allen,
Mr. Stewart,	Mr. Lucas,
Mr. Leary,	Mr. Buchanan,
Mr. Redman,	Mr. T. Garrett,
Mr. Love,	

} Tellers.

And the Clause, as amended, having been put, and carried,—

No. 6.

Motion made and Question put,—That the Chairman do now leave the Chair, report progress, and ask leave to sit again at a later hour of the day. (*Mr. Robertson.*)

Committee divided.

Ayes, 33.

Mr. Walsh,	Mr. Douglas,
Mr. Robertson,	Mr. Cunneen,
Mr. Redman,	Mr. Allen,
Mr. Arnold,	Mr. Cummings,
Mr. Love,	Mr. Walker,
Mr. O'Brien,	Mr. Lucas,
Mr. Morrice,	Mr. Dick,
Mr. Hoskins,	Mr. Irving,
Mr. Egan,	Mr. Haworth,
Mr. McArthur,	Mr. Wilson,
Mr. Parkes,	Mr. Laycock,
Mr. Markham,	Mr. J. T. Ryan,
Mr. Sutherland,	Mr. Leary,
Mr. Stewart,	Mr. Raper,
Mr. Flett,	Capt. Moriarty,
Mr. Rusden,	Mr. Caldwell,
Mr. Atkinson,	

} Tellers.

Noes, 13.

Mr. Morris,
Mr. Dalglish,
Mr. Lesley,
Mr. T. Garrett,
Mr. Suttor,
Mr. Mate,
Mr. Lewis,
Mr. Terry,
Mr. Lackey,
Mr. Hannell,
Mr. Hay,
Mr. Driver,
Mr. Piddington,

} Tellers.

Progress reported;—to sit again.

THURSDAY,

THURSDAY, 7 MARCH, 1861.

No. 7.

Same Bill.

Clause 20. Crown Lands intended to be sold without conditions for residence and improvement shall be put up for public auction in lots not exceeding three hundred and twenty acres each at such places and times as the Minister shall direct to be notified by advertisement in the *Gazette* And the upset prices per acre shall not be lower than for Town Lands Eight pounds—Suburban Lands Two pounds—"good" Lands "having frontage" One pound—"inferior and back Land Five shillings" Provided that the upset price may be respectively fixed at any higher amounts.—*Read.*

Question proposed,—That the Clause, as read, stand part of the Bill. (*Mr. Robertson.*)
Amendment proposed,—That the word "good" be omitted, with a view of inserting in its stead the word "other." (*Mr. Rusden.*)

Question put,—That the word proposed to be omitted stand part of the Clause.
Committee divided.

Ayes, 24.

Mr. Weekes,	Mr. McArthur,	} Tellers.
Mr. Robertson,	Mr. Shepherd,	
Mr. Arnold,	Mr. J. T. Ryan,	
Mr. Lackey,	Mr. Gray,	
Mr. Morris,	Mr. Suttor,	
Mr. Haworth,	Mr. Irving,	
Mr. Flett,	Mr. Buchanan,	
Mr. Walker,	Mr. Rusden,	
Mr. Redman,	Mr. Meston,	
Mr. Cummings,	Mr. Mate,	
Mr. Atkinson,	Mr. Watt,	
Mr. Piddington,	Mr. Lesley,	

Noes, 26.

Mr. O'Brien,	Mr. Markham,	} Tellers.
Mr. Allen,	Mr. Egan,	
Mr. Driver,	Mr. Walsh,	
Mr. T. Garrett,	Mr. Raper,	
Mr. Lucas,	Mr. Sutherland,	
Mr. Love,	Mr. Laycock,	
Capt. Moriarty,	Mr. Smart,	
Mr. Leary,	Mr. Caldwell,	
Mr. Cunneen,	Mr. Dalgleish,	
Mr. Stewart,	Mr. Wilson,	
Mr. Parkes,	Mr. Dick,	
Mr. Lewis,	Mr. Hoskins,	
Mr. Terry,	Mr. Morrice,	

Question,—That the word proposed to be inserted be so inserted—put and carried.

No. 8.

Question proposed,—That the Clause, as amended, stand part of the Bill. (*Mr. Robertson.*)

Amendment proposed,—That the words "having frontage" be omitted. (*Mr. Lucas.*)
Question put,—That the words proposed to be omitted stand part of the Clause.
Committee divided.

Ayes, 23.

Mr. Weekes,	Mr. Redman,	} Tellers.
Mr. Arnold,	Mr. McArthur,	
Mr. Lackey,	Mr. Irving,	
Mr. Haworth,	Mr. Gray,	
Mr. Watt,	Mr. Suttor,	
Mr. Flett,	Mr. Buchanan,	
Mr. Walker,	Mr. Meston,	
Mr. Cummings,	Mr. Mate,	
Mr. J. T. Ryan,	Mr. Rusden,	
Mr. Atkinson,	Mr. Morrice,	
Mr. Piddington,	Mr. Lesley,	
Mr. Shepherd,		

Noes, 28.

Mr. Robertson,	Mr. Egan,	} Tellers.
Mr. Dick,	Mr. Walsh,	
Mr. O'Brien,	Mr. Raper,	
Mr. Allen,	Mr. Sutherland,	
Mr. Driver,	Mr. T. Garrett,	
Mr. Love,	Mr. Lucas,	
Capt. Moriarty,	Mr. Hannell,	
Mr. Leary,	Mr. Laycock,	
Mr. Cunneen,	Mr. Smart,	
Mr. Stewart,	Mr. Caldwell,	
Mr. Parkes,	Mr. Wilson,	
Mr. Lewis,	Mr. Dalgleish,	
Mr. Terry,	Mr. Hoskins,	
Mr. Markham,	Mr. Morris,	

No. 9.

Question proposed,—That the Clause, as amended, stand part of the Bill. (*Mr. Robertson.*)

Amendment proposed,—That the words "inferior and back Land Five shillings" be omitted. (*Mr. Lucas.*)

Question put,—That the words proposed to be omitted stand part of the Clause.
Committee divided.

Ayes, 21.

Mr. Weekes,	Mr. Rusden,	} Tellers.
Mr. Arnold,	Mr. Irving,	
Mr. Lesley,	Mr. Redman,	
Mr. Haworth,	Mr. McArthur,	
Mr. Watt,	Mr. Lackey,	
Mr. Walker,	Mr. Morrice,	
Mr. Flett,		
Mr. J. T. Ryan,		
Mr. Atkinson,		
Mr. Piddington,		
Mr. Shepherd,		
Mr. Gray,		
Mr. Buchanan,		
Mr. Meston,		
Mr. Mate,		

Noes, 30.

Mr. Robertson,	Mr. Egan,	} Tellers.
Mr. Dick,	Mr. Walsh,	
Mr. O'Brien,	Mr. Cummings,	
Mr. Allen,	Mr. Suttor,	
Mr. Morris,	Mr. Hannell,	
Mr. Driver,	Mr. Laycock,	
Mr. Lucas,	Mr. Smart,	
Capt. Moriarty,	Mr. Caldwell,	
Mr. Leary,	Mr. Wilson,	
Mr. Cunneen,	Mr. Dalgleish,	
Mr. Stewart,	Mr. Raper,	
Mr. Parkes,	Mr. Sutherland,	
Mr. Lewis,	Mr. T. Garrett,	
Mr. Terry,	Mr. Hoskins,	
Mr. Markham,	Mr. Love,	

No. 10.

Motion made and Question put,—That the Clause, as amended, stand part of the Bill. (*Mr. Robertson.*)

Committee

Committee divided.

Ayes, 33.		Noes, 18.	
Mr. Weekes,	Mr. McArthur,	Mr. Meston,	Mr. Mate,
Mr. Robertson,	Mr. Raper,	Mr. Lackey,	Mr. Rusden,
Mr. Arnold,	Mr. Sutherland,	Mr. Watt,	} Tellers.
Mr. Driver,	Mr. T. Garrett,	Mr. Lesley,	
Mr. O'Brien,	Capt. Moriarty,	Mr. Irving,	
Mr. Hoskins,	Mr. Love,	Mr. Piddington,	
Mr. Markham,	Mr. Walsh,	Mr. Shepherd,	
Mr. Caldwell,	Mr. Leary,	Mr. Haworth,	
Mr. Stewart,	Mr. Parkes,	Mr. J. T. Ryan,	
Mr. Lewis,	Mr. Suttor,	Mr. Gray,	
Mr. Smart,	Mr. Allen,	Mr. Morrice,	
Mr. Egan,	Mr. Dalglish,	Mr. Atkinson,	
Mr. Terry,	Mr. Wilson,	Mr. Flett,	
Mr. Cunneen,	Mr. Morris,	Mr. Buchanan,	
Mr. Hannell,	Mr. Lucas,	Mr. Redman,	
Mr. Laycock,	Mr. Dick,	Mr. Walker,	
Mr. Cummings,			

And the Committee continuing to sit until after Midnight,—

FRIDAY, 8 MARCH, 1861, A.M.

No. 11.

Clause 28. This Act shall commence on the _____ of _____ next And shall be styled and may be cited as the "Crown Lands Alienation Act of 1861"—(*Read.*)

And the Clause having been amended by filling the first blank by the insertion of the word "first,"—

Motion made and Question put,—That the second blank be filled by the insertion of the word "January." (*Mr. Robertson.*)

Committee divided.

Ayes, 35.		Noes, 5.	
Mr. Robertson,	Mr. Sutherland,	Mr. Redman,	} Tellers.
Mr. Watt,	Mr. J. T. Ryan,	Mr. Terry,	
Capt. Moriarty,	Mr. Leary,	Mr. Egan,	
Mr. Lucas,	Mr. Wilson,	Mr. Irving,	
Mr. Dalglish,	Mr. Laycock,	Mr. Parkes,	
Mr. Hoskins,	Mr. Hannell,		
Mr. O'Brien,	Mr. Walker,		
Mr. Caldwell,	Mr. Allen,		
Mr. Stewart,	Mr. Buchanan,		
Mr. Lewis,	Mr. Lesley,		
Mr. Cummings,	Mr. Driver,		
Mr. Atkinson,	Mr. Suttor,		
Mr. Flett,	Mr. Mate,		
Mr. Cunneen,	Mr. Lackey,		
Mr. Shepherd,	Mr. Hart,		
Mr. Morrice,	Mr. Morris,		
Mr. Markham,	Mr. Dick,		
Mr. T. Garrett,			

Clause, as amended, carried.

No. 12.

Postponed Clause.

1. The following terms within inverted commas shall for the purposes of this Act unless the context otherwise indicate bear the meanings set against them respectively—

"Crown Lands"—All Lands vested in Her Majesty which have not been dedicated to any public purpose or which have not been granted or lawfully contracted to be granted to any person in "fee simple."

"Town Lands"—Crown Lands in any City Town or Village or set apart as a site for the same.

"Suburban Lands"—Crown Lands declared in the *Gazette* to be Suburban by the Governor and Executive Council.

"Orders in Council"—The Orders in Council and Regulations or some or one of them from time to time issued under the Imperial Act ninth and tenth Victoria chapter one hundred and four.

"Minister"—The Minister for the time being charged with the administration of the Public Lands.

"Land Agent"—Any person duly appointed to sell Crown Lands.

"Land Office Days"—Days notified in the *Gazette* upon which Land Agents shall attend at the Land Offices of their Districts respectively.

"Appraisement"—Settlement of price value or damage by appraisers.

"Arbitration"—Settlement of boundaries by arbitrators.

"Improvements"—Improvements on Crown Lands to the value to be determined by appraisement if disputed in Town and Suburban lands of not less than twice the upset price of the allotment or portion on which the improvements may stand and in other lands of not less than one pound per acre.

"Frontage"—Frontage to any river stream or watercourse which according to the practice of the Survey Department ought to form a boundary between different sections or lots of land.—(*Read.*)

Amendment

Amendment proposed,—That after the words “fee simple,” there be inserted the words “or which had not been vested in the Corporation of the Trustees of the Clergy and School Lands which was dissolved by an Order in Council dated the 4th day of February 1833.” (*Mr. Robertson.*)

Debate ensued.

Motion made and Question put,—That the Chairman do now leave the Chair, report progress, and ask leave to sit again on Tuesday next. (*Mr. Robertson.*)
Committee divided.

Ayes, 36.

Mr. Robertson,	Mr. Hannell,	} Tellers.
Mr. Lucas,	Mr. Shepherd,	
Mr. Dick,	Mr. J. T. Ryan,	
Mr. Morris,	Mr. Sutherland,	
Mr. Watt,	Mr. T. Garrett,	
Mr. O'Brien,	Mr. Irving,	
Mr. Caldwell,	Mr. Atkinson,	
Mr. Moriarty,	Mr. Parkes,	
Mr. Lewis,	Mr. Sutor,	
Mr. Egan,	Mr. Hoskins,	
Mr. Lackey,	Mr. Haworth,	
Mr. Markham,	Mr. Mate,	
Mr. Cummings,	Mr. Driver,	
Mr. Morrice,	Mr. Wilson,	
Mr. Laycock,	Mr. Leary,	
Mr. Flett,	Mr. Allen,	
Mr. Lesley,	Mr. Walker,	} Tellers.
Mr. Stewart,	Mr. Dalgleish,	

Noes, 3.

Mr. Buchanan,	} Tellers.
Mr. Redman,	
Mr. Terry,	

Progress reported ; to sit again.

1861.

Legislative Assembly.

NEW SOUTH WALES.

No. 7.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE HOUSE.

(EXTRACTED FROM THE MINUTES.)

SESSION OF 1861.

TUESDAY, 12 MARCH, 1861.

No. 1.

CHINESE IMMIGRATION REGULATION BILL.

Clause 3. If any ship shall arrive in any port of New South Wales having on board "a greater number of passengers officers and crew than in proportion of one" person to every "seven" tons of the tonnage of such ship and any such "passengers" shall be Chinese the Owner Charterer or Master of such ship shall be liable upon conviction to a penalty not "exceeding" Twenty Pounds for each passenger "so carried" in excess.—(Read.)

Question proposed,—That the Clause, as read, stand part of the Bill. (Mr. Lucas.)

Amendment proposed,—That the words "a greater number of passengers officers and crew than in proportion of one" be omitted. (Capt. Moriarty.)

Question put,—That the words proposed to be omitted stand part of the Clause.

Committee divided.

Ayes, 33.

Mr. Robertson,	Mr. Cunneen,	} Tellers.
Mr. Lucas,	Mr. Allen,	
Mr. T. Garrett,	Mr. Dalgleish,	
Mr. Cummings,	Mr. O'Brien,	
Mr. Morrice,	Mr. Caldwell,	
Mr. Lewis,	Mr. Weckes,	
Mr. Markham,	Mr. Arnold,	
Mr. Parkes,	Mr. Wilson,	
Mr. Hannell,	Mr. C. Cowper,	
Mr. Stewart,	junr.,	
Mr. Matc,	Mr. Buchanan,	
Mr. Douglas,	Mr. Laycock,	
Mr. Terry,	Mr. Lackey,	
Mr. McArthur,	Mr. Suttor,	
Mr. Leary,	Mr. Driver,	
Mr. Love,	Mr. Hoskins,	
Mr. Sutherland,	Mr. Dick,	

Noes, 2.

Mr. Redman,	} Tellers.
Capt. Moriarty,	

And the Clause have been amended by substituting "twenty" for "seven,"—by inserting "officers or crew" after "passengers," and by inserting "one hundred pounds nor less than" after "exceeding,

No. 2.

Question proposed,—That the Clause, as amended, stand part of the Bill. (*Mr. Lucas.*)

Amendment proposed,—That the words "so carried" be omitted with a view of inserting in their stead the words "landed in the Colony." (*Mr. Redman.*)

Question put,—That the words proposed to be omitted stand part of the Clause. Committee divided.

Ayes, 19.		Noes, 12.	
Mr. Robertson,	Mr. O'Brien,	Mr. Egan,	Mr. Hannell,
Mr. Lucas,	Mr. Weekes,	Mr. Lewis,	Mr. Wilson,
Mr. Cummings,	Mr. C. Cowper,	Mr. Morrice,	} Tellers.
Mr. Terry,	junr.,	Mr. Leary,	
Mr. Parkes,	Mr. Allen,	Mr. Lackey,	
Mr. Stewart,	Mr. Driver,	Mr. Laycock,	
Mr. Douglas,	Mr. Buchanan,	Mr. Mate,	
Mr. Sutherland,	Mr. T. Garrett,	Mr. Raper,	
Mr. Cunneen,	Mr. Hoskins,	Mr. Redman,	
Mr. Caldwell,	Mr. Dick,	Mr. Dalgleish,	

No. 3.

Motion made and Question put,—That the Chairman do now leave the Chair, report progress, and ask leave to sit again this day fortnight. (*Mr. Dick.*)

Committee divided.

Ayes, 5.		Noes, 26.	
Mr. Egan,	} Tellers.	Mr. Robertson,	Mr. Raper,
Mr. Cunneen,		Mr. Weekes,	Mr. Laycock,
Mr. Douglas,		Mr. Cummings,	Mr. T. Garrett,
Mr. O'Brien,		Mr. Wilson,	Mr. Terry,
Mr. Dick,		Mr. Hannell,	Mr. Buchanan,
		Mr. Driver,	Mr. Dalgleish,
		Mr. Sutherland,	Mr. Parkes,
		Mr. Lewis,	Mr. C. Cowper,
		Mr. Caldwell,	junr.,
		Mr. Morrice,	Mr. Stewart,
		Mr. Leary,	Mr. Lucas,
		Mr. Lackey,	Mr. Hoskins,
		Mr. Redman,	Mr. Allen,
		Mr. Love,	} Tellers.

Clause, as amended, put and carried.

No. 4.

Motion made and Question put,—That the Chairman do now leave the Chair, report progress, and ask leave to sit again on Friday next. (*Mr. Lucas.*)

Committee divided.

Ayes, 14.		Noes, 16.	
Mr. Morrice,	Mr. Love,	Mr. Robertson,	Mr. Dalgleish,
Mr. O'Brien,	Mr. Lucas,	Mr. Weekes,	Mr. C. Cowper,
Mr. Egan,	Mr. Allen,	Mr. Dick,	junr.,
Mr. Caldwell,	Mr. Hoskins,	Mr. Cummings,	Mr. Parkes,
Mr. Stewart,	Mr. Wilson,	Mr. Lackey,	Mr. Redman,
Mr. Leary,	} Tellers.	Mr. Lewis,	Mr. Laycock,
Mr. Hannell,		Mr. Terry,	Mr. T. Garrett,
Mr. Sutherland,		Mr. Buchanan,	Mr. Driver,
Mr. Cunneen,		Mr. Douglas,	

No. 5.

Same Bill.

Clause 4. On arrival in any port of New South Wales of any ship having any "male" Chinese on board before any such "male" Chinese are permitted to land and before making any entry the Master shall pay to the Collector of Customs a rate of "Ten" Pounds for every such "male" Chinese and no entry shall be deemed to have been legally made or to have any legal effect whatsoever until such payment shall have been "made" and upon the payment of the before mentioned rate by the Master of any ship the Collector of Customs or other authorized Officer shall deliver to each male Chinese passenger a parchment Certificate which shall bear on the face of it the date of delivery the name of Chinese the signature of Collector of Customs and all other matters which the Government shall deem "necessary" and if any Master shall neglect to pay such rate aforesaid or shall land or permit any such male Chinese to land at any port in New South Wales before any such payment shall have been made and with the intent of evading the payment of any such rate such Master shall upon conviction be liable to a penalty not exceeding *Twenty* Pounds for each male Chinese so landed or permitted to land in addition to the amount of such rate and in every such case in addition to the pecuniary fine hereby imposed upon the Master the ship shall be forfeited and may be seized condemned and disposed of in the same manner as ships forfeited for a breach of any law relating to the Customs of the Colony.

—(*Read.*)

And the Clause having been amended by omitting (twice) the word "male" in the second line of the clause,—

Question

Question proposed,—That the Clause, as amended, stand part of the Bill. (*Mr. Lucas.*)

Amendment proposed,—That the word "Ten" be omitted with a view of inserting in its stead the word "Twenty." (*Mr. Terry.*)

Question put,—That the word proposed to be omitted stand part of the Clause.

Committee divided.

Ayes, 15.			Noes, 9.	
Mr. Lucas,	Mr. Hannell,	} Tellers.	Mr. Driver,	} Tellers.
Mr. Robertson,	Mr. Sutherland,		Mr. Love,	
Mr. Weekes,	Mr. Laycock,		Mr. Terry,	
Mr. Morrice,	Mr. Douglas,		Mr. T. Garrett,	
Mr. Egan,	Mr. Hoskins,		Mr. Buchanan,	
Mr. Leary,	Mr. Dick,		Mr. Cowper, junr.,	
Mr. Lackey,			Mr. Cunneen,	
Mr. Parkes,			Mr. Dalglish,	
Mr. Cummings,			Mr. Lewis,	

And the Committee continuing to sit until after midnight,—

WEDNESDAY, 13 MARCH, 1861, A.M.

And the Clause having been further amended by omitting the word "male,"—

No. 6.

Question proposed,—That the Clause, as amended, stand part of the Bill. (*Mr. Lucas.*)

Amendment proposed,—That all the words after the word "made" down to the word "necessary," inclusive, be omitted. (*Mr. Weekes.*)

Motion made and Question put,—That the Chairman do now leave the Chair, report progress, and ask leave to sit again on Friday next. (*Mr. Lucas.*)

Committee divided.

Ayes, 13.			Noes, 10.	
Mr. Robertson,	Mr. Douglas,	} Tellers.	Mr. Dick,	Mr. Buchanan,
Mr. Morrice,	Mr. Cummings,		Mr. C. Cowper,	Mr. Laycock,
Mr. Egan,	Mr. Sutherland,		junr.,	Mr. Driver,
Mr. Leary,	Mr. Weekes,		Mr. Parkes,	Mr. Dalglish,
Mr. Lackey,	Mr. Lucas,		Mr. Lewis,	
Mr. Cunneen,	Mr. Hoskins,		Mr. Terry,	
Mr. Hannell,			Mr. T. Garrett,	

Progress reported,—to sit again.

THURSDAY, 14 MARCH, 1861.

No. 7.

CROWN LANDS ALIENATION BILL OF 1861.

Motion made and Question put,—That the Chairman do now leave the Chair, and ask leave to sit again to-morrow. (*Mr. Weekes.*)

Committee divided.

Ayes, 24.			Noes, 11.	
Mr. Watt,	Capt. Moriarty,	} Tellers.	Mr. Raper,	} Tellers.
Mr. Weekes,	Mr. Love,		Mr. Dalglish,	
Mr. Arnold,	Mr. Walker,		Mr. Lewis,	
Mr. Morrice,	Mr. Douglas,		Mr. Parkes,	
Mr. O'Brien,	Mr. Plett,		Mr. Piddington,	
Mr. Markham,	Mr. Shepherd,		Mr. Meston,	
Mr. Mate,	Mr. Suttor,		Mr. Terry,	
Mr. Dick,	Mr. Stewart,		Mr. Driver,	
Mr. Egan,	Mr. Hoskins,		Mr. Lucas,	
Mr. Leary,	Mr. Wilson,		Mr. Walsh,	
Mr. J. T. Ryan,	Mr. Dickson,		Mr. Hannell,	
Mr. T. Garrett,	Mr. Morris,			

No. 8.

SUPPLY.—ESTIMATES-IN-CHIEF.

Treasury.

Question proposed,—That there be granted to Her Majesty, a sum not exceeding £6,182, to defray the salaries and contingencies of the Treasury Department, for the year 1861. (*Mr. Weekes.*)

Motion made and Question put,—That the item £350, for salary of Clerk, be reduced by £25. (*Mr. Dickson.*)

Committee

Committee divided.

Ayes, 28.

Mr. Dickson,	Mr. Walker,	} Tellers.
Mr. Morrice,	Mr. Dalgleish,	
Mr. Hoskins,	Mr. Love,	
Mr. Lucas,	Capt. Moriarty,	
Mr. Lewis,	Mr. T. Garrett,	
Mr. Egan,	Mr. Parkes,	
Mr. J. T. Ryan,	Mr. Cunneen,	
Mr. Piddington,	Mr. Mate,	
Mr. Meston,	Mr. Douglas,	
Mr. Terry,	Mr. Laycock,	
Mr. Leary,	Mr. Stewart,	
Mr. Hannell,	Mr. Driver,	
Mr. Raper,	Mr. Walsh,	
Mr. Cummings,	Mr. Wilson,	

Noes, 10.

Mr. Arnold,	} Tellers.
Mr. Weekes,	
Mr. Robertson,	
Mr. Markham,	
Mr. O'Brien,	
Mr. Flett,	
Mr. C. Cowper,	
junr.,	
Mr. Watt,	
Mr. Suttor,	
Mr. Morris,	

Estimate, after further reduction, carried.

No. 9.

Customs.

Question proposed,—That there be granted to Her Majesty, a sum not exceeding £23,410 (being less than Estimate by £384—salaries for Boatmen at Albury and Moama—withdrawn), to defray the salaries and contingencies of the Customs Department, for the year 1861. (*Mr. Weekes.*)

Motion made and Question put,—That the item £530, for salary of Chief Clerk, be omitted. (*Mr. Lucas.*)

Committee divided.

Ayes, 6.

Mr. Driver,	} Tellers.
Mr. Lewis,	
Mr. Terry,	
Mr. Dalgleish,	
Mr. Lucas,	
Mr. Hart,	

Noes, 33.

Mr. Robertson,	Mr. Stewart,	} Tellers.
Mr. Arnold,	Mr. Cunneen,	
Mr. Weekes,	Mr. C. Cowper,	
Mr. Mate,	junr.,	
Mr. Morris,	Mr. Laycock,	
Capt. Moriarty,	Mr. Flett,	
Mr. Leary,	Mr. Markham,	
Mr. J. T. Ryan,	Mr. Douglas,	
Mr. Raper,	Mr. Hoskins,	
Mr. Parkes,	Mr. Dickson,	
Mr. Wilson,	Mr. Allen,	
Mr. Meston,	Mr. O'Brien,	
Mr. T. Garrett,	Mr. Cummings,	
Mr. Hannell,	Mr. Watt,	
Mr. Morrice,	Mr. Walker,	
Mr. Love,	Mr. Egan,	
Mr. Piddington,	Mr. Suttor,	

No. 10.

Original Question stated.

Afterwards proposed, That the item £530, for salary of Chief Clerk, be reduced by £80. (*Mr. Terry.*)

And the Chairman objecting to receive this motion, on the ground that the Committee had decided that the item should not be omitted,—

Motion made and Question put,—That the Chairman do now leave the Chair and report the point of Order to the House. (*Mr. Terry.*)

Committee divided.

Ayes, 20.

Mr. Morrice,	Mr. Raper,	} Tellers.
Mr. Lewis,	Mr. Cummings,	
Mr. Hart,	Mr. Stewart,	
Mr. Parkes,	Mr. Dalgleish,	
Mr. Terry,	Mr. Lucas,	
Mr. Piddington,	Mr. Leary,	
Mr. J. T. Ryan,	Mr. Douglas,	
Mr. Hannell,	Mr. Watt,	
Mr. Laycock,	Mr. Driver,	
Mr. Allen,	Mr. Dickson,	
*	*	
*	*	
*	*	
*	*	

Noes, 18.

Mr. Robertson,	Mr. Cunneen,	} Tellers.
Mr. Weekes,	Mr. C. Cowper,	
Mr. T. Garrett,	junr.,	
Mr. Egan,	Mr. Walker,	
Capt. Moriarty,	Mr. O'Brien,	
Mr. Suttor,	Mr. Hoskins,	
Mr. Wilson,	Mr. Meston,	
Mr. Love,	Mr. Mate,	
Mr. Markham,	Mr. Morris,	
Mr. Flett,		
*	*	
*	*	
*	*	
*	*	

And the Committee having resumed,—

No. 11.

Original Question stated.

Motion made and Question put,—That the item £530, for salary of Chief Clerk, be reduced by £80. (*Mr. Terry.*)

Committee divided.

Ayes, 7.

Mr. Lewis,	} Tellers.
Mr. Lucas,	
Mr. Sutherland,	
Mr. Terry,	
Mr. Driver,	
Mr. Caldwell,	
Mr. Dalgleish,	

Noes, 32.

Mr. Robertson,	Mr. Laycock,	} Tellers.
Mr. Weekes,	Mr. Piddington,	
Mr. Douglas,	Mr. Haworth,	
Mr. Lackey,	Mr. Hannell,	
Mr. Wilson,	Mr. C. Cowper, junr.,	
Mr. Mate,	Mr. Hoskins,	
Mr. Leary,	Mr. Raper,	
Mr. McArthur,	Mr. Suttor,	
Mr. O'Brien,	Mr. Irving,	
Mr. Parkes,	Mr. Hay,	
Mr. Watt,	Mr. Walker,	
Capt. Moriarty,	Mr. Meston,	
Mr. J. T. Ryan,	Mr. Walsh,	
Mr. Allen,	Mr. Arnold,	
Mr. Markham,	Mr. T. Garrett,	
Mr. Morrice,	Mr. Morris,	

No. 12.

No. 12.

Original Question stated.

Motion made and Question put,—That the item £530, for salary of Cashier, be reduced by £80. (*Mr. Terry.*)

Committee divided.

Ayes, 6.

Mr. Lewis,	} Tellers.
Mr. Terry,	
Mr. Dalgleish,	
Mr. Sutherland,	
Mr. Lucas,	
Mr. Caldwell,	

Noes, 33.

Mr. Robertson,	Mr. Piddington,	} Tellers.
Mr. Weekes,	Mr. J. T. Ryan,	
Mr. O'Brien,	Mr. Hannell,	
Mr. T. Garrett,	Mr. C. Cowper,	
Mr. Lackey,	junr.,	
Mr. Mate,	Mr. Watt,	
Mr. Leary,	Mr. Raper,	
Mr. McArthur,	Mr. Suttor,	
Mr. Hoskins,	Mr. Hay,	
Mr. Markham,	Mr. Douglas,	
Mr. Driver,	Mr. Walker,	
Mr. Parkes,	Mr. Meston,	
Capt. Moriarty,	Mr. Haworth,	
Mr. Allen,	Mr. Walsh,	
Mr. Love,	Mr. Arnold,	
Mr. Morrice,	Mr. Morris,	
Mr. Laycock,	Mr. Wilson,	

No. 13.

*And several items of the Estimate having been reduced,—*Question proposed,—That there be granted to Her Majesty, a sum not exceeding £23,240, to defray the salaries and contingencies of the Customs Department, for the year 1861. (*Mr. Weekes.*)Motion made and Question put,—That the item £200, for salary of (Additional) Clerk, be omitted. (*Mr. Dalgleish.*)

Committee divided.

Ayes, 3.

Mr. Dalgleish,	} Tellers.
Mr. Terry,	
Mr. Driver,	

Noes, 40.

Mr. Robertson,	Mr. Laycock,	} Tellers.
Mr. Weekes,	Mr. Lewis,	
Mr. Love,	Mr. Stewart,	
Mr. O'Brien,	Capt. Moriarty,	
Mr. Lackey,	Mr. Lucas,	
Mr. Morris,	Mr. Watt,	
Mr. Mate,	Mr. Cummings,	
Mr. Leary,	Mr. Raper,	
Mr. Parkes,	Mr. Sutherland,	
Mr. McArthur,	Mr. Markham,	
Mr. Hoskins,	Mr. Gray,	
Mr. Hannell,	Mr. Suttor,	
Mr. Caldwell,	Mr. Hay,	
Mr. J. T. Ryan,	Mr. Meston,	
Mr. Allen,	Mr. Wilson,	
Mr. Douglas,	Mr. Dickson,	
Mr. Morrice,	Mr. Walsh,	
Mr. Walker,	Mr. Arnold,	
Mr. Piddington,	Mr. T. Garrett,	
Mr. Cunneen,	Mr. Egan,	

And several further items of the Estimate having been reduced,—

No. 14.

Question proposed,—That there be granted to Her Majesty, a sum not exceeding £22,860, to defray the salaries and contingencies of the Customs Department, for the year 1861. (*Mr. Weekes.*)Motion made and Question put,—That the item £400, for salary of Warehouse Keeper, be reduced by £50. (*Mr. Dalgleish.*)

Committee divided.

Ayes, 23.

Mr. Driver,	Mr. Egan,	} Tellers.
Mr. Raper,	Mr. Walker,	
Mr. Dickson,	Mr. Douglas,	
Mr. Dalgleish,	Mr. Parkes,	
Mr. Lewis,	Mr. Cunneen,	
Mr. Terry,	Mr. J. T. Ryan,	
Mr. Allen,	Mr. T. Garrett,	
Mr. Redman,	Mr. Sutherland,	
Mr. Leary,	Capt. Moriarty,	
Mr. Hannell,	Mr. Hoskins,	
Mr. Piddington,	Mr. Lucas,	
Mr. Hay,		

Noes, 18.

Mr. Meston,	Mr. Morris,	} Tellers.
Mr. Weekes,	Mr. Walsh,	
Mr. O'Brien,	Mr. Cummings,	
Mr. Mate,	Mr. Laycock,	
Mr. Wilson,	Mr. Love,	
Mr. Caldwell,	Mr. Lackey,	
Mr. Suttor,		
Mr. Watt,		
Mr. Markham,		
Mr. Morrice,		
Mr. Flett,		
Mr. Gray,		

No. 15.

Question proposed,—That there be granted to Her Majesty, a sum not exceeding £22,810, to defray the salaries and contingencies of the Customs Department, for the year 1861. (*Mr. Weekes.*)Motion made and Question put,—That the item £175, for salary of thirteenth Locker, be omitted. (*Mr. Dalgleish.*)

Committee

Committee divided.

Ayes, 3.
Mr. Sutherland,
Mr. Dalgleish, } Tellers.
Mr. Redman, }

Noes, 27.

Mr. Weekes, Mr. Hannell,
Mr. Dickson, Mr. Lucas,
Mr. Meston, Mr. Parkes,
Mr. Raper, Mr. Watt,
Mr. Hoskins, Mr. Cummings,
Capt. Moriarty, Mr. Walker,
Mr. Caldwell, Mr. Markham,
Mr. Lewis, Mr. Wilson,
Mr. Terry, Mr. Morris,
Mr. Flett, Mr. Mate,
Mr. Allen, Mr. Walsh,
Mr. Lackey, Mr. Love, } Tellers.
Mr. Cunneen, Mr. Egan,
Mr. Leary,

And the Estimate having been further reduced by the postponement of the items for salary of Sub-Collectors at Albury and Moama,—

No. 16.

Question proposed,—That there be granted to Her Majesty, a sum not exceeding £22,210, to defray the salaries and contingencies of the Customs Department, for the year 1861. (*Mr. Weekes.*)

Motion made and Question put,—That the item £52, for salary to Acting Customs Officer, Richmond River, be omitted. (*Mr. Dalgleish.*)

Committee divided.

Ayes, 8.
Mr. Moriarty,
Mr. Egan,
Mr. Raper,
Mr. Flett,
Mr. Terry,
Mr. Dalgleish,
Mr. Caldwell, } Tellers.
Mr. Lucas, }

Noes, 21.

Mr. Weekes, Mr. Stewart,
Mr. Redman, Mr. Cummings,
Mr. Haworth, Mr. Walker,
Mr. Parkes, Mr. Mate,
Mr. Allen, Mr. Wilson,
Mr. Hoskins, Mr. Watt,
Mr. Lewis, Mr. Lackey,
Mr. Laycock, Mr. Douglas,
Mr. Leary, Mr. Love, } Tellers.
Mr. Markham, Mr. Morris,
Mr. Hannell,

Estimate, £22,210, carried.

No. 17.

Colonial Distilleries.

Question proposed,—That there be granted to Her Majesty, a sum not exceeding £2,190, to defray the salaries and contingencies of the Department of the Colonial Distilleries, for the year 1861. (*Mr. Weekes.*)

Motion made and Question put,—That the item £500, for salary of Chief Inspector and Accountant, be reduced by £400. (*Mr. Dalgleish.*)

Committee divided.

Ayes, 2.
Mr. Dalgleish, } Tellers.
Mr. Terry, }

Noes, 28.

Mr. Arnold, Mr. Flett,
Mr. Redman, Mr. Douglas,
Mr. Weekes, Mr. Markham,
Mr. C. Cowper, Mr. Stewart,
junr., Mr. Caldwell,
Capt. Moriarty, Mr. Lucas,
Mr. Love, Mr. Cummings,
Mr. Egan, Mr. Walker,
Mr. Raper, Mr. Lackey,
Mr. Haworth, Mr. Watt,
Mr. Lewis, Mr. Wilson,
Mr. Leary, Mr. Mate, } Tellers.
Mr. Laycock, Mr. Hoskins,
Mr. Hannell, Mr. Morris,
Mr. Allen,

No. 18.

Original Question stated.

Motion made and Question put,—That the item £1,200, for 3 Inspectors at £400, be reduced by £400. (*Mr. Stewart.*)

Committee divided.

Ayes, 4.
Mr. Lewis,
Mr. Terry,
Mr. Lucas, } Tellers.
Mr. Dalgleish, }

Noes, 28.

Mr. Arnold, Mr. Allen,
Mr. Redman, Mr. Parkes,
Mr. Weekes, Mr. Love,
Capt. Moriarty, Mr. Cummings,
Mr. Raper, Mr. Walker,
Mr. Haworth, Mr. Lackey,
Mr. Caldwell, Mr. Watt,
Mr. Leary, Mr. Wilson,
Mr. Laycock, Mr. Mate,
Mr. Hannell, Mr. Hoskins,
Mr. Douglas, Mr. C. Cowper,
Mr. Sutherland, junr., } Tellers.
Mr. Flett, Mr. Egan,
Mr. Markham, Mr. Morris,
Mr. Stewart,

Original Estimate carried.

No. 19.

No. 19.

Sydney Branch of the Royal Mint.

Question proposed,—That there be granted to Her Majesty, a sum not exceeding £14,032, to defray the salaries and contingencies of the Department of the Sydney Branch of the Royal Mint, for the year 1861. (*Mr. Weekes.*)

Motion made and Question put,—That the item £530, for salary of (Second) Assayer, be reduced by £13. (*Mr. Lucas.*)

Committee divided.

Ayes, 9.		Noes, 25.	
Mr. Lewis,	} Tellers.	Mr. Arnold,	Mr. Markham,
Mr. Egan,		Mr. Weekes,	Mr. Walker,
Mr. Parkes,		Mr. Walsh,	Mr. Cummings,
Mr. Sutherland,		Capt. Moriarty,	Mr. Redman,
Mr. Stewart,		Mr. Haworth,	Mr. Laycock,
Mr. Raper,		Mr. Leary,	Mr. Lackey,
Mr. Terry,		Mr. Dalgleish,	Mr. Watt,
Mr. T. Garrett,		Mr. Caldwell,	Mr. Wilson,
Mr. Lucas,		Mr. Hannell,	Mr. Mate,
		Mr. Driver,	Mr. C. Cowper,
		Mr. Douglas,	junr.,
		Mr. Morrice,	Mr. Hoskins.
		Mr. Flett,	Mr. Morris.

And items in the Estimate having been reduced,—

No. 20.

Question proposed,—That there be granted to Her Majesty, a sum not exceeding £13,957, to defray the salaries and contingencies of the Department of the Sydney Branch of the Royal Mint, for the year 1861. (*Mr. Weekes.*)

Motion made and Question put,—That the item £240, for salary of Clerk, be reduced by £40. (*Mr. Lucas.*)

Committee divided.

Ayes, 10.		Noes, 23.	
Mr. Egan,	} Tellers.	Mr. Arnold,	Mr. Driver,
Mr. Raper,		Mr. Weekes,	Mr. Walker,
Mr. Stewart,		Capt. Moriarty,	Mr. Redman,
Mr. Parkes,		Mr. Hoskins,	Mr. Laycock,
Mr. Douglas,		Mr. Haworth,	Mr. Lackey,
Mr. Terry,		Mr. Leary,	Mr. Watt,
Mr. Sutherland,		Mr. Cummings,	Mr. Wilson,
Mr. Dalgleish,		Mr. Hannell,	Mr. Mate,
Mr. Lewis,		Mr. Morrice,	Mr. Caldwell,
Mr. Lucas,		Mr. Gray,	Mr. T. Garrett,
	Mr. Flett,	Mr. Morris.	
		Mr. Markham,	

Estimate, £13,957, carried.

FRIDAY, 15 MARCH, 1861.

No. 21.

IMPOUNDING BILL OF 1861.

Clause 4. "The" majority of the Justices in Petty Sessions assembled in and for any district in which any Pound established under this Act may be situate "shall" select and appoint some fit and proper person as and to be Poundkeeper of any such "Pound" Provided that until such appointments respectively all Pounds and Poundkeepers established or appointed at the time of passing this Act shall be deemed to be Pounds and Poundkeepers established and appointed under this Act and subject to the provisions hereof.—(*Read.*)

Question proposed,—That the Clause, as read, stand part of the Bill. (*Mr. Watt.*)

Amendment proposed,—That all the words after the first word "The" down to the word "shall" be omitted, with the view of inserting in their stead the words "Governor with the advice of the Executive Council shall." (*Mr. Hoskins.*)

Question put,—That the words proposed to be omitted stand part of the Clause.

Committee divided.

Ayes, 25.		Noes, 15.	
Mr. Allen,	Capt. Moriarty,	Mr. Robertson,	Mr. Caldwell,
Mr. Hart,	Mr. Wilson,	Mr. Arnold,	Mr. T. Garrett,
Mr. Lackey,	Mr. Piddington,	Mr. O'Brien,	Mr. Walsh,
Mr. Parkes,	Mr. Hannell,	Mr. Driver,	} Tellers.
Mr. Raper,	Mr. Shepherd,	Mr. Hoskins,	
Mr. Dalgleish,	Mr. Mate,	Mr. Smart,	
Mr. Morrice,	Mr. Hay,	Mr. McArthur,	
Mr. Egan,	Mr. Suttor,	Mr. Lewis,	
Mr. Leary,	Mr. Gray,	Mr. Cunneen,	
Mr. Terry,	Mr. Markham,	Mr. Buchanan,	
Mr. Flett,	Mr. Watt,	Mr. Blake,	
Mr. Meston,	Mr. Lucas,	Mr. C. Cowper,	
Mr. Laycock,		junr.,	

No. 22.

No. 22.

Question proposed,—That the Clause, as amended, stand part of the Bill. (*Mr. Watt.*)

Motion made and Question put,—That the Chairman do now leave the Chair, and ask leave to sit again "this day six months." (*Mr. Dalgleish.*)

Committee divided.

Ayes, 18.

Mr. Arnold,	Mr. Gray,	} Tellers.
Mr. Robertson,	Mr. Laycock,	
Mr. Walsh,	Mr. Wilson,	
Mr. Weekes,	Mr. Driver,	
Capt. Moriarty,	Mr. Caldwell,	
Mr. Allen,	Mr. C. Cowper,	
Mr. Markham,	junr.,	
Mr. Hoskins,	Mr. T. Garrett,	
Mr. Dalgleish,		
Mr. Lewis,		
Mr. Smart,		

Noes, 21.

Mr. O'Brien,	Mr. Hay,	} Tellers.
Mr. Lackey,	Mr. Lucas,	
Mr. Raper,	Mr. Cunneen,	
Mr. Morrice,	Mr. Mate,	
Mr. Parkes,	Mr. Watt,	
Mr. Shepherd,	Mr. Meston,	
Mr. Terry,	Mr. Cummings,	
Mr. Hannell,	Mr. Flett,	
Mr. Suttor,	Mr. Egan,	
Mr. Macleay,	Mr. Piddington,	
Mr. Leary,		

No. 23.

Question proposed,—That the Clause, as amended, stand part of the Bill. (*Mr. Watt.*)

Amendment proposed,—That the following proviso be inserted after the word "Pound," viz :—"Provided always that where any such Pound shall be "within the limits of any Municipality established under the Municipalities "Act of 1858 such appointment shall be made by the Council of the Muni- "cipality." (*Mr. Walsh.*)

Question put,—That the words proposed to be inserted be so inserted.

Committee divided.

Ayes, 20.

Mr. Arnold,	Mr. Cunneen,	} Tellers.
Mr. Walsh,	Mr. Caldwell,	
Mr. Weekes,	Mr. Driver,	
Mr. Robertson,	Mr. Gray,	
Capt. Moriarty,	Mr. Piddington,	
Mr. Markham,	Mr. O'Brien,	
Mr. Hoskins,	Mr. Wilson,	
Mr. Dalgleish,	Mr. T. Garrett,	
Mr. Lewis,	Mr. C. Cowper,	
Mr. Smart,	junr.,	
Mr. Hannell,		

Noes, 19.

Mr. Raper,	Mr. Hay,	} Tellers.
Mr. Allen,	Mr. Lucas,	
Mr. Morrice,	Mr. Mate,	
Mr. Parkes,	Mr. Watt,	
Mr. Shepherd,	Mr. Meston,	
Mr. Terry,	Mr. Cummings,	
Mr. Flett,	Mr. Egan,	
Mr. Laycock,	Mr. Lackey,	
Mr. Suttor,		
Mr. Macleay,		
Mr. Leary,		

Clause, as amended, carried.

No. 24.

Clause 5. If at any time any such Poundkeeper shall be guilty of any neglect or offence under this Act or shall not perform the duties of Poundkeeper to the satisfaction of such Justices such Poundkeeper shall be removed from such Pound and any vacancy caused by such removal or the death or resignation of any Poundkeeper shall be filled in the manner hereinbefore provided for the appointment of Poundkeepers Provided always that the order for the removal of any such Poundkeeper shall be made by the majority of such Justices in Petty Sessions assembled.—(*Read*)

Motion made and Question put,—That the Clause, as read, stand part of the Bill. (*Mr. Watt.*)

Committee divided.

Ayes, 24.

Mr. Arnold,	Mr. Allen,	} Tellers.
Mr. O'Brien,	Mr. Hannell,	
Mr. Leary,	Mr. Macleay,	
Mr. Parkes,	Mr. Piddington,	
Mr. Lackey,	Mr. Shepherd,	
Mr. Morrice,	Mr. Hay,	
Mr. Mate,	Mr. Suttor,	
Mr. Meston,	Mr. Raper,	
Mr. Terry,	Mr. Gray,	
Mr. Laycock,	Mr. Cummings,	
Mr. Flett,	Mr. Lucas,	
Mr. Cunneen,	Mr. Watt,	

Noes, 12.

Mr. Robertson,	} Tellers.
Mr. Weekes,	
Mr. Driver,	
Mr. Hoskins,	
Mr. Walsh,	
Mr. Smart,	
Mr. Dalgleish,	
Mr. Caldwell,	
Capt. Moriarty,	
Mr. Cowper, junr.,	
Mr. Markham,	
Mr. T. Garrett,	

No. 25.

Motion made and Question put,—That the Chairman do now leave the Chair. (*Mr. Dalgleish.*)

Committee divided.

Ayes, 3.

Mr. Hoskins,	} Tellers.
Mr. Walsh,	
Mr. Dalgleish,	

Noes, 19.

Mr. Robertson,	Mr. Allen,	} Tellers.
Mr. Arnold,	Mr. Laycock,	
Mr. Lackey,	Mr. Caldwell,	
Mr. Raper,	Mr. Markham,	
Mr. O'Brien,	Mr. Parkes,	
Mr. Leary,	Mr. Mate,	
Mr. Piddington,	Mr. Meston,	
Mr. Smart,	Mr. Lucas,	
Mr. Terry,	Mr. Watt,	
Mr. Morrice,		

No. 26.

No. 26.

Clause 7. It shall be lawful for the Governor "of the Colony" to advance and issue if required any sum not exceeding thirty pounds "each" for the erection of "such" Pounds as he may deem necessary such advance to be repaid to the Treasury out of the proceeds of such stock as may be sold out of such Pound and not claimed by the owner or his agent according to the provisions of this Act and every Pound shall be kept in good repair by the keeper thereof at his proper cost and charge and shall be delivered up by such keeper upon the termination of his office by removal or otherwise in like order to such persons as shall be appointed by such Justices in such behalf and every Pound erected as aforesaid shall be properly fenced and "enclosed" and adapted as far as may be for keeping stock infected with any contagious disease separate and apart from those in "health" and if any Poundkeeper shall not keep up and maintain the said enclosures in proper repair or shall knowingly keep or permit to be kept any stock infected with any contagious disease in the same enclosure with stock not so infected or shall not keep the said Pound clean and in good order and the stock which from time to time shall be impounded therein supplied with a sufficiency of wholesome food and water every such Poundkeeper shall upon conviction of any such neglect forfeit and pay a sum not "exceeding Five" Pounds.—(Read.)

Question proposed,—That the Clause, as read, stand part of the Bill. (Mr. Watt.)

Amendment proposed,—That the words "of the Colony" be omitted, with the view of inserting the words "with the advice of the Executive Council." (Mr. Lucas.)

Question put,—That the words proposed to be omitted stand part of the Clause. Committee divided.

Ayes, 16.		Noes, 18.	
Mr. Arnold,	Mr. Parkes,	Capt. Moriarty,	Mr. Hannell,
Mr. Weekes,	Mr. Stewart,	Mr. Raper,	Mr. Cunneen,
Mr. Robertson,	Mr. Laycock,	Mr. Piddington,	Mr. Meston,
Mr. Morrice,	Mr. Markham,	Mr. Lackey,	Mr. O'Brien,
Mr. Dalgleish,	Mr. Caldwell,	Mr. Leary,	Mr. Watt,
Mr. J. T. Ryan,	Mr. Hoskins,	Mr. Irving,	Mr. Lucas,
Mr. Redman,	Mr. C. Cowper,	Mr. Hay,	Mr. Mate,
Mr. Terry,	junr.,	Mr. Macleay,	Mr. Cummings,
Mr. Smart,		Mr. Suttor,	Mr. Walsh,

And the Clause having been further amended by omitting the word "each," and by inserting the words "each of" before the word "such,"—

No. 27.

Question proposed,—That the Clause as amended stand part of the Bill. (Mr. Watt.)

Amendment proposed,—That all the words after the word "enclosed" down to the word "health," inclusive, be omitted. (Mr. Walsh.)

Question put,—That the words proposed to be omitted stand part of the Clause. Committee divided.

Ayes, 13.		Noes, 25.	
Mr. Lucas,		Mr. Arnold,	Mr. Wilson,
Mr. Shepherd,		Mr. Robertson,	Mr. Lewis,
Mr. Lackey,		Mr. Meston,	Mr. Flett,
Mr. Mate,		Mr. Walsh,	Mr. Terry,
Mr. J. T. Ryan,		Mr. O'Brien,	Mr. Stewart,
Mr. Cummings,		Mr. C. Cowper,	Mr. Laycock,
Mr. Piddington,		junr.,	Mr. Leary,
Mr. Suttor,		Mr. Markham,	Mr. Sutherland,
Mr. Cunneen,		Mr. T. Garrett,	Mr. Macleay,
Mr. Irving,		Mr. Morrice,	Mr. Moriarty,
Mr. Raper,		Mr. Parkes,	Mr. Caldwell,
Mr. Hannell,	} Tellers.	Mr. Dalgleish,	Mr. Hoskins,
Mr. Watt,		Mr. Smart,	Mr. Redman,

No. 28.

Question proposed,—That the Clause, as amended, stand part of the Bill. (Mr. Watt.)

Amendment proposed,—That the words "exceeding Five" be omitted, with the view of inserting the words "less than Two pounds nor more than Ten." (Mr. Redman.)

Question put,—That the words proposed to be omitted stand part of the Clause. Committee divided.

Ayes, 32.		Noes, 7.	
Mr. Arnold,	Mr. Stewart,	Capt. Moriarty,	
Mr. Robertson,	Mr. Sutherland,	Mr. C. Cowper,	
Mr. Redman,	Mr. Terry,	junr.,	
Mr. O'Brien,	Mr. Lewis,	Mr. Meston,	
Mr. Lucas,	Mr. Dalgleish,	Mr. Morrice,	
Mr. Smart,	Mr. Parkes,	Mr. Hay,	
Mr. Hannell,	Mr. Suttor,	Mr. Hoskins,	} Tellers.
Mr. Leary,	Mr. Cunneen,	Mr. Walsh,	
Mr. Cummings,	Mr. Flett,		
Mr. Markham,	Mr. Piddington,		
Mr. J. T. Ryan,	Mr. Laycock,		
Mr. Raper,	Mr. Buchanan,		
Mr. Wilson,	Mr. T. Garrett,		
Mr. Mate,	Mr. Macleay,		
Mr. Lackey,	Mr. Caldwell,		
Mr. Shepherd,	Mr. Watt,		

Clause, as amended, carried.

No. 29

Clause 8. The keeper of every Pound legally constituted by virtue of this Act may demand and receive Pound fees for the stock of the several descriptions which shall be impounded therein the several and respective sums following that is to say For the first or only head of horses cattle goats or swine the sum of sixpence and for every additional head of horses cattle goats or swine impounded at the same time and upon the same account the sum of three-pence each and for the first or only sheep four-pence and for every additional sheep impounded at the same time and upon the same account the sum of one farthing "each".—(*Read.*)

Question proposed,—That the Clause, as read, stand part of the Bill. (*Mr. Watt.*)

Amendment proposed,—That there be added after the word "each" the words "And all such Pound fees shall be paid over to such person and at such times as the Governor with the advice of the Executive Council shall appoint and shall be applied to the Public uses of the said Colony and in support of the Government thereof." (*Mr. Walsh*)

Question put,—That the words proposed to be added be so added.

Committee divided.

Ayes, 18.		Noes, 18.	
Mr. O'Brien,	Mr. Lewis,	Mr. Arnold,	Mr. Macleay.
Mr. Meston,	Mr. Shepherd,	Mr. Robertson,	Mr. Allen.
Mr. Hoskins,	Mr. Flett,	Mr. Raper,	Mr. Suttor,
Mr. C. Cowper,	Mr. Hart,	Mr. Mate,	Mr. Hay,
junr.,	Mr. Laycock,	Mr. Lucas,	Mr. Piddington,
Mr. Caldwell,	Mr. Driver,	Mr. Terry,	Mr. Jackey,
Mr. Wilson,	Mr. Markham,	Mr. Parkes,	Mr. Watt,
Mr. Morrice,	Mr. Walsh,	Mr. Dick,	Mr. Cummings, } Tellers.
Mr. Smart,	Mr. T. Garrett,	Mr. Buchanan,	Mr. Cunneen, }
Mr. Dalgleish,			

The Chairman gave the Casting Vote with the Noes.

No. 30.

Motion made and Question put,—That the Clause, as read, stand part of the Bill. (*Mr. Watt.*)

Committee divided.

Ayes, 24.		Noes, 16.	
Mr. Arnold,	Mr. Lackey,	Mr. Meston,	Mr. Markham,
Mr. Robertson,	Mr. J. T. Ryan,	Mr. Walsh,	Mr. Smart,
Mr. O'Brien,	Mr. Allen,	Mr. Wilson,	Mr. Caldwell,
Mr. Macleay,	Mr. Hannell,	Mr. Dalgleish,	Mr. Flett,
Mr. Dick,	Mr. Hay,	Mr. Shepherd,	Mr. T. Garrett,
Mr. Cummings,	Mr. Parkes,	Mr. C. Cowper,	Mr. Sutherland,
Mr. Buchanan,	Mr. Suttor,	junr.,	Mr. Hoskins, }
Mr. Terry,	Mr. Hart,	Mr. Lewis,	Mr. Driver, }
Mr. Mate,	Mr. Piddington,	Mr. Morrice,	
Mr. Cunneen,	Mr. Laycock,		
Mr. Leary,	Mr. Lucas,		
Mr. Raper,	Mr. Watt,		

No. 31.

Motion made and Question put,—That the Chairman leave the Chair, report progress, and ask leave to sit again this day fortnight. (*Mr. C. Cowper, junr.*)

Committee divided.

Ayes, 15.		Noes, 23.	
Mr. Walsh,	Mr. Smart,	Mr. O'Brien,	Mr. Lackey,
Mr. Arnold,	Mr. Lewis,	Mr. Watt,	Mr. Terry,
Mr. Robertson,	Mr. Dalgleish,	Mr. Hay,	Mr. Allen,
Mr. C. Cowper,	Mr. Flett,	Mr. Raper,	Mr. J. T. Ryan,
junr.,	Mr. Buchanan,	Mr. Meston,	Mr. Hart,
Mr. Garrett,	Mr. Laycock,	Mr. Piddington,	Mr. Macleay,
Mr. Markham,	Mr. Caldwell,	Mr. Mate,	Mr. Sutherland,
Mr. Wilson,	Mr. Hoskins,	Mr. Shepherd,	Mr. Driver,
		Mr. Parkes,	Mr. Suttor,
		Mr. Cummings,	Mr. Lucas,
		Mr. Morrice,	Mr. Leary, }
		Mr. Cunneen,	

Clause 9, read and carried—progress reported—to sit again.

1861.

Legislative Assembly.
NEW SOUTH WALES.

No. 8.

WEEKLY REPORT OF DIVISIONS
IN
COMMITTEE OF THE WHOLE HOUSE.

(EXTRACTED FROM THE MINUTES.)

SESSION OF 1861.

WEDNESDAY, 20 MARCH, 1861.

No. 1.

CROWN LANDS ALIENATION BILL OF 1861.

Original Clause 1 having been omitted, with a view of introducing a new Clause to follow Clause 1,—

Proposed new Clause 2. On and from the day of the commencement of this Act the Orders in Council shall be repealed. Provided that nothing herein shall prejudice or affect anything already lawfully done or commenced or contracted to be done thereunder respectively or to prevent the several provisions of the said Orders in Council from being carried into effect with respect to lands under lease or promise of lease "made" previously to the twenty-second day of February one thousand eight hundred and "fifty-eight" during the currency of such leases as fully as if the same had not been hereby repealed.
—(Read.)

Question proposed,—That the proposed new Clause, as read, stand part of the Bill, to follow Clause 1. (Mr. Robertson.)

Amendment proposed,—That all the words after the word "made" down to the word "fifty-eight" be omitted. (Mr. Suttor.)

Question put,—That the words proposed to be omitted stand part of the clause.

Committee divided.

Ayes, 28.

Mr. Cowper,	Mr. Terry,	
Mr. Raper,	Mr. Lucas,	
Mr. Robertson,	Mr. Flett,	
Mr. Weekes,	Mr. Sutherland,	
Mr. O'Brien,	Mr. Stewart,	
Mr. Hoskins,	Mr. Wilson,	
Mr. T. Garrett,	Mr. Blake,	
Mr. Caldwell,	Mr. Buchanan,	
Mr. Markham,	Mr. Driver,	
Mr. Love,	Mr. Dalgleish,	
Mr. Lewis,	Mr. Parkes,	
Mr. Hart,	Mr. C. Cowper,	} Tellers.
Mr. Redman,	junr.,	
Mr. Allen,	Capt. Moriarty,	
Mr. Cunneen,		

Noes, 12.

Mr. Egan,	
Mr. Piddington,	
Mr. Lesley,	
Mr. Mate,	
Mr. Lackey,	
Mr. Shepherd,	
Mr. Hay,	
Mr. Walker,	
Mr. Rusden,	
Mr. Suttor,	
Mr. Cummings,	} Tellers.
Mr. Morris,	

No. 2.

Proposed new Clause:—Every Adult Immigrant who shall come to this Colony direct from Great Britain and Ireland otherwise than at the expense of the Colony or the person who shall pay for the passage of any such Immigrant shall be entitled to a Land Order for the sum of £20 and after such Immigrant shall have resided in the Colony for two years continuously a further Land Order for the sum of £10 "provided" that children between the ages of four and fourteen years shall be entitled to half the above rates and "provided" also that every Immigrant claiming such Land Orders shall have complied with and shall be of the class comprised within the Immigration Regulations in force in the Colony for the time being.—*Read.*

Question proposed,—That the proposed new Clause, as read, stand part of the Bill, to follow Clause 12. (*Mr. Rusden.*)

Amendment proposed,—That all the words after the word "provided" down to the subsequent word "provided" inclusive, be omitted. (*Mr. Morris.*)

Question put,—That the words proposed to be omitted stand part of the Clause. Committee divided.

Ayes, 25.

Noes, 6.

Mr. Cowper,	Mr. Markham,	Mr. Mate,
Mr. Robertson,	Mr. Lucas,	Mr. Piddington,
Mr. Weekes,	Mr. Cunneen,	Mr. Terry,
Mr. O'Brien,	Mr. Leary,	Mr. Cummings,
Mr. Raper,	Mr. Lackey,	Mr. Rusden,
Mr. Morrice,	Mr. Allen,	Mr. Morris,
Mr. Caldwell,	Mr. Buchanan,	} Tellers.
Mr. Sutherland,	Mr. Laycock,	
Mr. T. Garrett,	Mr. Driver,	
Mr. Stewart,	Mr. Dalgleish,	
Mr. Lewis,	Mr. C. Cowper,	
Mr. Hoskins,	junr.,	} Tellers.
Mr. Love,	Capt. Moriarty,	

No. 3.

Motion made and Question put,—That the proposed new Clause, as read, stand part of the Bill, to follow Clause 12. (*Mr. Rusden.*) Committee divided.

Ayes, 7.

Noes, 26.

Mr. Morrice,	Mr. Cowper,	Mr. Parkes,
Mr. Piddington,	Mr. Robertson,	Mr. Allen,
Mr. Mate,	Mr. Weekes,	Mr. Laycock,
Mr. Cummings,	Mr. Driver,	Mr. Cunneen,
Mr. Terry,	Mr. C. Cowper,	Mr. Leary,
Mr. Rusden,	junr.,	Mr. Lackey,
Mr. Morris,	Mr. O'Brien,	Mr. Buchanan,
} Tellers.	Mr. Stewart,	Mr. Caldwell,
	Mr. Sutherland,	Mr. T. Garrett,
	Mr. Love,	Capt. Moriarty,
	Mr. Hoskins,	Mr. Raper,
	Mr. Windeyer,	Mr. Lucas,
	Mr. Markham,	Mr. Dalgleish,
	Mr. Lewis,	} Tellers.

No. 4.

CROWN LANDS OCCUPATION BILL OF 1861.

Clause 20. The Governor with the advice aforesaid may grant leases for purposes of mining for any metal or mineral excepting gold to any person of any Crown Lands not exceeding three hundred and twenty acres for coal mining lots and not exceeding eighty acres for other mineral lots for any period not exceeding fourteen years and with a right of renewal for a further period not exceeding fourteen years upon the next following conditions on the breach of any of which by any lessee the lease may be cancelled by the Governor with the advice of the Executive Council:—

- (1.) Persons may on application to the Minister obtain authority in writing to select on Crown Lands within twelve months from the date thereof coal or other mineral lots and may take possession of such lots and hold them for the period mentioned in such authority but the right shall be reserved to determine the boundaries of any such lots and to make provision for reservation of water supply Provided that applications made prior to the passing of this Act may be accepted under it and shall take precedence in the order of their date.
- (2.) The rent shall be five shillings per acre payable annually in advance at the Colonial Treasury the first payment to be made on application for authority to select and thereafter within the month of September for each ensuing year and leases shall in all cases end on the thirty-first day of December.
- (3.) Lessees shall expend at the rate of five pounds sterling per acre annually on their lots.
- (4.) Lessees may determine their leases by giving to the Minister three months notice of their desire to do so but no rent shall in any such case be refunded.

(5.)

(5.) Lessees may on application to the Minister in writing during the thirteenth year of their leases obtain a renewal of the same for a further period not exceeding fourteen "years" and the fine to be paid on such renewal not being less than two pounds ten shillings per acre shall be determined by appraisement and full information of the working and returns of the mine shall be afforded to the appraisers by the lessees on pain of forfeiting their claim to "renewal".

(6.) If any lease be forfeited or not renewed the lessee shall be at liberty within six months from the termination of his lease to remove or otherwise dispose of all machinery and improvements and the minerals brought to the surface during the term of his lease.—(Read.)

Question proposed,—That the Clause, as read, stand part of the Bill. (Mr. Robertson.)

Amendment proposed,—That all the words in Section 5 after the word "years," down to the word "renewal" inclusive, be omitted. (Mr. Allen.)

Question put,—That the words proposed to be omitted stand part of the Clause. Committee divided.

Ayes, 23.

Mr. Cowper,	Mr. Lackey,	
Mr. Robertson,	Mr. T. Garrett,	
Mr. Redman,	Mr. Flett,	
Capt. Moriarty,	Mr. Cummings,	
Mr. O'Brien,	Mr. Markham,	
Mr. Lewis,	Mr. Shepherd,	
Mr. Irving,	Mr. Mate,	
Mr. Sutherland,	Mr. Hoskins,	
Mr. Parkes,	Mr. Suttor,	
Mr. Morrice,	Mr. Dalgleish,	} Tellers.
Mr. Terry,	Mr. Morris,	
Mr. Leary,		

Noes, 4.

Mr. Rusden,	
Mr. Lesley,	
Mr. Allen,	} Tellers.
Mr. Lucas,	

THURSDAY, 21 MARCH, 1861.

No. 5.

SUPPLY.

Harbours, Light-houses, and Pilot Department.

Question proposed,—That there be granted to Her Majesty, a sum not exceeding £2,752, to defray the salaries and contingencies of the Steam Navigation and Pilot Board, and Harbour Masters, for the year 1861. (Mr. Weekes.)

Motion made and Question put,—That the item £250, for salary of Harbour Master at Twofold Bay, be omitted. (Mr. Dalgleish.)

Committee divided.

Ayes, 2.

Mr. Dalgleish,	} Tellers.
Mr. Driver,	

Noes, 32.

Mr. Cowper,	Mr. J. T. Ryan,
Mr. Arnold,	Mr. Stewart,
Mr. Weekes,	Mr. Terry,
Mr. Robertson,	Mr. Meston,
Mr. O'Brien,	Mr. Cunneen,
Mr. Mate,	Mr. Buchanan,
Mr. Redman,	Mr. Laycock,
Mr. Watt,	Mr. Sutherland,
Mr. Wilson,	Mr. Douglas,
Mr. Leary,	Mr. Hoskins,
Mr. Cummings,	Mr. Lesley,
Mr. Love,	Mr. T. Garrett,
Mr. Parkes,	Mr. Lucas,
Mr. Markham,	Mr. Morrice,
Mr. Lackey,	Mr. Allen,
Mr. Lewis,	Capt. Moriarty,

} Tellers.

Original Question put and carried.

No. 6.

Internal Communication.

Question proposed,—That there be granted to Her Majesty, a sum not exceeding £62,175 (being less than Estimate by £12,000 withdrawn, viz.:—£4,000 for the construction of a Road down the Araluen Mountain, by way Dirty Butter Creek; £4,000 for the construction of a Road from Mongo on the Clyde River to Qucanbeyan Road and Bredbo River; and £4,000 for special Works on the Road from Eden to Chalkers), for the construction and maintenance of Roads, other than Main Roads, and Ferries, for the year 1861. (Mr. Robertson.)

Debate ensued.

And

And the Committee continuing to sit until after midnight,

FRIDAY, 22 MARCH, 1861, A.M.

Motion made and Question put,—That the Chairman do now leave the Chair, report progress, and ask leave to sit again on Tuesday next. (*Mr. Wilson.*)

Committee divided.

Ayes, 9.

Mr. O'Brien,
Capt. Moriarty,
Mr. Egan,
Mr. Lewis,
Mr. Sutherland,
Mr. Douglas,
Mr. Redman,
Mr. Wilson,
Mr. T. Garrett, } Tellers.

Noes, 22.

Mr. Cowper, Mr. Flett,
Mr. Arnold, Mr. Suttor,
Mr. Weekes, Mr. Windeyer,
Mr. Robertson, Mr. Hay,
Mr. Dalgleish, Mr. Parkes,
Mr. Mate, Mr. Lackey,
Mr. Morris, Mr. Macleay,
Mr. Leary, Mr. Lesley,
Mr. Watt, Mr. Lucas,
Mr. Cummings, Mr. Piddington, } Tellers.
Mr. Markham, Mr. Hoskins, }

Original Question put and carried.

Progress reported,—to sit again.

FRIDAY, 22 MARCH, 1861.

No. 7.

IMPOUNDING BILL OF 1861.

Clause 11. All horses cattle sheep goats or swine impounded under the provisions of this Act shall be sent to the public Pound nearest to the land where the same were "trespassing" and the person impounding any such stock shall in a written memorandum specify to the keeper of the Pound the number and kinds of the horses cattle sheep goats or swine impounded and the name of the owner if he be known or supposed owner or otherwise state that he is wholly unknown to the person impounding the place where the said horses cattle sheep goats or swine were trespassing and the amount of damage claimed for the trespass and driving "separately" Provided that horses or cattle used for work shall not be impounded off any land not enclosed with a good substantial fence and the Poundkeeper shall not receive such working horses and cattle unless such animals have been on such land more than three days consecutively without being used for work by the owner or other authorized person provided they were not prevented being used for work by floods or other unavoidable causes and if any owner of land or occupier or other authorized person shall impound any horses cattle sheep goats or swine in any manner contrary to the directions and provisions hereof every person so offending shall upon conviction forfeit and pay a fine not exceeding ten pounds for every such offence.—(*Read.*)

Question proposed,—That the Clause, as read, stand part of the Bill. (*Mr. Watt.*)
And the Clause having been amended by inserting after the word "nearest" the words "by a practicable road or highway," and by inserting after the word "trespassing" the words "or in the event of such land being equi-distant" from two Pounds the person impounding may have the option in which of the "said Pounds the said cattle sheep goats or swine may be impounded."

Amendment proposed,—That all the words after the word "trespassing," down to the word "separately" inclusive, be omitted. (*Mr. Arnold.*)

Question put,—That the words proposed to be omitted stand part of the Clause.
Committee divided.

Ayes, 20.

Mr. Hay, Mr. Shepherd,
Mr. O'Brien, Mr. Flett,
Mr. Markham, Mr. Laycock,
Mr. Hoskins, Mr. Lackey,
Mr. Morrice, Mr. Douglas,
Mr. Raper, Mr. Piddington,
Mr. Parkes, Mr. Lesley,
Mr. Terry, Mr. C. Cowper,
Mr. Mate, junr., } Tellers.
Mr. Cummings, Mr. Wilson,
Mr. Watt,

Noes, 16.

Mr. Cowper, Mr. Buchanan,
Mr. Arnold, Mr. Suttor,
Mr. Weekes, Mr. Hart,
Mr. Love, Mr. T. Garrett, } Tellers.
Mr. Caldwell, Mr. Leary,
Mr. Lewis,
Mr. J. T. Ryan,
Mr. Dalgleish,
Mr. Driver,
Mr. Cunneen,
Mr. Sutherland,

Clause, after further amendment, carried.

No. 8.

Clause 12. It shall be lawful for the owner of any land or occupier or agent of such owner or occupier to charge and receive for trespass on such land and the Poundkeeper shall demand and receive on account of such person from the owner or his agent of such horses cattle sheep goats or pigs as may be impounded or if no owner or agent claiming such stock then out of the proceeds of the sale of the said stock the "following" on lands not enclosed with a good substantial fence for each and every head of horses cattle pigs and

and goats sixpence for each and every sheep one "farthing" on lands enclosed with a good substantial fence double the foregoing stated amount and for trespass in any garden uncut meadow or growing crop of any kind enclosed by a good substantial and sufficient fence eight times the "above" stated amount or the occupier of such land or his agent may demand from the owner (or his agent) of such stock trespassing in garden uncut meadow or growing crop or may sue for and recover at the nearest Court of Petty Sessions such further damage as such crop in the opinion of two or more Justices of the Peace assembled may have received Provided that in case any horses cattle sheep goats or swine shall be impounded off the said land more than once within three months the person so impounding may legally claim and obtain double the amount of damages for trespass so fixed.—(Read.)

Question proposed,—That the clause, as read, stand part of the Bill. (Mr. Watt.)

Amendment proposed,—That all the words after the word "following," down to the word "farthing" inclusive, be omitted. (Mr. Hoskins.)

Question put,—That the words proposed to be omitted stand part of the Clause.

Committee divided.

Ayes, 20.		Noes, 19.	
Mr. Arnold,	Mr. Laycock,	Mr. Weekes,	Mr. Lewis,
Mr. Morrice,	Mr. Shepherd,	Mr. C. Cowper,	Mr. Parkes,
Mr. Cunneen,	Mr. Hay,	junr.,	Mr. Love,
Mr. Irving,	Mr. Suttor,	Mr. Leary,	Mr. Douglas,
Mr. Meston,	Mr. Mate,	Mr. Sutherland,	Mr. Stewart,
Mr. Cummings,	Mr. Piddington,	Mr. J. T. Ryan,	Mr. Buchanan,
Mr. Terry,	Mr. Redman,	Mr. O'Brien,	Mr. Macleay,
Mr. Gray,	Mr. Wilson,	Mr. Markham,	Mr. Dickson,
Mr. Flett,	Mr. Lucas,	Mr. T. Garrett,	Mr. Dalgleish,
Mr. Watt,	Mr. Lesley,	Mr. Raper,	Mr. Hoskins,
	} Tellers.		} Tellers.

And a point of order having arisen as to the right of an Honorable Member to vote with the Noes after having given his voice with the Ayes,—

No. 9.

Motion made and Question put,—That the Chairman do now leave the Chair, to report the point of order to the House. (Mr. Wilson.)

Committee divided.

Ayes, 17.		Noes, 22.	
Mr. Weekes,	Mr. Raper,	Mr. Arnold,	Mr. Hay,
Mr. Markham,	Mr. Love,	Mr. Meston,	Capt. Moriarty,
Mr. Leary,	Mr. Macleay,	Mr. Lesley,	Mr. Morrice,
Mr. Hoskins,	Mr. Douglas,	Mr. Cummings,	Mr. Cunneen,
Mr. O'Brien,	Mr. Dalgleish,	Mr. Mate,	Mr. Gray,
Mr. Stewart,	Mr. C. Cowper,	Mr. Shepherd,	Mr. Laycock,
Mr. J. T. Ryan,	junr.,	Mr. Flett,	Mr. Irving,
Mr. Sutherland,	Mr. T. Garrett,	Mr. Watt,	Mr. Suttor,
Mr. Buchanan,	Mr. Wilson,	Mr. Parkes,	Mr. Lewis,
	} Tellers.	Mr. Redman,	Mr. Piddington,
		Mr. Terry,	Mr. Lucas,
			} Tellers.

No. 10.

Question proposed,—That the clause, as read, stand part of the Bill. (Mr. Watt.)

And the Committee continuing to sit until after midnight,—

SATURDAY, 23 MARCH, 1861, A. M.

Motion made and Question put,—That the Chairman do now leave the Chair, report progress, and ask leave to sit again on Friday next. (Mr. Wilson.)

Committee divided.

Ayes, 8.		Noes, 31.	
Mr. T. Garrett,		Mr. Cowper,	Mr. Douglas,
Mr. Wilson,		Mr. Weekes,	Mr. Shepherd,
Mr. Lewis,		Mr. Parkes,	Mr. Laycock,
Mr. Buchanan,		Mr. Dick,	Mr. Flott,
Mr. Gray,		Mr. O'Brien,	Mr. Lesley,
Mr. Hoskins,		Mr. Meston,	Mr. Hay,
Mr. Dalgleish,	} Tellers.	Mr. Lucas,	Mr. Windeyer,
Mr. Markham,		Mr. Cummings,	Mr. J. T. Ryan,
		Mr. Terry,	Mr. Irving,
		Mr. Redman,	Mr. Piddington,
		Mr. Leary,	Mr. Suttor,
		Mr. Caldwell,	Capt. Moriarty,
		Mr. Mate,	Mr. Mate,
		Mr. Egan,	Mr. Watt,
		Mr. Morrice,	Mr. Morris,
		Mr. Macleay,	} Tellers.

No.

No. 11.

Motion made and Question put,—That Clause 12 be postponed. (*Mr Redman.*)
Committee divided.

Ayes, 8.

Mr. Markham,	} Tellers.
Mr. Rodman,	
Mr. Lewis,	
Mr. Buchanan,	
Mr. Gray,	
Mr. Hoskins,	
Mr. T. Garrett,	
Mr. Dalgleish,	

Noes, 31.

Mr. Parkes,	Mr. Macleay,	} Tellers.
Mr. Cowper,	Mr. Wilson,	
Mr. Sutherland,	Mr. Shepherd,	
Mr. Weekes,	Mr. Laycock,	
Mr. Morris,	Mr. Plett,	
Mr. Lesley,	Mr. Driver,	
Mr. O'Brien,	Mr. J. T. Ryan,	
Mr. Meston,	Mr. Irving,	
Mr. Cummings,	Mr. Suttor,	
Mr. Cunneen,	Mr. Piddington,	
Mr. Lucas,	Capt. Moriarty,	
Mr. Terry,	Mr. Mate,	
Mr. Hay,	Mr. Windeyer,	
Mr. Egan,	Mr. Watt,	
Mr. Leary,	Mr. Dick,	
Mr. Morrice,		

And the Clause having been amended by inserting the word "first" before the word "above,"—

No. 12.

Motion made and Question put,—That the Clause, as amended, stand part of the Bill. (*Mr. Watt.*)

Committee divided.

Ayes, 21.

Mr. O'Brien,	Mr. Laycock,	} Tellers.
Mr. Lucas,	Mr. Macleay,	
Mr. J. T. Ryan,	Mr. Windeyer,	
Mr. Irving,	Mr. Parkes,	
Mr. Watt,	Mr. Suttor,	
Mr. Piddington,	Mr. Hay,	
Mr. Cummings,	Mr. Terry,	
Mr. Cunneen,	Mr. Morris,	
Mr. Egan,	Mr. Dick,	
Mr. Morrice,		
Mr. Mate,		
Mr. Leary,		

Noes, 12.

Mr. Cowper,	} Tellers.
Mr. Weekes,	
Mr. Sutherland,	
Mr. Hoskins,	
Mr. Markham,	
Mr. Wilson,	
Mr. Lewis,	
Mr. C. Cowper, junr.,	
Mr. Driver,	
Mr. T. Garrett,	
Mr. Dalgleish,	
Mr. Redman,	

No. 13.

Clause 13 having been read,—

Question proposed,—That the Clause, as read, stand part of the Bill. (*Mr. Watt.*)

Motion made and Question put,—That the Chairman do now leave the Chair. (*Mr. Hoskins.*)

Committee divided.

Ayes, 9.

Mr. Cowper,	} Tellers.
Mr. Weekes,	
Mr. Hoskins,	
Mr. Redman,	
Mr. Lewis,	
Mr. C. Cowper,	
junr.,	
Mr. Wilson,	
Mr. Dalgleish,	
Mr. Markham,	

Noes, 24.

Mr. O'Brien,	Mr. Laycock,	} Tellers.
Mr. Dick,	Mr. Leary,	
Mr. Mate,	Mr. Driver,	
Mr. Watt,	Mr. Suttor,	
Mr. Lucas,	Mr. T. Garrett,	
Mr. Cummings,	Mr. Windeyer,	
Mr. Parkes,	Mr. Irving,	
Mr. Terry,	Mr. Hay,	
Mr. Cunneen,	Mr. Piddington,	
Mr. Macleay,	Mr. Sutherland,	
Mr. Egan,	Mr. Morris,	
Mr. J. T. Ryan,		
Mr. Morrice,		

No. 14.

Motion made and Question put,—That the Chairman do now leave the Chair, report progress, and ask leave to sit again on Friday next. (*Mr. Hoskins.*)

Committee divided.

Ayes, 13.

Mr. Cowper,	Mr. J. T. Ryan,	} Tellers.
Mr. Weekes,	Mr. Macleay,	
Mr. Hoskins,	Mr. Dalgleish,	
Mr. T. Garrett,	Mr. Markham,	
Mr. Sutherland,		
Mr. Redman,		
Mr. Lewis,		
Mr. C. Cowper,		
junr.,		
Mr. Wilson,		

Noes, 20.

Mr. O'Brien,	Mr. Driver,	} Tellers.
Mr. Mate,	Mr. Laycock,	
Mr. Watt,	Mr. Cummings,	
Mr. Lucas,	Mr. Suttor,	
Mr. Morrice,	Mr. Windeyer,	
Mr. Leary,	Mr. Irving,	
Mr. Terry,	Mr. Hay,	
Mr. Cunneen,	Mr. Piddington,	
Mr. Parkes,	Mr. Dick,	
Mr. Egan,	Mr. Morris,	

Progress subsequently reported,—to sit again.

No. 15.

No. 15.

WAHGUNYAH MURRAY BRIDGE COMPANY'S BILL.

*Clause 1 having been read,—*Question proposed,—That the Clause, as read, stand part of the Bill. (*Mr. Hay.*)Motion made and Question put,—That the Chairman do now leave the Chair, report progress, and ask leave to sit again on Tuesday next. (*Mr. Hoskins.*)

Committee divided.

Ayes, 5.

Mr. O. Cowper,	} Tellers.
junr.,	
Mr. Egan,	
Mr. Driver,	
Mr. Lewis,	
Mr. Hoskins,	

Noes, 23.

Mr. Cowper,	Mr. Watt,	} Tellers.
Mr. Weekes,	Mr. Morrice,	
Mr. J. T. Ryan,	Mr. Wilson,	
Mr. Cummings,	Mr. Terry,	
Mr. Hay,	Mr. Lucas,	
Mr. Mate,	Mr. Cunneen,	
Mr. Markham,	Mr. Suttor,	
Mr. Sutherland,	Mr. Dalglish,	
Mr. O'Brien,	Mr. T. Garrett,	
Mr. Parkes,	Mr. Dick,	
Mr. Piddington,	Mr. Morris,	
Mr. Windeyer,		

1912

1913

1914

1915

1916

1861.

—
Legislative Assembly.
NEW SOUTH WALES.

—
No. 9.

—
WEEKLY REPORT OF DIVISIONS
 IN
COMMITTEE OF THE WHOLE HOUSE.

(EXTRACTED FROM THE MINUTES.)

—
SESSION OF 1861.

—
TUESDAY, 26 MARCH, 1861.

No. 1.

SUPPLY.

Legislative Council.

Question proposed,—That there be granted to Her Majesty, a sum not exceeding £5,975, to defray the salaries and contingencies of the Legislative Council Department, for the year 1861. (*Mr. Cowper.*)

Motion made and Question put,—That the item £800, for salary of Clerk of the Council, be reduced by £100. (*Mr. Windeyer.*)

Committee divided.

Ayes, 22.

Mr. Lucas,	Mr. J. T. Ryan,	} Tellers.
Mr. Love,	Mr. Terry,	
Mr. Caldwell,	Mr. Wilson,	
Mr. Haworth,	Mr. Lackey,	
Mr. Lewis,	Mr. Shepherd,	
Mr. Peisley,	Mr. Smart,	
Mr. Dalgleish,	Mr. Stewart,	
Mr. Windeyer,	Mr. Cunneen,	
Mr. Lesley,	Mr. Driver,	
Mr. Leary,	Mr. Sutherland,	
Mr. Parkes,	Mr. Dickson,	

Noes, 19.

Mr. Cowper,	Mr. Markham,	} Tellers.
Mr. Weekes,	Mr. Buchanan,	
Mr. Rusden,	Mr. Gray,	
Mr. Meston,	Mr. Hart,	
Mr. Egan,	Mr. Suttor,	
Mr. Hoskins,	Mr. Raper,	
Mr. O'Brien,	Mr. Mate,	
Mr. Daniel,	Mr. Morris,	
Mr. Morrice,		
Mr. Flett,		
Mr. Laycock,		

No. 2.

Motion made and Question put,—That the item £500, for salary of Short-hand Writer, be reduced by £100. (*Mr. Dalgleish.*)

Committee divided.

Ayes, 18.

Mr. Hoskins,	Mr. Parkes,	} Tellers.
Mr. Lucas,	Mr. Cunneen,	
Mr. Sutherland,	Mr. Driver,	
Mr. Caldwell,	Mr. Gray,	
Mr. Hart,	Mr. Lesley,	
Mr. Peisley,	Mr. Dickson,	
Mr. Stewart,		
Mr. Lewis,		
Mr. Terry,		
Mr. Leary,		
Mr. Lackey,		
Mr. Piddington,		

Noes, 24.

Mr. Cowper,	Mr. Morrice,	} Tellers.
Mr. Weekes,	Mr. J. T. Ryan,	
Capt. Moriarty,	Mr. Cummings,	
Mr. Rusden,	Mr. Buchanan,	
Mr. O'Brien,	Mr. Blake,	
Mr. Watt,	Mr. Flett,	
Mr. Mate,	Mr. Suttor,	
Mr. Wilson,	Mr. Meston,	
Mr. Morris,	Mr. Arnold,	
Mr. Daniel,	Mr. Hay,	
Mr. Love,	Mr. Egan,	
Mr. Haworth,	Mr. Dalgleish,	

Estimate, as reduced, carried.

166—

No. 3.

Committee divided.

Ayes, 29.		Noes, 7.	
Mr. Cowper,	Mr. Morris,	Mr. Cummings,	} Tellers.
Mr. Smart,	Mr. Neston,	Mr. Dickson,	
Mr. Weekes,	Mr. Hoskins,	Mr. Hannell,	
Capt. Moriarty,	Mr. Piddington,	Mr. Lewis,	
Mr. O'Brien,	Mr. Lackey,	Mr. Terry,	
Mr. Love,	Mr. Suttor,	Mr. Lucas,	
Mr. Parkes,	Mr. Hay,	Mr. Watt,	
Mr. Windeyer,	Mr. Shepherd,		
Mr. Caldwell,	Mr. Mate,		
Mr. Dalgleish,	Mr. Laycock,		
Mr. Walker,	Mr. Allen,		
Mr. Daniel,	Mr. T. Garrett,		
Mr. Irving,	Mr. Leary,		
Mr. Raper,	Mr. Wilson,		
Mr. Hart,			

No. 8.

Customs.

Motion made and Question put,—That there be granted to Her Majesty, a sum not exceeding £300 (postponed item), for salary of Sub-Collector at Albury, for the year 1861. (*Mr. Weekes.*)
Committee divided.

Ayes, 23.		Noes, 5.	
Mr. Arnold,	Mr. Leary,	Mr. Hay,	} Tellers.
Mr. Weekes,	Mr. Dickson,	Mr. Dalgleish,	
Mr. Caldwell,	Mr. Sutherland,	Mr. Suttor,	
Mr. Raper,	Mr. Parkes,	Mr. Mate,	
Mr. Hoskins,	Mr. Smart,	Mr. Morris,	
Mr. Lucas,	Mr. Piddington,		
Mr. Lewis,	Mr. Flett,		
Mr. T. Garrett,	Mr. Buchanan,		
Mr. Markham,	Mr. Allen,		
Mr. Terry,	Mr. Love,		
Mr. Lackey,	Mr. Driver,		
Mr. J. T. Ryan,			

No. 9.

Customs.

Motion made and Question put,—That there be granted to Her Majesty, a sum not exceeding £300 (postponed item), for salary of Sub-Collector at Moama, for the year 1861. (*Mr. Weekes.*)
Committee divided.

Ayes, 32.		Noes, 7.	
Mr. Cowper,	Mr. Leary,	Mr. Shepherd,	} Tellers.
Mr. Weekes,	Mr. Stewart,	Mr. Hay,	
Mr. Arnold,	Mr. Sutherland,	Mr. Windeyer,	
Mr. Hannell,	Mr. Allen,	Mr. Watt,	
Mr. Love,	Mr. Lackey,	Mr. Dalgleish,	
Mr. Caldwell,	Mr. J. T. Ryan,	Mr. Mate,	
Mr. Raper,	Mr. Lucas,	Mr. Morris,	
Mr. O'Brien,	Mr. Parkes,		
Mr. Hoskins,	Mr. Irving,		
Mr. Peasley,	Mr. Smart,		
Mr. Redman,	Mr. Piddington,		
Mr. Lewis,	Mr. Laycock,		
Mr. Markham,	Mr. Buchanan,		
Mr. Wilson,	Capt. Moriarty,		
Mr. Dickson,	Mr. Driver,		
Mr. Cummings,	Mr. T. Garrett,		

No. 10.

Administration of Justice. (Explanatory Memorandum.)

Question proposed,—That there be granted to Her Majesty, an additional sum not exceeding £233, to defray salaries for the Department of the Law Officers of the Crown, for the year 1861. (*Mr. Cowper.*)
Motion made and Question put,—That the item £50, increase to Clerk from £200 to £250, be omitted. (*Mr. Dalgleish.*)
Committee divided.

Ayes, 21.		Noes, 9.	
Mr. Raper,	Mr. Piddington,	Mr. Cowper,	} Tellers.
Capt. Moriarty,	Mr. Walker,	Mr. Weekes,	
Mr. Stewart,	Mr. Leary,	Mr. O'Brien,	
Mr. Dalgleish,	Mr. Mate,	Mr. Caldwell,	
Mr. Windeyer,	Mr. Lackey,	Mr. Morris,	
Mr. Terry,	Mr. Cummings,	Mr. Laycock,	
Mr. Peasley,	Mr. Shepherd,	Mr. Buchanan,	
Mr. Allen,	Mr. Hoskins,	Mr. Markham,	
Mr. Hart,	Mr. Love,	Mr. T. Garrett,	
Mr. Parkes,	Mr. Sutherland,		
Mr. Hay,			

No. 11.

No. 11.

Motion made and Question put,—That there be granted to Her Majesty, an additional sum not exceeding £183, to defray the salaries for the Department of the Law Officers of the Crown, for the year 1861. (*Mr. Cowper.*)

Committee divided.

Ayes, 9.

Mr. Cowper,
Mr. Weckes,
Mr. O'Brien,
Mr. Markham,
Mr. Allen,
Mr. Laycock,
Mr. Buchanan,
Mr. Caldwell, } Tellers.
Mr. T. Garrett, }

Noes, 22.

Mr. Cunneen,	Mr. Morris,
Mr. Love,	Mr. Terry,
Mr. Parkes,	Mr. Flett,
Mr. Hart,	Mr. Shepherd,
Mr. Walker,	Mr. Meston,
Mr. Hay,	Mr. Sutherland,
Capt. Moriarty,	Mr. Peisley,
Mr. Leary,	Mr. Hoskins,
Mr. Raper,	Mr. Piddington,
Mr. Stewart,	Mr. Dalglish, } Tellers.
Mr. Mate,	Mr. Windeyer, }

Progress reported,—to sit again.

[Price, 1d.]

Sydney: Thomas Richards, Government Printer.—1861.

1861.

Legislative Assembly.

NEW SOUTH WALES.

No. 10.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE HOUSE.

(EXTRACTED FROM THE MINUTES.)

SESSION OF 1861.

TUESDAY, 2 APRIL, 1861.

No. 1.

LEGISLATIVE COUNCIL BILL OF 1861.

Clause 3. At and after the next dissolution of the Legislative Assembly the present Legislative Council shall be dissolved And thenceforth a Legislative "Council" shall be constituted and composed solely of Members to be elected as hereinafter "prescribed" And the Governor may then forthwith and thereafter from time to time as occasion shall require in Her Majesty's name by instrument under the Great Seal of the Colony summon and call together a Legislative Council in and for the "Colony" And such Legislative Council shall meet for the dispatch of business on the same day as the Legislative "Assembly" Provided that it shall be lawful for the Governor by Proclamation or otherwise to dissolve any Legislative Council elected under this Act whenever he shall deem it expedient.—(Read.)

And the Clause having been amended by omitting all the words down to the word "Council" inclusive, and by inserting instead thereof the words "it shall be lawful for the Governor at such place and at such time not being later than six months after the day on which this Act shall come into operation and thereafter from time to time as occasion shall require in Her Majesty's name by instrument under the Great Seal of the Colony to summon and call together a Legislative Council in and for the Colony which"; and further by omitting all the words after the word "prescribed" down to the word "Colony" inclusive.

Question proposed,—That the Clause, as amended, stand part of the Bill. (Mr. Cowper.)

Amendment proposed,—That all the words after the word "Assembly" to the end of the Clause be omitted. (Mr. Parkes.)

Question put,—That the words proposed to be omitted stand part of the Clause.

Committee divided.

Ayes, 20.

Mr. Cowper,	Mr. Hart,	} Tellers.
Mr. Arnold,	Mr. Driver,	
Mr. Weekes,	Mr. Hoskins,	
Mr. O'Brien,	Mr. Markham,	
Mr. J. N. Ryan,	Mr. Dick,	
Mr. Love,	Mr. T. Garrett,	
Mr. Caldwell,		
Mr. Lucas,		
Mr. Peisley,		
Mr. Dalgleish,		
Mr. Allen,		
Mr. Redman,		
Mr. Sutherland,		
Mr. Stewart,		

Noes, 28.

Mr. Piddington,	Mr. Leary,	} Tellers.
Capt. Moriarty,	Mr. Terry,	
Mr. Watt,	Mr. McArthur,	
Mr. Rusden,	Mr. Morrice,	
Mr. Mate,	Mr. Wilson,	
Mr. Hay,	Mr. Raper,	
Mr. Windeyer,	Mr. Lackey,	
Mr. Shepherd,	Mr. Dickson,	
Mr. Suttor,	Mr. Smart,	
Mr. Cummings,	Mr. Macleay,	
Mr. Daniel,	Mr. Douglas,	
Mr. Neston,	Mr. Rotton,	
Mr. Hannell,	Mr. Egan,	
Mr. J. T. Ryan,	Mr. Parkes,	

Clause, as amended, carried.

No. 2.

No. 2.

Same Bill.

Clause 5. For the Election of Members to serve in the Legislative Council the Colony shall be divided "into" the following Council Districts:—

- | | |
|-------------|------------|
| Bourke | Mulgoa |
| Gipps | Roxburgh |
| The Hamlets | Macquarie |
| Cumberland | Phillip |
| Petersham | Wellesley |
| West Camden | Clinton |
| East Camden | Nelson |
| Wollondilly | Maitland |
| Auckland | Campbell |
| St. Vincent | Brisbane |
| King | Denison |
| Darling | Namoi |
| Wyuyard | Armidale |
| Cook | "Richmond" |

And the said Council Districts shall respectively comprise and consist of the several Assembly Districts and shall respectively return the number of Members set against the names of such Council Districts respectively in the Schedule hereto marked A.—(Read.)

Question proposed,—That the Clause, as read, stand part of the Bill. (Mr. Cowper.)

Amendment proposed,—That all the words after the word "into" down to the word "Richmond" inclusive be omitted, with a view of inserting the words "Eight Electoral Provinces which shall be designated by the following names:—Sydney Somers Hampden Milton Raleigh Nelson Peel Brougham."

(Mr. Parkes.)

Question put,—That the words proposed to be omitted stand part of the Clause. Committee divided.

Ayes, 37.

Noes, 16.

- | | | |
|-----------------|-----------------|------------|
| Mr. Cowper, | Mr. Sutherland, | } Tellers. |
| Mr. Weekes, | Mr. Douglas, | |
| Mr. Arnold, | Mr. Laycock, | |
| Mr. Smart, | Mr. Markham, | |
| Capt. Moriarty, | Mr. Leary, | |
| Mr. Morrice, | Mr. Daniel, | |
| Mr. Love, | Mr. Hannell, | |
| Mr. O'Brien, | Mr. Hart, | |
| Mr. Redman, | Mr. Egan, | |
| Mr. Lewis, | Mr. Gray, | |
| Mr. Caldwell, | Mr. Allen, | |
| Mr. Wilson, | Mr. Buchanan, | |
| Mr. Dick, | Mr. T. Garrett, | |
| Mr. Raper, | Mr. Dalgleish, | |
| Mr. J. N. Ryan, | Mr. J. T. Ryan, | |
| Mr. Cummings, | Mr. Meston, | |
| Mr. Peasley, | Mr. Hoskins, | |
| Mr. Atkinson, | Mr. Driver, | |
| Mr. Terry, | | |

- | | |
|-----------------|------------|
| Mr. Mate, | } Tellers. |
| Mr. Walker, | |
| Mr. Lackey, | |
| Mr. Parkes, | |
| Mr. Shepherd, | |
| Mr. Suttor, | |
| Mr. Irving, | |
| Mr. Dickson, | |
| Mr. Watt, | |
| Mr. Piddington, | |
| Mr. Windeyer, | |
| Mr. Lucas, | |
| Mr. Rotton, | |
| Mr. Rusden, | |
| Mr. Hay, | |
| Mr. Morris, | |

Clause, as read, carried.

WEDNESDAY, 3 APRIL, 1861.

No. 3.

Same Bill.

Clause 6. Every person qualified to be elected a Member of the Legislative Assembly and registered on the Council Roll and being of the full age of thirty "five" years shall be qualified to be elected a Member of the Legislative Council Provided that no person being a Member of the Legislative Assembly shall be capable of being elected a Member of the Legislative Council.—(Read.)

Question proposed,—That the Clause, as read, stand part of the Bill. (Mr. Cowper.)

Amendment proposed,—That the word "five" be omitted. (Mr. Terry.)

Question put,—That the word proposed to be omitted stand part of the Clause. Committee divided.

Ayes, 25.

Noes, 7.

- | | | |
|-----------------|-----------------|------------|
| Mr. Cowper, | Mr. Irving, | } Tellers. |
| Mr. Weekes, | Mr. Walker, | |
| Mr. Arnold, | Mr. Cummings, | |
| Mr. Ilaworth, | Mr. Lackey, | |
| Mr. O'Brien, | Mr. Suttor, | |
| Capt. Moriarty, | Mr. Piddington, | |
| Mr. Lewis, | Mr. Buchanan, | |
| Mr. Morrice, | Mr. Gray, | |
| Mr. J. N. Ryan, | Mr. Wilson, | |
| Mr. Douglas, | Mr. Rotton, | |
| Mr. Dick, | Mr. Morris, | |
| Mr. Markham, | Mr. Rusden, | |
| Mr. Watt, | | |

- | | |
|-----------------|------------|
| Mr. T. Garrett, | } Tellers. |
| Mr. Dalgleish, | |
| Mr. Cunneen, | |
| Mr. Terry, | |
| Mr. Love, | |
| Mr. Driver, | |
| Mr. Hoskins, | |

No. 4.

No. 4.

Motion made and Question put,—That there be inserted after the word *years*, the words "And who shall have resided within the Colony for a period of not less than three years." (*Mr. Parkes.*)

Committee divided.

Ayes, 13.		Noes, 21.		
Capt. Moriarty,	Mr. Rusden,	} Tellers.	Mr. Cowper,	Mr. Morrice,
Mr. Walker,	Mr. Morris,		Mr. Weekes,	Mr. Terry,
Mr. Windeyer,			Mr. Arnold,	Mr. Buchanan,
Mr. Parkes,			Mr. O'Brien,	Mr. Hoskins,
Mr. Cummings,			Mr. Lewis,	Mr. Haworth,
Mr. Irving,			Mr. Love,	Mr. Driver,
Mr. Suttor,			Mr. Gray,	Mr. Dick,
Mr. Hay,			Mr. Lackey,	Mr. Douglas,
Mr. Piddington,			Mr. Cunneen,	Mr. T. Garrett,
Mr. Wilson,			Mr. Markham,	Mr. Dalglish,
Mr. Rotton,			Mr. J. N. Ryan,	
				} Tellers.

Clause, as read, carried.

No. 5.

Same Bill.

Clause 7. Every person "qualified" to vote at the Election of a Member to serve in the Legislative Assembly and none other shall be entitled to be registered on a Council Roll and qualified to vote as hereinafter enacted at the Election of Members to serve in the Legislative Council.—(*Read.*)

Question proposed,—That the Clause, as read, stand part of the Bill. (*Mr. Cowper.*)

Motion made and Question put,—That there be inserted after the word "qualified" the words "otherwise than by reason of residence only." (*Mr. Rotton.*)

Committee divided.

Ayes, 7.		Noes, 22.		
Capt. Moriarty,		} Tellers.	Mr. Cowper,	Mr. Cunneen,
Mr. Piddington,			Mr. Weekes,	Mr. Buchanan,
Mr. Haworth,			Mr. Driver,	Mr. J. N. Ryan,
Mr. Morris,			Mr. T. Garrett,	Mr. Gray,
Mr. Watt,			Mr. Markham,	Mr. Morrice,
Mr. Rotton,			Mr. Hoskins,	Mr. Dick,
Mr. Rusden,			Mr. O'Brien,	Mr. Lackey,
		Mr. Lewis,	Mr. Douglas,	
		Mr. Parkes,	Mr. Arnold,	
		Mr. Windeyer,	Mr. Dalglish,	
		Mr. Wilson,	Mr. Love,	
			} Tellers.	

Progress reported,—to sit again.

THURSDAY, 4 APRIL, 1861.

No. 6.

Same Bill.

Clause 7 having been carried, after amendment, to read thus:—"Every person duly registered on a Council Roll shall be qualified to vote at the Election of Members to serve in the Legislative Council,"—

Clause 8. The Returning Officers of the several Council Districts shall respectively register in one Alphabetical Roll all the Electors registered in the several Rolls of the Assembly Districts comprised in such respective Council "Districts" and such Alphabetical Rolls shall respectively be the Council Rolls for such Council Districts respectively. And to this end the Returning Officer of every Assembly District shall within one month after the passing of this Act and thereafter on or before the *Twelfth* day of *May* in every year deliver a copy of the Roll of his Assembly District to the Returning Officer of the Council District of which it forms a part. But nothing herein shall affect any provision of the Electoral Act of 1858 relating or incidental to the preparation or completion of any Assembly Roll.—(*Read.*)

Question proposed,—That the Clause, as read, stand part of the Bill. (*Mr. Cowper.*)

Motion made and Question put,—That there be inserted after the word "Districts" the words "And all Gold Miners in said Districts who have held a Miner's Right for six months." (*Mr. Wilson.*)

Committee divided.

Ayes, 12.		Noes, 38.		
Mr. Lewis,		} Tellers.	Mr. Cowper,	Mr. Hay,
Mr. Markham,			Mr. Weekes,	Mr. Haworth,
Mr. Sutherland,			Mr. O'Brien,	Mr. Atkinson,
Mr. Peisley,			Mr. Dalglish,	Mr. Egan,
Mr. Hart,			Mr. Busden,	Mr. Leary,
Mr. Gray,			Mr. Cummings,	Mr. Laycock,
Mr. Terry,			Mr. Raper,	Mr. Irving,
Mr. Buchanan,			Mr. Watt,	Mr. Smart,
Mr. T. Garrett,			Mr. Redman,	Mr. Dickson,
Mr. Daniel,			Mr. Windeyer,	Mr. Piddington,
Mr. Hoskins,			Mr. Parkes,	Mr. Stewart,
Mr. Wilson,			Mr. Love,	Mr. Caldwell,
			Mr. Hannell,	Mr. Matc,
			Mr. Morrice,	Mr. Rotton,
			Mr. J. T. Ryan,	Mr. Suttor,
			Mr. Meston,	Mr. Allen,
		Mr. Cunneen,	Mr. Douglas,	
		Mr. Macleay,	Mr. Lucas,	
		Mr. Walker,	Mr. Morris,	
			} Tellers.	

Clause, as read, carried.

No. 7.

No. 7.

Same Bill.

Clause 15. The eighteenth and nineteenth sections of the Constitution Act and the several Enactments of the Electoral Act of 1858 which relate to the appointment and duties of Presiding Officers—to the course of Proceeding respecting the Ballot and otherwise before and at and after Elections—to the answering of questions and making the declaration of Electors and the consequences of making false answers or declarations—to the transmission of Ballot Papers after the Election—to the not questioning or avoiding of Elections for defects—to the Remedy for informalities—to Bribery and its consequences—to any misconduct of Returning and other Officers—to the Committee of Elections and Qualifications and Petitions against Returns—and all other the Enactments of the said Act—so far as any such Enactments as aforesaid are or can be made applicable to the purposes of this Act and so far as the same are not repealed or varied hereby—shall apply to and be deemed to be hereby again enacted for the purposes of this Act and be acted upon accordingly Provided that the said sections and other Enactments so far as they apply to the Legislative Assembly or to the Speaker thereof shall for the purposes of this Act apply respectively to the Legislative Council and to the "President" Provided also that every Ballot Paper under this Act shall be in the form of the Schedule hereto marked C and that the Declaration of Scrutineers under this Act shall be in the form of the Schedule hereto marked "D."—(Read.)

And the Clause having been amended by inserting after the word "President" the words "and so far as they apply to the Electoral Districts and Electoral Rolls" shall for the purposes of this Act apply respectively to Council Districts and Council Rolls."

Question proposed,—That the following Proviso be added after the letter D, at the end of the Clause (*Mr. Cowper*):—

"Provided also that during the Polling no Candidate shall be present in any Polling Booth or Polling Place or in any compartment or Ballot Room 'thereof' Provided further that if any person being able to read and write shall state to the Presiding Officer at any Election that he is not so able and shall thereupon express his wish to have the names of certain candidates struck out from his ballot paper such person shall be deemed guilty of a 'misdemeanor' And provided lastly that whenever in accordance with the 43rd section of the said Electoral Act it shall be the duty of the Presiding Officer himself to strike out from the ballot paper of any Elector unable to read or blind the names of such Candidates as such Elector shall express his wish to have struck out such Presiding Officer shall do so openly in the presence of all persons then lawfully present in the booth or polling place."

Debate ensued.

And the Committee continuing to sit until after Midnight,—

FRIDAY, 5 APRIL, 1861, A.M.

Motion made and Question put,—That the Chairman do now leave the Chair, report progress, and ask leave to sit again on Tuesday next. (*Mr Dick*) Committee divided.

Ayes, 20.

Mr. O'Brien,	Mr. Laycock,	} Tellers.
Mr. Parkes,	Mr. Stewart,	
Mr. Markham,	Mr. Wilson,	
Mr. Lewis,	Mr. Irving,	
Mr. Terry,	Mr. Hay,	
Capt. Moriarty,	Mr. Rotton,	
Mr. Sutherland,	Mr. Dick,	
Mr. Windeyer,	Mr. Morris,	
Mr. Macleay,		
Mr. Meston,		
Mr. Atkinson,		
Mr. Hannell,		

Noes, 24.

Mr. Cowper,	Mr. Peasley,	} Tellers.
Mr. Lucas,	Mr. Rusden,	
Mr. Weekes,	Mr. Driver,	
Mr. Cummings,	Mr. Buchanan,	
Mr. Allen,	Mr. Gray,	
Mr. Watt,	Mr. Mate,	
Mr. Walker,	Mr. Suttor,	
Mr. Love,	Mr. Hart,	
Mr. Redman,	Mr. Douglas,	
Mr. Hoskins,	Mr. Egan,	
Mr. Leary,	Mr. Dalgleish,	
Mr. Morrice,	Mr. T. Garrett,	

No. 8.

The Committee having decided to consider the several Provisoes *seriatim*,—and the first Proviso, ending with the word "thereof," having been carried,—

Motion made and Question put,—That the second Proviso, ending with the word "misdemeanor," stand part of the Clause. (*Mr. Cowper*)

Committee divided.

Ayes, 22.

Mr. Weekes,	Mr. Driver,	} Tellers.
Mr. Cowper,	Mr. Sutherland,	
Mr. T. Garrett,	Mr. Buchanan,	
Mr. Leary,	Mr. Wilson,	
Mr. O'Brien,	Mr. Peasley,	
Mr. Lewis,	Mr. J. T. Ryan,	
Mr. Terry,	Mr. Markham,	
Mr. Morrice,	Mr. Irving,	
Mr. Gray,	Mr. Hoskins,	
Mr. Redman,	Mr. Dalgleish,	
Mr. Allen,	Mr. Dick,	

Noes, 20.

Mr. Atkinson,	Mr. Laycock,	} Tellers.
Mr. Cummings,	Mr. Douglas,	
Capt. Moriarty,	Mr. Hay,	
Mr. Macleay,	Mr. Watt,	
Mr. Meston,	Mr. Suttor,	
Mr. Parkes,	Mr. Mate,	
Mr. Windeyer,	Mr. Hart,	
Mr. Walker,	Mr. Egan,	
Mr. Rusden,	Mr. Morris,	
Mr. Stewart,		
Mr. Hannell,		

No. 9.

No. 9.

Motion made and Question put,—That the Chairman do now leave the Chair, report progress, and ask leave to sit again to-morrow. (*Mr. Egan.*)

Committee divided.

Ayes, 6.

Mr. Watt,	} Tellers.
Mr. Moston,	
Mr. Hay,	
Mr. Macleay,	
Mr. Egan,	
Mr. Walker,	

Noes, 38.

Mr. Cowper,	Mr. Laycock,	} Tellers.
Mr. Weekes,	Mr. Hannell,	
Mr. Arnold,	Mr. J. T. Ryan,	
Mr. Atkinson,	Mr. Wilson,	
Mr. O'Brien,	Mr. Gray,	
Mr. Lucas,	Mr. Terry,	
Mr. Cummings,	Mr. Peisley,	
Capt. Moriarty,	Mr. Buchanan,	
Mr. Allen,	Mr. Morris,	
Mr. Windeyer,	Mr. Douglas,	
Mr. Lewis,	Mr. Sutherland,	
Mr. Parkes,	Mr. Dick,	
Mr. Redman,	Mr. Sutor,	
Mr. Driver,	Mr. Mate,	
Mr. Rusden,	Mr. Hart,	
Mr. Stewart,	Mr. Hoskins,	
Mr. Morrice,	Mr. Irving,	
Mr. Leary,	Mr. Dalgleish,	
Mr. Markham,	Mr. T. Garrett,	

And the third Proviso having been carried,—

Clause, as amended, carried.

Progress reported,—to sit again.

FRIDAY, 5 APRIL, 1861.

No. 10.

CHINESE IMMIGRATION REGULATION BILL.

Clause 4. On arrival in any port of New South Wales of any ship having any "male" Chinese on board before any such "male" Chinese are permitted to land and before making any entry the master shall pay to the Collector of Customs a rate of *Ten Pounds* for every such "male" Chinese and no entry shall be deemed to have been legally made or to have any legal effect whatsoever until such payment shall have been made and upon the payment of the before-mentioned rate by the Master of any ship the Collector of Customs or other authorized Officer shall deliver to each "male" Chinese passenger a parchment Certificate which shall bear on the face of it the date of delivery the name of Chinese the signature of Collector of Customs and all other matters which the Government shall deem necessary and if any Master shall neglect to pay such rate aforesaid or shall land or permit any such "male" Chinese to land at any port in New South Wales before any such payment shall have been made and with the intent of evading the payment of any such rate such Master shall upon conviction be liable to a penalty not exceeding "*Twenty*" Pounds for each "male" Chinese so landed or permitted to land in addition to the amount of such "rate" and in every such case in addition to the pecuniary fine hereby imposed upon the Master the ship shall be forfeited and may be seized condemned and disposed of in the same manner as ships forfeited for a breach of any law relating to the Customs of the Colony.—(*Read.*)

And, the Clause having been amended by omitting the word "male" three several times,—

Question proposed,—That the Clause, as amended, stand part of the Bill. (*Mr. Lucas.*)

Motion made and Question put,—That the Chairman do now leave the Chair. (*Mr. Rotton.*)

Committee divided.

Ayes, 4.

Mr. J. N. Ryan,	} Tellers.
Mr. Dickson,	
Mr. Rotton,	
Mr. Piddington,	

Noes, 30.

Mr. Weekes,	Mr. Atkinson,	} Tellers.
Mr. O'Brien,	Mr. Allen,	
Mr. Love,	Mr. Lackey,	
Mr. Cummings,	Mr. Laycock,	
Mr. Driver,	Mr. Gray,	
Mr. Hoskins,	Mr. Mate,	
Mr. Redman,	Mr. Morrice,	
Mr. Hart,	Mr. Sutherland,	
Mr. T. Garrett,	Mr. J. T. Ryan,	
Mr. Windeyer,	Mr. Buchanan,	
Mr. Stewart,	Mr. Wilson,	
Mr. Cunneen,	Mr. Hannell,	
Mr. Terry,	Mr. Parkes,	
Mr. Lewis,	Mr. Lucas,	
Mr. Markham,	Mr. Dalgleish,	

No. 11.

No. 11.

And the Clause having been further amended by twice omitting the word "male,"—
Motion made and Question put,—That there be inserted before the words "twenty"
the words "one hundred pounds nor less than." (Mr. Terry.)

Committee divided.

Ayes, 25.

Mr. Cowper,	Mr. Windeyer,
Mr. Weekes,	Mr. Laycock,
Mr. Mate,	Mr. Allen,
Mr. J. T. Ryan,	Mr. Meston,
Mr. Gray,	Mr. Atkinson,
Mr. Love,	Mr. Wilson,
Mr. Redman,	Mr. Sutherland,
Mr. Lewis,	Mr. Buchanan,
Mr. Stewart,	Mr. Hart,
Mr. Terry,	Mr. Parkes,
Mr. Cunneen,	Mr. Hoskins,
Mr. Cummings,	Mr. Dalgleish,
Mr. Markham,	

Noes, 3.

Mr. Rotton,	} Tellers.
Mr. Piddington,	
Mr. Lucas,	

No. 12.

And the Clause having been further amended by omitting the word "male,"—
Question proposed,—That the Clause, as amended, stand part of the Bill. (Mr.
Lucas.)

Amendment proposed,—That all the words after the word "rate," down to the end
of the Clause, be omitted. (Mr. Redman.)

Question put,—That the words proposed to be omitted stand part of the Clause.
Committee divided.

Ayes, 21.

Mr. Cowper,	Mr. Wilson,
Mr. Weekes,	Mr. Meston,
Mr. J. T. Ryan,	Mr. Laycock,
Mr. Windeyer,	Mr. Atkinson,
Mr. Love,	Mr. Gray,
Mr. Cummings,	Mr. Buchanan,
Mr. Lewis,	Mr. Hoskins,
Mr. Cunneen,	Mr. Parkes,
Mr. Markham,	Mr. Dalgleish,
Mr. Stewart,	Mr. Lucas,
Mr. Sutherland,	

Noes, 6.

Mr. Piddington,	} Tellers.
Mr. Allen,	
Mr. Redman,	
Mr. Suttor,	
Mr. Rotton,	
Mr. Mate,	

No. 13.

Motion made and Question put,—That the Clause, as amended, stand part of the
Bill. (Mr. Lucas.)

Committee divided.

Ayes, 22.

Mr. Cowper,	Mr. Markham,
Mr. Weekes,	Mr. Cummings,
Mr. J. T. Ryan,	Mr. Sutherland,
Mr. Windeyer,	Mr. Meston,
Mr. Love,	Mr. Laycock,
Mr. Wilson,	Mr. Atkinson,
Mr. Lewis,	Mr. Buchanan,
Mr. Allen,	Mr. Hoskins,
Mr. Cunneen,	Mr. Gray,
Mr. Stewart,	Mr. Dalgleish,
Mr. Parkes,	Mr. Lucas,

Noes, 4.

Mr. Rotton,	} Tellers.
Mr. Mate,	
Mr. Redman,	
Mr. Piddington,	

No. 14.

Same Bill.

Clause 5. No Master of any ship shall be liable for any rate for any female
Chinese that may arrive in his ship and the Master of any ship in which such
female Chinese may arrive shall be entitled to the remission of any rate which
he is required to pay under this Act for the one male Chinese under whose
protection such female Chinese may arrive Provided the male Chinese be the
father or husband of the female Chinese.—(Read.)

Motion made and Question put,—That the Clause, as read, stand part of the Bill.
(Mr. Lucas.)

Committee divided.

Ayes, 4.

Mr. Atkinson,	} Tellers.
Mr. Meston,	
Mr. Rotton,	
Mr. Piddington,	

Noes, 21.

Mr. Cowper,	Mr. Lewis,	} Tellers.
Mr. Weekes,	Mr. Laycock,	
Mr. Dalgleish,	Mr. Hoskins,	
Mr. Redman,	Mr. Gray,	
Mr. Love,	Mr. Buchanan,	
Mr. Wilson,	Mr. Allen,	
Mr. Parkes,	Mr. Mate,	
Mr. Markham,	Mr. Sutherland,	
Mr. Cummings,	Mr. J. T. Ryan,	
Mr. Cunneen,	Mr. Lucas,	
Mr. Stewart,		

No. 15

No. 15.

Same Bill.

Clause 6. Any "male" Chinese who shall come into this Colony by land from any other of the Australian Colonies or elsewhere shall pay into the hands of the Registrar nearest the place where such Chinese entered the Colony the sum of "Fifteen" Pounds and if any Chinese shall neglect or try to evade the payment longer than may be necessary to go from the place where he entered the Colony to the nearest Registrar he shall be liable to a penalty of any sum not less than "Fifteen" Pounds nor exceeding "Twenty-five" "Pounds" and in default of immediate payment to be imprisoned for any period not less than three nor exceeding six months.—(Read.)

And the Clause having been amended by omitting the word "male",—

Motion made and Question put,—That the first blank "Fifteen" be filled by inserting the word "Fifteen." (Mr. Lucas.)

Committee divided.

Ayes, 20.

Mr. Redman,	Mr. Sutherland,	} Tellers.
Mr. Cowper,	Mr. Allen,	
Mr. Weekes,	Mr. Parkes,	
Mr. Dalgleish,	Mr. Peisley,	
Mr. Buchanan,	Mr. Hoskins,	
Mr. Wilson,	Mr. Markham,	
Mr. Cummings,	Mr. Laycock,	
Mr. Love,	Mr. Stewart,	
Mr. Lewis,	Mr. J. T. Ryan,	
Mr. Cunneen,	Mr. Lucas,	

Noes, 4.

Mr. Meston,	} Tellers.
Mr. Mate,	
Mr. Rotton,	
Mr. Piddington,	

And the Committee having continued to sit until after Midnight,—

SATURDAY, 6 APRIL, 1861, A. M.

No. 16.

Motion made and Question put,—That the second blank "Fifteen" be filled by inserting the word "Fifteen." (Mr. Lucas.)

Committee divided.

Ayes, 20.

Mr. Redman,	Mr. Cunneen,	} Tellers.
Mr. Cowper,	Mr. Allen,	
Mr. Weekes,	Mr. J. T. Ryan,	
Mr. Buchanan,	Mr. Markham,	
Mr. Wilson,	Mr. Peisley,	
Mr. Love,	Mr. Laycock,	
Mr. Gray,	Mr. Stewart,	
Mr. Hoskins,	Mr. Sutherland,	
Mr. Lewis,	Mr. Dalgleish,	
Mr. Cummings,	Mr. Lucas,	

Noes, 5.

Mr. Meston,	} Tellers.
Mr. Mate,	
Mr. Parkes,	
Mr. Rotton,	
Mr. Piddington,	

No. 17.

Motion made and Question put,—That the third blank "Twenty-five" be filled by inserting the word "Twenty-five." (Mr. Lucas.)

Committee divided.

Ayes, 20.

Mr. Redman,	Mr. Hoskins,	} Tellers.
Mr. Cowper,	Mr. Gray,	
Mr. Weekes,	Mr. Peisley,	
Mr. Buchanan,	Mr. Markham,	
Mr. Wilson,	Mr. Parkes,	
Mr. Love,	Mr. Laycock,	
Mr. Cummings,	Mr. Stewart,	
Mr. Lewis,	Mr. Sutherland,	
Mr. Cunneen,	Mr. Dalgleish,	
Mr. Allen,	Mr. Lucas,	

Noes, 4.

Mr. Meston,	} Tellers.
Mr. Mate,	
Mr. Rotton,	
Mr. Piddington,	

No. 18.

Question proposed,—That the Clause, as amended, stand part of the Bill. (Mr. Lucas.)

Amendment proposed,—That all the words after the word "Pounds" to the end of the Clause be omitted. (Mr. Rotton.)

Question put,—That the words proposed to be omitted stand part of the Clause.

Committee divided.

Ayes, 23.

Mr. Cowper,	Mr. Parkes,	} Tellers.
Mr. Weekes,	Mr. Mackham,	
Mr. Wilson,	Mr. Laycock,	
Mr. Cunneen,	Mr. Mate,	
Mr. Dalgleish,	Mr. Stewart,	
Mr. Love,	Mr. Gray,	
Mr. Buchanan,	Mr. Sutherland,	
Mr. Hoskins,	Mr. Driver,	
Mr. Lewis,	Mr. J. T. Ryan,	
Mr. Allen,	Mr. Redman,	
Mr. Peisley,	Mr. Lucas,	
Mr. Cummings,		

Noes, 3.

Mr. Piddington,	} Tellers.
Mr. Watt,	
Mr. Rotton,	

Clause, as amended, carried.

Progress reported,—to sit again.

1870

1871

1872

1873

1874

1875

1876

1877

1878

1879

1861.

Legislative Assembly.
NEW SOUTH WALES.

No. 11.

WEEKLY REPORT OF DIVISIONS
IN
COMMITTEE OF THE WHOLE HOUSE.

(EXTRACTED FROM THE MINUTES.)

SESSION OF 1861.

TUESDAY, 9 APRIL, 1861.

No. 1.

CATTLE DISEASE PREVENTION BILL OF 1861.

Clause 1. It shall be lawful for the Governor with the advice of the Executive Council by Proclamation to prohibit the importation or introduction into the Colony or into any Port thereof either wholly or from any "other" place "by name" and for any specified time of any horned Cattle and to authorize the destruction of any such Cattle as may be introduced contrary to such "prohibition."—(Read.)

Question proposed,—That the Clause, as read, stand part of the Bill. (Mr. Meston.)
And the Clause having been amended, in line 9, by substituting the word "specified" for the word "other," and by omitting the words "by name,"—

Motion made and Question put,—That there be added, after the word "prohibition," the following words—"for the purpose of preventing the introduction of any "infectious or contagious disease among the Cattle of the said Colony."
(Mr. Hart.)

Committee divided.

Ayes, 2.

Mr. Rotton,	}	Tellers.
Mr. Hart,		

Nocs, 33.

Mr. Cowper,	Mr. Egan,	}	Tellers,
Mr. Wilson,	Mr. Markham,		
Mr. Weekes,	Mr. Lucas,		
Mr. Meston,	Mr. J. N. Ryan,		
Mr. Cummings,	Mr. Eckford,		
Mr. O'Brien,	Mr. Sutherland,		
Mr. Hay,	Mr. Cunneen,		
Mr. Stewart,	Mr. Buchanan,		
Mr. Terry,	Mr. Driver,		
Mr. Dalgleish,	Mr. Caldwell,		
Mr. Dick,	Mr. Dickson,		
Mr. Windeyer,	Mr. Gray,		
Mr. Parkes,	Mr. Suttor,		
Mr. Hoskins,	Capt. Moriarty,		
Mr. Allen,	Mr. Mate,		
Mr. Lewis,	Mr. Morris,		
Mr. Laycock,			

Clause, as amended, put and carried.

WEDNESDAY, 10 APRIL, 1861.

No. 2.

LEGISLATIVE COUNCIL BILL OF 1861.

Clause 17. Immediately after such Election of President and before proceeding to any other business the Legislative Council shall determine by Lot the order in which the names of the several Members shall be entered upon a list to be

called The "Members' Roll" and at the end of *Two* years from the date of such determination and thereafter at the end of every succeeding *Second year* the "*Ten*" Members first on such Roll shall vacate their seats and *Ten* Members shall be elected to supply such vacancies who shall immediately after taking their seats be placed at the foot of such Roll in the order to be then also determined by Lot and in every case of a single Member elected to fill any vacancy his name shall be placed last on the Members' Roll Provided that every Member going out in rotation or by reason of his accepting any office of profit under the Crown shall if not disqualified be capable of re-election as a Member of the Legislative Council and of being placed at the foot of the said Roll.—(*Read.*)

Question proposed,—That the Clause, as read, stand part of the Bill. (*Mr. Cowper.*)

Amendment proposed,—That the word "*Ten*" be omitted with the view of inserting the word "*Fifteen.*" (*Mr. Hoskins.*)

Question put,—That the word proposed to be omitted stand part of the Clause.

Committee divided.

Ayes, 30.		Noes, 11.
Mr. Cowper,	Mr. Leary,	Mr. Douglas,
Mr. Weekes,	Mr. Markham,	Mr. Raper,
Mr. Arnold,	Mr. Eckford,	Mr. Terry,
Mr. Smart,	Mr. Blake,	Mr. Daigfeish,
Mr. O'Brien,	Mr. Hay,	Mr. Cunneen,
Mr. Haworth,	Mr. Mate,	Mr. Lewis,
Mr. Love,	Mr. Suttor,	Mr. Sutherland,
Capt. Moriarty,	Mr. Laycock,	Mr. Stewart,
Mr. Cummings,	Mr. Morris,	Mr. Driver,
Mr. Egan,	Mr. Rusden,	Mr. Hoskins,
Mr. Hart,	Mr. Rotton,	Mr. Lucas,
Mr. Parkes,	Mr. Gray,	} Tellers.
Mr. Windeyer,	Mr. Daniel,	
Mr. Wilson,	Mr. Caldwell,	
Mr. Atkinson,	Mr. McArthur,	

And the following further proviso having been added, viz.:—"And provided that every Member elected to fill any vacancy occasioned by death resignation or other extraordinary cause shall be placed on the said Roll in the order in which the Member creating such vacancy stood at the time of its occurrence,"—
Clause, as amended, carried.

No. 3.

Same Bill.

Clause 18. The presence of at least "*Ten*" Members of the Legislative Council shall be necessary for despatch of business And every question shall be decided by the majority of votes of the Members present exclusive of the President Provided that in case of equality of votes he shall decide the same by his casting vote.—(*Read.*)

Question proposed,—That the Clause, as read, stand part of the Bill. (*Mr. Cowper.*)

And exception being taken to the blank "*Ten*",—

Motion made and Question put,—That the blank "*Ten*" be filled by inserting therein the word "*Twelve.*" (*Mr. Cowper.*)

Committee divided.

Ayes, 28.		Noes, 10.
Mr. Cowper,	Mr. Blake,	Mr. Lucas,
Mr. Weekes,	Mr. Wilson,	Capt. Moriarty,
Mr. O'Brien,	Mr. Buchanan,	Mr. Meston,
Mr. Smart,	Mr. Suttor,	Mr. Hart,
Mr. Haworth,	Mr. Laycock,	Mr. Terry,
Mr. McArthur,	Mr. Morris,	Mr. Raper,
Mr. Markham,	Mr. Gray,	Mr. Driver,
Mr. Lewis,	Mr. Hoskins,	Mr. Sutherland,
Mr. Leary,	Mr. Rotton,	Mr. Hay,
Mr. Egan,	Mr. Douglas,	Mr. Windeyer,
Mr. J. N. Ryan,	Mr. Parkes,	} Tellers.
Mr. Peisley,	Mr. Rusden,	
Mr. Allen,	Mr. Caldwell,	
Mr. Atkinson,	Mr. Love,	

No. 4.

Same Bill.

Clause 23. All the enactments of the Constitution Act relating to the Legislative Council as constituted thereunder except as repealed or varied hereby shall apply to the Legislative Council as constituted under this Act And the said Council shall except as herein otherwise enacted possess and may exercise all the powers vested in the Legislative Council by the said Constitution "Act."—*Read.*

Question proposed,—That the Clause, as read, stand part of the Bill. (*Mr. Cowper.*)

Motion

Motion made and Question put,—That there be added, after the word "Act," at the end of the Clause, the following proviso :—" Provided nevertheless that the said Legislative Council shall be precluded from amending (otherwise than verbally) any Bill for appropriating any part of the Public Revenue or for the imposing of any rate or tax." (Mr. Hoskins.)

Committee divided.

Ayes, 20.		Noes, 25.	
Mr. Dick,	Mr. Eckford,	Mr. Cowper,	Mr. Blake,
Mr. Redman,	Mr. Peisley,	Mr. Weekes,	Mr. Leary,
Mr. Lucas,	Mr. Dalgleish,	Mr. Morris,	Mr. Laycock,
Mr. Caldwell,	Mr. Buchanan,	Mr. O'Brien,	Mr. Sutherland,
Mr. Rusden,	Mr. Hoskins,	Mr. Smart,	Mr. Ilaworth,
Mr. Lewis,	Capt. Moriarty,	Mr. Allen,	Mr. McArthur,
Mr. Love,	Mr. Hannell,	Mr. Cummings,	Mr. Hart,
Mr. Douglas,		Mr. Mate,	Mr. Gray,
Mr. Driver,		Mr. Meston,	Mr. Rotton,
Mr. Dickson,		Mr. Stewart,	Mr. Wilson,
Mr. Markham,		Mr. Windeyer,	Mr. Egan,
Mr. Terry,		Mr. Parkes,	Mr. Sattor,
Mr. Gunneen,		Mr. Daniel,	

THURSDAY, 11 APRIL, 1861.

No. 5.

INSOLVENCY COMMISSIONERS BILL OF 1861.

Clause 1. The Chief Commissioner of Insolvent Estates shall hold his office during ability and good behaviour and shall be paid an annual salary not less than the sum of "which" sum shall not be diminished during the continuance of such person in the office of Chief Commissioner of Insolvent "Estates" But it shall be lawful for the Governor with the advice of the Executive Council to remove any such Commissioner for inability or misbehaviour Provided that twenty-one days at the least before such removal the Commissioner shall have notice of the intention to remove him and that he shall thereafter and before removal have the opportunity of being heard before the Governor and "Council" in his defence.—(Read.)

Question proposed,—That the blank in the third line be filled by inserting the words twelve hundred pounds. (Mr. Cowper.)

Motion made and Question put,—That the Chairman do now leave the Chair. (Mr. Rotton.)

Committee divided.

Ayes, 2.		Noes, 27.	
Mr. Rotton,		Mr. Cowper,	Mr. Lewis,
Mr. Dick,	} Tellers.	Mr. Smart,	Mr. Dalgleish,
		Mr. Weekes,	Mr. Buchanan,
		Mr. Windeyer,	Mr. Raper,
		Mr. Cummings,	Mr. Allen,
		Mr. Holroyd,	Mr. Gray,
		Mr. Hay,	Mr. Sattor,
		Mr. Lackey,	Mr. Mate,
		Mr. McArthur,	Mr. O'Brien,
		Mr. Gunneen,	Mr. Morris,
		Mr. Terry,	Mr. Wilson,
		Mr. Stewart,	Mr. Hannell,
		Mr. Parkes,	Mr. Hoskins,
		Mr. Laycock,	

No. 6.

Motion made and Question put,—That the blank be filled by inserting the words "twelve hundred pounds." (Mr. Cowper.)

Committee divided.

Ayes, 11.		Noes, 19.	
Mr. Cowper,	Mr. Smart,	Mr. Hannell,	Mr. Lewis,
Mr. Weekes,	Mr. Morris,	Mr. Cummings,	Mr. Laycock,
Mr. O'Brien,		Mr. Lackey,	Mr. Gray,
Mr. McArthur,		Mr. Dalgleish,	Mr. Gunneen,
Mr. Allen,		Mr. Dick,	Mr. Hoskins,
Mr. Holroyd,		Mr. Parkes,	Mr. Sattor,
Mr. Hay,		Mr. Terry,	Mr. Mate,
Mr. Buchanan,		Mr. Stewart,	Mr. Rotton,
Mr. Wilson,		Mr. Lesley,	Mr. Windeyer,
		Mr. Raper,	

Clause, after being amended by inserting in the blank the words one thousand pounds,—by omitting all the words thereafter, down to the word "Estates," inclusive, and by inserting before the word "Council" the word "Executive," carried.

FRIDAY, 12 APRIL, 1861.

No. 7.

CHINESE IMMIGRATION REGULATION BILL.

Clause 13. In any proceedings under this Act evidence that any "person" arrived in New South Wales from China or its Dependencies or any of the Islands of the Chinese Seas shall be sufficient proof unless the contrary be shewn that such person is a Chinese within the meaning of this Act.—(*Read.*)

Question proposed,—That the Clause, as read, stand part of the Bill. (*Mr. Lucas.*)
 Motion made and Question put,—That there be inserted after the word "person," the words "speaks the Chinese language and conforms to their habits and manners." (*Mr. Dick.*)

Committee divided.

Ayes, 8.

Mr. Caldwell,	
Mr. Sutherland,	
Mr. Terry,	
Mr. Peisley,	
Mr. Parkes,	
Mr. Hay,	
Mr. Dick,	
Mr. Windeyer,	} Tellers.

Noes, 26.

Mr. Cowper,	Mr. Stewart,	
Mr. Weekes,	Mr. Douglas,	
Mr. Lesley,	Mr. Laycock,	
Mr. Meston,	Mr. Eckford,	
Mr. Lucas,	Mr. Allen,	
Mr. Holroyd,	Mr. Hoskins,	
Mr. Cummings,	Mr. Dalgleish,	
Mr. Love,	Mr. C. Cowper,	
Mr. T. Garrett,	junr.,	
Mr. Hannell,	Mr. Wilson,	
Mr. McArthur,	Mr. Driver,	
Mr. Markham,	Mr. Daniel,	} Tellers.
Mr. Lewis,	Mr. Egan,	
Mr. Buchanan,		

No. 8.

Motion made and Question put,—That the Clause (13) be postponed. (*Mr. Parkes.*)

Committee divided.

Ayes, 19.

Mr. Hannell,	Mr. Markham,	
Mr. Dalgleish,	Mr. Hoskins,	
Mr. Douglas,	Mr. Parkes,	
Mr. T. Garrett,	Mr. Dick,	
Mr. Love,	Mr. Allen,	
Mr. Sutherland,	Mr. Eckford,	
Mr. Caldwell,	Mr. Driver,	
Mr. Lewis,	Mr. Holroyd,	} Tellers.
Mr. Windeyer,	Mr. Dickson,	
Mr. Peisley,		

Noes, 14.

Mr. J. N. Ryan,	Mr. Daniel,	
Mr. Rotton,	Mr. Hay,	
Mr. Cowper,	Mr. Egan,	} Tellers.
Mr. Weekes,	Mr. Lesley,	
Mr. Meston,		
Mr. Lucas,		
Mr. Cummings,		
Mr. Laycock,		
Mr. Terry,		
Mr. Suttor,		

No. 9.

Same Bill.

Clause 14. The Certificate mentioned in the sixth section of the Act of Council eleventh Victoria number thirty-nine shall not "hereafter" be issued or granted to any Chinese within the meaning of this Act.—(*Read.*)

Question proposed,—That the Clause, as read, stand part of the Bill. (*Mr. Lucas.*)

Amendment proposed,—That the word "hereafter" be omitted, with the view of inserting the words "after twelve months from the passing of this Act." (*Mr. Love.*)

Question put,—That the word proposed to be omitted stand part of the Clause.

Committee divided.

Ayes, 19.

Mr. Weekes,	Mr. Hannell,	
Mr. Blake,	Mr. Markham,	
Mr. Cummings,	Mr. Laycock,	
Mr. C. Cowper,	Mr. Cunneen,	
junr.,	Mr. Terry,	
Mr. Hoskins,	Mr. Allen,	
Mr. Lewis,	Mr. Buchanan,	
Mr. Windeyer,	Mr. Eckford,	
Mr. Lucas,	Mr. T. Garrett,	} Tellers.
Mr. Peisley,	Mr. Dalgleish,	

Noes, 10.

Mr. Lesley,		
Mr. Meston,		
Mr. Parkes,		
Mr. Love,		
Mr. Douglas,		
Mr. J. N. Ryan,		
Mr. McArthur,		
Mr. Rotton,		
Mr. Sutherland,	} Tellers.	
Mr. Caldwell,		

No. 10.

Motion made and Question put,—That the Clause (14), as read, stand part of the Bill. (*Mr. Lucas.*)

Committee divided.

Ayes, 22.

Mr. Weekes,	Mr. Hannell,	
Mr. T. Garrett,	Mr. Markham,	
Mr. Blake,	Mr. Laycock,	
Mr. Cummings,	Mr. Terry,	
Mr. Hoskins,	Mr. Parkes,	
Mr. Love,	Mr. Allen,	
Mr. McArthur,	Mr. Buchanan,	
Mr. Lewis,	Mr. Eckford,	
Mr. Cunneen,	Mr. Dalgleish,	} Tellers.
Mr. Lucas,	Mr. C. Cowper,	
Mr. Windeyer,	junr.,	
Mr. Peisley,		

Noes, 7.

Mr. Rotton,		
Mr. Douglas,		
Mr. Sutherland,		
Mr. Meston,		
Mr. J. N. Ryan,		
Mr. Lesley,	} Tellers.	
Mr. Caldwell,		

No. 11.

No. 11.

Same Bill.

Clause 15. This Act shall come into operation from and after the first day of one thousand eight hundred and sixty-one and may be cited as the "Chinese Immigration 'and Registration' Act of 1861."

And the Clause having been amended by filling the blank by the insertion of the word "October", and the omission of the words "and Registration" with a view of inserting in their place the word "Regulation,"—a point of Order arose as to the right of offering an Amendment to the Question for inserting the word "Regulation" in the blank created by the omission of the words "and Registration."

Motion made and Question put,—That the Chairman do now leave the Chair, and report the point of Order to the House. (*Mr. Dalgleish.*)

Ayes, 10.

Mr. Arnold,
Mr. Cummings,
Mr. Gray,
Mr. Cunneen,
Mr. Douglas,
Mr. Lesley,
Mr. Rotton,
Mr. Caldwell,
Mr. T. Garrett,
Mr. Dalgleish,

} Tellers.

Nocs, 21.

Mr. Weekes,	Mr. McArthur,
Mr. Love,	Mr. Sutherland,
Mr. Meston,	Mr. Peisley,
Mr. Lucas,	Mr. Markham,
Mr. Dickson,	Mr. Laycock,
Mr. Hannoll,	Mr. Buchanan,
Mr. Terry,	Mr. Eckford,
Mr. Windeyer,	Mr. Allen,
Mr. Wilson,	Mr. Lewis,
Mr. Hart,	Mr. Hoskins,
Mr. Parkes,	

} Tellers.

No. 12.

Motion made and Question put,—That the word "Regulation" be inserted in the blank created by the omission of the words "and Registration."

Committee divided.

Ayes, 23.*

Mr. Weekes,	Mr. Hannell,
Mr. Hoskins,	Mr. Laycock,
Mr. Wilson,	Mr. Markham,
Mr. Gray,	Mr. Eckford,
Mr. Cummings,	Mr. Buchanan,
Mr. Cunneen,	Mr. Caldwell,
Mr. McArthur,	Mr. Love,
Mr. Lucas,	Mr. Douglas,
Mr. Lewis,	Mr. Arnold,
Mr. Hart,	Mr. Dalgleish,
Mr. Terry,	Mr. T. Garrett,

} Tellers.

Nocs, 8.

Mr. Meston,
Mr. Allen,
Mr. Windeyer,
Mr. Parkes,
Mr. Sutherland,
Mr. Peisley,
Mr. Rotton,
Mr. Lesley,

} Tellers.

* Only 22 Names enumerated in Tellers' List.

Clause, as amended, carried.

No. 13.

Postponed Clause.

13. In any proceedings under this Act evidence that any "person arrived in "New South Wales from China or its Dependencies or any of the Islands of "the Chinese Seas" shall be sufficient proof unless the contrary be shewn that such person is a Chinese within the meaning of this "Act."—(*Read.*)

Question proposed,—That the Clause, as read, stand part of the Bill. (*Mr. Lucas.*)

Amendment proposed,—That all the words after the word "person" down to the word "seas" inclusive be omitted, with the view of inserting the words "is by general repute known as a Chinese." (*Mr. Windeyer.*)

And the Question—That the words proposed to be omitted stand part of the Clause—having been resolved in the negative,—

Question put,—That the words proposed to be inserted be so inserted.

Committee divided.

Ayes, 30.

Mr. Cowper,	Mr. Sutherland,
Mr. Weekes,	Mr. Laycock,
Mr. Dickson,	Mr. Holroyd,
Mr. T. Garrett,	Mr. Buchanan,
Mr. Dalgleish,	Mr. Hart,
Mr. Allen,	Mr. Eckford,
Mr. Love,	Mr. Caldwell,
Mr. McArthur,	Mr. Parkes,
Mr. Cummings,	Mr. Redman,
Mr. Gray,	Mr. Hoskins,
Mr. Terry,	Mr. Wilson,
Mr. Lewis,	Mr. Douglas,
Mr. Stewart,	Mr. Markham,
Mr. Windeyer,	Mr. Lucas,
Mr. Hannell,	Mr. Cunneen,

} Tellers.

Nocs, 4.

Mr. Lesley,
Mr. Meston,
Mr. Blake,
Mr. Rotton,

} Tellers.

And the Clause having been further amended by adding after the word "Act," at the end thereof, the following proviso :—" Provided always that any person "maliciously and without reasonable and probable cause taking any pro- "ceedings under this Act against any person as a Chinese such person not "being a Chinese shall be guilty of a misdemeanour,"—

Clause, as amended, carried.

[Faint, mostly illegible text, possibly a list or report. Some words like "Mr. [Name]" are visible.]

[Faint, mostly illegible text, possibly a list or report. Some words like "Mr. [Name]" are visible.]

[Faint, mostly illegible text at the bottom of the page.]

1861.

Legislative Assembly.

NEW SOUTH WALES.

No. 12.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE HOUSE.

(EXTRACTED FROM THE MINUTES.)

SESSION OF 1861.

WEDNESDAY, 17 APRIL, 1861.

No. 1.

SUPPLY—ADDITIONAL ESTIMATES, 1861.

Pension.

Motion made and Question put,—That there be granted to Her Majesty, for the year 1861, a sum not exceeding £196 0s. 7d., to defray additional charge for Pensions not provided for by Schedule B to Schedule (No. 1) of the Act of the Imperial Parliament, 18 and 19 Vict., cap. 54, being Pension to H. H. Browne, late Agent for Immigration. (*Mr. Cowper.*)

Committee divided.

Ayes, 14.

Mr. Cowper,	Mr. Suttor,	} Tellers.
Mr. Weekes,	Mr. Piddington,	
Mr. O'Brien,	Mr. Markham,	
Mr. Flett,	Mr. McArthur,	
Mr. Daniel,		
Mr. Mate,		
Mr. Rotton,		
Mr. Lackey,		
Mr. Holroyd,		
Mr. Hay,		

Noes, 19.

Mr. Cummings,	Mr. J. Garrett,	} Tellers.
Mr. Parkes,	Mr. Lewis,	
Mr. Dalgleish,	Mr. Caldwell,	
Mr. Leary,	Mr. Dickson,	
Mr. Terry,	Mr. Wilson,	
Mr. Lesley,	Mr. Cunneen,	
Mr. Hoskins,	Mr. Laycock,	
Mr. Meston,	Mr. Lucas,	
Mr. Gray,	Mr. Love,	
Mr. Raper,		

No. 2.

Miscellaneous Services.

Question proposed,—That there be granted to Her Majesty, a sum not exceeding £1,468, to defray additional charge for Miscellaneous Services, for the year 1861 (being less than original Estimate by item £165 withdrawn), for enlargement of Enclosure to Cricket Ground in Outer Domain. (*Mr. Cowper.*)

Motion made and Question put,—That the item £208, for compensation to Mr. H. Dangar, for fencing road passing through his land at Singleton, be omitted. (*Mr. Rotton.*)

Committee divided.

Ayes, 10.

Mr. Windeyer,	} Tellers.
Mr. Dalgleish,	
Mr. Raper,	
Mr. Terry,	
Mr. Mate,	
Mr. Suttor,	
Mr. Atkinson,	
Mr. Rotton,	
Mr. Dickson,	
Mr. Dick,	

Noes, 25.

Mr. Cowper,	Mr. Stewart,	} Tellers.
Mr. Weekes,	Mr. Buchanan,	
Mr. Arnold,	Mr. Gray,	
Capt. Moriarty,	Mr. Lackey,	
Mr. Cummings,	Mr. Holroyd,	
Mr. Piddington,	Mr. Laycock,	
Mr. Wilson,	Mr. Caldwell,	
Mr. J. Garrett,	Mr. O'Brien,	
Mr. Parkes,	Mr. C. Cowper,	
Mr. Sutherland,	junr.,	
Mr. Lewis,	Mr. Daniel,	
Mr. Flett,	Mr. Lucas,	
Mr. Markham,	Mr. Hannell,	

No. 3.

Motion made and Question put,—That the item £210, for the examination of the Shoalhaven and Snowy Rivers as to fitness for propagation of Salmon, be omitted. (*Mr. Dalgleish.*)

Committee divided.

Ayes, 11.

Mr. Cowper,	} Tellers.
Mr. Weekes,	
Mr. Arnold,	
Mr. Atkinson,	
Mr. Dickson,	
Mr. Dalgleish,	
Mr. Buchanan,	
Mr. Rotton,	
Mr. O'Brien,	
Mr. Hennell,	
Mr. Lucas,	

Noes, 24.

Mr. Daniel,	Mr. Markham,	} Tellers.
Capt. Moriarty,	Mr. Ilett,	
Mr. Caldwell,	Mr. Hoskins,	
Mr. Piddington,	Mr. Gray,	
Mr. Wilson,	Mr. Leary,	
Mr. Lewis,	Mr. Terry,	
Mr. Windeyer,	Mr. Kaper,	
Mr. Parkes,	Mr. Lackey,	
Mr. Wate,	Mr. Holroyd,	
Mr. Stewart,	Mr. Laycock,	
Mr. Sutherland,	Mr. Cummings,	
Mr. J. Garrett,	Mr. Dick,	

Estimate, as proposed, carried.

No. 4.

DEPARTMENT OF PUBLIC WORKS.

Question proposed,—That there be granted to Her Majesty, a sum not exceeding £330 0s, to defray additional charge for salaries and contingencies of the Department of Public Works, for the year 1861. (*Mr. Arnold.*)

Motion made and Question put,—That the item £30, being addition to salary of Chief Clerk, be omitted. (*Mr. Dalgleish.*)

Committee divided.

Ayes, 5.

Mr. Lewis,	} Tellers.
Mr. Parkes,	
Mr. Windeyer,	
Mr. Dalgleish,	
Mr. Lucas,	

Noes, 26.

Mr. Cowper,	Mr. Rotton,	} Tellers.
Mr. Weekes,	Mr. Lackey,	
Mr. Arnold,	Mr. Holroyd,	
Mr. Morris,	Mr. Laycock,	
Mr. Wate,	Mr. Caldwell,	
Mr. Stewart,	Mr. Gray,	
Mr. J. Garrett,	Mr. Buchanan,	
Mr. Markham,	Mr. Dick,	
Mr. Driver,	Mr. C. Cowper,	
Mr. Cummings,	junr.,	
Mr. Cameron,	Mr. Daniel,	
Mr. Leary,	Capt. Moriarty,	
Mr. Hennell,	Mr. Walker,	
Mr. J. T. Ryan,		

Estimate, as proposed, carried.

No. 5.

Miscellaneous Services.

Question proposed,—That there be granted to Her Majesty, a sum not exceeding £304, to defray additional charge for Miscellaneous Services, for the year 1861. (*Mr. Arnold.*)

And the Committee continuing to sit until after Midnight,—

THURSDAY, 18 APRIL, 1861, A.M.

Motion made and Question put,—That the item £252, for passage to England of Captain Martindale and family, be omitted. (*Mr. Windeyer.*)

Committee divided.

Ayes, 14.

Mr. Wilson,	Mr. Piddington,	} Tellers.
Mr. Lewis,	Mr. Leary,	
Mr. Sutherland,	Mr. Rotton,	
Mr. Hoskins,	Mr. Lucas,	
Mr. Holroyd,	Mr. Dalgleish,	
Mr. Parkes,		
Mr. Windeyer,		
Mr. Driver,		
Mr. Laycock,		

Noes, 14.

Mr. Cowper,	Mr. Gray,	} Tellers.
Mr. Weekes,	Mr. Cameron,	
Mr. Arnold,	Mr. Buchanan,	
Mr. Cummings,	Mr. Morris,	
Mr. Atkinson,	Mr. Daniel,	
Mr. O'Brien,	Mr. C. Cowper,	
Mr. J. Garrett,	junr.,	
Mr. Sattor,	Mr. Dick,	
Mr. Caldwell,		

No. 6.

Motion made and Question put,—That the item be reduced to one shilling. (*Mr. Hoskins.*)

Committee divided.

Ayes, 17.

Mr. Wilson,	Mr. J. T. Ryan,	} Tellers.
Mr. Lewis,	Mr. Driver,	
Mr. Windeyer,	Mr. Laycock,	
Mr. Sutherland,	Mr. Piddington,	
Mr. Holroyd,	Mr. Lesley,	
Mr. Lackey,	Mr. Rotton,	
Mr. Parkes,	Mr. Dalgleish,	
Mr. Hoskins,	Mr. Lucas,	
Mr. Hennell,		

Noes, 17.

Mr. Cowper,	Mr. Buchanan,	} Tellers.
Mr. Arnold,	Mr. Gray,	
Mr. Atkinson,	Mr. Sattor,	
Mr. Weekes,	Mr. Morris,	
Mr. O'Brien,	Mr. Daniel,	
Mr. Cummings,	Mr. C. Cowper,	
Mr. Caldwell,	junr.,	
Mr. Flett,	Mr. J. Garrett,	
Mr. Walker,	Mr. Dick,	

The

The numbers on either side being equal, the Chairman gave his casting vote with the Noes, assigning as his reason for so voting, that the Committee would have an opportunity of again dealing with this item when considering the Annual Appropriation Bill.

No. 7.

Motion made and Question put,—That the item be reduced by £251 18s. (*Mr. Windeyer*.)
Committee divided.

Ayes, 16.		Noes, 18.	
Mr. Lucas,	Mr. Laycock,	Mr. Cowper,	Mr. Buchanan,
Mr. Lewis,	Mr. Ryan,	Mr. Weekes,	Mr. Morris,
Mr. Sutherland,	Mr. Piddington,	Mr. Arnold,	Mr. Suttor,
Mr. Hopkins,	Mr. Rotton,	Mr. O'Brien,	Mr. C. Cowper,
Mr. Windeyer,	Mr. Dalgleish,	Mr. Cummings,	junr.,
Mr. Parkes,	Mr. Wilson,	Mr. Flett,	Mr. Daniel,
Mr. Holroyd,		Mr. Caldwell,	Mr. Dick,
Mr. Lackey,		Mr. Cunneen,	Mr. Atkinson,
Mr. Lesley,		Mr. Walker,	Mr. J. Garrett,
Mr. Hamell,		Mr. Gray,	

No. 8.

Motion made and Question put,—That the Chairman do now leave the Chair, report progress, and ask leave to sit again to-morrow. (*Mr. Parkes*.)
Committee divided.

Ayes, 16.		Noes, 20.	
Mr. Sutherland,	Mr. J. T. Ryan,	Mr. Cowper,	Mr. Dick,
Mr. Dalgleish,	Mr. Piddington,	Mr. Weekes,	Mr. Gray,
Mr. Lesley,	Mr. Rotton,	Mr. Arnold,	Mr. Buchanan,
Mr. Hopkins,	Mr. Lewis,	Mr. Atkinson,	Mr. Morris,
Mr. Lackey,	Mr. Lucas,	Mr. O'Brien,	Mr. Suttor,
Mr. Parkes,		Mr. Flett,	Mr. C. Cowper,
Mr. Holroyd,		Mr. Caldwell,	junr.,
Mr. Windeyer,		Mr. Driver,	Mr. Daniel,
Mr. Hamell,		Mr. Cunneen,	Mr. Cummings,
Mr. Wilson,		Mr. Walker,	Mr. J. Garrett,
Mr. Laycock,		Mr. J. N. Ryan,	

No. 9.

Motion made and Question put,—That the Chairman do now leave the Chair. (*Mr. Lucas*.)
Committee divided.

Ayes, 12.		Noes, 20.	
Mr. Sutherland,	Mr. Wilson,	Mr. Cowper,	Mr. Walker,
Mr. Lesley,	Mr. Dalgleish,	Mr. Weekes,	Mr. C. Cowper,
Mr. Windeyer,		Mr. Arnold,	junr.,
Mr. Lucas,		Mr. Atkinson,	Mr. Gray,
Mr. Parkes,		Mr. Dick,	Mr. J. N. Ryan,
Mr. Laycock,		Mr. O'Brien,	Mr. Buchanan,
Mr. J. T. Ryan,		Mr. Driver,	Mr. Suttor,
Mr. Piddington,		Mr. J. Garrett,	Mr. Daniel,
Mr. Rotton,		Mr. Cummings,	Mr. Caldwell,
Mr. Hopkins,		Mr. Flett,	Mr. Morris,
		Mr. Cunneen,	

Progress subsequently reported—to sit again.

No. 10.

COMMISSIONER AT NEWCASTLE APPOINTMENT BILL.

The following Message, from the Legislative Council, having been read:—

“MR. SPEAKER,

“The Legislative Council disagrees to the Amendments made by the Legislative Assembly in the Bill, intituled ‘An Act to authorize the appointment of a Commissioner to issue Writs of Summons and Arrest at the Port of Newcastle,’ for the following reasons:—

“1st. Because, with the exception of Sydney, Newcastle, being the only Port of Entry and Clearance in the Colony for vessels arriving in and departing therefrom, is largely resorted to, and debts are incurred there, by masters of vessels and others connected therewith, which are not discharged, through the facilities of evading payment afforded by the opportunity of leaving the Port after Clearance, and, therefore, a practical and urgent necessity exists for the passing of such a measure as the present in reference to that Port; whereas no such necessity, as far as this Council is aware, exists in reference to other places.

“2nd. Because the measure is an experimental one, of great importance, and it is desirable to see the effects of its operation at Newcastle (a place where grievances now exist for want of such a law), before extending it to other parts of the Colony where no such grievances, as far as this Council is aware, exist.

“3rd. And further, as regards the proposed extension of the measure to Albury, because, that being an inland border town, such a provision would there be impracticable for any useful purpose.

“Legislative Council Chamber,
“Sydney, 17 April, 1861.”

“W. W. BURTON,
“President.”

Question

Question proposed,—That the Committee agrees to the following resolution :—
 Resolved, That this Committee does not insist upon the amendments made by
 the Legislative Assembly in the Bill, intituled “ *An Act to authorize the*
“ appointment of a Commissioner to issue Writs of Summons and Arrest at
“ the Port of Newcastle.” (Mr. Walsh.)

Motion made and Question put,—That the Chairman do now leave the Chair.
 (Mr. Hart.)

Committee divided.

Ayes, 9.

Mr. Dalgleish,
 Mr. Love,
 Mr. Hart,
 Mr. Meston,
 Mr. Hoskins,
 Mr. Buchanan,
 Mr. Windeyer
 Mr. Dickson, } Tellers.
 Mr. Egan,

Noes, 26.

Mr. Cowper, Mr. J. T. Ryan,
 Mr. Weckes, Mr. Peisley,
 Mr. Dick, Mr. Lewis,
 Mr. Holroyd, Mr. Piddington,
 Mr. Rusden, Mr. Rotton,
 Mr. Daniel, Mr. Markham,
 Mr. Lucas, Mr. Laycock,
 Mr. Hannell, Mr. J. N. Ryan,
 Mr. McArthur, Mr. O'Brien,
 Mr. Cummings, Mr. Douglas,
 Mr. Shepherd, Mr. Arnold,
 Mr. Raper, Mr. Mate, } Tellers.
 Mr. Terry, Mr. Walsh,

Resolution reported.

1861.

Legislative Assembly.

NEW SOUTH WALES.

No. 13.

WEEKLY REPORT OF DIVISIONS
IN
COMMITTEE OF THE WHOLE HOUSE.
(EXTRACTED FROM THE MINUTES.)

SESSION OF 1861.

WEDNESDAY, 24 APRIL, 1861.

No. 1.

SUPPLY—ADDITIONAL ESTIMATES, 1861.

Miscellaneous Services.

Motion made and Question put,—That the item £252, for passage to England of Captain Martindale and family, be reduced by £251 10s. (*Mr. Lucas.*)
Committee divided.

Ayes, 29.

Mr. Haworth,	Mr. Leary,	} Tellers.
Mr. O'Brien,	Mr. Laycock,	
Mr. Lewis,	Mr. Hart,	
Capt. Moriarty,	Mr. Walsh,	
Mr. Lucas,	Mr. J. N. Ryan,	
Mr. Sutherland,	Mr. Dangar,	
Mr. Morrice,	Mr. Piddington,	
Mr. Stewart,	Mr. Driver,	
Mr. Lesley,	Mr. T. Garrett,	
Mr. Markham,	Mr. Hoskins,	
Mr. Terry,	Mr. Wilson,	
Mr. Parkes,	Mr. Rotton,	
Mr. Meston,	Mr. J. Garrett,	
Mr. Raper,	Mr. Dalgleish,	
Mr. Dickson,		

Noes, 7.

Mr. Cowper,	} Tellers.
Mr. Weekes,	
Mr. Cummings,	
Mr. Caldwell,	
Mr. Buchanan,	
Mr. Smart,	
Mr. Morris,	

No. 2:

PUBLIC WORKS.

Motion made and Question put,—That there be granted to Her Majesty, for the year 1861, to be provided for by Loan, a sum not exceeding £14,700, to defray Additional Charge for Public Works. (*Mr. Cowper.*)
Committee divided.

Ayes, 22.

Mr. Cowper,	Mr. Cummings,	} Tellers.
Mr. Weekes,	Mr. Parkes,	
Mr. Haworth,	Mr. Dangar,	
Mr. Lewis,	Mr. Walker,	
Mr. J. Garrett,	Mr. Piddington,	
Capt. Moriarty,	Mr. Sutherland,	
Mr. Raper,	Mr. T. Garrett,	
Mr. O'Brien,	Mr. Hoskins,	
Mr. Caldwell,	Mr. Rotton,	
Mr. Morrice,	Mr. Dalgleish,	
Mr. Lesley,	Mr. Morris,	

Noes, 3.

Mr. Dickson,	} Tellers.
Mr. Rusden,	
Mr. Lucas,	

THURSDAY, 25 APRIL, 1861.

No. 3.

COAL FIELDS REGULATION BILL, 1861.

Clause 17. The costs of every arbitration under this Act shall be defrayed and paid by the owners of the respective Collieries to which such arbitrations "relate."
—(Read)

Motion made and Question put, That there be added, after the word "relate," the words "or by the Government as the arbitrators may award." (*Mr. Redman.*)
Committee divided.

Ayes, 8.

Mr. Haworth,	} Tellers.
Mr. Allen,	
Mr. Redman,	
Mr. Terry,	
Mr. Parkes,	
Mr. Douglas,	
Mr. Irving,	
Mr. Hoskins,	

Noes, 22.

Mr. Cowper,	Mr. Lackey,	} Tellers.
Mr. Weekes,	Mr. Lucas,	
Mr. Dalgleish,	Mr. Flett,	
Mr. Cummings,	Mr. J. Garrett,	
Mr. Stewart,	Mr. Dickson,	
Mr. Hart,	Mr. Sutherland,	
Mr. Caldwell,	Mr. Suttor,	
Mr. Dangar,	Mr. Morris,	
Mr. Morrice,	Mr. Buchanan,	
Mr. Lewis,	Mr. T. Garrett,	
Mr. Markham,	Mr. Windeyer,	

And the Bill having been recommitted,—

No. 4.

Clause 27. The wages of every person employed in every Colliery shall be "paid" by his immediate employer to such person or his duly authorized representative in money and not otherwise at an office and at fixed times to be determined for that purpose by the Special Rules for each Colliery. And such office shall not be contiguous to any house where spirits wine beer or other spirituous liquors are sold. And every owner or agent or such employer who shall pay or permit to be paid any wages to any person in his employ contrary to this enactment shall for every such offence be liable to a penalty not exceeding Ten pounds.—(Read.)

Motion made and Question put,—That there be inserted after the word "paid," the words "weekly in full." (*Mr. Buchanan.*)
Committee divided.

Ayes, 2.

Mr. Terry,	} Tellers.
Mr. Buchanan,	

Noes, 37.

Mr. Cowper,	Mr. Leary,	} Tellers.
Mr. Weekes,	Mr. Daniel,	
Mr. Lucas,	Mr. Hoskins,	
Mr. Dalgleish,	Mr. J. Garrett,	
Mr. Walsh,	Mr. Markham,	
Mr. Windeyer,	Mr. Laycock,	
Mr. Cummings,	Mr. Driver,	
Mr. Irving,	Mr. Lewis,	
Mr. Redman,	Mr. Sutherland,	
Mr. Stewart,	Mr. Caldwell,	
Mr. Parkes,	Mr. Suttor,	
Mr. Allen,	Mr. Rotton,	
Mr. Hart,	Mr. Haworth,	
Mr. Dangar,	Mr. Gray,	
Mr. Dickson,	Mr. Wilson,	
Mr. Lackey,	Mr. O'Brien,	
Mr. Morrice,	Mr. M'ate,	
Mr. Douglas,	Mr. Morris,	
Mr. T. Garrett,		

Clause, as read, carried.

No. 5.

APPROPRIATION BILL, 1860-61.

Motion made and Question put,—That out of the Consolidated Revenue Fund there shall and may be issued and applied, for the service of the year 1861, any sum or sums of money not exceeding £3,538 l. 11d., to supplement the Schedule to Schedule (I.) to the Act of the Imperial Parliament 18 and 19 Victoria, chap. 54. (*Mr. Weekes.*)

Committee divided.

Ayes, 18.

Mr. Cowper,	Mr. J. N. Ryan,	} Tellers.
Mr. Weekes,	Mr. Mate,	
Mr. Arnold,	Mr. Buchanan,	
Mr. Morrice,	Mr. Daniel,	
Mr. Wilson,	Mr. Morris,	
Mr. Stewart,	Mr. Rotton,	
Mr. Markham,	Mr. Laycock,	
Mr. Cummings,	Mr. Caldwell,	
Mr. Gray,	Mr. Walsh,	

Noes, 12.

Mr. Walker,	Mr. Douglas,	} Tellers.
Mr. Dangar,	Mr. Piddington,	
Mr. Terry,	Mr. Hoskins,	
Mr. Parkes,		
Mr. Dalgleish,		
Mr. Lewis,		
Mr. Driver,		
Mr. Sutherland,		
Mr. Lucas,		

FRIDAY,

FRIDAY, 26 APRIL, 1861.

No. 6.

PROPOSED WHARF AT SHELLHARBOUR.

Question proposed,—That the Committee agree to the following Resolution:— Resolved, That an Address be presented to the Administrator of the Government, praying that His Excellency will be pleased to cause to be placed upon the Supplementary Estimates for 1861, a sum not exceeding £“7” 00, for the purpose of constructing a Wharf at Shellharbour. (Mr. Gray.)

Amendment proposed,—That the figure “7” be omitted, with the view of inserting the figure “2” in its stead. (Mr. Arnold.)

Question put,—That the figure proposed to be omitted stand part of the Resolution. Committee divided

Ayes, 35.		Noes, 12.	
Mr. Blake,	Mr. Allen,	Mr. Cowper,	
Mr. Sutherland,	Mr. Wilson,	Mr. Arnold,	
Mr. Stewart,	Mr. Parkes,	Mr. Weekes,	
Mr. Lewis,	Mr. Windeyer,	Mr. Driver,	
Mr. Caldwell,	Mr. Raper,	Mr. Morrice,	
Mr. Egan,	Mr. Mate,	Mr. Walsh,	
Mr. Peisley,	Mr. Terry,	Mr. Dangar,	
Mr. Cummings,	Mr. J. N. Ryan,	Mr. Dickson,	
Mr. Gray,	Mr. Suttor,	Mr. Piddington,	
Mr. Love,	Mr. Dick,	Mr. Buchanan,	
Mr. Leary,	Mr. Markham,	Mr. Dalgleish,	} Tellers.
Mr. Lackey,	Mr. Cunneen,	Mr. Rusden,	
Mr. Holroyd,	Mr. Hoskins,		
Mr. Smart,	Mr. J. T. Ryan,		
Mr. Shepherd,	Mr. Rotton,		
Mr. Flett,	Mr. Hart,		
Mr. Meston,	Mr. Morris,		
Mr. Douglas,			

Resolution, as read, agreed to.

No. 7.

ASSISTED IMMIGRATION.

Question proposed,—That the Committee agree to the following Resolution (Mr. Rotton):—Resolved, That an Address be presented to His Excellency the Administrator of the Government, requesting that the sum of £50,000 may be placed upon the Supplementary Estimates for 1861, to be expended in promoting Assisted Immigration to this “Colony”.

Motion made and Question put,—That there be added after the word “Colony,” the words “from the Mother Country in proportion to the number of the Colonists who are natives of Great Britain, Ireland, and New South Wales respectively. (Mr. Dalgleish.)

Committee divided.

Ayes, 4.		Noes, 40.	
Mr. Redman,		Mr. Cowper,	Mr. Lucas,
Mr. Lewis,		Mr. Weekes,	Mr. Gray,
Mr. Dalgleish,	} Tellers.	Mr. Arnold,	Mr. Lackey,
Mr. Wilson,		Mr. Raper,	Mr. Driver,
		Mr. Rusden,	Mr. Love,
		Mr. Egan,	Mr. Cunneen,
		Mr. Stewart,	Mr. Laycock,
		Mr. Cummings,	Mr. Markham,
		Mr. Leary,	Mr. Caldwell,
		Mr. Allen,	Mr. Meston,
		Mr. Shepherd,	Mr. Mate,
		Mr. Terry,	Mr. Hart,
		Mr. J. N. Ryan,	Mr. Walsh,
		Mr. Dangar,	Mr. Suttor,
		Mr. Sutherland,	Mr. Buchanan,
		Mr. Peisley,	Mr. Douglas,
		Mr. J. T. Ryan,	Mr. Daniel,
		Mr. Morrice,	Mr. O'Brien,
		Mr. Hoskins,	Mr. Rotton,
		Mr. Blake,	Mr. Morris,

No. 8.

Original Resolution put. Committee divided.

Ayes, 35.		Noes, 7.	
Mr. Cowper,	Mr. Cummings,	Mr. Driver,	
Mr. Weekes,	Mr. Laycock,	Mr. Lewis,	
Mr. Rusden,	Mr. Meston,	Mr. Sutherland,	
Mr. Dick,	Mr. MacLay,	Mr. Redman,	
Mr. O'Brien,	Mr. Douglas,	Mr. Stewart,	
Mr. Leary,	Mr. Dangar,	Mr. Dalgleish,	} Tellers.
Mr. Lackey,	Mr. Dickson,	Mr. Wilson,	
Mr. Blake,	Mr. Cunneen,		
Mr. J. T. Ryan,	Mr. Suttor,		
Mr. Markham,	Mr. Walsh,		
Mr. Egan,	Mr. Hart,		
Mr. J. N. Ryan,	Mr. Morrice,		
Mr. Lucas,	Mr. Caldwell,		
Mr. Peisley,	Mr. Raper,		
Mr. Shepherd,	Mr. Daniel,		
Mr. Terry,	Mr. Rotton,		
Mr. Mate,	Mr. Morris,		
Mr. Allen,			

No. 9.

No. 9.

PROPOSED PENSION TO LADY MITCHELL.

Question proposed,—That the Committee agree to the following Resolution:—
 Resolved, That an Address be presented to the Administrator of the Government, requesting that His Excellency would be pleased to cause to be placed on the Supplementary Estimates for 1861, the sum of £200, as a Pension to Lady Mitchell, widow of the late Sir Thomas Mitchell, Surveyor General of New South Wales, in consideration of the eminent services rendered by him to the Colony in his official capacity. (*Mr. Irving.*)
 Debate ensued.

And the Committee continuing to sit until after Midnight,—

SATURDAY, 27 APRIL, 1861, A.M.,

Motion made and Question put,—That the Chairman do now leave the Chair, report progress, and ask leave to sit again on Tuesday next. (*Mr. Dalgleish.*)
 Committee divided.

Ayes, 7.

Mr. Cowper,	} Tellers.
Mr. Weekes,	
Mr. Lewis,	
Mr. Dickson,	
Mr. Driver,	
Mr. Terry,	
Mr. Dalgleish,	

Noes, 21.

Mr. O'Brien,	Mr. Daniel,	} Tellers.
Mr. Meston,	Mr. Love,	
Mr. Leary,	Mr. Irving,	
Mr. Cummings,	Mr. Redman,	
Mr. Dangar,	Mr. Macleay,	
Mr. Morris,	Mr. J. T. Ryan,	
Mr. Egan,	Mr. Wilson,	
Mr. Walsh,	Mr. Caldwell,	
Mr. Windeyer,	Mr. Sutherland,	
Mr. Parkes,	Mr. Dick,	
Mr. Shepherd,		

No. 10.

Motion made and Question put,—That the Chairman do now leave the Chair.
 (*Mr. Lewis.*)

Committee divided.

Ayes, 6.

Mr. Cowper,	} Tellers.
Mr. Weekes,	
Mr. Driver,	
Mr. Dickson,	
Mr. Dalgleish,	
Mr. Lewis,	

Noes, 22.

Mr. O'Brien,	Mr. Shepherd,	} Tellers.
Mr. Meston,	Mr. Daniel,	
Mr. Irving,	Mr. Terry,	
Mr. Cummings,	Mr. Sutherland,	
Mr. Dangar,	Mr. Redman,	
Mr. Love,	Mr. Macleay,	
Mr. Morris,	Mr. J. T. Ryan,	
Mr. Egan,	Mr. Wilson,	
Mr. Walsh,	Mr. Caldwell,	
Mr. Leary,	Mr. Dick,	
Mr. Parkes,	Mr. Windeyer,	

No. 11.

Original Resolution put.

Committee divided.

Ayes, 17.

Mr. O'Brien,	Mr. Macleay,	} Tellers.
Mr. Redman,	Mr. Irving,	
Mr. Windeyer,	Mr. Meston,	
Mr. Love,	Mr. Walsh,	
Mr. Parkes,	Mr. Caldwell,	
Mr. Egan,	Mr. J. T. Ryan,	
Mr. Cummings,	Mr. Wilson,	
Mr. Dangar,	Mr. Morris,	
Mr. Daniel,		

Resolution reported.

Noes, 8.

Mr. Cowper,	} Tellers.
Mr. Weekes,	
Mr. Lewis,	
Mr. Leary,	
Mr. Terry,	
Mr. Dickson,	
Mr. Dalgleish,	
Mr. Driver,	

1861.

Legislative Assembly.

NEW SOUTH WALES.

No. 14.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE HOUSE.

(EXTRACTED FROM THE MINUTES.)

SESSION OF 1861.

WEDNESDAY, 1 MAY, 1861.

No. 1.

GOLD FIELDS BILL, 1861.

Clause 3. The Governor may with the advice of the Executive Council declare by Proclamation in the *Gazette* any Crown Lands to be Gold Fields within the meaning and for the purposes of this Act and may by the same or any other Proclamation declare any such Gold Fields or any portions thereof from year to year to be open to "Aliens" as hereinafter "provided".—(Read.)

Question proposed,—That the Clause, as read, stand part of the Bill. (*Mr. Cowper.*)

Amendment proposed,—That the word "Aliens" be omitted, with the view of inserting in its stead, the word "Chinese." (*Mr. T. Garrett.*)

Question put,—That the word proposed to be omitted stand part of the Clause.

Committee divided.

Ayes, 10.

Mr. Cowper,	} Tellers.
Mr. Blake,	
Mr. Weekes,	
Mr. O'Brien,	
Mr. Piddington,	
Mr. Morrice,	
Mr. Douglas,	
Mr. Daniel,	
Mr. Dalgleish,	
Mr. Walsh,	

Noes, 24.

Mr. Parkes,	Mr. Sutherland,	} Tellers.
Mr. Wilson,	Mr. Stewart,	
Mr. Love,	Mr. Lackey,	
Mr. Lucas,	Mr. Buchanan,	
Mr. Shepherd,	Mr. J. T. Ryan,	
Mr. Markham,	Mr. Cunneen,	
Mr. Lewis,	Mr. Laycock,	
Mr. Cummings,	Mr. Suttor,	
Mr. Redman,	Mr. Dickson,	
Mr. Terry,	Mr. Meston,	
Mr. Walker,	Mr. Hoskins,	
Mr. Raper,	Mr. Hannell,	

No. 2.

(Same Bill.)

Question put,—That the word proposed to be inserted be so inserted.

Committee divided.

Ayes, 19.

Mr. Lucas,	Mr. Dangar,	} Tellers.
Mr. Love,	Mr. Torry,	
Mr. Markham,	Mr. Stewart,	
Mr. Redman,	Mr. Flett,	
Mr. Sutherland,	Mr. Laycock,	
Mr. Lewis,	Mr. Cunneen,	
Mr. Driver,	Mr. Hoskins,	
Mr. Dickson,	Mr. Wilson,	
Mr. Cummings,	Mr. Dick,	
Mr. Buchanan,		

Noes, 17.

Mr. Cowper,	Mr. Caldwell,	} Tellers.
Mr. Weekes,	Mr. Suttor,	
Mr. Dalgleish,	Mr. O'Brien,	
Mr. Blake,	Mr. Parkes,	
Mr. Morrice,	Mr. Piddington,	
Mr. Walker,	Mr. Douglas,	
Mr. Shepherd,	Mr. Walsh,	
Mr. Hart,		
Mr. Morris,		
Mr. Gray,		

297—A

No. 3.

No. 3.

(Same Bill.)

Question proposed,—That Clause 3, as amended, stand part of the Bill. (*Mr. Cowper.*)

Amendment proposed,—That the following proviso be added after the word "provided," at the end of the clause, viz. :—"Provided that Chinese shall not be excluded from any Gold Field which may after the passing of this Act be discovered solely by Chinese." (*Mr. Morris.*)

Question put,—That the words proposed to be added be so added.
Committee divided.

Ayes, 13.

Mr. Dickson,	Mr. Markham,	} Tellers.
Mr. Caldwell,	Mr. Flett,	
Mr. Morris,	Mr. Shepherd,	
Mr. Parkes,	Mr. J. N. Ryan,	
Mr. Raper,	Mr. Lucas,	
Mr. Dangar,	Mr. Piddington,	
Mr. Terry,		

Noes, 13.

Mr. Holroyd,	Mr. Redman,	} Tellers.
Mr. Cowper,	Mr. Lewis,	
Mr. Weekes,	Mr. Sutherland,	
Mr. Wilson,	Mr. Suttor,	
Mr. Dalgleish,	Mr. Hoskins,	
Mr. Love,	Mr. Driver,	
Mr. Cummings,		

The Chairman gave his casting vote with the Noes.

No. 4.

(Same Bill.)

Question proposed,—That Clause 3, as amended, stand part of the Bill. (*Mr. Cowper.*)

Amendment proposed,—That the following proviso be added, after the word "provided," at the end of the Clause, viz. :—"Provided that such Gold Fields or portions thereof so declared open to Chinese shall be for their exclusive use for the period expressed in such Proclamation or until voluntary abandonment thereof which ever shall first happen and none other than Chinese shall be allowed to exercise the rights of miners on such Gold Fields so set apart for Chinese occupation." (*Mr. Redman.*)

Question put,—That the words proposed to be added be so added.
Committee divided.

Ayes, 2.

Mr. Redman,	} Tellers.
Mr. Piddington,	

Noes, 25.

Mr. Cowper,	Mr. Love,	} Tellers.
Mr. Weekes,	Mr. Raper,	
Mr. Holroyd,	Mr. J. T. Ryan,	
Mr. Lucas,	Mr. Buchanan,	
Mr. Morris,	Mr. Hart,	
Mr. Walker,	Mr. Caldwell,	
Mr. Parkes,	Mr. Dalgleish,	
Mr. Meston,	Mr. Douglas,	
Mr. Sutherland,	Mr. Walsh,	
Mr. Markham,	Mr. Dickson,	
Mr. Terry,	Mr. Hoskins,	
Mr. Dangar,	Mr. Wilson,	
Mr. Lewis,		

Clause, as amended, read and carried.

No. 5.

(Same Bill.)

Clause 4. The Governor with the advice aforesaid shall subject to the provisions of this Act and the Regulations to be made hereunder cause a "Miner's Right" to be granted to "any" British subject or naturalized subject of Her "Majesty" applying for the same between the first of January and the thirtieth of June upon payment of a fee of twenty shillings and after the last mentioned day in any year upon payment of a fee of ten shillings.—(*Read.*)

Question proposed,—That the Clause, as read, stand part of the Bill. (*Mr. Cowper.*)

Amendment proposed,—That all the words after the word "any" down to the word "Majesty" inclusive, be omitted, with the view of inserting in their stead, the word "person." (*Mr. Dickson.*)

Question put,—That the words proposed to be omitted stand part of the Clause.
Committee divided.

Ayes, 2.

Mr. Morris,	} Tellers.
Mr. Piddington,	

Noes, 29.

Mr. Holroyd,	Mr. Sutherland,	} Tellers.
Mr. Cowper,	Mr. Hart,	
Mr. Weekes,	Mr. Buchanan,	
Mr. Daniel,	Mr. Caldwell,	
Mr. Raper,	Mr. Cunneen,	
Mr. Dangar,	Mr. O'Brien,	
Mr. Love,	Mr. Dickson,	
Mr. Markham,	Mr. Dalgleish,	
Mr. Lewis,	Mr. Walsh,	
Mr. Terry,	Mr. Douglas,	
Mr. Rusden,	Mr. Hoskins,	
Mr. Redman,	Mr. Windeyer,	
Mr. Cummings,	Mr. Wilson,	
Mr. J. T. Ryan,	Mr. Driver,	
Mr. Lucas,		

And

And the Clause having been further amended by inserting the word "person" in the place of the words omitted, and by the addition at the end thereof of the words "Provided that such fee shall during the remainder of the current year be five shillings only."

Clause, as amended, carried.

No. 6.

(Same Bill.)

Clause 5. Every such "Miner's Right" shall be in force from the date thereof to the thirty-first day of December then next and shall during the said period authorize the holder to mine for gold upon any "Gold Fields" and to occupy (except as against Her Majesty) for the purpose of residence in connection with the object of mining so much land as may be prescribed under the Regulations aforesaid and every such holder shall during the continuance of such Miner's Right be deemed in law to be the owner of the claim which shall be occupied by virtue of such Miner's Right and during such continuance as aforesaid all gold then being in and upon the said claim shall be deemed in law to be the absolute personal property of such "holder."—(Read.)

Question proposed,—That the Clause, as read, stand part of the Bill. (Mr. Cowper.)
And the Clause having been amended by omitting the words "Gold Fields", and inserting in their stead the words "Waste Lands of the Crown",—also by adding after the word "holder" at the end thereof the following proviso:—
"Provided always it shall be lawful for the Governor with the advice of the Executive Council by Proclamation to order and declare that such Miner's Right shall only authorize aliens described in such Proclamation to mine for gold upon such Gold Fields or at such places as shall be named in such Proclamation."

Question put,—That the Clause, as amended, stand part of the Bill.

Committee divided.

Ayes, 23.

Mr. Cowper,	Mr. Rusden,	} Tellers.
Mr. Weekes,	Mr. Douglas,	
Mr. Dickson,	Mr. Windeyer,	
Mr. Walsh,	Mr. J. T. Ryan,	
Mr. Caldwell,	Mr. Morrice,	
Mr. Lewis,	Mr. Laycock,	
Mr. Sutherland,	Mr. Buchanan,	
Mr. Morris,	Mr. Hoskins,	
Mr. Love,	Mr. Parkes,	
Mr. Markham,	Mr. Dalgleish,	
Mr. Dick,	Mr. Wilson,	
Mr. Dangar,		

Noes, 2.

Mr. Hannell,	} Tellers.
Mr. Piddington,	

No. 7.

(Same Bill.)

Clause 6. The Governor with the advice aforesaid may subject to the provisions of this Act and the Regulations aforesaid cause a License to be granted to "any" British subject or naturalized subject of Her "Majesty" applying for the same between the two first mentioned days aforesaid on payment of a fee of "five" pounds and after the last mentioned day on payment of a fee of two pounds ten shillings "every" which License shall be in force till the then next thirty-first day of December and shall authorize the holder to occupy Lands for the purpose of carrying on business upon any Gold Field during such period.—(Read.)

And the Clause having been amended by omitting all the words after the word "any" down to the word "Majesty," inclusive, and by inserting in their stead, the word "person,"

Question proposed,—That the Clause, as amended, stand part of the Bill. (Mr. Cowper.)

Amendment proposed,—That the word "five" be omitted with the view of inserting the word "four." (Mr. Wilson.)

Question put,—That the word proposed to be omitted stand part of the Clause.

Committee divided.

Ayes, 23.

Mr. Cowper,	Mr. Laycock,	} Tellers.
Mr. Weekes,	Mr. Piddington,	
Mr. Redman,	Mr. Buchanan,	
Mr. Lewis,	Mr. J. T. Ryan,	
Mr. Dickson,	Mr. Atkinson,	
Mr. Love,	Mr. Holroyd,	
Mr. Caldwell,	Mr. Daniel,	
Mr. Shepherd,	Mr. Parkes,	
Mr. Walker,	Mr. Mate,	
Mr. Morrice,	Mr. Walsh,	
Mr. Windeyer,	Mr. Sutherland,	
Mr. Cunneen,		

Noes, 12.

Mr. Rusden,	} Tellers.
Mr. Morris,	
Mr. Dalgleish,	
Mr. Cummings,	
Mr. Dangar,	
Mr. Meston,	
Mr. Lucas,	
Mr. Markham,	
Mr. Douglas,	
Mr. Hoskins,	
Mr. Dick,	
Mr. Wilson,	

And the Clause having been further amended by omitting the word "every,"—
Clause, as amended, carried.

THURSDAY,

THURSDAY, 2 MAY, 1861.

No. 8.

(Same Bill.)

Clause 8. No alien shall be entitled to a Miner's Right or a Business License but the Governor with the advice aforesaid may cause the issue and grant to any alien of a Mining Registration Ticket or a Business Registration Ticket on his paying fees the same in manner and amount respectively and for the like periods as are hereinbefore fixed for a Miner's Right or a Business License And such Tickets shall confer upon such aliens all like privileges as are conferred under this Act by any Miner's Right or Business License in and upon such Gold Fields or portions thereof as may be proclaimed open to aliens as hereinbefore provided And every such alien who shall mine for gold or become resident on any Gold Field so proclaimed and not possess such a Ticket shall be liable on conviction before a Justice of the Peace to a penalty not exceeding *Five pounds* for the first such offence and not exceeding *Ten* nor less than *Five pounds* for the second and subsequent offences And any Justice of the Peace or Police Constable may summarily arrest any alien who shall be so found upon any Gold Field without either Mining Registration Ticket or a Business Registration Ticket.—(Read.)

And the Clause having been amended so as to read thus:—Every alien not being an authorized person who shall mine for gold or become resident on any Gold Field without a Miner's Right as aforesaid shall be liable on conviction before a Justice of the Peace to a penalty not exceeding Five pounds for the first such offence and not exceeding Ten nor less than Five pounds for the second and subsequent offences And any Justice of the Peace or Police Constable may arrest any alien who shall be so found upon any Gold Field and forthwith take him before some Justice to be dealt with.

Question put,—That the Clause, as amended, stand part of the Bill. (*Mr. Cowper.*) Committee divided.

Ayes, 24.

Mr. Cowper,	Mr. Hannell,	} Tellers.
Mr. Walsh,	Mr. Dangar,	
Mr. Dalgleish,	Mr. Shepherd,	
Mr. Lewis,	Mr. Cunneen,	
Mr. Stewart,	Mr. Laycock,	
Mr. Dickson,	Mr. Buchanan,	
Mr. Caldwell,	Mr. Hoskins,	
Mr. Love,	Mr. Parkes,	
Mr. Sutherland,	Mr. Windeyer,	
Mr. Cummings,	Mr. Watt,	
Mr. Markham,	Mr. Dick,	
Mr. Terry,	Mr. Wilson,	

Noes, 3.

Mr. Rusden,	} Tellers.
Mr. Lucas,	
Mr. Piddington,	

No. 9.

(Same Bill.)

Clause 10. Any person not holding a Miner's Right "a" Lease or "any Registration Ticket" under this Act shall not mine for gold or possess any claim "or land" on any Gold Field and shall not "work" for any other person whether or not the lawful possessor of any such claim "or land" or as partner with any such person And every such lawful possessor by whom he shall be employed as partner or with whom he shall so work shall absolutely forfeit his claim "or land" unless such claim shall be held by virtue of a Business License "or Business Registration Ticket" or by a lease in which last-mentioned case the Governor may with the advice aforesaid remit such forfeiture.—(Read.)

And the Clause having been amended by omitting the letter "a," also by omitting the words "any Registration Ticket" and the insertion in their stead of the word "License," also by omitting the words "or land,"—

Further Amendment proposed,—That the word "work" be omitted, with the view of inserting the words "mine or dig." (*Mr. Rusden.*)

Question put,—That the word proposed to be omitted stand part of the Clause. Committee divided.

Ayes, 14.

Mr. Cowper,	Mr. Sutherland,	} Tellers.
Mr. Weekes,	Mr. Shepherd,	
Mr. Dickson,	Mr. Cunneen,	
Mr. Stewart,	Mr. Laycock,	
Mr. Love,	Mr. Buchanan,	
Mr. Allen,	Mr. Walsh,	
Mr. Caldwell,	Mr. Dalgleish,	

Noes, 10.

Mr. Dick,	Mr. Dangar,	} Tellers.
Mr. Wilson,	Mr. Hoskins,	
Mr. Irving,	Mr. Rusden,	
Mr. Parkes,		
Mr. Lucas,		
Mr. Lewis,		
Mr. Windeyer,		

And the Clause having been further amended so as to read thus:—"Any person not holding a Miner's Right Lease or License under this Act shall not mine for gold or possess any claim on any Gold Field and shall not work for any other person whether or not the lawful possessor of any such claim or as partner with any such person And every such lawful possessor by whom he shall be employed as partner or with whom he shall so work shall absolutely forfeit his claim unless such claim shall be held by virtue of a Business License or by a lease in which last-mentioned case the Governor may with the advice aforesaid remit such forfeiture."

Clause, as so amended, carried.

No. 10.

No. 10.

(Same Bill.)

Clause 19. Such Justice and assessors upon the hearing of any complaint as aforesaid upon proof of any "gold" having been removed as aforesaid (of which any such finding as aforesaid shall be sufficient evidence) may cause any "gold" taken or removed from such claim to be summarily seized and delivered to the person encroached upon and may also "cause" the whole or any part of the damages ascertained as aforesaid to an amount not exceeding one hundred pounds to be paid by the person so having encroached or trespassed "as to such Justice and assessors shall seem just" to be recovered by distress and sale of the goods and chattels of such person in manner prescribed by law for the recovery of any sum adjudged by Justices of the Peace as a pecuniary penalty or compensation Provided that no person shall be imprisoned for default in payment of such damages for a longer period than three months.—(Read.)

Question proposed,—That the Clause, as read, stand part of the Bill. (Mr. Cowper.)
And the Clause having been amended by inserting the word "such" before the word "gold" in the second and fourth lines,—

Amendment proposed,—That the word "cause" be omitted, with the view of inserting in its stead the word "adjudge." (Mr. Dick.)

Question put,—That the word proposed to be omitted stand part of the Clause.
Committee divided.

Ayes, 22.

Mr. Cowper,	Mr. Stewart,	} Tellers.
Mr. Weekes,	Mr. Sutherland,	
Mr. Walsh,	Mr. Shepherd,	
Mr. Allen,	Mr. Suttor,	
Mr. Morrice,	Mr. Hoskins,	
Mr. Love,	Mr. Driver,	
Mr. Markham,	Mr. Dalgleish,	
Mr. Hart,	Mr. Windeyer,	
Mr. Lewis,	Mr. Parkes,	
Mr. Dangar,	Mr. Wilson,	
Mr. Cummings,	Mr. Lucas,	

Noes, 2.

Mr. Piddington,	} Tellers.
Mr. Dick,	

And the Clause having been further amended by omitting the words "as to such Justice and Assessors shall seem just," and by adding at the end of the Clause the following proviso:—"Provided also that nothing herein contained shall "prejudice the right of any person to resort to any remedy which he may already "have at law or in equity,"—

Clause, as so amended, carried.

No. 11.

ENFORCEMENT OF CLAIMS AGAINST THE CROWN BILL.

New Clause 14. The Colonial Treasurer shall pay the amount of any moneys and costs as to which a judgment or decree rule or order shall be given or made that the suppliant in any such Petition of Right is entitled and of which judgment or decree rule or order the tenor and purport shall have been so certified to him as aforesaid out of any "moneys" in his hands for the time being legally applicable thereto or which may be "hereafter" voted by Parliament for that purpose.—(Read.)

Question proposed,—That the Clause, as read, stand part of the Bill. (Mr. Holroyd.)

Amendment proposed,—That all the words after the word "moneys" down to the word "hereafter" inclusive, be omitted. (Mr. Dick.)

Question put,—That the words proposed to be omitted stand part of the Clause.
Committee divided.

Ayes, 24.

Mr. Cowper,	Mr. Markham,	} Tellers.
Mr. Weekes,	Mr. Flett,	
Mr. Lewis,	Mr. Piddington,	
Mr. Morrice,	Mr. Hoskins,	
Mr. Caldwell,	Mr. Parkes,	
Mr. Holroyd,	Mr. Meston,	
Mr. Driver,	Mr. Gunneen,	
Mr. Walker,	Mr. Buchanan,	
Mr. Watt,	Mr. Dalgleish,	
Mr. Terry,	Mr. Walsh,	
Mr. Dangar,	Mr. Morris,	
Mr. Mate,	Mr. Hart,	

Noes, 2.

Mr. Dickson,	} Tellers.
Mr. Dick,	

Clause, as read, carried.

1861.

Legislative Assembly.
NEW SOUTH WALES.

No. 15.

WEEKLY REPORT OF DIVISIONS

IN

COMMITTEE OF THE WHOLE HOUSE.

(EXTRACTED FROM THE MINUTES.)

SESSION OF 1861.

MONDAY, 6 MAY, 1861.

No. 1.

LOAN FOR ASSISTED IMMIGRATION.

Resolution.

Motion made and Question put,—That the Committee agree to the following Resolution:—

Resolved,—That there be granted to Her Majesty, to be provided for by Loan, a sum not exceeding £50,000, to be raised by the Sale of Debentures secured upon the Consolidated Revenue Fund of New South Wales, and bearing interest at a rate not exceeding five per centum per annum, to provide for the expenditure of that amount in promoting Assisted Immigration to this Colony. (*Mr. Weekes.*)

Committee divided.

Ayes, 25.

Mr. Cowper,	Mr. Rusden,		
Mr. Arnold,	Mr. Holroyd,		
Mr. Weekes,	Mr. Cummings,		
Mr. Raper,	Mr. Cunneen,		
Mr. Caldwell,	Mr. Morris,		
Mr. Morrice,	Mr. Douglas,		
Mr. Ryan,	Mr. Walsh,		
Mr. Markham,	Mr. Rotton,		
Mr. Flett,	Mr. Lucas,		
Mr. Dangar,	Mr. Garrett,		
Mr. Daniel,	Mr. Blake,		} Tellers.
Mr. Terry,	Mr. Egan,		
Mr. Watt,			

Noes, 4.

Mr. Windeyer,	} Tellers.
Mr. Hannell,	
Mr. Lewis,	
Mr. Dalgleish,	

Resolution reported,—to sit again.

No. 2.

MORPETH AND MAITLAND RAILWAY COMPANY'S BILL, 1861.

Clause 1. The following persons that is to say Benjamin Lee junior "S." "S." Dickson John Eales James Taylor "Lewis Wolfe Levy" "Alexander Dodds" James Brand Ritchie Robertson Enoch Coberoft Thomas "Cadall" Charles "E." Jaques John Scott William Henry Mullen "J. E. Wolfe" "Captain" Close Alexander Brown Portus Andrew Liddell Isaac Gorriek Robert Strachan Octavius E. Middleton P. O'Keefe W. Lipscomb D. Moffit Duncan Sim

And all other persons who shall hereafter become shareholders in the said undertaking and their several and respective successors executors administrators and assigns shall be and hereby are incorporated into a Company for constructing

constructing maintaining and working the said Railway and such extensions thereof and all other works by this Act authorized subject to the rules regulations and provisions hereinafter mentioned and for these purposes shall be and are one body corporate by the name of "The Maitland and Morpeth Railway Company" and by that name shall have perpetual succession and a common seal and shall and may grant and receive and sue and be sued plead and be impleaded in all Courts whatsoever at law and in equity and shall have power and authority from and after the passing of this Act and at all times hereafter to purchase from the owners thereof and from all parties having an interest therein or enabled by this Act to sell and convey the same all the lands by this Act authorized to be taken and to hold such lands to them and their successors for the use of the said undertaking and works and generally for carrying into effect the provisions of this Act and also to sell dispose and deal with the said lands in manner by this Act directed without incurring any penalties or forfeitures.—(Read.)

And the Clause having been amended by converting the initial letters "S." "S." into the words "Samuel," "Smith," by omitting the names of "Lewis Wolfe Levy" and "Alexander Dodds," by changing the word "Cadall" into "Cadell," by converting the initial "E." into the word "Edmund," and by omitting the name of "J. E. Wolfe,"—

Further amendment proposed,—That the word "Captain" be omitted, with the view of inserting the words "Edward Charles." (Mr. Parkes.)

Motion made and Question put,—That the Chairman do now leave the Chair, report progress, and ask leave to sit again to-morrow. (Mr. Dalgleish.)

Committee divided.

Ayes, 4.

Mr. Rotton,	} Tellers.
Mr. Lucas,	
Mr. Hannell,	
Mr. Hoskins,	

Noes, 22.

Mr. Cowper,	Mr. Stewart,	} Tellers.
Mr. Weekes,	Mr. Markham,	
Mr. Arnold,	Mr. Dickson,	
Mr. Windeyer,	Mr. Wilson,	
Mr. Love,	Mr. Hart,	
Mr. Watt,	Mr. Parkes,	
Mr. Cummings,	Mr. Allen,	
Mr. Leary,	Mr. Walsh,	
Mr. J. Garrett,	Mr. Daniel,	
Mr. Dangar,	Mr. Rusden,	
Mr. Caldwell,	Mr. Morris,	

No. 3.

(Same Bill.)

Question proposed,—That the word "Captain," proposed to be omitted, stand part of the Clause.

Motion made and Question put,—That the Chairman do now leave the Chair, report progress, and ask leave to sit again on Tuesday next. (Mr. Hoskins.)

Committee divided.

Ayes, 5.

Mr. Lucas,	} Tellers.
Mr. Lewis,	
Mr. Morrice,	
Mr. Hannell,	
Mr. Hoskins,	

Noes, 23.

Mr. Cowper,	Mr. Parkes,	} Tellers.
Mr. Weekes,	Mr. Allen,	
Mr. Arnold,	Mr. Wilson,	
Mr. Love,	Mr. Windeyer,	
Mr. Morris,	Mr. Walsh,	
Mr. Meston,	Mr. J. Garrett,	
Mr. Markham,	Mr. Gray,	
Mr. Leary,	Mr. Driver,	
Mr. Dangar,	Mr. Sutherland,	
Mr. Caldwell,	Mr. Watt,	
Mr. Stewart,	Mr. Rusden,	
Mr. Cummings,		

No. 4.

(Same Bill.)

Motion made and Question put,—That the Chairman do now leave the Chair.—(Mr. Hoskins.)

Committee divided.

Ayes, 6.

Mr. Hannell,	} Tellers.
Mr. Lucas,	
Mr. Lewis,	
Mr. Morrice,	
Mr. Dalgleish,	
Mr. Hoskins,	

Noes, 23.

Mr. Cowper,	Mr. Sutherland,	} Tellers.
Mr. Arnold,	Mr. Stewart,	
Mr. Weekes,	Mr. Driver,	
Mr. Love,	Mr. J. Garrett,	
Mr. Watt,	Mr. Walsh,	
Mr. Cummings,	Mr. Windeyer,	
Mr. Meston,	Mr. Wilson,	
Mr. Markham,	Mr. Allen,	
Mr. Leary,	Mr. Parkes,	
Mr. Dangar,	Mr. Rusden,	
Mr. Caldwell,	Mr. Morris,	
Mr. Suttor,		

No. 5.

(Same Bill.)

Motion made and Question put,—That the Chairman do now leave the Chair, report progress, and ask leave to sit again to-morrow. (Mr. Parkes.)

Committee

Committee divided.

Ayes, 13.

Mr. Lewis,	Mr. Dalgleish,	} Tellers.
Mr. Piddington,	Mr. Lucas,	
Mr. Hannell,		
Mr. Morrice,		
Mr. Allen,		
Mr. Parkes,		
Mr. Rotton,		
Mr. Hoskins,		
Mr. Sutherland,		
Mr. Suttor,		
Mr. Douglas,		

Noes, 22.

Mr. Cowper,	Mr. Dangar,	} Tellers.
Mr. Weekes,	Mr. J. Garrett,	
Mr. Morris,	Mr. Gray,	
Mr. Arnold,	Mr. Smart,	
Mr. Watt,	Mr. Windeyer,	
Mr. Love,	Mr. Cummings,	
Mr. Meston,	Mr. Wilson,	
Mr. Markham,	Mr. Buchanan,	
Mr. Rusden,	Mr. Walsh,	
Mr. Leary,	Mr. Driver,	
Mr. Caldwell,	Mr. Dick,	

And the Committee having continued to sit until after Midnight,—

TUESDAY, 7 MAY, 1861, A.M.

No. 6.

(Same Bill.)

Question,—That the word "Captain," proposed to be omitted, stand part of the Clause,—put.

Committee divided.

Ayes, 3.

Mr. Piddington,	} Tellers.
Mr. Hoskins,	
Mr. Dalgleish,	

Noes, 18.

Mr. Cowper,	Mr. Gray,	} Tellers.
Mr. Weekes,	Mr. Love,	
Mr. Arnold,	Mr. Driver,	
Mr. Windeyer,	Mr. Buchanan,	
Mr. Parkes,	Mr. Douglas,	
Mr. Sutherland,	Mr. Markham,	
Mr. Watt,	Mr. Wilson,	
Mr. Cummings,	Mr. Morris,	
Mr. Dangar,	Mr. Dick,	

Progress reported,—to sit again.

TUESDAY, 7 MAY, 1861.

No. 7.

CROWN LANDS ALIENATION BILL, 1861. LEGISLATIVE COUNCIL'S AMENDMENTS.

(References made to Council's Reprint.)

Page 2, clause 2, lines 34 to 39. After "respectively" omit remainder of clause.

Motion made and Question put,—That the Committee disagrees from this Amendment. (Mr. Cowper.)

Committee divided.

Ayes, 28.

Mr. Cowper,	Mr. Terry,	} Tellers.
Mr. Weekes,	Mr. Raper,	
Mr. Arnold,	Mr. Lucas,	
Capt. Moriarty,	Mr. J. Garrett,	
Mr. O'Brien,	Mr. Hannell,	
Mr. Sutherland,	Mr. Parkes,	
Mr. Markham,	Mr. Laycock,	
Mr. Love,	Mr. Hoskins,	
Mr. J. T. Ryan,	Mr. Buchanan,	
Mr. Dickson,	Mr. Driver,	
Mr. Allen,	Mr. Haworth,	
Mr. Caldwell,	Mr. Gray,	
Mr. Windeyer,	Mr. Lewis,	
Mr. Stewart,	Mr. Dalgleish,	

Noes, 20.

Mr. Walsh,	Mr. Leary,	} Tellers.
Mr. Suttor,	Mr. Cummings,	
Mr. Egan,	Mr. Piddington,	
Mr. Rotton,	Mr. Walker,	
Mr. Daniel,	Mr. Lackey,	
Mr. Watt,	Mr. J. N. Ryan,	
Mr. Shepherd,	Mr. Rusden,	
Mr. Mate,	Mr. Macleay,	
Mr. Meston,	Mr. Wilson,	
Mr. Dangar,	Mr. Morris,	

No. 8.

(Same Bill.)

Page 3, clause 7, 6, lines 28 to 33. Omit "issued or made previously to the twenty-

"second day of February one thousand eight hundred and fifty-eight";

insert "except in the first class Settled Districts and in the second class

"Settled Districts when held in such districts respectively under lease or

"promise of lease made since the twenty-second day of February one thousand

"eight hundred and fifty-eight."

Motion made and Question put,—That the Committee disagrees from these Amendments. (Mr. Cowper.)

Committee divided.

Ayes, 33.

Mr. Cowper,	Mr. Blake,	} Tellers.
Mr. Weekes,	Mr. Lucas,	
Mr. Arnold,	Mr. Garrett,	
Mr. Dick,	Mr. Windeyer,	
Mr. Lewis,	Mr. Parkes,	
Mr. Sutherland,	Mr. Love,	
Mr. Markham,	Mr. Allen,	
Mr. Morris,	Mr. J. T. Ryan,	
Mr. Caldwell,	Mr. Laycock,	
Mr. O'Brien,	Mr. Gray,	
Mr. Stewart,	Mr. Hoskins,	
Mr. Smart,	Mr. Buchanan,	
Mr. Hart,	Mr. Haworth,	
Mr. Atkinson,	Mr. Leary,	
Mr. Raper,	Mr. Dickson,	
Mr. Terry,	Mr. Dalgleish,	
Capt. Moriarty,		

Noes, 17.

Mr. Meston,	} Tellers.
Mr. Watt,	
Mr. Cummings,	
Mr. Shepherd,	
Mr. Mate,	
Mr. Wilson,	
Mr. Dangar,	
Mr. Holroyd,	
Mr. Lackey,	
Mr. Piddington,	
Mr. Macleay,	
Mr. Walker,	
Mr. J. N. Ryan,	
Mr. Suttor,	
Mr. Morris,	
Mr. Rotton,	
Mr. Egan,	

No. 9.

No. 9.

(Same Bill.)

Page 5, clause **14**, **12**, lines 41 to 44. *After "Act" insert "and not being under application for purchase at auction by persons who have paid or tendered at the time of application a deposit of fifty per cent. upon the minimum price."*
 Motion made and Question put,—That the Committee disagrees from this Amendment. *(Mr. Cowper.)*

Ayes, 29.		Noes, 18.	
Mr. Weekes,	Mr. Terry,	Mr. Raper,	Mr. Suttor,
Mr. Smart,	Mr. J. T. Ryan,	Mr. Egan,	Mr. Watt,
Mr. Cowper,	Mr. Hannell,	Mr. Rotton,	Mr. Walsh,
Mr. Arnold,	Mr. Laycock,	Mr. Walker,	} Tellers.
Mr. Redman,	Mr. Buchanan,	Mr. Lackey,	
Mr. Morrice,	Mr. Gray,	Mr. Daniel,	
Mr. Caldwell,	Mr. Hoskins,	Mr. Shepherd,	
Mr. Sutherland,	Mr. Atkinson,	Mr. Mate,	
Mr. Love,	Mr. Wilson,	Mr. J. N. Ryan,	
Mr. Markham,	Mr. Parkes,	Mr. Dangar,	
Mr. Dickson,	Mr. Morris,	Mr. Lucas,	
Mr. Stewart,	Mr. Lewis,	Mr. Cummings,	
Mr. J. Garrett,	Mr. Dalgleish,	Mr. Dick,	
Mr. Leary,	Capt. Moriarty,	Mr. Meston,	
Mr. Cunneen,		Mr. Piddington,	

No. 10.

A Question having been put and the voices given, attention was called to the circumstance, that an Honorable Member who had given his voice with the "Ayes" was dividing with the "Noes,"—And the Chairman having ruled that that Member was bound to vote with the "Ayes,"

Motion made and Question put,—That the Chairman do now leave the Chair, report the Point of Order for the determination of the Speaker, and ask leave to sit again as soon as the Point of Order shall be disposed of. *(Mr. Morris.)*

Committee divided.

Ayes, 27.		Noes, 22.	
Mr. Raper,	Mr. Leary,	Mr. Cowper,	Mr. Buchanan,
Mr. Rotton,	Mr. Dangar,	Mr. Arnold,	Mr. Caldwell,
Capt. Moriarty,	Mr. Windeyer,	Mr. Weekes,	Mr. Dickson,
Mr. Watt,	Mr. Walker,	Mr. Redman,	Mr. Hoskins,
Mr. Morrice,	Mr. O'Brien,	Mr. Dalgleish,	Mr. Smart,
Mr. Lewis,	Mr. Suttor,	Mr. Daniel,	Mr. Atkinson,
Mr. Dick,	Mr. Laycock,	Mr. J. Garrett,	Mr. Love,
Mr. Lackey,	Mr. Piddington,	Mr. Markham,	Mr. Lucas,
Mr. Meston,	Mr. Hannell,	Mr. Cunneen,	} Tellers.
Mr. Cummings,	Mr. Wilson,	Mr. J. T. Ryan,	
Mr. Mate,	Mr. Parkes,	Mr. Sutherland,	
Mr. Shepherd,	Mr. Egan,	Mr. Stewart,	
Mr. J. N. Ryan,	Mr. Morris,	Mr. Terry,	
Mr. Holroyd,		Mr. Gray,	

The Committee resumed.

No. 11.

(Same Bill.)

Page 5, Clause 14, line 59. *At the end of the Clause insert Provided further that any deposit paid by an applicant for sale by auction in manner beforementioned shall be forfeited if the land shall not be sold when the auction takes place but if sold to the applicant he shall be allowed credit for such deposit in the purchase of the land and if sold to any other person the applicant shall be entitled to receive back his deposit.*

Motion made and Question put,—That the Committee disagrees from this Amendment. *(Mr. Cowper.)*

Committee divided.

Ayes, 40.		Noes, 5.	
Mr. Cowper,	Mr. J. T. Ryan,	Mr. J. N. Ryan,	
Mr. Weekes,	Mr. Dangar,	Mr. Macleay,	
Mr. Arnold,	Mr. Piddington,	Mr. Meston,	
Capt. Moriarty,	Mr. Mate,	Mr. Watt,	} Tellers.
Mr. Redman,	Mr. Suttor,	Mr. Morris,	
Mr. O'Brien,	Mr. Cunneen,		
Mr. Morrice,	Mr. Windeyer,		
Mr. Lewis,	Mr. Gray,		
Mr. Sutherland,	Mr. Hoskins,		
Mr. Love,	Mr. Laycock,		
Mr. Stewart,	Mr. Buchanan,		
Mr. Lackey,	Mr. Hannell,		
Mr. Markham,	Mr. Egan,		
Mr. J. Garrett,	Mr. Wilson,		
Mr. Caldwell,	Mr. Walsh,		
Mr. Dickson,	Mr. Daniel,		
Mr. Terry,	Mr. Raper,		
Mr. Dick,	Mr. Parkes,		
Mr. Shepherd,	Mr. Atkinson,		
Mr. Cummings,	Mr. Dalgleish,		

No. 12.

No. 12.

(Same Bill.)

Proposed New Clause:—

20. Crown Lands may be conditionally selected for the purposes of mining other than gold mining under section fourteen of this Act except that in such case the price shall be forty shillings per acre and except that in such case instead of the conditions applicable to other cases in regard to the declaration and certificate required a declaration shall be required only of the fact that not less than an average sum of Two pounds per acre has been expended in mining operations other than gold mining on the land And upon such conditions being satisfied as hereby altered and on payment of the balance of purchase money a grant in fee simple shall be made without reservation of minerals other than gold and the same may be made on satisfaction of such conditions and payment of such balance notwithstanding the period of three years required in other cases shall not have "expired" And a grant may be made in like manner of any portion (not being less than forty acres) of a larger portion originally selected for purchase upon a declaration shewing an expenditure in such mining operations as aforesaid of an average sum of not less than Five Pounds per acre on the land so to be granted And in that case the purchase of the remainder of the land selected shall be rescinded and any deposit paid thereon applied in or towards satisfying the balance of purchase money of the land "granted" Provided further that if the Minister shall be dissatisfied with any such declaration as aforesaid he may cause the fact of the expenditure required to authorize a grant to be referred to arbitration under this Act and the issue of a grant shall in that case be dependent on the award thereon.—(*Read.*)

Question proposed,—That the Committee agrees to this Amendment. (*Mr. Cowper.*)Amendment proposed,—That all the words after the word "expired" down to the word "granted," inclusive, be omitted. (*Mr. Dick.*)

Question put,—That the words proposed to be omitted stand part of proposed new Clause.

Committee divided.

Ayes, 46.

Mr. Cowper,	Mr. Rotton,
Mr. Weekes,	Mr. Mate,
Mr. Arnold,	Mr. Gray,
Mr. Haworth,	Mr. Piddington,
Mr. Blake,	Mr. Hoskins,
Mr. Redman,	Mr. Suttor,
Capt. Moriarty,	Mr. Lucas,
Mr. Dalglish,	Mr. Hannell,
Mr. Holroyd,	Mr. Parkes,
Mr. Raper,	Mr. Cunneen,
Mr. Morris,	Mr. Love,
Mr. Dangar,	Mr. Windeyer,
Mr. J. N. Ryan,	Mr. Caldwell,
Mr. Cummings,	Mr. Leary,
Mr. Terry,	Mr. Lackey,
Mr. Walker,	Mr. Wilson,
Mr. Sutherland,	Mr. Buchanan,
Mr. Meston,	Mr. Douglas,
Mr. Smart,	Mr. Daniel,
Mr. Watt,	Mr. Dickson,
Mr. Shepherd,	Mr. Walsh,
Mr. Stewart,	Mr. Egan,
Mr. J. T. Ryan,	Mr. Atkinson,

} Tellers.

Nocs, 2.

Mr. Lewis,	} Tellers.
Mr. Dick,	

No. 13.

No. 13.

*(Same Bill.)*Original Question put.
Committee divided.

Ayes, 35.

Mr. Cowper,	Mr. Shepherd,	} Tellers.
Mr. Weekes,	Mr. J. N. Ryan,	
Mr. Morris,	Mr. Rotton,	
Mr. Atkinson,	Mr. Driver,	
Mr. Haworth,	Mr. Hannell,	
Mr. Arnold,	Mr. Walker,	
Mr. Blake,	Mr. Mate,	
Mr. J. Garrett,	Mr. Love,	
Mr. Holroyd,	Mr. Windeyer,	
Mr. Raper,	Mr. Lackey,	
Mr. Dangar,	Mr. Buchanan,	
Mr. Cummings,	Mr. Douglas,	
Mr. Piddington,	Mr. Daniel,	
Mr. Markham,	Mr. Dickson,	
Mr. Leary,	Mr. Lewis,	
Mr. Meston,	Mr. Egan,	
Mr. Smart,	Mr. Dick,	
Mr. Watt,		

Noes, 15.

Mr. Lucas,	} Tellers.
Capt. Moriarty,	
Mr. Sutherland,	
Mr. Dalglish,	
Mr. Cunneen,	
Mr. Morrice,	
Mr. Terry,	
Mr. Hoskins,	
Mr. Redman,	
Mr. Stewart,	
Mr. Laycock,	
Mr. Caldwell,	
Mr. Suttor,	
Mr. Walsh,	
Mr. Wilson,	

No. 14.

(Same Bill.)

Page 9, Clause 29, 26, lines 38 to 49. *Omit* paragraph 4; *insert* 4. In any case where reference shall be made to arbitration as aforesaid the Supreme Court or a Judge shall have power at any time and from time to time to remit the matters referred or any or either of them to the reconsideration and redetermination of the said arbitrators or umpire as the case may be upon such terms as to costs and otherwise as to the said Court or Judge may seem proper.

Motion made and Question put,—That the Committee disagrees from these Amendments. (*Mr. Cowper.*)
Committee divided.

Ayes, 27.

Mr. Cowper,	Mr. Stewart,	} Tellers.
Mr. Weekes,	Mr. Laycock,	
Mr. Arnold,	Mr. Cunneen,	
Capt. Moriarty,	Mr. Lackey,	
Mr. Gray,	Mr. Buchanan,	
Mr. Morrice,	Mr. Hoskins,	
Mr. Leary,	Mr. Douglas,	
Mr. Raper,	Mr. Daniel,	
Mr. Dangar,	Mr. Lewis,	
Mr. Markham,	Mr. Atkinson,	
Mr. Hannell,	Mr. Parkes,	
Mr. Terry,	Mr. Love,	
Mr. Dickson,	Mr. Dalglish,	
Mr. Smart,		

Noes, 18.

Mr. Redman,	Mr. Hart,	} Tellers.
Mr. Holroyd,	Mr. Driver,	
Mr. Dick,	Mr. Walsh,	
Mr. Wilson,	Mr. Morris,	
Mr. Walker,		
Mr. Mate,		
Mr. Windeyer,		
Mr. Lucas,		
Mr. Watt,		
Mr. Sutherland,		
Mr. Piddington,		
Mr. Caldwell,		
Mr. Suttor,		
Mr. Meston,		

No. 15.

(Same Bill.)

Page 10, Clause 29, 26, lines 18 to 20. *Omit* "the Minister may"; *insert* "it shall be lawful for any Judge of the Supreme Court on the application of either party to such arbitration to."
" " lines 21 to 23. *Omit* "And the award of the umpire shall be binding final and conclusive upon all persons and to all intents and purposes whatsoever."

Motion made and Question put,—That the Committee disagrees from these Amendments. (*Mr. Cowper.*)
Committee divided.

Ayes, 32.

Mr. Cowper,	Mr. Smart,	} Tellers.
Mr. Weekes,	Mr. Caldwell,	
Mr. Arnold,	Mr. Laycock,	
Capt. Moriarty,	Mr. Cunneen,	
Mr. Gray,	Mr. Lackey,	
Mr. Love,	Mr. Buchanan,	
Mr. Morrice,	Mr. Hoskins,	
Mr. Leary,	Mr. Douglas,	
Mr. Raper,	Mr. Daniel,	
Mr. Dangar,	Mr. Lewis,	
Mr. Markham,	Mr. Atkinson,	
Mr. Dickson,	Mr. Parkes,	
Mr. Terry,	Mr. Wilson,	
Mr. Hannell,	Mr. Redman,	
Mr. Lucas,	Mr. Egan,	
Mr. Stewart,	Mr. Dalglish,	

Noes, 14.

Mr. Walsh,	} Tellers.
Mr. Holroyd,	
Mr. Walker,	
Mr. Mate,	
Mr. Windeyer,	
Mr. Watt,	
Mr. Driver,	
Mr. Piddington,	
Mr. Macleay,	
Mr. Meston,	
Mr. Hart,	
Mr. J. N. Ryan,	
Mr. Morris,	
Mr. Dick,	

No. 16.

No. 16.

(Same Bill.)

Page 11, Clause **32. 29**, lines 19 to 21. *After "next" insert " Provided that an Act intituled ' An Act for regulating the occupation of Crown Lands ' shall during the present session be passed by the Legislature of this Colony."*
 „ „ line 21. *After " And " insert " this Act."*

Motion made and Question put,—That the Committee disagrees from these Amendments. (*Mr. Cowper.*)

Committee divided.

Ayes, 38.

Mr. Cowper,	Mr. Sutherland,	}	Tellers.
Mr. Weckes,	Mr. Windeyer,		
Mr. Walsh,	Mr. Driver,		
Mr. Redman,	Mr. Piddington,		
Mr. Arnold,	Mr. Laycock,		
Capt. Moriarty,	Mr. Cunneen,		
Mr. Gray,	Mr. Lackey,		
Mr. Morrice,	Mr. Buchanan,		
Mr. Leary,	Mr. Hoskins,		
Mr. Raper,	Mr. Douglas,		
Mr. Dangar,	Mr. Hart,		
Mr. Lucas,	Mr. Daniel,		
Mr. Markham,	Mr. Lewis,		
Mr. Terry,	Mr. Atkinson,		
Mr. Hannell,	Mr. Parkes,		
Mr. Dickson,	Mr. Wilson,		
Mr. Caldwell,	Mr. Dick,		
Mr. Smart,	Mr. Love,		
Mr. Stewart,	Mr. Dalgleish,		

Noes, 10.

Mr. Holroyd,	}	Tellers.
Mr. Egan,		
Mr. Mate,		
Mr. Watt,		
Mr. Rotton,		
Mr. Macleay,		
Mr. Meston,		
Mr. J. N. Ryan,		
Mr. Walker,		
Mr. Morris,		

The Chairman reported that the Committee had agreed to some, and disagreed from others, of the Amendments made by the Legislative Council in this Bill.

THURSDAY, 9 MAY, 1861.

No. 17.

CROWN LANDS OCCUPATION BILL, 1861. LEGISLATIVE COUNCIL'S AMENDMENTS:—
(References to Council's Reprint.)

Page 3, Clause **10. 11**, lines 29 and 30. *After " Districts " omit " or " ; insert " Five years and in."*
 „ „ line 30. *Omit " Five " ; insert " Ten."*

Motion made and Question put,—That the Committee disagrees from these Amendments. (*Mr. Cowper.*)

Committee divided.

Ayes, 30.

Mr. Arnold,	Mr. Leary,	}	Tellers.
Mr. Cowper,	Mr. Hart,		
Mr. Weckes,	Mr. Raper,		
Capt. Moriarty,	Mr. Daniel,		
Mr. Morrice,	Mr. Driver,		
Mr. J. Garrett,	Mr. Windeyer,		
Mr. Lewis,	Mr. J. T. Ryan,		
Mr. Caldwell,	Mr. Laycock,		
Mr. Lucas,	Mr. Buchanan,		
Mr. Terry,	Mr. Gray,		
Mr. Dickson,	Mr. Hoskins,		
Mr. Markham,	Mr. Wilson,		
Mr. Stewart,	Mr. Walsh,		
Mr. Hannell,	Mr. Dalgleish,		
Mr. Dick,	Mr. Love,		

Noes, 7.

Mr. Egan,	}	Tellers.
Mr. Cummings,		
Mr. Dangar,		
Mr. J. N. Ryan,		
Mr. Meston,		
Mr. Rotton,		
Mr. Morris,		

No. 18.

(Same Bill.)

Page 5, Clause **11. 12**, lines 10 to 13. *After " cancel " omit remainder of Clause ; insert " so much of the lease as relates to the land so sold and to three times the area thereof adjoining thereto Provided that the lessee of the lands from which such sale shall be made shall be at liberty either to retain the remaining portion thereof paying however the same amount of rent as for the whole section or surrender the same."*

Motion made and Question put,—That the Committee agrees to these Amendments. (*Mr. Cowper.*)

Committee

Committee divided.

Ayes, 15.

Mr. Rotton,	Mr. Meston,	} Tellers.
Mr. Leary,	Mr. Mate,	
Mr. Cunneen,	Mr. Suttor,	
Mr. Daniel,	Mr. Piddington,	
Mr. Egan,	Mr. Dangar,	
Mr. Rusden,	Mr. Wilson,	
Mr. Dick,	Mr. Morris,	
Mr. J. N. Ryan,		

Noes, 26.

Mr. Cowper,	Mr. Caldwell,	} Tellers.
Mr. Arnold,	Mr. Morrice,	
Mr. Lucas,	Mr. Hoskins,	
Mr. Driver,	Mr. Buchanan,	
Mr. O'Brien,	Mr. Gray,	
Mr. Atkinson,	Mr. Laycock,	
Capt. Moriarty,	Mr. J. T. Ryan,	
Mr. Raper,	Mr. Dickson,	
Mr. J. Garrett,	Mr. Windeyer,	
Mr. Love,	Mr. Hannell,	
Mr. Markham,	Mr. Stewart,	
Mr. Lewis,	Mr. Hart,	
Mr. Terry,	Mr. Dalgleish,	

No. 19.

(Same Bill.)

Page 5, Clause **12**, ~~13~~, line 24. *After* "Leases of"; *insert* "existing."
Motion made and Question put,—That the Committee disagrees from these Amendments. (*Mr. Cowper.*)

Committee divided.

Ayes, 31.

Mr. Cowper,	Mr. Piddington,	} Tellers.
Mr. Weekes,	Mr. Stewart,	
Mr. O'Brien,	Mr. Driver,	
Mr. Dalgleish,	Mr. Dickson,	
Mr. Atkinson,	Mr. Wilson,	
Mr. Love,	Mr. Laycock,	
Mr. Terry,	Mr. Buchanan,	
Mr. Lewis,	Mr. Gray,	
Mr. Markham,	Mr. Hoskins,	
Mr. Cunneen,	Capt. Moriarty,	
Mr. Morrice,	Mr. Walsh,	
Mr. J. Garrett,	Mr. C. Cowper,	
Mr. Leary,	junr.,	
Mr. Hart,	Mr. Parkes,	
Mr. Raper,	Mr. Caldwell,	
Mr. Dangar,	Mr. Dick,	

Noes, 10.

Mr. Watt,	} Tellers.
Mr. Rotton,	
Mr. Rusden,	
Mr. Egan,	
Mr. J. N. Ryan,	
Mr. Daniel,	
Mr. Suttor,	
Mr. Meston,	
Mr. Mate,	
Mr. Morris,	

No. 20.

(Same Bill.)

Page 6, Clause **12**, ~~13~~, line 5. *Omit* paragraph (3).
Motion made and Question put,—That the Committee disagrees from this Amendment. (*Mr. Cowper.*)

Committee divided.

Ayes, 33.

Mr. Cowper,	Mr. J. Garrett,	} Tellers.
Mr. Weekes,	Mr. Stewart,	
Mr. O'Brien,	Mr. Piddington,	
Mr. Caldwell,	Mr. Parkes,	
Mr. Love,	Mr. Gray,	
Mr. Terry,	Mr. Dickson,	
Mr. Lewis,	Mr. Wilson,	
Mr. Markham,	Mr. Leary,	
Mr. Dick,	Mr. Laycock,	
Mr. Cunneen,	Mr. Buchanan,	
Mr. Morrice,	Mr. Hoskins,	
Mr. Lucas,	Mr. C. Cowper,	
Mr. Hart,	junr.,	
Mr. Raper,	Capt. Moriarty,	
Mr. Dangar,	Mr. Windeyer,	
Mr. Driver,	Mr. Dalgleish,	
Mr. Sutherland,	Mr. Atkinson,	

Noes, 8.

Mr. Meston,	} Tellers.
Mr. Watt,	
Mr. Rotton,	
Mr. Rusden,	
Mr. Egan,	
Mr. J. N. Ryan,	
Mr. Mate,	
Mr. Morris,	

No. 21.

(Same Bill.)

Page 9, Clause **20**, ~~21~~, lines 43 to 46. *Omit* paragraph (4); *insert* (4.) **In any case where reference shall be made to arbitration as aforesaid the Supreme Court or a Judge shall have power at any time and from time to time to remit the matters referred or any or either of them to the reconsideration and redetermination of the said arbitrators or umpire as the case may be upon such terms as to costs and otherwise as to the said Court or Judge may seem proper.**

Motion made and Question put,—That the Committee disagrees from these Amendments. (*Mr. Cowper.*)

Committee

Committee divided.

Ayes, 23.		Noes, 12.
Mr. Cowper,	Mr. Stewart,	Capt. Moriarty,
Mr. Weekes,	Mr. Dickson,	Mr. Meston,
Mr. O'Brien,	Mr. Laycock,	Mr. Egan,
Mr. Love,	Mr. Buchanan,	Mr. Lucas,
Mr. Terry,	Mr. C. Cowper,	Mr. Sutherland,
Mr. Lewis,	junr.,	Mr. Windeyer,
Mr. Markham,	Mr. Gray,	Mr. Dick,
Mr. Morrice,	Mr. Atkinson,	Mr. Rusden,
Mr. J. Garrett,	Mr. Leary,	Mr. Wilson,
Mr. Raper,	Mr. Hoskins,	Mr. Watt,
Mr. Parkes,	Mr. Caldwell,	Mr. Mate,
Mr. Cunneen,	Mr. Dalgleish,	Mr. Morris,
	} Tellers.	} Tellers.

The Chairman reported that the Committee had agreed to some, and disagreed from others, of the Amendments made by the Legislative Council in this Bill.

FRIDAY, 10 MAY, 1861.

No. 22.

ALLOWANCE TO MOUNTED VOLUNTEER RIFLES FOR FORAGE, &c.

Question proposed,—That the Committee agrees to the following Resolution:—

Resolved,—That an Address be presented to the Administrator of the Government, praying that His Excellency will cause to be placed upon the Supplementary Estimates for the year 1861, the sum “of” £2,500, for the Mounted Volunteer Rifles, to provide half forage for 100 horses, at £20 each, and £5 each towards shoeing horses, wear and tear of horse trappings, &c., for 100 members. (*Mr. Sutherland.*)

Amendment proposed,—That all the words after the word “of” be omitted, with the view of inserting in their stead “£1,000 to provide forage allowance, “and other expenses, for the Mounted Volunteer Rifles, when actually “employed on duty.” (*Mr. Dalgleish.*)

Question put,—That the words proposed to be omitted stand part of the proposed Resolution.

Committee divided.

Ayes, 22.		Noes, 12.
Mr. Blake,	Mr. Dickson,	Mr. Cowper,
Mr. Caldwell,	Mr. Mate,	Mr. Weekes,
Mr. J. T. Ryan,	Mr. Lackey,	Mr. Arnold,
Mr. Hart,	Mr. Dangar,	Mr. J. Garrett,
Mr. Sutherland,	Mr. Piddington,	Mr. Raper,
Mr. Stewart,	Mr. Allen,	Mr. J. N. Ryan,
Mr. Morrice,	Mr. Driver,	Mr. Buchanan,
Mr. Meston,	Mr. Holroyd,	Mr. Wilson,
Mr. Terry,	Mr. Cunneen,	Mr. Rotton,
Mr. Rusden,	Mr. Egan,	Mr. Sutor,
Mr. Smart,	Mr. Love,	Mr. Dalgleish,
	} Tellers.	} Tellers.

No. 23.

Original Question put.

Committee divided.

Ayes, 18.		Noes, 16.
Mr. Blake,	Mr. Mate,	Mr. Cowper,
Mr. J. T. Ryan,	Mr. Lackey,	Mr. Weekes,
Mr. Hart,	Mr. Dangar,	Mr. Arnold,
Mr. Sutherland,	Mr. Piddington,	Mr. Egan,
Mr. Stewart,	Mr. Allen,	Capt. Moriarty,
Mr. Rusden,	Mr. Cunneen,	Mr. Sutor,
Mr. Meston,	Mr. Holroyd,	Mr. Raper,
Mr. Terry,	Mr. Love,	Mr. J. N. Ryan,
Mr. Driver,	Mr. Caldwell,	Mr. Morris,
	} Tellers.	Mr. Dickson,
		Mr. Buchanan,
		Mr. Wilson,
		Mr. Rotton,
		Mr. Walsh,
		Mr. Dalgleish,
		Mr. J. Garrett,
		} Tellers.

Resolution reported.

1861.

Legislative Assembly.
NEW SOUTH WALES.

No. 1.

WEEKLY ABSTRACT
OF
PETITIONS RECEIVED
BY THE
LEGISLATIVE ASSEMBLY.

WHEN RECEIVED.	FROM WHOM AND WHENCE PRESENTED.	NUMBER OF SIGNATURES.	BY WHOM PRESENTED.	ABSTRACT OF PRAYER.
Jan. 11 ..	Certain Directors of the Colonial Bank of Australasia..	(3) Three.....	Mr. Blake.....	{ Praying for leave to introduce a Bill for the Incorporation of the Colonial Bank of Australasia.

Legislative Assembly Offices,
Sydney, 12 January, 1861.

CHA. TOMPSON,
Clerk of Legislative Assembly.

1861.

Legislative Assembly.

NEW SOUTH WALES.

No. 2.

WEEKLY ABSTRACT

OF

PETITIONS RECEIVED

BY THE

LEGISLATIVE ASSEMBLY.

WHEN RECEIVED.	FROM WHOM AND WHENCE PRESENTED.	NUMBER OF SIGNATURES.	BY WHOM PRESENTED.	ABSTRACT OF PRAYER.
Jan. 18 ..	Alexander Berry, of the North Shore, near Sydney, in the Colony of New South Wales, Esquire	(1) One.....	Mr. Morris	Praying for leave to appear and be represented before the Select Committee, appointed on the 17th instant, to inquire into and report upon his former Petition, of the 21st September, 1859, relative to the proposed Municipality of Shoalhaven.

Legislative Assembly Offices,
Sydney, 18 January, 1861.

CHA. TOMPSON,
Clerk of Legislative Assembly.

1861.

Legislative Assembly.

NEW SOUTH WALES.

No. 3.

WEEKLY ABSTRACT
OF
PETITIONS RECEIVED
BY THE
LEGISLATIVE ASSEMBLY.

WHEN RECEIVED.	FROM WHOM AND WHENCE PRESENTED.	NUMBER OF SIGNATURES.	BY WHOM PRESENTED.	ABSTRACT OF PRAYER.
Jan. 23 ..	John Campbell, of the City of Sydney, in the Colony of New South Wales, Esquire	(1) One.....	Mr. Parkes	Praying for leave to bring in a Bill to enable the Trustees of a settlement made by Mr. Joseph Wilson, of Land at Balmain, to sell the said Land, and to make provision for the investment of the proceeds of the sale thereof.
.. 24 ..	Mrs. Eliza Lockyer	(1) One.....	Mr. Hart	Representing that she is left with a young family in circumstances of great pecuniary distress, and praying a favorable consideration of her case with reference to certain long and important Public Services of her late husband, as therein set forth.

Legislative Assembly Offices,
Sydney, 25 January, 1861.

CHA. TOMPSON,
Clerk of Legislative Assembly.

1861.

Legislative Assembly.

NEW SOUTH WALES.

No. 4.

WEEKLY ABSTRACT
OF
PETITIONS RECEIVED
BY THE
LEGISLATIVE ASSEMBLY.

WHEN RECEIVED.	FROM WHOM AND WHENCE PRESENTED.	NUMBER OF SIGNATURES.	BY WHOM PRESENTED.	ABSTRACT OF PRAYER.
Feb. 5	James and Alexander Brown	(1) One	Mr. Parkes	{ Praying for leave to introduce a Bill to amend the Miami and Hexham Railway Act.
" 6	James Graham, Mayor of the Shoalhaven Municipality	(1) One	Mr. J. Garrett	{ Praying to be heard by Attorney or Counsel before the Select Committee, now sitting, on the Shoalhaven Municipality.
" 8	Francis Mitchell, and Francis Clarke	(4) Four	Mr. Windeyer	{ Praying for leave to bring in a Bill to authorize the sale and exchange of property held in Trust for Mrs. Martha Foxlowe Hosking and her issue.
" 8	John Piper Mackenzie, and George Cox	(1) One	Mr. Windeyer	{ Praying for leave to bring in a Bill to confer powers to sell and grant Building Leases upon the Trustees of the Marriage Settlement of William Henry Mackenzie, and Helen his wife.
" 8	Certain Members of the United Church of England and Ireland in this Colony	(213) Two hundred and thirteen	Mr. Douglas	{ Against the passing of the Church and School Lands Bill.
" 8	Certain Inhabitants of the District of Wollongong, Dapto, and Oharecoal	(214) Two hundred and fourteen	Mr. Arnold	{ Praying that a Land Bill may be passed with the provisions in the Petition set forth.
" 8	Certain Inhabitants of the Districts of Broughton Creek, Fox Ground, and its vicinity	(302) Three hundred and two	Mr. Arnold	Similar prayer.
" 8	Henry William Dudley	(1) One	Mr. Parkes	{ Representing that he sustained certain disadvantages and hardships, as in the Petition set forth, arising out of his connection with the Railway Authorities, as the Lessee of the Railway Refreshment Rooms, and praying relief.

Legislative Assembly Offices,
Sydney, 8 February, 1861.

CHA. TOMPSON,
Clerk of Legislative Assembly.

1861.

Legislative Assembly.
NEW SOUTH WALES.

No. 5.

WEEKLY ABSTRACT
OF
PETITIONS RECEIVED
BY THE
LEGISLATIVE ASSEMBLY.

WHEN RECEIVED.	FROM WHOM AND WHENCE PRESENTED.	NUMBER OF SIGNATURES.	BY WHOM PRESENTED.	ABSTRACT OF PRAYER.
Feb. 12 ..	Right Reverend William Tyrrell, Doctor in Divinity, Lord Bishop of Newcastle	(1) One	Mr. Dick	{ Praying for leave to bring in a Bill to enable him, as surviving Trustee of certain Land situated in the Town of West Maitland, to sell the said land, and to provide for the appropriation of the proceeds of such sale.
.. 12 ..	Certain Miners and Others resident on the Burrangong Gold Fields	(3,394) Three thousand three hundred and ninety-four	Mr. Robertson	{ Complaining of the recent arrival, at the Burrangong Gold Fields, of several thousand Chinese, and praying that such a measure may be passed by this House as shall relieve them of all Chinamen who have occupied or intend to occupy those Gold Fields.
.. 12 ..	Archbishop, Vicars-General, Deans, and other Clergy of the Roman Catholic Church now assembled in Sydney ..	(8) Eight	Mr. Hart	{ Praying that the Church and School Lands Bill may not be passed, and that the Petitioners may be heard by Counsel at the Bar of this House in support of their alleged vested interests and in opposition to the Bill.
.. 13 ..	Right Reverend Frederic Barker, D. D., Bishop of Sydney	(1) One	Mr. Cowper	{ Praying that he may be heard by Counsel against the Church and School Lands Bill, and that the House will not pass this Bill.
.. 13 ..	Certain Inhabitants of Broughton Creek, Fox Ground, Geringong, Kiama, Dapto, Shellharbour, and Wollongong	(468) Four hundred and sixty-eight }	Mr. Arnold	{ Praying that the Duties on Tea and Sugar may be repealed.
.. 13 ..	Henry Burton Bradley	(1) One	Mr. Walsh	{ Praying to be heard by himself, his Counsel, or his Agent, against the Minmi and Hoxham Railway Act Amendment Bill.

Legislative Assembly Offices,
Sydney, 15 February, 1861.

CHA. TOMPSON,
Clerk of Legislative Assembly.

1861.

Legislative Assembly.

NEW SOUTH WALES.

No. 6.

WEEKLY ABSTRACT
OF
PETITIONS RECEIVED
BY THE
LEGISLATIVE ASSEMBLY.

WHEN RECEIVED.	FROM WHOM AND WHENCE PRESENTED.	NUMBER OF SIGNATURES.	BY WHOM PRESENTED.	ABSTRACT OF PRAYER.
Feb. 19 ..	Certain Members of the Denominational School Board in New South Wales	(4) Four	Mr. Cowper	{ Praying that, for the reasons in the Petition set forth, the House will not pass the Church and School Lands Bill.
.. 19 ..	Thomas Harrison	(1) One	Mr. Parkes	{ Complaining of his dismissal from office, under the circumstances in the Petition set forth, and praying relief.
.. 20 ..	Certain Proprietors of Property, Householders, and others, residing in Pitt-street and adjoining streets	(324) Three hundred and twenty-four	Mr. Arnold	{ Praying that the House will pass the Pitt-street Tramway Bill of 1861.
.. 20 ..	Municipal Council of Newcastle	(1) One	Mr. Hannell	{ Representing the existence of certain obstructions to the permanent improvement of the City of Newcastle, and praying relief.
.. 21 ..	Edward Bell	(1) One	Mr. Wilson	{ Praying that this House will, before coming to any decision on the subject either of Railway Extension on the present system, or of Tramways, satisfy itself of the practicability and economy of the system of locomotion projected by him.
.. 22 ..	Samuel Hebblewhite	(1) One	Mr. Piddington	{ Praying that this House will either exempt the Randwick and Coogee Roads Trust from the operation of the Municipalities Act Amendment Bill of 1861, now under the consideration of the House, or refuse to pass the said Bill altogether.

Legislative Assembly Offices,
Sydney, 22 February, 1861.

CHA. TOMPSON,
Clerk of Legislative Assembly.

1861.

Legislative Assembly.

NEW SOUTH WALES.

No. 7.

WEEKLY ABSTRACT
OF
PETITIONS RECEIVED
BY THE
LEGISLATIVE ASSEMBLY.

WHEN RECEIVED.	FROM WHOM AND WHENCE PRESENTED.	NUMBER OF SIGNATURES.	BY WHOM PRESENTED.	ABSTRACT OF PRAYER.
Feb. 27 ...	Chairman and Councillors of the Municipality of Waterloo }	(2) Two	Mr. Lucas	{ Praying that the Municipalities Act Amendment Bill of 1861 may pass.
.. 27 ..	Certain Freeholders, Householders, Residents in Pitt-street, and others	(44) Forty-four	Mr. Sutherland ..	{ Against the passing of the Pitt-street Tramway Bill of 1861.
Mar. 1....	Municipal Council of Waverley	(2) Two	Mr. Lucas	{ In favour of the Municipalities Act Amendment Bill of 1861.
.. 1....	Certain Ratepayers of Waverley	(53) Fifty-three	Mr. Lucas	Similar prayer.

Legislative Assembly Offices,
Sydney, 1 March, 1861.

CHA. TOMPSON,
Clerk of Legislative Assembly.

1861.

Legislative Assembly.

NEW SOUTH WALES.

No. 8.

WEEKLY ABSTRACT

OF

PETITIONS RECEIVED

BY THE

LEGISLATIVE ASSEMBLY.

WHEN RECEIVED.	FROM WHOM AND WHENCE PRESENTED.	NUMBER OF SIGNATURES.	BY WHOM PRESENTED.	ABSTRACT OF PRAYER.
Mar. 5....	Samuel Anderson and John Campbell	(2) Two	Mr. Love	{ Alleging that they have sustained certain injuries arising out of a Judgment delivered in the Supreme Court, in the matter of Sempill (Official Assignee) v. Anderson and Campbell, in the insolvency of one Patrick Barron; and praying a consideration of their case.
.. 6....	Certain Inhabitants of the District of Macdonald River .. }	(72) Seventy-two ..	Mr. Piddington ..	{ Representing that their operations and welfare are much impeded by the want of proper roads in the District, and by the bad state of those which are now in existence; and praying relief.
.. 7....	Certain Inhabitants of Sydney..	(19) Nineteen	Mr. Parkes	{ Representing that the Chinese have been repeatedly subject, in this Colony, to the grossest violence and outrage, as in the Petition particularized; and praying that such measures may be taken as will secure protection to their persons and property.

Legislative Assembly Offices,
Sydney, 8 March, 1861.

CHA. TOMPSON,
Clerk of Legislative Assembly.

1861.

—
Legislative Assembly.
NEW SOUTH WALES.

—
No. 9.
—

WEEKLY ABSTRACT
OF
PETITIONS RECEIVED
BY THE
LEGISLATIVE ASSEMBLY.

WHEN RECEIVED.	FROM WHOM AND WHENCE PRESENTED.	NUMBER OF SIGNATURES.	BY WHOM PRESENTED.	ABSTRACT OF PRAYER.
Mar. 12 ..	Inhabitants of the Township of Maitland and its vicinity .	(106) One hundred and six	Mr. Dickson	{ Representing that the Railway Line, as constructed through the Town of Maitland, has deprived them of reasonable access to the Reserve for Gaol and Court House; and praying relief.
.. 12 ..	Certain Residents of the Northern District.....	(270) Two hundred and seventy	Mr. Hoskins	{ Praying that a Bill may be passed providing for the payment of all Members who may be elected to sit in the next Legislative Assembly of New South Wales.
.. 12 ..	Certain Directors of the Clarence and Richmond Rivers Steam Navigation Company. }	(5) Five	Mr. Parkes	{ Praying for leave to introduce a Bill to Incorporate the Clarence and Richmond Rivers Steam Navigation Company.
.. 12 ..	Members of the Sydney Trade Protection Society	(1) One	Mr. McArthur.....	{ Praying for the passing of an Insolvency Act suited to the present requirements of the Colony.
.. 14 ..	Su San Sing Doh, a Chinaman ..	(1) One	Mr. Parkes	{ Representing that, in January last, he suffered certain aggressions, as in the Petition set forth, from Europeans at the Lambing Flat Diggings, including the burning of his tent, whereby he sustained a loss to the extent of £300; and praying a consideration of his case.

*Legislative Assembly Offices,
Sydney, 15 March, 1861.*

CHA. TOMPSON,
Clerk of Legislative Assembly.

1861.

Legislative Assembly.
NEW SOUTH WALES.

No. 10.

WEEKLY ABSTRACT
OF
PETITIONS RECEIVED
BY THE
LEGISLATIVE ASSEMBLY.

WHEN RECEIVED.	FROM WHOM AND WHENCE PRESENTED.	NUMBER OF SIGNATURES.	BY WHOM PRESENTED.	ABSTRACT OF PRAYER.
Mar. 20 ..	Certain Household-ers, Land-owners, and Residents of Raymond Terrace, and its suburbs	(279) Two hundred and seventy-nine.	Mr. Windeyer	{ Representing that the Cattle Driving Act is prejudicial to the interests of their District; and praying relief.
.. 20 ..	Samuel Ward, of Camden	(1) One.....	Mr. Douglas	{ Complaining of the conduct of Mr. Justice Cary in a recent case in which the Petitioner was plaintiff, and one Alexander Brand, defendant.
.. 20 ..	Certain Residents in the Dis-trict of Camden	(140) One hundred and forty	Mr. Douglas	{ Complaining of the judicial con-duct of Mr. Justice Cary, generally.
.. 21 ..	Certain Members of the United Church of England and Ireland, in the District of Carcoar	(30) Thirty.....	Mr. Watt.....	{ Praying that the Church of England Synods Bill may pass.
.. 21 ..	Congregation of the Scots Church in Pitt-street, Sydney	(1) One	Mr. Love	{ Against the passing of the Church of England Synods Bill.
.. 22 ..	Certain Merchants, Trades-men, and Citizens of Sydney	(111) One hundred and eleven	Mr. Hay	{ Against the passing of the Chinese Immigration Regula-tion Bill; and praying that any Chinese Immigration Regula-tion Bill which may be enter-tained may be deprived of all class legislation of an oppressive or prohibitory character, and be framed upon principles of justice, to the mutual benefit of the Chinese and the Inhabitants of these Colonies.

Legislative Assembly Offices,
Sydney, 22 March, 1861.

CHA. TOMPSON,
Clerk of Legislative Assembly.

1861.

Legislative Assembly.
NEW SOUTH WALES.

No. 11.

WEEKLY ABSTRACT
OF
PETITIONS RECEIVED
BY THE
LEGISLATIVE ASSEMBLY.

WHEN RECEIVED.	FROM WHOM AND WHENCE PRESENTED.	NUMBER OF SIGNATURES.	BY WHOM PRESENTED.	ABSTRACT OF PRAYER.
Mar. 26 ..	Edward Drinkwater	(1) One.....	Mr. Shepherd	{ Representing that he believes it is proposed to recommend the mortgage and ultimate sale of the Common Lands of the District, of which he is a Trustee, for the purpose of defraying the expense of certain proposed Roads and Bridges to cross the Parramatta River and Iron Cove, and praying that no appropriation of such lands may be sanctioned at variance with the intention as expressed in the original Grant.
.. 26 ..	Inhabitants of Raymond Terrace.....	(481) Four hundred and eighty-one ..	Mr. Windeyer	{ Praying for the establishment of a Steam Ferry at Raymond Terrace.
.. 27 ..	Certain Members of the Church of England in Windsor and its neighbourhood	(126) One hundred and twenty-six ..	Mr. Walker	{ Praying that the House will pass the Church of England Synods Bill.
.. 27 ..	New South Wales Alliance for the Suppression of Intemperance, and for the Social, Moral, and Intellectual Elevation of the People....	(12) Twelve	Mr. Parkes	{ Praying that the License called "Confectioners' License," may be no longer required by law.
.. 27 ..	Certain Members of the United Church of England and Ireland, resident in the Parish of Prospect, and the District of the Seven Hills, in the County of Cumberland	(70) Seventy	Mr. Laycock	{ Praying that the Church of England Synods Bill may pass.
.. 27 ..	Certain Members of the Church of England residing at Castle Hill and Baulkham Hills ..	(31) Thirty-one	Mr. Laycock	Similar prayer.
.. 27 ..	Certain Members of the Church of England residing at Dooral ..	(28) Twenty-eight ..	Mr. Laycock	Similar prayer.
.. 28 ..	Joseph Wilson.....	(1) One	Mr. Parkes	{ Praying that the House will pass Wilson's Settlement Investment Bill.

Legislative Assembly Offices,
Sydney, 28 March, 1861.

CHA. TOMPSON,
Clerk of Legislative Assembly.

1861.

Legislative Assembly.
NEW SOUTH WALES.

No. 12.

WEEKLY ABSTRACT
OF
PETITIONS RECEIVED
BY THE
LEGISLATIVE ASSEMBLY.

WHEN RECEIVED.	FROM WHOM AND WHENCE PRESENTED.	NUMBER OF SIGNATURES.	BY WHOM PRESENTED.	ABSTRACT OF PRAYER.
April 2 ..	Certain Members of the United Church of England and Ireland in the District of Campbelltown.....	(43) Forty-three ..	Mr. Leary	{ In favour of the passing of the Church of England Synods Bill.
" 2 ..	Certain Members of the Church of England resident in Goulburn and the neighbourhood ..	(42) Forty-two	Mr. Douglas	Similar prayer.
" 2 ..	Certain Members of the Church of England resident in the District of Penrith	(10) Ten.....	Mr. Douglas	Similar prayer.
" 2 ..	Certain Inhabitants of the District of the Lachlan	(21) Twenty-one ..	Mr. Watt	Similar prayer.
" 2 ..	Certain Members of the Church of England residing at Parramatta	(90) Ninety	Mr. Lackey	Similar prayer.
" 2 ..	The Minister and certain Elders and Deacons of the Scots Church, Pitt-street, Sydney	(7) Seven	Mr. Leary.....	{ Against the passing of the Church of England Synods Bill.
" 2 ..	Certain Members of the Churches of England and Scotland, Wesleyans, Congregationalists, &c., in Sydney ..	(219) Two hundred and nineteen }	Mr. Wilson	Similar prayer.
" 2 ..	Members of the Congregational Church, and other inhabitants of Newtown	(33) Thirty-three ..	Mr. Dickson	Similar prayer.
" 2 ..	Members of the Church and Congregation meeting for Divine Worship in the Baptist Chapel, Bathurst-street, Sydney	(93) Ninety-three..	Mr. Parkes	Similar prayer.
" 3 ..	Certain Inhabitants of the Town and District of Windsor ..	(154) One hundred and fifty-four }	Mr. Walker	{ Representing that much inconvenience and loss are occasioned to the steam-boats and vessels trading to and stopping at Windsor, and to passengers and others interested, by reason of there being no proper wharf or landing-place for passengers or goods at that place; and praying relief.

WHEN RECEIVED.	FROM WHOM AND WHENCE PRESENTED.	NUMBER OF SIGNATURES.	BY WHOM PRESENTED.	ABSTRACT OF PRAYER.
April 3 ..	Members of the United Church of England and Ireland residing in the Districts of Mulgoa and Greendale.....	{65} Sixty-five	Mr. J. T. Ryan ..	{ In favour of the passing of the Church of England Synods Bill.
" 4 ..	Certain Members of the United Church of England and Ireland resident on the Western Gold Fields	{168} One hundred and fifty-eight..	Mr. Wisdom	Similar prayer.
" 4 ..	Certain Members of the Church of England residing in the Town of Kelso and the adjoining Districts	{30} Thirty	Mr. Suttor	Similar prayer.
" 4 ..	Certain Members of the Church of England residing at Pen-nant Hills	{30} Thirty	Mr. Atkinson	Similar prayer.
" 5 ..	Certain Members of the Church of England, Parishioners of St. Mark's, Alexandria, near Sydney	{53} Fifty-three....	Mr. Smart	Similar prayer.
" 5 ..	Members holding the Faith of the United Church of England and Ireland in the Colony ..	{212} Two hundred and twelve	Mr. Windeyer	{ Against the passing of the Church of England Synods Bill.
" 5 ..	Mun Gaim, a Chinaman.....	(1) One	Mr. Parkes	{ Representing that he suffered certain aggressions, as in the Petition set forth, from Europeans at Lambing Flat, including the burning of his tent, whereby he sustained a loss to the extent of £500; and praying relief.
" 5 ..	Certain Members of the Church of England residing in the District of Hartley	{54} Fifty-four	Mr. Rotton	{ In favour of the passing of the Church of England Synods Bill.
" 5 ..	William Dixon	(1) One	Mr. Sutherland ..	{ Complaining of his dismissal from office, under the circumstances in the Petition set forth; and praying relief.

Legislative Assembly Offices,
Sydney, 5 April, 1861.

CHAS. TOMPSON,
Clerk of Legislative Assembly.

1861.

Legislative Assembly.

NEW SOUTH WALES.

No. 13.

WEEKLY ABSTRACT

OF

PETITIONS RECEIVED

BY THE

LEGISLATIVE ASSEMBLY.

DATE WHEN RECEIVED.	FROM WHOM AND WHEN PRESENTED.	NUMBER OF SIGNATURES.	BY WHOM PRESENTED.	ABSTRACT OF PRAYER.
April 9	Certain Landholders and others having interest in the Field of Mars Common	(259) Two hundred and fifty-nine	Mr. Shepherd	{ Praying that the House will not sanction any measure having for its object the appropriation of the Common Lands at the Field of Mars for any other purpose than that for which they were originally intended.
" 9	Certain Members of the United Church of England and Ireland in the Parishes of Narellan and Cook	(125) One hundred and twenty-five	Mr. Cowper	{ In favour of the passing of the Church of England Synods Bill.
" 9	Clergyman and certain Members of the United Church of England and Ireland connected with the Church of St. Mary, in the Parish and District of Waverley	(59) Fifty-nine	Mr. Cowper	Similar prayer.
" 9	Certain Members of the Church of England in the Districts of Randwick and Coogee	(25) Twenty-five	Mr. Cowper	Similar prayer.
" 9	Certain Inhabitants of the Town and District of Brairwood, including the Gold Fields	(359) Three hundred and fifty-nine	Capt. Moriarty	Similar prayer.
" 9	Certain Members of the Church of England in the District of Orange	(44) Forty-four	Mr. Paisley	Similar prayer.
" 9	Samuel Robinson	(1) One	Mr. Parkes	{ Representing that in consequence of neglect and carelessness on the part of certain Public servants he lost a considerable quantity of Gold, left by him with Mr. Commissioner Johnson, at Stony Creek, and transmitted by that officer under escort to Orange; and praying consideration.
" 9	Reverend Thomas Campbell Fwing, Incumbent of St. Michael's, Wollongong	(1) One	Mr. Haworth	{ In favour of the passing of the Church of England Synods Bill.
" 9	Certain Inhabitants of Redfern, Chippendale, and neighbourhood	(104) One hundred and four	Mr. Sutherland	{ Against the passing of the Church of England Synods Bill.

WHEN RECEIVED.	FROM WHOM AND WHENCE PRESENTED.	NUMBER OF SIGNATURES.	BY WHOM PRESENTED.	ABSTRACT OF PRAYER.
April 10 ..	Certain Residents of Campbelltown	(71) Seventy-one ..	Mr. Leary	{ Against the passing of the Church of England Synods Bill.
" 10 ..	Certain Inhabitants of the United Townships of Gunning and Collector, with their suburbs	(37) Thirty-seven ..	Mr. Douglas	{ In favour of the passing of the Church of England Synods Bill.
" 11 ..	Certain Members of the Church of England resident in the Tumut District	(102) One hundred and two ..	Mr. Cowper	{ In favour of the Church of England Synods Bill.
" 11 ..	Certain Members of the Church of England residing in Richmond and the neighbourhood ..	(15) Forty-five	Mr. Piddington ..	Similar prayer.
" 11 ..	Christopher Rispin, late Turnkey of Her Majesty's Gaol at Darlinghurst	(1) One	Mr. Parkes	{ Complaining of his recent alleged dismissal from office, and praying relief.
" 12 ..	The Clergyman and certain Members of the United Church of England and Ireland connected with the Parish of Canterbury	(49) Forty-nine	Mr. Lucas	{ In favour of the passing of the Church of England Synods Bill.
" 12 ..	The Clergyman and Parishioners of Christ Church, Bungonia, Argyle	(65) Sixty-five	Capt. Moriarty ..	Similar prayer.
" 12 ..	Inhabitants of the Town of Muswellbrook	(66) Sixty-six	Mr. Gray	{ Representing that they suffer great inconvenience from being surrounded by squatters, who, holding a pre-emptive right, purchase up the available portions of land: and praying the suspension of the sale of all lands within twelve miles of the Town of Muswellbrook until the Land Bill shall have been passed.
" 12 ..	The Clergyman and certain Members of the United Church of England and Ireland connected with the Parish of St. Paul's, Sydney	(106) One hundred and six	Mr. Sutherland ..	{ In favour of the Church of England Synods Bill.
" 12 ..	The Clergyman and certain Members of the Church of England residing in the Ecclesiastical District attached to the Incumbency of St. Luke's Church, Scone	(90) Ninety	Mr. Douglas	Similar prayer.
" 12 ..	John Ryan and Bryan Maguire, Refreshment Room Servants, engaged to attend on the Legislative Council and Assembly	(2) Two	Mr. Parkes	{ Complaining of number of hours of employment daily, with insufficiency of pay to enable them to appear before and wait upon the House in a respectable attire; and praying relief.
" 12 ..	Certain Inhabitants of the District of Liverpool	(51) Fifty-one	Mr. Laycock	{ In favour of the passing of the Church of England Synods Bill.
" 12 ..	Certain Inhabitants of Holdsworthy	(18) Eighteen	Mr. Laycock	Similar prayer.

Legislative Assembly Offices,
Sydney, 12 April, 1861.

CHA. TOMPSON,
Clerk of Legislative Assembly.

1861.

Legislative Assembly.

NEW SOUTH WALES.

No. 14.

WEEKLY ABSTRACT

OF

PETITIONS RECEIVED

BY THE

LEGISLATIVE ASSEMBLY.

WHEN RECEIVED.	FROM WHOM AND WHENCE PRESENTED.	NUMBER OF SIGNATURES.	BY WHOM PRESENTED.	ABSTRACT OF PRAYER.
April 16 ..	Certain Inhabitants of the Parishes of Pitt Town and Wilberforce	(51) Fifty-one	Mr. Piddington ..	{ In favour of the passing of the Church of England Synods Bill.
.. 16 ..	Certain Members of the Church of England in the City of Sydney	(109) One hundred and nine ..	Mr. Parkes	Similar prayer.
.. 16 ..	Certain Members of the Church of England in the District of Molong	(18) Eighteen	Mr. Suttor	Similar prayer.
.. 16 ..	Certain Clergymen and Members of the Church of England residing in the Town of Bathurst	(88) Eighty-eight ..	Mr. Hart	Similar prayer.
.. 16 ..	Certain Farmers, Settlers, and others, residents within the Municipality of Albury	(174) One hundred and seventy-four	Mr. Mate	{ Representing that they are put to great inconvenience and expense through the want of a Town Common appertinent to the Albury Municipality, and praying that such a Common may be granted.
.. 16 ..	William Meadows Brownrigg ..	(1) One	Mr. Parkes	{ Complaining of certain grievances, pecuniary and otherwise, in the Petition set forth, as sustained by him in his capacity as a Licensed Surveyor under the Government, and praying inquiry into his case.
.. 16 ..	Tu Lim Pow, Chinese Merchant	(1) One	Mr. Driver	{ Representing that he suffered aggressions and losses, as in the Petition set forth, from Europeans at Lambing Flat, including the burning of his store and its contents, and praying relief.

WHEN RECEIVED.	FROM WHOM AND WHENCE PRESENTED.	NUMBER OF SIGNATURES.	BY WHOM PRESENTED.	ABSTRACT OF PRAYER.
April 16 ..	Hercules Watt	(1) One	{ Mr. C. Cowper, junr.	{ Setting forth certain losses which he will sustain if an Act be passed to compel the closing of all Tanyards within the boundaries of the City of Sydney, and praying relief in the event of such Act being passed.
.. 16 ..	Certain Mechanics and Labourers of the City of Sydney and Suburbs	{ (187) One hundred } and eighty-seven }	Mr. Sutherland ..	{ Representing that they have been in a state of involuntary idleness for many months, by which they have been reduced to destitution, and praying that, as some means of remedying their sufferings, the Public Works of the Colony, now in abeyance, may be proceeded with.
.. 19 ..	Chairman and Vice-Chairman of the Morpeth and Maitland Railway Company	{ (2) Two	Mr. Parkes	{ Praying for leave to introduce the Morpeth and Maitland Railway Company's Bill.

*Legislative Assembly Offices,
Sydney, 19 April, 1861.*

CHA. TOMPSON,
Clerk of Legislative Assembly.

1861.

Legislative Assembly.
NEW SOUTH WALES.

No. 15.

WEEKLY ABSTRACT
OF
PETITIONS RECEIVED
BY THE
LEGISLATIVE ASSEMBLY.

WHEN RECEIVED.	FROM WHOM AND WHENCE PRESENTED.	NUMBER OF SIGNATURES.	BY WHOM PRESENTED.	ABSTRACT OF PRAYER.
April 23 ..	Inhabitants of Mudgee	{ (307) Three hundred and seven.. }	Mr. Terry.....	{ Against the passing of the Church of England Synods Bill.
.. 23 ..	Certain Inhabitants of the District of Braidwood	{ (1,564) One thousand five hundred and sixty-four .. }	Captain Moriarty..	{ Praying for a full and minute inquiry into and investigation of all the circumstances connected with the case of Frederick Beer, a medical practitioner, who, in April, 1856, was sentenced to ten years imprisonment, on a charge of having illegally administered belladonna to one Phyllis Browne; and who, in April last, received a ticket-of-leave, and is now practising his profession at Braidwood.
.. 23 ..	Hu Foo and Kylong, for themselves and other Chinamen }	(43) Forty-three.....	Mr. Parkes	{ Representing that the Petitioners suffered aggressions and losses, as in the Petition set forth, from European and other diggers at Lambing Flat, and praying relief.
.. 23 ..	John Page	(1) One	Mr. Parkes	{ Representing that, relying on the due enforcement of the Act 14 Vic. No. 30, he abstained from establishing himself as a tanner in Sydney, and opened a tanning establishment at St. Mary's, South Creek; but that, having recently learned that tanneries are not discontinued in Sydney, he is desirous of the adoption of measures which will have the effect of immediately discontinuing such establishments within the limits of exclusion.
.. 26 ..	Members of the Church of England in the Town and District of Albury	(65) Sixty-five	Mr. Mate.....	{ In favour of the passing of the Church of England Synods Bill.

Legislative Assembly Offices,
Sydney, 26 April, 1861.

CHA. TOMPSON,
Clerk of Legislative Assembly

1861.

Legislative Assembly.
NEW SOUTH WALES.

No. 16.

WEEKLY ABSTRACT
OF
PETITIONS RECEIVED
BY THE
LEGISLATIVE ASSEMBLY.

WHEN RECEIVED.	FROM WHOM AND WHENCE PRESENTED.	NUMBER OF SIGNATURES.	BY WHOM PRESENTED.	ABSTRACT OF PRAYER.
May 2....	Certain Inhabitants of Black Creek, in the Police District of Maitland	(70) Seventy	Mr. Parkes	{ Praying for the establishment of a Court House at Black Creek.
" 2....	Directors of the Pymont Bridge Company	(5) Five	Mr. Parkes	{ Setting forth that they had incurred considerable expenditure in the prosecution of their work, on the understanding that the Pymont Railway Terminus would be completed by the Government; and praying that such Terminus and relative works should, with as little delay as possible, be completed and made available for the public.
" 2....	Kew Loong Pow	(1) One	Mr. Parkes	{ Setting forth that he, with the rest of his countrymen, were driven from the Lambing Flat Diggings, and his property destroyed; and praying relief.
" 2....	Daniel Lynch	(1) One	Mr. Windeyer	{ Setting forth that he had been struck off pay in the General Post Office, Sydney, in consequence of illness contracted in the discharge of a public duty; and praying relief.
" 3....	Certain Inhabitants of Sydney and its neighbourhood	(626) Six hundred and twenty-six }	Mr. Sutherland ..	{ Praying that such steps may be taken, without delay, as may appear best calculated to lead to the speedy completion of the Pymont Railway Terminus.
" 3....	Jana Cockburn	(1) One	Mr. Driver	{ Setting forth her services in the capacity of late Office Cleaner employed in the Immigration Department, without remuneration, and praying relief.

Legislative Assembly Offices,
Sydney, 3 May, 1861.

For CHA. TOMPSON,
Clerk of Legislative Assembly,
F. ELDERSHAW,
Clerk Assistant.

1861.

Legislative Assembly.
NEW SOUTH WALES.

No. 17.

WEEKLY ABSTRACT

OF

PETITIONS RECEIVED

BY THE

LEGISLATIVE ASSEMBLY.

WHEN RECEIVED.	FROM WHOM AND WHENCE PRESENTED.	NUMBER OF SIGNATURES.	BY WHOM PRESENTED.	ABSTRACT OF PRAYER.
May 8.	William Bland, as President of the Council of the Australian Medical Association	(1) One	Mr. Sutherland ..	Setting forth the high price and defective supply of pure water to the Inhabitants of Sydney, and praying that steps may be taken to remedy these evils.

Legislative Assembly Offices,
Sydney, 10 May, 1861.

For CHA. TOMPSON,
Clerk of Legislative Assembly,
F. ELDERSHAW,
Clerk Assistant.

1861.

Legislative Assembly.
NEW SOUTH WALES.

PETITIONS.

GENERAL SUMMARY of the Weekly Abstracts of PETITIONS received by the Legislative Assembly during the Session of 1861.

WHEN RECEIVED.	FROM WHOM AND WHENCE PRESENTED.	NUMBER OF SIGNATURES.	BY WHOM PRESENTED.	ABSTRACT OF PRAYER.	WHETHER PRINTED.
1. Church and School Lands.					
Feb. 8	Certain Members of the United Church of England and Ireland in this Colony	(213) Two hundred and thirteen	Mr. Douglas . .	{ Against the passing of the Church and School Lands Bill }	Printed.
.. 12 ..	Archbishop, Vicars General, Deans, and other Clergy of the Roman Catholic Church now assembled in Sydney	(8) Eight	Mr. Hart	{ Praying that the Church and School Lands Bill may not be passed, and that the Petitioners may be heard by Counsel at the Bar of this House in support of their alleged vested interests and in opposition to the Bill. . . }	Printed.
.. 13 ..	Right Reverend Frederic Barker, D.D., Bishop of Sydney	(1) One	Mr. Cowper	{ Praying that he may be heard by Counsel against the Church and School Lands Bill, and that the House will not pass this Bill. }	Printed.
.. 19 ..	Certain Members of the Denominational School Board in New South Wales	(4) Four	Mr. Cowper	{ Praying that, for the reasons in the Petition set forth, the House will not pass the Church and School Lands Bill. }	Printed.
2. Church of England Synods.					
March 21..	Certain Members of the United Church of England and Ireland, in the District of Carcoar	(30) Thirty	Mr. Watt	{ Praying that the Church of England Synods Bill may pass. }	Printed.
.. 21..	Congregation of the Scots Church in Pitt-street, Sydney..	(1) One	Mr. Love	{ Against the passing of the Church of England Synods Bill. }	Printed.
.. 27..	Certain Members of the Church of England in Windsor and its neighbourhood	(126) One hundred and twenty-six	Mr. Walker	{ Praying that the House will pass the Church of England Synods Bill. }	Printed.
.. 27	Certain Members of the United Church of England and Ireland, resident in the Parish of Prospect, and the District of the Seven Hills, in the County of Cumberland	(70) Seventy	Mr. Laycock . .	Similar prayer	Printed.
.. 27..	Certain Members of the Church of England residing at Castle Hill and Baulkham Hills	(31) Thirty-one	Mr. Laycock . .	Similar prayer	Printed.
.. 27..	Certain Members of the Church of England residing at Dooral	(23) Twenty-eight	Mr. Laycock . .	Similar prayer	Printed.
April 2..	Certain Members of the United Church of England and Ireland in the District of Campbelltown	(43) Forty-three	Mr. Leary	{ In favour of the passing of the Church of England Synods Bill. }	Printed.

WHEN RECEIVED.	FROM WHOM AND WHENCE PRESENTED.	NUMBER OF SIGNATURES.	BY WHOM PRESENTED.	ABSTRACT OF PRAYER.	WHETHER PRINTED.
	Church of England Synods— continued.				
April 2 ..	Certain Members of the Church of England resident in Goulburn and the neighbourhood ..	(42) Forty-two	Mr. Douglas ..	{ In favour of the passing of the Church of England Synods Bill.	{ Not Printed.
" 2 ..	Certain Members of the Church of England resident in the District of Penrith ..	(10) Ten	Mr. Douglas ..	Similar prayer	{ Not Printed.
" 2 ..	Certain Inhabitants of the District of the Lachlan ..	(21) Twenty-one	Mr. Watt	Similar prayer	Printed.
" 2 ..	Certain Members of the Church of England residing at Paramatta ..	(90) Ninety	Mr. Lackey	Similar prayer	Printed.
" 2 ..	The Minister and certain Elders and Deacons of the Scots Church, Pitt-street, Sydney ..	(7) Seven	Mr. Leary	{ Against the passing of the Church of England Synods Bill.	{ Printed.
" 2 ..	Certain Members of the Churches of England and Scotland, Wesleyans, Congregationalists, &c., in Sydney ..	(219) Two hundred and nineteen	Mr. Wilson	Similar prayer	Printed.
" 2 ..	Members of the Congregational Church, and other inhabitants of Newtown ..	(33) Thirty-three	Mr. Dickson ..	Similar prayer	Printed.
" 2 ..	Members of the Church and Congregation meeting for Divine Worship in the Baptist Chapel, Bathurst-street, Sydney ..	(93) Ninety-three	Mr. Parkes	Similar prayer	Printed.
" 3 ..	Members of the United Church of England and Ireland residing in the Districts of Mulgoa and Greendale ..	(65) Sixty-five	Mr. J. T. Ryan..	{ In favour of the passing of the Church of England Synods Bill.	{ Not Printed.
" 4 ..	Certain Members of the United Church of England and Ireland resident on the Western Gold Fields ..	(158) One hundred and fifty-eight ..	Mr. Wisdom....	Similar prayer.....	Printed.
" 4 ..	Certain Members of the Church of England residing in the Town of Kelso and the adjoining Districts ..	(30) Thirty	Mr. Suttor	Similar prayer.....	Printed.
" 4 ..	Certain Members of the Church of England residing at Penant Hills ..	(30) Thirty	Mr. Atkinson ..	Similar prayer.....	Printed.
" 5 ..	Certain Members of the Church of England, Parishioners of St. Mark's, Alexandria, near Sydney ..	(53) Fifty-three	Mr. Smart	Similar prayer.....	Printed.
" 5 ..	Members holding the Faith of the United Church of England and Ireland in the Colony ..	(212) Two hundred and twelve	Mr. Windeyer ..	{ Against the passing of the Church of England Synods Bill.	{ Printed.
" 5 ..	Certain Members of the Church of England residing in the District of Hartley ..	(54) Fifty-four	Mr. Rotton	{ In favour of the passing of the Church of England Synods Bill.	{ Printed.
" 9 ..	Certain Members of the United Church of England and Ireland in the Parishes of Narellan and Cook ..	(125) One hundred and twenty-five..	Mr. Cowper....	Similar prayer	Printed.
" 9 ..	Clergymen and certain Members of the United Church of England and Ireland connected with the Church of St. Mary, in the Parish and District of Waverley ..	(59) Fifty-nine	Mr. Cowper....	Similar prayer.....	Printed.
" 9 ..	Certain Members of the Church of England in the Districts of Randwick and Coogee ..	(25) Twenty-five	Mr. Cowper....	Similar prayer.....	Printed.
" 9 ..	Certain Inhabitants of the Town and District of Braidwood, including the Gold Fields ..	(359) Three hundred and fifty-nine.....	Capt. Moriarty..	Similar prayer	Printed.

WHEN RECEIVED.	FROM WHOM AND WHENCE PRESENTED.	NUMBER OF SIGNATURES.	BY WHOM PRESENTED.	ABSTRACT OF PRAYER.	WHETHER PRINTED.
	Church of England Synods— continued.				
April 9 ..	Certain Members of the Church of England in the District of Orange	(44) Forty-four	Mr. Peisley	{ In favour of the passing of the Church of England Synods Bill. }	Printed.
" 9 ..	Reverend Thomas Campbell Ewing, Incumbent of St. Michael's, Wollongong	(1) One	Mr. Haworth ..	Similar prayer	Printed.
" 9 ..	Certain Inhabitants of Redfern, Chippendale, and neighbourhood	(104) One hundred and four	Mr. Sutherland..	{ Against the passing of the Church of England Synods Bill. }	Printed.
" 10 ..	Certain Residents of Campbelltown	(71) Seventy-one	Mr. Leary.....	Similar prayer	Printed.
" 10 ..	Certain Inhabitants of the United Townships of Gunning and Collector, with their suburbs	(37) Thirty-seven....	Mr. Douglas ..	{ In favour of the passing of the Church of England Synods Bill. }	Printed.
" 11 ..	Certain Members of the Church of England resident in the Tumut District.....	(102) One hundred and two	Mr. Cowper....	{ In favour of the Church of England Synods Bill	Not Printed.
" 11 ..	Certain Members of the Church of England residing in Richmond and the neighbourhood..	(45) Forty-five	Mr. Piddington..	Similar prayer	Printed.
" 12 ..	The Clergyman and certain Members of the United Church of England and Ireland connected with the Parish of Canterbury	(49) Forty-nine.....	Mr. Lucas	{ In favour of the passing of the Church of England Synods Bill. }	Not Printed.
" 12 ..	The Clergyman and Parishioners of Christ Church, Bungonia, Argyle	(65) Sixty-five	Capt. Moriarty ..	Similar prayer	{ Not Printed.
" 12 ..	The Clergyman and certain Members of the United Church of England and Ireland connected with the Parish of St. Paul's, Sydney	(106) One hundred and six	Mr. Sutherland..	{ In favour of the Church of England Synods Bill	Not Printed.
" 12 ..	The Clergyman and certain Members of the Church of England residing in the Ecclesiastical District attached to the Incumbency of St. Luke's Church, Scone	(90) Ninety	Mr. Douglas....	Similar prayer	{ Not Printed.
" 12 ..	Certain Inhabitants of the District of Liverpool.....	(51) Fifty-one	Mr. Laycock ..	{ In favour of the passing of the Church of England Synods Bill. }	Printed.
" 12 ..	Certain Inhabitants of Holdsworth	(18) Eighteen	Mr. Laycock ..	Similar prayer	Printed.
" 16 ..	Certain Inhabitants of the Parishes of Pitt Town and Wilberforce	(51) Fifty-one	Mr. Piddington..	Similar prayer	Printed.
" 16 ..	Certain Members of the Church of England in the City of Sydney	(109) One hundred and nine	Mr. Parkes	Similar prayer	Printed.
" 16 ..	Certain Members of the Church of England in the District of Molong	(18) Eighteen	Mr. Suttor	Similar prayer	{ Not Printed.
" 16 ..	Certain Clergymen and Members of the Church of England residing in the Town of Bathurst..	(88) Eighty-eight....	Mr. Hart	Similar prayer	{ Not Printed.
" 23 ..	Inhabitants of Mudgee.....	(307) Three hundred and seven	Mr. Terry	{ Against the passing of the Church of England Synods Bill	Printed.
" 26 ..	Members of the Church of England in the Town and District of Albury	(65) Sixty-five	Mr. Mate	{ In favour of the passing of the Church of England Synods Bill. }	{ Not Printed.
Jan. 24 ..	3. Grievances. Mrs. Eliza Lockyer	(1) One.....	Mr. Hart	{ Representing that she is left with a young family in circumstances of great pecuniary distress, and praying a favourable consideration of her case with reference to certain long and important public services of her late husband, as therein set forth	Printed.

WHEN RECEIVED.	FROM WHOM AND WHENCE PRESENTED.	NUMBER OF SIGNATURES.	BY WHOM PRESENTED.	ABSTRACT OF PRAYER.	WHETHER PRINTED.
	Grievances—continued.				
Feb. 8 ...	Henry William Dudley	(1) One	Mr. Parkes ...	{ Representing that he sustained certain disadvantages and hardships, as in the Petition set forth, arising out of his connection with the Railway Authorities, as the Lessee of the Railway Refreshment Rooms, and praying relief	{ Printed.
„ 12 ..	Certain Miners and Others resident on the Burrangong Gold Fields	{ (3,394) Three thousand three hundred and ninety-four	Mr. Robertson..	{ Complaining of the recent arrival at the Burrangong Gold Fields, of several thousand Chinese, and praying that such a measure may be passed by this House as shall relieve them of all Chinamen who have occupied or intend to occupy those Gold Fields....	{ Not Printed.
„ 19 ..	Thomas Harrison	(1) One	Mr. Parkes ...	{ Complaining of his dismissal from office, under the circumstances in the Petition set forth, and praying relief	{ Printed.
Mar. 5 ..	Samuel Anderson and John Campbell	{ (2) Two	Mr. Love	{ Alleging that they have sustained certain injuries arising out of a Judgment delivered in the Supreme Court, in the matter of Sempill (Official Assignee) v. Anderson and Campbell, in the insolvency of one Patrick Barron; and praying a consideration of their case	{ Printed.
„ 6 ..	Certain Inhabitants of the District of Macdonald River	{ (72) Seventy-two....	Mr. Piddington..	{ Representing that their operations and welfare are much impeded by the want of proper roads in the District, and by the bad state of those which are now in existence, and praying relief ..	{ Printed.
„ 7 ..	Certain Inhabitants of Sydney..	(19) Nineteen	Mr. Parkes ...	{ Representing that the Chinese have been repeatedly subject, in this Colony, to the grossest violence and outrage, as in the Petition particularized; and praying that such measures may be taken as will secure protection to their persons and property...	{ Printed.
„ 12 ..	Inhabitants of the Township of Maitland and its vicinity	{ (106) One hundred and six	Mr. Dickson ..	{ Representing that the Railway Line, as constructed through the Town of Maitland, has deprived them of reasonable access to the Reserve for Gaol and Court House, and praying relief	{ Printed.
„ 14 ..	Su San Ling Doh, a Chinaman	(1) One	Mr. Parkes ...	{ Representing that, in January last, he suffered certain aggressions, as in the Petition set forth, from Europeans at the Lambing Flat Diggings, including the burning of his tent, whereby he sustained a loss to the extent of £300; and praying a consideration of his case	{ Printed.
„ 20 ..	Certain Householders, Landowners, and Residents of Raymond Terrace, and its suburbs	{ (279) Two hundred and seventy-nine..	Mr. Windeyer ..	{ Representing that the Cattle Driving Act is prejudicial to the interests of their District; and praying relief.....	{ Printed.
April 3 ..	Certain Inhabitants of the Town and District of Windsor	{ (154) One hundred and fifty-four	Mr. Walker ...	{ Representing that much inconvenience and loss are occasioned to the steam-boats and vessels trading to and stopping at Windsor, and to passengers and others interested, by reason of there being no proper wharf or landing-place for passengers or goods at that place; and praying relief	{ Printed.
April 5 ..	Mun Gaim, a Chinaman	(1) One	Mr. Parkes ...	{ Representing that he suffered certain aggressions, as in the Petition set forth, from Europeans at Lambing Flat, including the burning of his tent, whereby he sustained a loss to the extent of £500; and praying relief	{ Printed.

WHEN RECEIVED.	FROM WHOM AND WHENCE PRESENTED.	NUMBER OF SIGNATURES.	BY WHOM PRESENTED.	ABSTRACT OF PRAYER.	WHETHER PRINTED.
April 5 ..	Grievances—continued. William Dixon	(1) One	Mr. Sutherland..	{ Complaining of his dismissal from office, under the circumstances in the Petition set forth; and praying relief..... }	{ Printed.
" 9 ..	Samuel Robinson	(1) One	Mr. Parkes	{ Representing that in consequence of neglect and carelessness on the part of certain Public servants he lost a considerable quantity of Gold, left by him with Mr. Commissioner Johnson, at Stony Creek, and transmitted by that officer under escort to Orange; and praying consideration..... }	{ Printed.
" 11 ..	Christopher Rispin, late Turnkey of Her Majesty's Gaol at Darlinghurst..... }	(1) One	Mr. Parkes	{ Complaining of his recent alleged dismissal from office, and praying relief..... }	{ Not Printed.
" 12 ..	Inhabitants of the Town of Muswellbrook	(66) Sixty-six	Mr. Gray	{ Representing that they suffer great inconvenience from being surrounded by squatters, who, holding a pre-emptive right, purchase up the available portions of land; and praying the suspension of the sale of all lands within twelve miles of the Town of Muswellbrook until the Land Bill shall have been passed..... }	{ Printed.
" 12 ..	John Ryan and Bryan Maguire, Refreshment Room Servants, engaged to attend on the Legislative Council and Assembly.. }	(2) Two	Mr. Parkes	{ Complaining of number of hours of employment daily, with insufficiency of pay to enable them to appear before and wait upon the House in a respectable attire; and praying relief..... }	{ Printed.
" 16 ..	Certain Farmers, Settlers, and others, residents within the Municipality of Albury	(174) One hundred and seventy-four.. }	Mr. Mate	{ Representing that they are put to great inconvenience and expense through the want of a Town Common appertinent to the Albury Municipality, and praying that such a Common may be granted..... }	{ Not Printed.
" 16 ..	William Meadows Brownrigg ..	(1) One	Mr. Parkes	{ Complaining of certain grievances, pecuniary and otherwise, in the Petition set forth, as sustained by him in his capacity as a Licensed Surveyor under the Government, and praying inquiry into his case	{ Printed.
" 16 ..	Tu Lim Pow, Chinese Merchant	(1) One	Mr. Driver	{ Representing that he suffered aggressions and losses, as in the Petition set forth, from Europeans at Lambing Flat, including the burning of his store and its contents, and praying relief..... }	{ Not Printed.
" 16 ..	Certain Mechanics and Labourers of the City of Sydney and Suburbs	(187) One hundred and eighty-seven }	Mr. Sutherland..	{ Representing that they have been in a state of involuntary idleness for many months, by which they have been reduced to destitution, and praying that, as some means of remedying their sufferings, the Public Works of the Colony, now in abeyance, may be proceeded with..... }	{ Printed.
" 23 ..	Hu Foo and Kylong, for themselves and other Chinamen .. }	(43) Forty-three	Mr. Parkes	{ Representing that the Petitioners suffered aggressions and losses, as in the Petition set forth, from European and other diggers at Lambing Flat, and praying relief..... }	{ Printed.
May 2....	Kew Loong Pow	(1) One	Mr. Parkes	{ Setting forth that he, with the rest of his countrymen, were driven from the Lambing Flat Diggings, and his property destroyed; and praying relief. }	{ Printed.
" 2....	Daniel Lynch	(1) One	Mr. Windeyer ..	{ Setting forth that he had been struck off pay in the General Post Office, Sydney, in consequence of illness contracted in the discharge of a public duty; and praying relief..... }	{ Not Printed.

WHEN RECEIVED.	FROM WHOM AND WHENCE PRESENTED.	NUMBER OF SIGNATURES.	BY WHOM PRESENTED.	ABSTRACT OF PRAYER.	WHETHER PRINTED.
	Grievances—continued.				
May 3....	Jane Cockburn	(1) One	Mr. Driver	{ Setting forth her services in the capacity of late Office Cleaner employed in the Immigration Department, without remuneration, and praying relief. }	Printed.
	4. Land Bill.				
Feb. 8....	Certain Inhabitants of the District of Wollongong, Dapto, and Charcoal.....	{ (214) Two hundred and fourteen }	Mr. Arnold	{ Praying that a Land Bill may be passed with the provisions in the Petition set forth..... }	Printed.
.. 8....	Certain Inhabitants of the Districts of Broughton Creek, Fox Ground, and its vicinity.....	{ (302) Three hundred and two	Mr. Arnold	Similar prayer	Printed.
	5. Miscellaneous.				
.. 13....	Certain Inhabitants of Broughton Creek, Fox Ground, Geri-gong, Kiama, Dapto, Shell-harbour, and Wollongong	{ (468) Four hundred and sixty-eight .. }	Mr. Arnold	{ Praying that the Duties on Tea and Sugar may be repealed }	Not Printed.
.. 13....	Henry Burton Bradley	(1) One	Mr. Walsh	{ Praying to be heard by himself, his Counsel, or his Agent, against the Minmi and Hexham Railway Act Amendment Bill.. }	Not Printed.
March 12..	Certain Residents of the Northern District	{ (270) Two hundred and seventy..... }	Mr. Hoskins ...	{ Praying that a Bill may be passed providing for the payment of all Members who may be elected to sit in the next Legislative Assembly of New South Wales .. }	Printed.
.. 12..	Members of the Sydney Trade Protection Society	{ (1) One	Mr. McArthur..	{ Praying for the passing of an Insolvency Act suited to the present requirements of the Colony	Printed.
.. 20..	Samuel Ward, of Camden	(1) One	Mr. Douglas ..	{ Complaining of the conduct of Mr. Justice Cary in a recent case in which the Petitioner was plaintiff, and one Alexander Brand, defendant	Printed.
.. 20..	Certain Residents in the District of Camden.....	{ (140) One hundred and forty	Mr. Douglas ..	{ Complaining of the judicial conduct of Mr. Justice Cary, generally	Printed.
.. 22 ..	Certain Merchants, Tradesmen, and Citizens of Sydney	{ (111) One hundred and eleven	Mr. Hay	{ Against the passing of the Chinese Immigration Regulation Bill; and praying that any Chinese Immigration Regulation Bill which may be entertained may be deprived of all class legislation of an oppressive or prohibitory character, and be framed upon principles of justice, to the mutual benefit of the Chinese and the Inhabitants of these Colonies..... }	Printed.
.. 26..	Edward Drinkwater	(1) One	Mr. Shepherd ..	{ Representing that he believes it is proposed to recommend the mortgage and ultimate sale of the Common Lands of the District, of which he is a Trustee, for the purpose of defraying the expense of certain proposed Roads and Bridges to cross the Parramatta River and Iron Cove, and praying that no appropriation of such lands may be sanctioned at variance with the intention as expressed in the original Grant..... }	Printed.
.. 26..	Inhabitants of Raymond Terrace	{ (481) Four hundred and eighty-one .. }	Mr. Windeyer ..	{ Praying for the establishment of a Steam Ferry at Raymond Terrace..... }	Printed.
.. 27..	New South Wales Alliance for the Suppression of Intemperance, and for the Social, Moral, and Intellectual Elevation of the People	{ (12) Twelve	Mr. Parkes	{ Praying that the License called "Confectioners' License," may be no longer required by law. ... }	Printed.
.. 28..	Joseph Wilson	(1) One	Mr. Parkes	{ Praying that the House will pass Wilson's Settlement Investment Bill	Not Printed.

WHEN RECEIVED.	FROM WHOM AND WHENCE PRESENTED.	NUMBER OF SIGNATURES.	BY WHOM PRESENTED.	ABSTRACT OF PRAYER.	WHETHER PRINTED.
	Miscellaneous—continued.				
April 9 ..	Certain Landowners and others having interest in the Field of Mars Common	(259) Two hundred and fifty-nine	Mr. Shepherd ..	{ Praying that the House will not sanction any measure having for its object the appropriation of the Common Lands at the Field of Mars for any other purpose than that for which they were originally intended.	} Printed.
.. 16 ..	Hercules Watt	(1) One	Mr. C. Cowper, junr.	{ Setting forth certain losses which he will sustain if an Act be passed to compel the closing of all Tanyards within the boundaries of the City of Sydney, and praying relief in the event of such Act being passed.	} Printed.
.. 23 ..	Certain Inhabitants of the District of Braidwood	((1,564) One thousand five hundred and sixty-four	Captain Moriarty	{ Praying for a full and minute inquiry into and investigation of all the circumstances connected with the case of Frederick Beer, a medical practitioner, who, in April, 1856, was sentenced to ten years imprisonment, on a charge of having illegally administered belladonna to one Phyllis Browne; and who, in April last, received a ticket-of-leave, and is now practising his profession at Braidwood	} Printed.
.. 23 ..	John Page	(1) One	Mr. Parkes	{ Representing that, relying on the due enforcement of the Act 14 Vict., No. 30, he abstained from establishing himself as a tanner in Sydney, and opened a tanning establishment at St. Mary's, South Creek; but that, having recently learned that tanneries are not discontinued in Sydney, he is desirous of the adoption of measures which will have the effect of immediately discontinuing such establishments within the limits of exclusion..	} Printed.
May 2....	Certain Inhabitants of Black Creek, in the Police District of Maitland	(70) Seventy	Mr. Parkes	{ Praying for the establishment of a Court House at Black Creek.	} Printed.
.. 8....	William Bland, as President of the Council of the Australian Medical Association.....	(1) One	Mr. Sutherland ..	{ Setting forth the high price and defective supply of pure water to the Inhabitants of Sydney, and praying that steps may be taken to remedy these evils.	} Printed.
	6. Municipalities.				
Jan. 18 ..	Alexander Berry, of the North Shore, near Sydney, in the Colony of New South Wales, Esquire	(1) One	Mr. Morris	{ Praying for leave to appear and be represented before the Select Committee, appointed on the 17th instant, to inquire into and report upon his former Petition, of the 21st September, 1859, relative to the proposed Municipality of Shoalhaven	} Printed.
Feb. 6....	James Graham, Mayor of the Shoalhaven Municipality	(1) One	Mr. J. Garrett..	{ Praying to be heard by Attorney or Counsel before the Select Committee, now sitting, on the Shoalhaven Municipality.....	} Not Printed.
.. 20....	Municipal Council of Newcastle	(1) One	Mr. Hannell..	{ Representing the existence of certain obstructions to the permanent improvement of the City of Newcastle, and praying relief	} Printed.
.. 22....	Samuel Hebblewhite	(1) One	Mr. Piddington..	{ Praying that this House will either exempt the Randwick and Goozee Roads Trust from the operation of the Municipalities Act Amendment Bill of 1861, now under the consideration of the House, or refuse to pass the said Bill altogether.	} Printed.
.. 27 ..	Chairman and Councillors of the Municipality of Waterloo	(2) Two	Mr. Lucas.....	{ Praying that the Municipalities Act Amendment Bill of 1861 may pass	} Not Printed.
Mar. 1....	Municipal Council of Waverley	(2) Two	Mr. Lucas.....	{ In favour of the Municipalities Act Amendment Bill of 1861....	} Not Printed.
.. 1....	Certain Ratepayers of Waverley	(53) Fifty-three.....	Mr. Lucas.....	{ Similar prayer	} Not Printed.

WHEN RECEIVED.	FROM WHOM AND WHENCE PRESENTED.	NUMBER OF SIGNATURES.	BY WHOM PRESENTED.	ABSTRACT OF PRAYER.	WHETHER PRINTED.
7. Private Bills.					
Jan. 11 ..	Certain Directors of the Colonial Bank of Australasia	(3) Three	Mr. Blake	{ Praying for leave to introduce a Bill for the Incorporation of the Colonial Bank of Australasia	{ Not Printed.
" 23 ..	John Campbell, of the City of Sydney, in the Colony of New South Wales, Esquire	(1) One	Mr. Parkes	{ Praying for leave to bring in a Bill to enable the Trustees of a settlement made by Mr. Joseph Wilson, of Land at Balmain, to sell the said Land, and to make provision for the investment of the proceeds of the sale thereof	{ Not Printed.
Feb. 6 ..	James and Alexander Brown ..	(1) One	Mr. Parkes	{ Praying for leave to introduce a Bill to amend the Minmi and Hexham Railway Act	{ Not Printed.
" 8 ..	Trustees of Hosking's Estate ..	(4) Four	Mr. Windeyer ..	{ Praying for leave to bring in a Bill to authorize the sale and exchange of property held in Trust for Mrs. Martha Foxlowe Hosking and her issue	{ Not Printed.
" 8 ..	Trustees of Mackenzie's Marriage Settlement	(1) One	Mr. Windeyer ..	{ Praying for leave to bring in a Bill to confer powers to sell and grant Building Leases upon the Trustees of the Marriage Settlement of William Henry Mackenzie, and Helen his wife	{ Not Printed.
" 12 ..	Right Reverend William Tyrrell, Doctor in Divinity, Lord Bishop of Newcastle	(1) One	Mr. Dick	{ Praying for leave to bring in a Bill to enable him, as surviving Trustee of certain Land situated in the Town of West Maitland, to sell the said land, and to provide for the appropriation of the proceeds of such sale	{ Not Printed.
Mar. 12 ..	Certain Directors of the Clarence and Richmond Rivers Steam Navigation Company ..	(5) Five	Mr. Parkes	{ Praying for leave to introduce a Bill to incorporate the Clarence and Richmond Rivers Steam Navigation Company	{ Not Printed.
April 19 ..	Chairman and Vice-Chairman of the Morpeth and Maitland Railway Company	(2) Two	Mr. Parkes	{ Praying for leave to introduce the Morpeth and Maitland Railway Company's Bill	{ Not Printed.
8. Railways.					
Feb. 20 ..	Certain Proprietors of Property, Householders, and others, residing in Pitt-street and adjoining streets	(324) Three hundred and twenty-four ..	Mr. Arnold	{ Praying that the House will pass the Pitt-street Tramway Bill of 1861	{ Printed.
" 21 ..	Edward Bell	(1) One	Mr. Wilson	{ Praying that this House will, before coming to any decision on the subject either of Railway Extension on the present system, or of Tramways, satisfy itself of the practicability and economy of the system of locomotion projected by him	{ Printed.
" 27 ..	Certain Freeholders, Householders, Residents in Pitt-street and others	(44) Forty-four	Mr. Sutherland ..	{ Against the passing of the Pitt-street Tramway Bill of 1861 ..	{ Not Printed.
May 2 ..	Directors of the Pyrmont Bridge Company	(5) Five	Mr. Parkes	{ Setting forth that they had incurred considerable expenditure in the prosecution of their work, on the understanding that the Pyrmont Railway Terminus would be completed by the Government; and praying that such Terminus and relative works should, with as little delay as possible, be completed and made available for the public	{ Printed.
" 3 ..	Certain Inhabitants of Sydney and its neighbourhood	(626) Six hundred and twenty-six ..	Mr. Sutherland ..	{ Praying that such steps may be taken, without delay, as may appear best calculated to lead to the speedy completion of the Pyrmont Railway Terminus ..	{ Printed.

Legislative Assembly Offices,
Sydney, 11 May, 1861.

CHA. TOMPSON,
Clerk of Legislative Assembly.

Sydney: Thomas Richards, Government Printer.—1861.

[Price, 2d.]

Legislative Assembly. NEW SOUTH WALES.

No. 1.

ALPHABETICAL REGISTER OF PUBLIC BILLS ORIGINATED IN THE ASSEMBLY DURING THE SESSION OF 1861.

Table with columns: SHORT TITLES, BY WHOM INITIATED, When ordered, When presented and read 1st, Read 2nd, Committed, Reported, Recommended, Report, Adoption of Report, Read 3rd, Passed, Sent up to Council for concurrence, Agreed to by Council without Amendment, Agreed to by Council with Amendments, Council's Amendments agreed to, Assembly agrees to some and disagrees from others, Assembly agrees to some, amends one, and disagrees from others, Council's Amendments made by the Council, Assent Reported, Number of Act, REMARKS.

No. 2.

ALPHABETICAL REGISTER OF PRIVATE BILLS INTRODUCED UPON PETITION TO THE ASSEMBLY DURING THE SESSION OF 1861.

Table with columns: SHORT TITLES, BY WHOM PETITION PRESENTED, When ordered, When presented and read 1st, When referred to Select Committee, When reported by Select Committee, Read 2nd, Committed, Reported, Recommended, Report, Adoption of Report, Read 3rd, Passed, Sent up to Council for concurrence, Agreed to by Council without Amendment, Agreed to by Council with Amendment, Council's Amendments agreed to, Assent, REMARKS.

No. 3.

ALPHABETICAL REGISTER OF PUBLIC AND PRIVATE BILLS BROUGHT FROM THE COUNCIL DURING THE SESSION OF 1861.

Table with columns: SHORT TITLES OF PUBLIC BILLS, PRIVATE BILLS, When brought, Read 1st, Referred to Select Committee, Reported by Select Committee, Read 2nd, Committed, Reported, Recommended, Report, Adoption of Report, Read 3rd, Passed without Amendment, Passed with Amendment, Sent up to Council for concurrence, Agreed to by Council, Council disagrees from Assembly's Amendments, Assembly does not insist upon its Amendments, Assent Reported, Number of Act, REMARKS.

RECAPITULATION.

Number of Public Bills originated in the LEGISLATIVE ASSEMBLY, as per Register No. 1	...	...	...	...	...	35
Number of Private Bills	do.	do.	as per Register No. 2	...	...	9
Number of Public Bills brought from the LEGISLATIVE COUNCIL, as per Register No. 3	...	...	...	...	...	13
Number of Private Bills	do.	do.	do.	...	...	1
						58
				Public.	Private.	Total.
Passed and Assented to	...	...	...	28		30
Passed and Reserved	...	...	...	1		1
Superseded by Question of "this day six months"	...	...	...	2		2
Discharged from Paper	...	...	...	5		7
Negatived on motion for 2nd reading	...	...	...	3		3
Pro forma Bill	...	...	...	1		1
Not returned by Legislative Council	...	...	...			3
Referred to Select Committee. (No Report)	...	...	...	1		1
Stopped by Prorogation	...	...	...	5		5
						58

Legislative Assembly Offices,
Sydney, 11 May, 1861.

CHA. TOMPSON,
Clerk of Legislative Assembly.

1861.

Legislative Assembly.

NEW SOUTH WALES.

ALPHABETICAL REGISTERS .

OF

ADDRESSES AND ORDERS FOR PAPERS,

AND OF

A D D R E S S E S

(NOT BEING FOR PAPERS.)

SESSION 1861.

1861.

Legislative Assembly.

NEW SOUTH WALES.

ALPHABETICAL REGISTER OF ADDRESSES AND ORDERS FOR PAPERS DURING THE SESSION OF 1861.

WHEN PASSED.		ON WHOSE MOTION.		PAPERS APPLIED FOR.		RETURN TO ADDRESS OR ORDER.	REGISTER NUMBER.	IF TO BE PRINTED.	
No.	Date.	Entry.		By Address.	By Order.			Date of Order.	When delivered for Printing.
14	1 February	8	Mr. Watt	Additional, or Sixth, Pilot for Fort Jackson	By Order.	2 April	61/268		
11	29 January	12	Mr. Hart	Chaucer, Rev. W.					
68	10 May, A.M.	27	Mr. Buchanan	Criminal Cases in which the Crown has refused to Prosecute					
68	10 May, A.M.	29	Mr. Walsh	Croft, Dr. Jonathan					
31	5 March	8	Mr. Blake	Delivery of Goods at Campbelltown		25 April (in part)	61/385	8 May	9 May.
46	3 April, A.M.	29	Mr. Leary	Distribution of Relief to Sufferers by last Flood at Windsor		6 May	61/423		
11	29 January	8	Mr. Driver	Great North Road—Expenditure of Money Voted for Repairs of portion of		27 March	61/243	27 March	28 March.
65	6 May	17	Mr. Lucas	Harbour Master, Sydney					
65	6 May	16	Mr. Lucas	Insolvent Estates					
23	19 February	16	Mr. Dalgleish	Letters of Registration of Inventions					
8	23 January	18	Mr. Love	Mail Guards on the Northern Line of Road—Discharge of					
11	29 January	13	Mr. T. Garrett	Martindale, Captain—Resignation of					
9	24 January	13	Mr. C. Cowper, Junr.			24 April	61/381	24 April	25 April.
68	9 May	13	Mr. Rotton			24 April	61/380	24 April	25 April.
68	10 May, A.M.	28	Mr. Hart						
65	6 May	25	Mr. Hart						
57	24 April, A.M.	21	Mr. Lucas						

ALPHABETICAL REGISTER OF ADDRESSES, &c.—Continued.

WHEN PASSED.		ON WHOSE MOTION.	PAPERS APPLIED FOR.		RETURN TO ADDRESS OR ORDER.	REGISTER NUMBER.	IF TO BE PRINTED.	
No.	Date.		By Address.	By Order.			Date of Order.	When delivered for Printing.
54	16 April	Mr. Dickson	Payments made for Legal Services during Responsible Government.		9 May	61/442	9 May	10 May.
17	8 Feb., A.M.	Mr. Shepherd	Petty Sessions, Condobolin	Pilot Board.				
31	5 March	Mr. Daigleish		Private Lands taken for Railway Purposes.				
31	5 March	Mr. Parkes		Railway between Liverpool and Campbelltown.				
43	27 Mar., A.M.	Mr. Lucas		Railway Extension Lines and Works.				
57	23 April	Mr. Rotton		Revenue Returns and Expenditure for 1860.				
63	2 May	Mr. Piddington		Road from Parramatta River to Great North Road				
11	29 January	Mr. Shepherd		Road Funds, Carcoat.	9 May	61/446	9 May	10 May.
27	26 February	Mr. Watt		Roads—Shoalhaven District.				
27	26 February	Mr. T. Garrett			20 February	61/154		
11	30 Jan., A.M.	Mr. Daigleish						
43	27 Mar., A.M.	Mr. Hoskins		Smith v. Crook.				
68	10 May, A.M.	Mr. Walsh		Southern Gold Fields—Correspondence.				
23	19 February	Mr. O'Brien		Special Warrants issued by the Sheriff.				
5	16 January	Mr. Buchanan		"Swan"—Reprive of	14 February	61/140	14 February	16 February.
15	5 February	Mr. Rusden		Tawell, John—Proceedings of the Crown in the matter of the Property of the late	27 February	61/175	27 February	28 February.
11	29 January	Mr. Parkes		System of Tendering for Buns.	26 April, A.M.	61/385	26 April, A.M.	26 April.
54	16 April	Mr. Dickson		Telegraph Department.	9 May	61/445	9 May	10 May.
7	18 January	Mr. Rusden		Tenders for Buns undischarged of	8 May	61/434	8 May	9 May.
63	2 May	Mr. Piddington		Treasury Balances	10 April	61/315	10 April	10 April.
30	1 March	Mr. Buchanan		"Turner" and "Wood"	8 March	61/194	8 March	11 March.
27	26 February	Mr. Weston		Unpaid Magistracy	26 March	61/253	26 March	27 March.
14	1 February	Mr. Watt		Vessels entering Port Jackson				

CHA. TOMPSON,
Clerk of Legislative Assembly.

Legislative Assembly Offices,
Sydney, 11 May, 1861.

Legislative Assembly.

NEW SOUTH WALES.

SUPPLEMENTARY REGISTER OF ADDRESSES AND ORDERS FOR PAPERS DURING FORMER SESSIONS.

WHEN PASSED.		OK WHOSE MOTION.	PAPERS APPLIED FOR.		RETURN TO ADDRESS OR ORDER.	REGISTER NUMBER.	IF TO BE PRINTED.	
VOTES.			By Address.	By Order.			Date of Order.	When delivered for Printing.
No.	Date.	Entry.						
12	12 Oct., 1860	7	Mr. Hart	Applications for Letters of Registration of Inventions	1861.	61/389	1861.	1861.
84	24 April, "	6	Dr. Lang	Chauvel, Mr. C. G. T., and others—Exercise of Pre-emptive Rights	26 April	61/443	26 April	26 April.
106	1 June, "	10	Mr. Hart	Clark Irving, Esq.—Pre-emptive Right exercised by	9 May (Further)		9 May	10 May.
15	23 Sept., 1859	24	Mr. Martin	East Maitland Land Reserves.	30 January	61/82	23 April	24 April.
17	23 Oct., 1860	6	Mr. A. Campbell	Identified Stolen Horses	30 January	61/81	23 April	24 April.
54	2 Feb., "	27	Mr. Robertson	Tala, or Moolpa Run.	15 January	61/35	15 January	16 January.
17	23 Oct., "	10	Mr. Forster	West, Brothers, Messrs.	30 January	61/78	30 January	31 January.
6	3 Oct., "	9	Mr. Macleay		30 January	61/83	23 April	24 April.
125	24 Nov., 1858	14	Mr. Plunkett		15 January	61/40	15 January	16 January.
74	3 April, 1860	26	Mr. Parkes		80 January	61/187	30 January	31 January.
24	6 Nov., "	4	Mr. Watt		80 January	61/387	15 January	16 January.
					6 March (Further)	61/79	6 March	7 March.
					26 April, A.M.		30 January	31 January.
					30 January			

Legislative Assembly Offices,
Sydney, 11 May, 1861.

CHA. TOMPSON,
Clerk of Legislative Assembly.

NEW SOUTH WALES.

ALPHABETICAL REGISTER OF ADDRESSES (NOT BEING FOR PAPERS) TO THE GOVERNOR GENERAL, AND TO THE ADMINISTRATOR OF THE GOVERNMENT, DURING THE SESSION OF 1861.

SUBJECT OF ADDRESS.	VOTES.			WHEN PASSED OR AGREED TO.			WHEN AND HOW PRESENTED.			WHEN AND HOW ANSWERED.			REMARKS.	
	No.	Date.	Fifty	On whose Motion.	No.	Date.	By Whom.	No.	Date.	By Whom and How.	No.	Date.		By Whom and How.
Appointment of future Members of Legislative Council	68	9 May..	6	Mr. Walsh	68	9 May....	6	The Speaker.	8	23 Jan...	3	23 Jan...	The Governor General.	Committee appointed to prepare Address.
Approaching Departure of His Excellency Sir William Denison for India.....	7	18 Jan..	6	Mr. Cowper	7	18 Jan.....	6	{ The Legisla- tive Assembly. }	8	19 Jan...	3	19 Jan...	{ His Excellency the Ad- ministrator of the Government. — By Message. }	
Assisted Immigration	60	26 April.	6	Mr. Rotton	60	26 April ..	6	The Speaker ..	64	3 May..	8	3 May..	{ His Excellency the Ad- ministrator of the Government. — By Message. }	Committee appointed to prepare Reply.
Assumption of the Administration of the Government by Lieutenant-Colonel Kempf.....	10	25 Jan...	3	Mr. Cowper	10	25 Jan.....	3	The Speaker.	44	27 March.	4	27 March.	{ His Excellency the Ad- ministrator of the Government. — By Message. }	
Assumption of the Administration of the Government by the Right Honorable Sir John Young	43	{ 27 Mar. A.M. }	7	Mr. Cowper	43	27 Mar., A.M.	7	{ The Legisla- tive Assembly. }	44	27 March.	4	27 March.	{ His Excellency the Ad- ministrator of the Government. — By Message. }	
Bridge over the Nepean River, on the Great Western Line	46	{ 3 April, A.M. }	32	Mr. J. T. Ryan ..	46	3 April, A.M.	32	The Speaker.	..	9 April.	..	9 April.	The Speaker.	
Chinese at Lambing Flat—Alleged Aggression on	68	9 May..	18	Mr. Parkes	68	9 May....	18	The Speaker.	..	10 May..	..	10 May..	The Speaker.	
Compensation to the Family of the late Mrs. de Courcy	18	8 Feb...	12	Mr. Hart	18	8 Feb.....	12	The Speaker.	..	11 Feb..	..	11 Feb..	The Speaker.	
Compensation to Messrs. Brett and Heather—relative to Identified Stolen Horses	30	1 March	8	Mr. Macleay	30	1 March ..	8	The Speaker.	..	5 March.	..	5 March.	The Speaker.	
Dismemberment of the Colony	67	8 May..	5	Mr. Cowper	67	8 May....	5	The Speaker.	..	9 May..	..	9 May..	{ His Excellency the Ad- ministrator of the Government. — By Message. }	
Emigration Agencies and Lectureships in Great Britain and Ireland	64	3 May..	15	Mr. Parkes	64	3 May....	15	The Speaker ..	..	4 May..	..	4 May..	The Speaker ..
Examination of Rivers, with a view to the Develop- ment of Salmon	15	5 Feb...	6	Mr. Wilson	15	5 Feb.....	6	The Speaker.	..	11 Feb..	..	11 Feb..	The Speaker.	
Mounted Volunteer Rifles—Allowance to, for Forage, &c.	60	10 May..	7	Mr. Sutherland ..	60	10 May....	7	The Speaker.	..	10 May..	..	10 May..	The Speaker.	
Promotion of the Growth of Flax in the Colony	56	19 April.	8	Mr. Allen	56	19 April ..	8	The Speaker.	..	22 April.	..	22 April.	The Speaker.	
Proposed Pension to Lady Mitchell	60	26 April.	10	Mr. Irving	60	27 Apl., A.M.	10	The Speaker.	..	29 April.	..	29 April.	The Speaker.	
Proposed Public Wharf at Windsor	64	3 May..	11	Mr. Walker	64	3 May....	11	The Speaker.	..	4 May..	..	4 May..	The Speaker.	
Proposed Wharf at Shellharbour	60	26 April.	5	Mr. Gray	60	26 April ..	5	The Speaker.	..	29 April.	..	29 April.	The Speaker.	
Railroad Extensions	67	8 May..	10	Mr. Cummings ..	67	8 May....	10	The Speaker.	..	9 May..	..	9 May..	The Speaker.	
Reimbursement to Library Funds	27	26 Feb...	10	Mr. O'Brien	27	26 Feb.....	10	The Speaker.	..	5 Mar..	..	5 Mar..	The Speaker.	
Reply to Governor General's Opening Speech	2	11 Jan...	11	Mr. O'Brien	2	11 Jan.....	11	{ The Legisla- tive Assembly }	3	12 Jan...	1	12 Jan...	The Governor General.	
Salaries of future Governors General and of Respon- sible Ministers	8	23 Jan...	20	Mr. Hoskins	8	24 Jan.....	20	The Speaker.	..	29 Jan..	..	29 Jan..	The Speaker.	
Title of Governor of the Colony	67	8 May..	7	Mr. Cowper	67	8 May....	7	The Speaker.	..	9 May..	..	9 May..	The Speaker.	

Legislative Assembly Offices,
Sydney, 11 May, 1861.

803--B

CHA. TOMPSON,
Clerk of Legislative Assembly.

1861.

Legislative Assembly.

NEW SOUTH WALES.

STANDING AND SELECT COMMITTEES APPOINTED DURING THE SESSION OF 1861.

No. of Committee	DESIGNATION OF COMMITTEE.	WHEN AND HOW APPOINTED.	MEMBERS.	CHAIRMAN.	NUMBER OF MEETINGS.		N ^o . OF WITNESSES EXAMINED.	WHEN REPORTED.
					Called.	Held.		
1	The Governor General's Opening Speech	11 January, 1861; Votes 2, Entry 11. (On motion of Mr. O'Brien.)	{ Mr. Caldwell, Mr. Douglas, Mr. Hart, Mr. Leary, Mr. McArthur, Mr. Robertson, Mr. Smart, Mr. O'Brien, Mr. Dick. }	Mr. O'Brien	1	1	None..	Final. 11 January, 1861.
2	Standing Orders	15 January, 1861; Votes 4, Entry 4. (On motion of Mr. Cowper.)	{ The Speaker, Mr. Cowper, Mr. Arnold, Mr. Hart, Mr. Hay, Mr. Parkes, 1 Seat declared vacant, 28 March, 1861. 2 Added, 10 April, 1861. }	The Speaker	5	4	None..	{ 6 February, 1861. (" Proposed Standing Orders.") }
3	Library	15 January, 1861; Votes 4, Entry 5. (On motion of Mr. Cowper.)	{ The Speaker, Mr. Cowper, Mr. Arnold, Mr. Dick, Mr. Hay, Mr. O'Brien, Mr. Parkes, Mr. Walsh, Mr. Windeyer, Mr. Wisdom. }	The Speaker	10	10	None..	{ 22 February, 1861. (" Reimbursement to Library Funds.") }
4	Departure of the Governor General ..	15 January, 1861; Votes 4, Entry 17. (On motion of Mr. Cowper.)	{ Mr. Douglas, Mr. Egan, Mr. Hart, Mr. Wilson, Mr. McArthur, Mr. Parkes, Mr. Robertson, Mr. Smart, Mr. Sutherland, Mr. Cowper. }	Mr. Cowper	2	2	None..	Final. 17 January, 1861.
5	Shoalhaven Municipality—(Petition of Alex. Berry, Esq.)	17 January, 1861; Votes 6, Entry 5. (By Ballot.)	{ Mr. J. Garrett, Mr. Hay, Mr. Leary, Mr. Caldwell, Mr. Cunneen, 1 Seat declared vacant, 28 March, 1861. }	Mr. J. Garrett	1	1	None.	

STANDING AND SELECT COMMITTEES, &c.—Continued.

No. of Committee	DESIGNATION OF COMMITTEE.	WHEN AND HOW APPOINTED.	MEMBERS.	CHAIRMAN.	NUMBER OF MEETINGS.		NO. OF WITNESSES EXAMINED.	RECEIPTS RECEIVED	WHEN REPORTED.
					Called.	Held.			
6	Colonial Bank of Australasia } Incorporation Bill.....}	18 January, 1861; Votes 7, Entry 8. (On motion of Mr. Parkes.)	{ Mr. Blake, Mr. Hay, Mr. Smart, Mr. Daniel, Mr. Lord, Mr. Parkes, Mr. Weekes, Mr. Hay, Mr. Morris, Mr. Egan, Mr. Parkes.	Mr. Blake	3	3	2		Final. 6 February, 1861.
7	Petition of Mr. N. L. Kentish	23 January, 1861; Votes 8, Entry 12. (On motion of Mr. Dick.)	{ Mr. Macleay, Mr. Stewart, Mr. Markham, Mr. Walsh, Mr. Dick.	Mr. Dick	8	7	4		Final. 19 April, 1861.
8	Public Prisons in Sydney and } Cumberland	23 January, 1861; Votes 8, Entry 13. (On motion of Mr. Parkes.)	{ Mr. Cowper, Mr. Hunt, Mr. Morris, Mr. Wilson, Mr. Windeyer, Mr. Lucas, Mr. Walsh, Mr. Sutherland, Mr. Mate, Mr. Parkes.	Mr. Parkes	5	7 (4 not called.)	26 Free, 83 Prisoners, 45 (4 written.)		Final. 10 May, 1861.
9	Elections and Qualifications	16 January, 1861; Votes 5, Entry 3. (By Speaker's <i>Harvans</i> —effectuating 24 January, 1861.)	{ William Macleay, Esquire, Charles Hamilton Walsh, Esquire, Alexander Walker Scott, Esquire, John Hay, Esquire, James Dickson, Esquire, Henry Parkes, Esquire, John Garrett, Esquire, Thomas Garrett, Esquire, John Bowrie Wilson, Esquire. ¹ Appointment resigned, 12 February, 1861. ² Appointment resigned, 7 February, 1861. ³ Added, 8 February, 1861, A.M. ⁴ Added, 12 February, 1861.	Mr. Hay	9	6	7		22 February, 1861. (“ Moffat v. Smart.”)
10	Present System of Tendering for } the Public Service	29 January, 1861; Votes 11, Entry 5. (On motion of Mr. Windeyer.)	{ Mr. Arnold, Mr. Daniel, Mr. Egan, Mr. Parkes, Mr. Morris, Mr. Wilson, Mr. Chay, Mr. Dickson, Mr. Shephard, Mr. Windeyer,	Mr. Windeyer	11	11	8		Final. 4 May, 1861.

STANDING AND SELECT COMMITTEES, &c.—Continued.

No. of Committee	DESIGNATION OF COMMITTEE.	WHEN AND HOW APPOINTED.	MEMBERS.	CHAIRMAN.	NUMBER OF MEETINGS.		No. of WITNESSES EXAMINED.	WHEN REPORTED.
					Called.	Held.		
11	Petition of Mrs. Mary Jones	20 January, 1861; Votes 11, Entry 17. (On motion of Mr. Stewart.)	{ Mr. Hart, Mr. Parkes, Mr. Mate, Mr. Walsh, Mr. Morrice, Mr. Walsh, Mr. Dalglish, Mr. Fiddington, Mr. Hoskins, Mr. Weekes, Mr. Parkes. Mr. Stewart, Mr. Dalglish, Mr. Shepherd, Mr. Rotton, Mr. Morris, Capt. Moriarty, Mr. Windeyer, Mr. Love, Mr. Walsh, Mr. Douglas, Mr. Robertson, ¹ Mr. Lucas, Mr. Hoskins, Mr. Wilson, Mr. Walsh, 1 Seat declared vacant, 28 March, 1861.	Mr. Stewart.....	7	7	9 (One Evidence expunged.)	Final. 16 April, 1861.
12	Wilson's Settlement Investment Bill.....	20 January, 1861; Votes 11, Entry 18. (On motion of Mr. Parkes.)	{ Mr. Walsh, Mr. Dickson, Mr. Shepherd, Mr. Leary, Mr. Parkes, Mr. Windeyer, Mr. O. Cowper, junr., Mr. Parkes.	Mr. Parkes	1	1	4	Final. 6 February, 1861.
13	Grievances.....	29 January, 1861; Votes 11, Entry 19. (On motion of Mr. Parkes.)	{ Mr. Stewart, Mr. Dalglish, Mr. Shepherd, Mr. Rotton, Mr. Morris, Mr. Wilson, Mr. Fiddington, Mr. Hoskins, Mr. Weekes, Mr. Parkes. Mr. Stewart, Mr. Lucas, Mr. Love, Mr. Walsh, Mr. Douglas, Mr. Robertson, ¹ Mr. Lucas, Mr. Hoskins, Mr. Wilson, Mr. Walsh, 1 Seat declared vacant, 28 March, 1861.	Mr. Parkes	4	3	5	Progress. 10 May, 1861.
14	Seamen.....	29 January, 1861; Votes 11, Entry 20. (On motion of Mr. Dalglish.)	{ Capt. Moriarty, Mr. Windeyer, Mr. Love, Mr. Walsh, Mr. Douglas, Mr. Robertson, ¹ Mr. Lucas, Mr. Hoskins, Mr. Wilson, Mr. Walsh, 1 Seat declared vacant, 28 March, 1861.	Mr. Dalglish	23	12	17	Progress. 10 May, 1861.
15	System of Tendering for Runs.....	5 February, 1861; Votes 15, Entry 10. (On motion of Mr. Rusden.)	{ Mr. Robertson, ¹ Mr. Lucas, Mr. Hoskins, Mr. Wilson, Mr. Walsh, 1 Seat declared vacant, 28 March, 1861.	Mr. Rusden	8	8	10	{ Progress. 27 March, 1861, A.M.
16	Working of the Insolvent Law	12 February, 1861; Votes 19, Entry 17. (On motion of Mr. Hart.)	{ Mr. Smart, Mr. Rotton, Mr. Love, Mr. Dick, Mr. Windeyer, Mr. Robertson, Mr. Rusden, Mr. Morris, Mr. Windeyer, Mr. Wilson.	Mr. Hart	18	10	11	Progress. 8 May, 1861.
17	Unpaid Magistracy	12 February, 1861; Votes 19, Entry 19. (On motion of Mr. Meston.)	{ Mr. Robertson, Mr. Rusden, Mr. Morris, Mr. Windeyer, Mr. Wilson.	Mr. Meston	9	9	12	Final. 22 March, 1861.

STANDING AND SELECT COMMITTEES, &c.—Continued.

No. of Committee	DESIGNATION OF COMMITTEE.	WHEN AND HOW APPOINTED.	MEMBERS.	CHAIRMAN.	NUMBER OF MEETINGS.		NO. OF WITNESSES EXAMINED.	WHEN REPORTED.
					Called.	Held.		
18	Minni and Hexham Railway Act Amendment Bill	12 February, 1861; Votes 19, Entry 20. (On motion of Mr. Parkes.)	{ Mr. Allen, Mr. C. Cowper, junr., Mr. Dickson, Mr. Laycock, Mr. Arnold, Mr. Parkes, Mr. Egan, Capt. Moriarty, Mr. Piddington, Mr. Daniel, Mr. Dick, Mr. Hay, Mr. Robertson, Mr. Egan, Mr. Driver, Mr. Lucas, Mr. Wilson, Mr. Morris, Mr. Mate, Mr. Macleay, Mr. Dick, Mr. Driver, Mr. Mate, Mr. Dick, Mr. Driver, Mr. Mate, Mr. Blake, Mr. Daniel, Mr. Markham, Mr. Dickson, Mr. Parkes, Mr. Hay, Mr. Piddington, Mr. Sutherland, Mr. Smart,	Mr. Parkes	6	4	4	Final. 22 March, 1861.
19	Light-house, near Jarvis Bay	12 February, 1861; Votes 19, Entry 22. (On motion of Mr. Gray.)	{ Mr. Wilson, Mr. J. Garrett, Mr. Dalgleish, Mr. Gray, Mr. Daniel, Mr. Parkes, Mr. Windcye, Mr. Wilson, Mr. Driver, Mr. Lucas, Mr. Watt, Mr. Arnold, Mr. Robertson, Mr. Hay, Mr. Wilson, Mr. Piddington, Mr. Windcye, Mr. Wilson, Mr. Piddington, Mr. Windcye, Mr. Hart, Mr. Walsh, Mr. Terry, Mr. Dick, Mr. Hoskins, Mr. Love, Mr. Egan, Mr. Lucas, Mr. Robertson.	Capt. Moriarty ..	14	11	11	Final. 9 May, 1861.
20	State and Management of the Sydney Domain	19 February, 1861; Votes 23, Entry 9. (By Ballot.)	{ Mr. Daniel, Mr. Dick, Mr. Hay, Mr. Robertson, Mr. Egan, Mr. Driver, Mr. Lucas, Mr. Watt, Mr. Arnold, Mr. Robertson, Mr. Hay, Mr. Wilson, Mr. Piddington, Mr. Windcye, Mr. Wilson, Mr. Piddington, Mr. Windcye, Mr. Blake, Mr. Daniel, Mr. Markham, Mr. Dickson, Mr. Parkes, Mr. Hay, Mr. Piddington, Mr. Sutherland, Mr. Smart,	Mr. Daniel	12	9	16	Final. 26 April, 1861.
21	Walgunyah Murray Bridge Company's Bill	19 February, 1861; Votes 23, Entry 17. (On motion of Mr. Hey.)	{ Mr. Lucas, Mr. Wilson, Mr. Morris, Mr. Mate, Mr. Macleay, Mr. Dick, Mr. Driver, Mr. Mate, Mr. Dick, Mr. Driver, Mr. Mate, Mr. Blake, Mr. Daniel, Mr. Markham, Mr. Dickson, Mr. Parkes, Mr. Hay, Mr. Piddington, Mr. Sutherland, Mr. Smart,	Mr. Hay	2	2	4	Final. 15 March, 1861.
22	Hosking's Trust Bill	19 February, 1861; Votes 23, Entry 22. (On motion of Mr. Parkes, for Mr. Windcye.)	{ Mr. Dick, Mr. Driver, Mr. Mate, Mr. Dick, Mr. Driver, Mr. Mate, Mr. Blake, Mr. Daniel, Mr. Markham, Mr. Dickson, Mr. Parkes, Mr. Hay, Mr. Piddington, Mr. Sutherland, Mr. Smart,	Mr. Windcye	4	3	4	Final. 11 April, 1861.
23	Mackenzie's Marriage Settlement Trustees Bill	19 February, 1861; Votes 23, Entry 23. (On motion of Mr. Parkes, for Mr. Windcye.)	{ Mr. Dick, Mr. Driver, Mr. Mate, Mr. Dick, Mr. Driver, Mr. Mate, Mr. Blake, Mr. Daniel, Mr. Markham, Mr. Dickson, Mr. Parkes, Mr. Hay, Mr. Piddington, Mr. Sutherland, Mr. Smart,	Mr. Windcye	3	2	3	Final. 3 April, 1861, A.M.
24	West Maitland Church Land Sale Bill	26 February, 1861; Votes 27, Entry 15. (On motion of Mr. Mate, for Mr. Dick.)	{ Mr. Blake, Mr. Daniel, Mr. Markham, Mr. Dickson, Mr. Parkes, Mr. Hay, Mr. Piddington, Mr. Sutherland, Mr. Smart,	Mr. Dick	2	1	2	Final. 20 March, 1861.
25	Sydney Revenues Improvement Bill ..	1 March, 1861; Votes 30, Entry 3	{ Mr. Parkes, Mr. Hay, Mr. Piddington, Mr. Sutherland, Mr. Smart,	Mr. Robertson, } 8 March, 1861 } Mr. Love, } Mr. Egan, } Mr. Lucas, } Mr. Robertson. }	11	9	3	

STANDING AND SELECT COMMITTEES, &c.—Continued.

No. of Committee	DESIGNATION OF COMMITTEE.	WHEN AND HOW APPOINTED.	MEMBERS.	CHAIRMAN.	NUMBER OF MEETINGS.		No. of WITNESSES EXAMINED.	WHEN REPORTED.
					Called.	Held.		
26	Claims of the Rev. W. B. Clarke.....	12 March, 1861; Votes 35, Entry 8. (By Ballot.)	{ Mr. Shepherd, Mr. Hoskins, Mr. Wilson, Mr. G. Cowper, junr., Mr. Walker. Mr. Matc,	Mr. Shepherd.....	7	6	2	Progress. 3 May, 1861, A.M.
27	Tanners and Carriers Bill	27 March, 1861, A.M.; Votes 43, Entry 27. (On motion of Mr. Lucas.)	{ Mr. Atkinson, Mr. Dickson, Mr. Parkes, Mr. Sutherland, Mr. Egan, Mr. Love, Mr. Flett, Mr. Driver, Mr. Lucas.	None	None.	None.	None.	
28	Clarence and Richmond Rivers Steam Navigation Company's Bill }	27 March, 1861, A.M.; Votes 43, Entry 34. (On motion of Mr. Parkes.)	{ Mr. Allen, Mr. Caldwell, Mr. Flett, Mr. Hannell, Mr. Gray, Mr. Arnold, Mr. Parkes, The Speaker, Mr. Wisdom, Mr. Wilson, Mr. Windeyer, Mr. Hay, Mr. Walsh, Mr. Piddington.	Mr. Parkes	1	1	2	Final. 3 April, 1861, A.M.
29	Privilege	4 April, 1861, A.M.; Votes 47, Entry 7. (By Ballot.)	{ Mr. Gray, Mr. Arnold, Mr. Parkes, The Speaker, Mr. Wisdom, Mr. Wilson, Mr. Windeyer, Mr. Hay, Mr. Walsh, Mr. Piddington.	The Speaker	2	2	6	Final. 9 April, 1861.
30	Morpeth and Maitland Railway Company's Bill..... }	24 April, 1861; Votes 58, Entry 23. (On motion of Mr. Parkes.)	{ Mr. Rusden, Mr. Morris, Mr. Hoskins, Mr. Hannell, Mr. Arnold, Mr. Lucas, Mr. Buchanan, Mr. Parkes.	Mr. Parkes	2	2	7	Final. 27 April, 1861, A.M.

Legislative Assembly Offices,
Sydney, 11 May, 1861.

CHA. TOMPSON,
Clerk of Legislative Assembly.

Sydney: Thomas Richards, Government Printer—1861.

[Paper, 2d.]

1861.

Legislative Assembly.
NEW SOUTH WALES.

**BUSINESS OF THE LEGISLATIVE ASSEMBLY OF NEW SOUTH WALES,
DURING THE SESSION OF 1861.**

1. New Writs issued										2
2. Select Committees :—										
On Public Bills					1					
On other Public Matters					17					
On Private Bills					9					
					—					27
3. Standing Committees										2
4. Election Committee (number of cases)										1
5. Public Bills :—										
Originated in the Assembly—										
Received the Royal Assent					14					
Reserved for signification of Her Majesty's Pleasure thereon }					None.					
Dropped or otherwise disposed of					21					
					—		35			
Brought from the Council—										
Received the Royal Assent					9					
Reserved for signification of Her Majesty's Pleasure thereon }					1					
Dropped or otherwise disposed of					3					
					—		13			
										48
6. Private Bills :—										
Originated in the Assembly—										
Received the Royal Assent					7					
Dropped or otherwise disposed of					2					
Brought from the Council—							9			
Received the Royal Assent					None.					
Dropped or otherwise disposed of					1					
					—		1			
										10
7. Petitions received :—										
Printed					*81					
Not Printed					32					
					—					113
8. Divisions :—										
In Whole House					126					
In Committee					199					
					—					325
9. Sittings :—										
Days of Meeting										69
Hours of Sitting (11 January, 1861, from 11 a.m. omitted)										660 hrs. 18 min.
Hours of Sitting after Midnight										59 hrs. 30 min.
Daily Average										8 hrs. 37 min.
Adjourned for want of a Quorum :—										
Before Commencement of Business										4
After Commencement of Business										2
10. Votes and Proceedings										69
Entries in Votes and Proceedings :—										
Of Business done					1,032					
Of Notices of Motion					1,504					
Of Orders of the Day					1,066					
Of Questions					395					
Of Contingent Notices, &c.					214					
					—					4,211
Daily Average										61
11. Orders for Papers										20
12. Addresses for Papers										20
13. Other Addresses										22
14. Papers laid upon the Table :—										
By Message					10					
By Command					49					
In return to Orders					10					
In return to Addresses					17					
Reports from Select Committees					26					
Proceedings of, and Evidence taken before ditto (of last Session)					3					
					—					115
Ordered to be Printed					110					
Not Ordered to be Printed					5					
					—					115

* Exclusive of three Petitions received during last Session, making in all, 84.

Legislative Assembly Offices,
Sydney, 11 May, 1861.

CHA. TOMPSON,
Clerk of Legislative Assembly.

1861.

Legislative Assembly.

NEW SOUTH WALES.

PROPOSED STANDING ORDERS.

REPORT

FROM THE

STANDING ORDERS COMMITTEE,

WITH THE

PROPOSED STANDING ORDERS.

ORDERED BY THE LEGISLATIVE ASSEMBLY TO BE PRINTED,
6 *February*, 1861.

SYDNEY:

THOMAS RICHARDS, GOVERNMENT PRINTER,

1861.

EXTRACTS FROM THE VOTES AND PROCEEDINGS OF THE
LEGISLATIVE ASSEMBLY.

VOTES No. 4. TUESDAY, 15 JANUARY, 1861.

4. Standing Orders Committee:—Mr. Cowper moved, pursuant to notice, That the Standing Orders Committee for the present Session consist of the following Members, viz.:—The Speaker, Mr. Cowper, Mr. Arnold, Mr. Hart, Mr. Hay, Mr. Parkes, Mr. Piddington, Mr. Robertson, Mr. Scott, and Mr. Smart;—with an instruction to prepare such Standing Rules and Orders as shall appear best adapted for the orderly conduct of the business of this House, and to report the same with as little delay as possible; and with leave to sit during any adjournment, and authority to confer upon subjects of mutual concernment with any Committee appointed for similar purposes by the Legislative Council.
Question put and passed.
-

VOTES No. 16. WEDNESDAY, 6 FEBRUARY, 1861.

2. Proposed Standing Orders:—Mr. Piddington, on behalf of the Chairman, brought up, from the Standing Orders Committee, a Report, with the Draft Standing Orders prepared by that Committee, pursuant to an instruction referred to them on the 15th ultimo.
Ordered to be printed.
Whereupon Mr. Piddington moved, That the Proposed Standing Orders be considered in Committee of the Whole on Tuesday next.
Question put and passed.
-

1861.

NEW SOUTH WALES.

STANDING RULES AND ORDERS.

REPORT

FROM

THE STANDING ORDERS COMMITTEE

OF THE

LEGISLATIVE ASSEMBLY,

WITH THE

PROPOSED STANDING ORDERS.

THE STANDING ORDERS COMMITTEE, to whom was referred, on the 15th ultimo, an Instruction “to prepare such Standing Rules and Orders as shall appear best adapted for the orderly conduct of the Business of this House, and to report the same with as little delay as possible,” have agreed to the following Report:—

Your Committee, in accordance with the Instruction above recited, have prepared, and have now the honor to present to your Honorable House, the Draft of such Standing Rules and Orders as, in their opinion, ought to be adopted for the orderly conduct of the Business of your Honorable House.

T. A. MURRAY,
Chairman.

*Legislative Assembly Chamber,
Sydney, 5 February, 1861.*

PROPOSED
STANDING RULES AND ORDERS
OF THE
LEGISLATIVE ASSEMBLY
OF
NEW SOUTH WALES.

GENERAL CONDUCT OF BUSINESS.

1. In all cases not specially provided for hereinafter, or by Sessional or other Orders, resort shall be had to the rules, forms, and usages of the Imperial Parliament, which shall be followed so far as the same can be applied to the proceedings of this House.

2. Whenever the House shall be informed of the unavoidable absence of the Speaker, the Chairman of Committees shall take the Chair for that day only; and in the event of the Speaker's absence continuing for more than one day, shall, if the House think fit and so order it, take the Chair in like manner on any subsequent day during such absence.

3. The Speaker shall take the Chair within half an hour after the time appointed for the meeting of the House, and if, at the expiration of such half hour there be not a quorum of Members present, shall adjourn the House to the next sitting day.

4. If, at any time after the commencement of the business of the day, notice be taken that there is not a quorum of Members present, the Speaker shall count the House, and, if there be not a quorum present, shall, by his own authority, adjourn the House to the next day of meeting.

5. If, at any time after the commencement of the Business of the Day, notice be taken that there is not a quorum of Members present, the Serjeant-at-Arms, by direction of the Speaker, shall ring the Division Bell before the Speaker proceed to count the House.

6. Upon every occasion when the House is counted out, the names of Members present shall be taken down by the Clerk at the Table, and be inserted in the Journals.

7. No Order for a Call of the House shall be made for any day earlier than twenty-one days from the day on which such Order shall have been made.

8. Whenever a Division shall be demanded by any Member, the Members present shall take their seats, the Ayes on the right, the Nocs on the left of the Chair, respectively; and the Speaker shall appoint Tellers, two of each Party; and shall declare which has the Majority, from lists of the Members voting on each side to be handed to him by the Tellers; and, in the event of the Tellers not agreeing, the Speaker shall immediately appoint other Tellers, and so from time to time until the Tellers shall have agreed.

9. No Member shall be admitted to vote upon any division who shall be in either Gallery or above the Bar to the right or left of the Speaker's Chair, when the Doors are locked; but no Member shall be allowed to avoid voting, by retiring there after the Doors are locked.

10. All Addresses to the Governor shall be presented by the Speaker, unless otherwise ordered by the House.

11. Whenever the Previous Question shall be proposed upon any Question consisting of a series of Resolutions, which have been brought under discussion or debate as one Motion, with the understanding that the Question be put on such Resolutions *seriatim*, the decision of the Previous Question, before putting the question on the first of such Resolutions, shall be taken and held to be conclusive, whether in the affirmative or negative, as regards the whole of such Resolutions.

12. It shall be the duty of the Clerk to communicate to the Colonial Secretary all Orders for Papers made by this House; and such Papers may be laid upon the Table by any Member of this House, being also a Member of the Government.

13. The Clerk shall transmit to the Clerk of the Legislative Council, a sufficient number of copies of all Papers printed by order of this House, for distribution to the Members of the Legislative Council.

14. The printed Votes and Proceedings shall include, and be deemed, held, and taken to be also the Journals of this House.

15. The custody of the Journals and Records, and of all Papers and Accounts whatsoever presented to this House, shall be in the Clerk, who shall neither take, nor permit to be taken, any of such Journals, Records, Papers, or Accounts, from the Chamber or Offices, without the express leave or order of this House.

PETITIONS.

16. No Petition shall be presented after the House shall have proceeded to the Orders of the Day.

17. It shall be incumbent on every Member presenting a Petition, to acquaint himself with the contents thereof, and to ascertain that it does not contain language disrespectful to any Branch of the Legislature.

18. Every Member presenting a Petition shall affix his name at the beginning thereof.

19. Every Petition must be in writing, and no printed or lithographed Petition shall be received.

20. Every Petition must contain the prayer of Petitioners at the end thereof.

21. Every Petition must be signed, by at least one person, on the skin or sheet on which the Petition is written.

22. Every Petition must be written in the English language.

23. Every Petition must be signed by the parties whose names are appended thereto, with their names or marks written or made by themselves, and by no one else, except in cases of incapacity from sickness.

24. No letters, affidavits, or other documents shall be attached to any Petition, except a Petition for a Private Bill, to which a printed copy of the Bill must be attached.

25. No Petition shall make reference to any Debate in the House.

26. No Petition shall, either directly or indirectly, pray for a grant of public money.

27. Every Member presenting a Petition, not being a Petition for a Private Bill, or relating to a Private Bill before the House, shall confine himself to a statement of the parties from whom it comes—of the number of signatures attached to it—of the material allegations contained in it—and to the reading of the prayer thereof; and the only Question which shall be entertained by the House, on the presentation of any Petition shall be, "That the Petition be received."

NOTICES AND MOTIONS.

28. No Notice of Motion shall be received after the House shall have proceeded to the Orders of the Day.

29. No Member shall make any motion, initiating a subject for discussion, but in pursuance of Notice openly given at a previous sitting of the House,

House, and duly entered on the Notice Paper; but it shall always be in order, on the presentation of any document, except a Petition, for the Member presenting it, to move, without previous notice, that it be printed, and that a day be appointed for its consideration.

30. Unless otherwise directed by Sessional Order, Motions shall take precedence of Orders of the Day, and be moved, or postponed in the order in which they stand on the Notice Paper, or lapse.

LAPSED QUESTIONS AND ORDERS.

31. If a Debate on any Motion, moved and seconded, be interrupted by the House being counted out, such Debate may be resumed, at the point where it was so interrupted, on Motion upon Notice.

32. If a Debate upon any Order of the Day be interrupted by the House being counted out, such Order may be restored to the Paper, for a future day, on Motion upon Notice; and such Debate shall then be resumed at the point where it was so interrupted.

33. If the discussion of any Question in a Committee of the whole House be interrupted for want of a quorum, the House may order the resumption of such Committee on a future day, on Motion upon Notice; and the discussion of such Question shall then be resumed at the point where it was so interrupted.

COMMITTEES OF THE WHOLE HOUSE.

34. In Committees of the whole House, twenty Members, exclusive of the Chairman, shall be a Quorum.

35. Lists of Divisions in Committees of the whole House shall be printed weekly.

36. Unless otherwise ordered by Sessional Order, the following Rules shall be observed in Committee of Supply:—

- (1.) When a Motion is made, in Committee of Supply, to omit or reduce any item of a Vote, a Question shall be proposed from the Chair for omitting or reducing such item accordingly; and Members shall speak to such Question only, until it has been disposed of.
- (2.) When several Motions are offered, they shall be taken in the order in which the items to which they relate appear in the printed Estimates.
- (3.) After a Question for omitting or reducing any item has been disposed of, no Motion shall be made, or Debate allowed upon any preceding item.
- (4.) Where it has been proposed to omit or reduce items in a Vote, the Question shall be afterwards put upon the original Vote, or upon the reduced Vote, as the case may be, without amendment.
- (5.) When a general reduction of the amount of the Vote is proposed, comprising many items, the Question shall be first put upon the smaller sum, and, if that be negatived, then upon the next smaller sum, and so on until the Question is put upon the original Vote, after failure of the several Motions for a general reduction thereof.
- (6.) It shall be held to be in order, at any time during the discussion of an Estimate or Item in an Estimate which has not been previously amended, to move the postponement of such Estimate or Item, provided such postponement be until the whole of the Estimates or Supplementary Estimate for the year for which the proposed Vote is intended to be taken, shall have been disposed of.

SELECT COMMITTEES.

37. No Select Committee shall consist of less than five or more than ten Members.

38. It shall not be compulsory on the Speaker or Chairman of Committees to serve on any Select Committee.

39. Every Member proposing a Select Committee shall be one of the Committee without being named by the House.

40. The Notice of Motion for the appointment of every Select Committee shall contain the names of the Members the Mover intends to serve with himself on such Committee.

41. If upon any Motion for a Select Committee, any Member shall require it, such Committee shall be chosen by Ballot, in the manner following, viz. :—Each Member shall give in to the Clerk a list of the Members who he intends shall serve on the Committee, not exceeding the number proposed in such Motion; and if any such list contain a larger number of names, it shall be void and rejected; and the Members who shall be reported by the Clerk to have the greatest number of votes, shall be declared by the Speaker to be, with the Mover, the Members of such Committee; and in any case of doubt, arising from two or more Members having an equality of Votes, the Speaker shall decide which shall serve on such Committee.

42. Any Notice of Motion for discharging, adding, or substituting Members of a Select Committee shall contain the names of such Members.

43. In all Select Committees three shall be a Quorum.

44. Every Select Committee, previously to the commencement of business, shall elect one of its Members to be the Chairman.

45. At the request of any Member, or in his own discretion, the Chairman of any Select Committee shall order the withdrawal of strangers at any time.

46. The Chairman of a Select Committee may summon or direct the Clerk of the House to summon the witnesses to be examined before such Committee.

47. Every Select Committee shall have power to award payment to any professional or other witnesses they may deem it necessary to employ in furtherance of the inquiry with which the Committee is charged; and the production of the Chairman's certificate by any such witness, with a copy of such award signed by the Clerk of Select Committees, shall entitle him to the Speaker's written order to the Clerk for payment of such sum as may be therein stated to be due to him for the special service to be therein named; and such order, with the Chairman's certificate and the copy of the award thereto appended, shall be sufficient authority and discharge to the Clerk for making such payment out of any public moneys in his hands or by the ordinary course of public payments through the Colonial Treasury; and every such award, with the sum awarded, the particulars of the service rendered, and the name of the party in whose favor made, shall be entered on the Minutes of the Proceedings of the Committee.

48. Every Report of a Select Committee shall be signed by the Chairman thereof.

 PUBLIC BILLS.

49. Every Bill for the paving, lighting, or cleansing of any City, Town, or Municipal District, or for supplying the same with water, promoted by the Municipal authorities of such City, Town, or District, shall be deemed and taken to be a Public Bill.

50. Amendments merely of a verbal or formal nature may be made, on motion, in any part of a Bill, at any time during its progress through the House, or in Committee of the whole House.

51. Clerical and typographical errors may be corrected in any part of a Bill, by the Chairman of Committees, before it is sent to the Legislative Council for its concurrence.

52. No clause, schedule, or amendment in substance, shall be offered to be added to, or made in, any Bill in possession of this House, except in a Committee of the whole House.

53. Before putting the Question "That this Bill do now pass?" the Speaker shall in every case report that the Chairman of Committees has certified that it is in accordance with the Bill as passed through all its previous stages in this House.

54. When a Bill, originated in this House, shall have passed, the Clerk shall forthwith certify at the top of the first page that, "This Public (or Private) Bill originated in the Legislative Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence."

55. After a Bill shall be so certified by the Clerk, it shall be sent with a Message desiring the concurrence of the Legislative Council.

56. The consideration of all amendments in Bills which shall have first passed this House, and of all amendments upon amendments which shall have been made by this House in any Bill which shall have first passed the Legislative Council, shall be in a Committee of the whole House; and in every case where this House shall agree to such amendments, or amendments upon their amendments, with or without amendments or further amendments of their own, the Clerk shall certify accordingly at the top of the first page of the Bill; and in every case of agreement or disagreement to any such amendments the Legislative Council shall be informed thereof by Message.

57. Every Bill originated in and passed by this House which shall pass the Legislative Council without amendment, and every such Bill which shall be returned to this House with amendments by the Legislative Council to which this House shall finally agree, shall be fair printed on Vellum or Parchment, and be by the Speaker presented to the Governor for Her Majesty's Assent, provided the Chairman of Committees shall have certified, in writing, on the Bill, that he has examined such fair print and found it to correspond in all respects with the Bill as finally passed by both Houses, and that at the top of the first page of such fair print the Clerk of this House shall have certified to its having finally passed both Houses.

58. Bills coming to this House the first time from the Legislative Council, shall be proceeded with, in all respects, as Bills presented in pursuance of Orders of this House; and every such Bill as shall finally pass this House shall be returned by Message to the Legislative Council, with the Clerk's Certificate at the top, that "the Legislative Assembly have this day agreed to such Bill," "with" or "without amendment," as the case may require.

59. Every Public Bill, which shall have passed both Houses, and received Her Majesty's Assent, or been reserved for the signification of Her Majesty's pleasure thereon, shall be numbered at the top, by the proper Officer, in the order in which it shall have received such Assent, or been so reserved; and shall have the date of such Assent or Reservation following the words "Assented to," or "Reserved," (as the case may be) within parenthesis, immediately after the Title.

PRIVATE BILLS.

60. Notice of the intention to apply for every Private Bill shall be published once a week, for four consecutive weeks, in the *Government Gazette*, in one or more public newspapers published in Sydney, and in one or more public newspapers published in or nearest to the District affected by the Bill, which notice shall contain a true statement of the general objects of the Bill.

61. No private Bill shall be initiated in this House but upon a Petition first presented and received, with a printed copy of the proposed Bill annexed; and such Petition shall be signed by one or more of the parties applying for the Bill.

62. Every Petition for a Private Bill shall commence by setting forth, that within the three months previously to its presentation to the House, the Public Notice required by Section 60 has been duly given of the general objects of and the intention to apply for such Bill, and shall conclude with a true statement of the general objects of the Bill, and a prayer for leave to introduce it; and the production of the numbers of the *Gazette* and Newspaper or Newspapers containing such Notice, shall be sufficient proof of such Notice.

63. When the Petition shall have been received, Notice of Motion for leave to bring in the Bill shall be given, and such Bill shall be introduced within thirty days from the receipt of such Petition.

64. When leave to bring in a Private Bill shall have been obtained, and before it shall be read a first time, it shall be printed, at the expense of the parties applying for it, in the same form as Public Bills, and a sufficient number of copies of it shall be delivered to the Clerk, for the use of the House.

65. Before a Private Bill shall be read a first time, the sum of twenty-five pounds, to meet the expenses attendant on such Bill, shall be paid to the credit of the Consolidated Revenue of the Colony, and a Certificate of such payment shall be produced by the Member having charge of the Bill.

66. When a Private Bill shall have been read a first time, it shall be referred to a Select Committee, to be appointed on Motion upon Notice, and such Committee shall require proof of the allegations contained in the Preamble.

67. Private Bills coming to this House the first time from the Legislative Council, if accompanied by printed copies of the Reports and Proceedings of the Select Committees, to which they may have been referred, shall be proceeded with in all respects as Public Bills "presented" in pursuance of Orders of this House, unless the House shall otherwise order; and every such Bill as shall finally pass this House shall be returned by Message to the Legislative Council with the Clerk's Certificate at the top, that "the Legislative Assembly have this day agreed to such Bill," "with" or "without Amendment," as the case may require.

68. Every Petition in opposition to a Private Bill shall distinctly specify the grounds of such opposition; and, if received, shall be referred to the Select Committee on the Bill.

69. Every Select Committee on a Private Bill may, in its discretion, hear Counsel if it be desired; and may also take such oral or other evidence as it may think requisite; and may decide on matters in issue between the persons conducting and opposing the Bill; after which, the Question shall be put from the Chair, "That this Preamble stand part of the Bill?": And if the Question pass in the negative, it shall be fatal to the Bill, and the Committee shall report accordingly; but if the Question pass in the affirmative, the several clauses of the Bill shall next be proceeded with, and the Amendments, if any, carefully noted for report to the House, care being taken that no clause be inserted, or Amendment made in the Bill, which shall be foreign to the import of the notice required under Section 60 to be given by the party or parties applying for it.

70. When a Select Committee shall have reported in favor of a Private Bill, such Bill shall be proceeded with as in the case of Public Bills, and a future day, subsequent to the distribution of the printed Report and Evidence, shall be appointed for the second reading.

71. No Number shall be given to any Private Bill which shall have passed both Houses and received Her Majesty's Assent.

MESSAGES FROM THE GOVERNOR.

72. Whenever the House shall be informed that there is a Message from the Governor, the business under discussion shall forthwith be suspended, and the bearer of the Message, if a Member, shall deliver it to the Speaker, and if not a Member shall be admitted and conducted to the Speaker, to whom he shall deliver it and then withdraw: The Speaker shall then immediately read the Message, and, if necessary, the House shall fix a future day for taking, or forthwith take the same into consideration.

JOINT ADDRESSES TO THE GOVERNOR.

73. Joint Addresses to the Governor, originating in this House, which shall not be ordered to be presented by both Houses, shall be borne by some Member of this House, to be named by the Speaker, who shall also report to this House the answer, if any be given.

COMMUNICATIONS WITH THE LEGISLATIVE COUNCIL.

74. The modes of communication with the Legislative Council shall be—

1. By Message,
2. By Conference,
3. By Joint Committees of the Legislative Council and Assembly,
4. By Select Committees communicating with each other.

BY MESSAGE.

75. A Message to the Legislative Council shall be by two or more Members of this House, to be named by the Speaker, ordinarily from among those Members who have taken the most prominent interest in the Bill or subject to be communicated.

76. This House will receive a Message from the Legislative Council by two or more of its Members.

77. Every Message shall be in writing, and entered upon the Journals, with the answer thereto, if any be given.

78. It shall be in order, at any time to move, without previous notice, that any passed Bill or Vote be communicated by Message to the Legislative Council.

79. This House will receive from the Legislative Council, in one Message, all Bills first communicated, all Bills returned without amendment, and all Bills with the amendments of this House upon the Legislative Council's amendments agreed to without amendment; a list of such Bills, with a statement of the assent of the Legislative Council thereto, being delivered together with such Message and Bills.

BY CONFERENCE.

80. The Members appointed by this House to represent it at conferences with the Legislative Council, shall, in number, never be fewer than five at an ordinary conference, and ten at a free conference.

81. Every demand for a conference with the Legislative Council shall be accompanied by a statement of the general objects of the conference demanded; and no such demand shall be made in reference to any subject matter at that time in possession of the Legislative Council.

82. In every Message communicating to the Legislative Council a demand for a conference, this House will state the number of Members it will appoint as its Managers at such conference.

83. This House will name the time and place of holding every conference demanded of it by the Legislative Council.

BY JOINT COMMITTEES.

84. In every Message proposing to the Legislative Council the appointment of a Joint Committee, this House will state the number of Members it will appoint to serve on such Committee.

85. Whenever the Legislative Council shall agree to a proposal from this House for the appointment of a Joint Committee, the first meeting of such Committee shall be held at such time and place as shall be named by the Legislative Council ; and in every Message agreeing to a proposal by the Legislative Council for the appointment of a Joint Committee, this House will name the time and place for the first meeting of such Committee.

86. The presence of at least three of the Members appointed by this House to serve on a Joint Committee shall be necessary at every meeting of such Committee for the dispatch of Business.

87. The proceedings of every Joint Committee shall be reported to this House by the Members it shall have appointed to serve on such Committee.

BY SELECT COMMITTEES COMMUNICATING WITH EACH OTHER.

88. The report of every Select Committee of this House, put in communication with a Select Committee of the Legislative Council, shall contain a clear statement of every matter intercommunicated, and of the action of the Committee thereupon.

STRANGERS.

89. The Speaker only shall have the privilege of admitting Strangers to the space above the Bar at the Speaker's Chair, or to the lower Gallery ; but every Member shall have the privilege of admitting, by orders, not transferable, two Strangers to the upper Gallery.

90. On the request of any Member, or in his own discretion, the Speaker shall and may at any time order Strangers to withdraw, and such Strangers shall immediately withdraw accordingly.

CONTEMPT.

91. Any Member not attending in compliance with an Order for a Call of the House, without reasonable excuse, shall be held guilty of contempt.

92. No Member shall absent himself during the Session for more than fourteen days at a time, without express leave of the House ; and any Member wilfully infringing this Order shall be held guilty of contempt.

93. Any Member who shall wilfully disobey any lawful Order of the House, and any Member or other person who shall wilfully or vexatiously interrupt the orderly conduct of the business of the House, shall be guilty of contempt.

94. Every Member adjudged by the House, for any of the causes hereinbefore mentioned, guilty of contempt, shall be committed by the Warrant of the Speaker, to the custody of the Serjeant-at-Arms, and shall, by the Serjeant-at-Arms, be detained in custody until released by an Order of the House, upon such conditions for payment of fees as to the House shall seem meet.

95. Any person not being a Member who wilfully or vexatiously shall interrupt the orderly conduct of the Business of the House, or obstruct the approaches to the House, or occasion a disturbance within the precincts of the House, shall be, by the Warrant of the Speaker, committed to the custody of the Serjeant-at-Arms, and shall, by the Serjeant-at-Arms, be detained in custody until discharged by an Order of the House.

SUSPENSION OF STANDING RULES AND ORDERS.

96. Except in cases of urgent and pressing necessity, no Motion shall be made to dispense with any Sessional or Standing Order of this House, without due notice thereof.

1861.

Legislative Assembly.

NEW SOUTH WALES.

REIMBURSEMENT TO LIBRARY FUNDS.

REPORT

FROM

THE LIBRARY COMMITTEE.

ORDERED BY THE LEGISLATIVE ASSEMBLY TO BE PRINTED,

22 *February*, 1861.

SYDNEY:

THOMAS RICHARDS, GOVERNMENT PRINTER, PHILLIP-STREET.

1861.

EXTRACTS FROM THE VOTES AND PROCEEDINGS OF THE
LEGISLATIVE ASSEMBLY.

VOTES NO. 4. TUESDAY, 15 JANUARY, 1861.

5. Library Committee:—Mr. Cowper moved, pursuant to notice, That the Library Committee for the present Session consist of the following Members, viz. :—The Speaker, Mr. Cowper, Mr. Arnold, Mr. Dick, Mr. Hay, Mr. O'Brien, Mr. Parkes, Mr. Walsh, Mr. Windeyer, and Mr. Wisdom; with leave to sit during any adjournment, and authority to confer upon subjects of mutual concernment with any Committee appointed for similar purposes by the Legislative Council.
Question put and passed.
-

VOTES NO. 26. FRIDAY, 22 FEBRUARY, 1861.

2. Reimbursement to Library Funds:—Mr. O'Brien, on behalf of the Chairman, brought up a Report from the Library Committee, in reference to Reimbursement to Library Funds, which was read at length by the Clerk, by direction of the Speaker, as follows:—

“ The Library Committee of the Legislative Assembly, appointed on the 15th January
“ last, have agreed to the following Report:—

“ Your Committee beg to report to your Honorable House, that, having had
“ under consideration the reduction to which the Annual Votes for the Purchase of
“ Books for the Library have been subjected by the Expenses incurred in the
“ Collation, Binding, and Shipment of Parliamentary Reports and Papers presented
“ to the Library by the Speaker of the House of Commons, and the expediency of
“ requesting the Government to place on the Estimates a sum of money sufficient
“ to reimburse to the Library the amount so expended, your Committee deemed it
“ expedient to request a Conference with the Library Committee of the Legislative
“ Council on the subject.

“ This request having been acceded to, a Conference was accordingly held in
“ the Committee Room, No. 2, of the Legislative Council, on the 21st instant, the
“ result of which was, that the following Resolution was agreed to by the Library
“ Committees of the respective Houses:—

“ That the Government be requested to place on the Estimates the sum of five
“ hundred and seven pounds, to reimburse to the Library the amount of
“ the Reductions to which the Annual Votes for the Purchase of Books
“ have been subjected by the Expenses incurred in the Collation, Binding,
“ and Shipment of Parliamentary Reports and Papers presented to the
“ Library by the House of Commons.

“ And your Committee would now recommend the adoption of the said
“ Resolution by your Honorable House.

“ T. A. MURRAY,
“ Chairman.”

“ *Legislative Assembly Chamber,*
“ *Sydney, 21 February, 1861.*”

Ordered, on motion of Mr. O'Brien, to be printed.

1861.

REIMBURSEMENT TO LIBRARY FUNDS.

REPORT.

THE LIBRARY COMMITTEE of the Legislative Assembly, appointed on the 15th January last, have agreed to the following Report:—

Your Committee beg to report to your Honorable House, that, having had under consideration the reduction to which the Annual Votes for the Purchase of Books for the Library have been subjected by the Expenses incurred in the Collation, Binding, and Shipment of Parliamentary Reports and Papers presented to the Library by the Speaker of the House of Commons, and the expediency of requesting the Government to place on the Estimates a sum of money sufficient to reimburse to the Library the amount so expended, your Committee deemed it expedient to request a Conference with the Library Committee of the Legislative Council on the subject.

This request having been acceded to, a Conference was accordingly held in the Committee Room, No. 2, of the Legislative Council, on the 21st instant, the result of which was, that the following Resolution was agreed to by the Library Committees of the respective Houses:—

That the Government be requested to place on the Estimates the sum of five hundred and seven pounds, to reimburse to the Library the amount of the Reductions to which the Annual Votes for the Purchase of Books have been subjected by the Expenses incurred in the Collation, Binding, and Shipment of Parliamentary Reports and Papers presented to the Library by the House of Commons.

And your Committee would now recommend the adoption of the said Resolution by your Honorable House.

T. A. MURRAY,

Chairman.

Legislative Assembly Chamber,

Sydney, 21 February, 1861.

1911

1911

1861.

Legislative Assembly.

NEW SOUTH WALES.

ELECTION PETITION.

(MOFFAT V. SMART.)

REPORT FROM THE COMMITTEE

OF

ELECTIONS AND QUALIFICATIONS ;

WITH

MINUTES OF THE PROCEEDINGS OF THE COMMITTEE,

AND

EVIDENCE.

ORDERED BY THE LEGISLATIVE ASSEMBLY TO BE PRINTED,
22 *February*, 1861.

SYDNEY :

THOMAS RICHARDS, GOVERNMENT PRINTER, PHILLIP-STREET.

1861.

EXTRACTS FROM THE VOTES AND PROCEEDINGS OF THE
LEGISLATIVE ASSEMBLY.

VOTES No. 5. WEDNESDAY, 16 JANUARY, 1861.

3. Committee of Elections and Qualifications:—The Speaker, pursuant to the requirement of the Electoral Act of 1858, laid upon the Table his Warrant appointing the Committee of Elections and Qualifications for the present Session, of which the following is a copy:—

“LEGISLATIVE ASSEMBLY.

“*By the Honorable the Speaker of the Legislative Assembly
of New South Wales.*

“Pursuant to the power in that behalf vested in me, as Speaker of the Legislative
“Assembly of New South Wales, by the Electoral Act of 1858, I do hereby appoint

“William Macleay, Esquire,

“Charles Hamilton Walsh, Esquire,

“Alexander Walker Scott, Esquire,

“John Hay, Esquire,

“James Dickson, Esquire,

“Henry Parkes, Esquire,

“John Garrett, Esquire,

“being Members of the said Assembly, to be Members of the Committee of Elections

“and Qualifications in the said Act referred to, during the present Session of the

“Assembly aforesaid.

“Given under my Hand, at the Legislative Assembly Chamber,

“Macquarie-street, Sydney, this sixteenth day of January, in the

“year of our Lord one thousand eight hundred and sixty-one.

“T. A. MURRAY,

“*Speaker.*”

VOTES No. 9. THURSDAY, 24 JANUARY, 1861.

Members of Committee of Elections and Qualifications sworn:—Henry Parkes, Alexander Walker Scott, Charles Hamilton Walsh, William Macleay, and James Dickson, Esquires, sworn at the Table, by the Clerk, as Members of the Committee of Elections and Qualifications, for the present Session, pursuant to the requirement of the 70th Section of the Electoral Act of 1858.

3. First Meeting of Elections and Qualifications Committee:—Pursuant to the requirement of the 70th Section of the Electoral Act of 1858, the Speaker appointed the first Meeting of the Committee of Elections and Qualifications to take place at noon, on Tuesday next, the 29th instant, in Committee Room No. 2.

VOTES No. 13. THURSDAY, 31 JANUARY, 1861.

Member of Committee of Elections and Qualifications Sworn:—John Garrett, Esquire, sworn at the Table, by the Clerk, as a Member of the Committee of Elections and Qualifications, for the present Session, pursuant to the requirement of the 70th Section of the Electoral Act of 1858.

VOTES No. 15. TUESDAY, 5 FEBRUARY, 1861.

Election Petition:—Mr. Robertson, *by Command*, laid upon the Table a Petition from William Palmer Moffat, of Balmain and Sydney, in the Colony of New South Wales, Solicitor, against the Election and Return of Thomas Ware Smart, Esquire, as Member for the Electorate of The Glebe,—on the ground that the Petitioner himself had a right to have been returned or elected as such Member.
Petition, on motion of Mr. Robertson, referred to the Committee of Elections and Qualifications.

VOTES No. 17. THURSDAY, 7 FEBRUARY, 1861.

10. Committee of Elections and Qualifications:—The Speaker, pursuant to the requirement of the Electoral Act of 1858, laid upon the Table his Warrant, appointing Thomas Garrett, Esquire, to be a Member of the Committee of Elections and Qualifications for the present Session, of which the following is a copy:—

“ LEGISLATIVE ASSEMBLY.

“ *By the Honorable the Speaker of the Legislative Assembly
of New South Wales.*

“ Pursuant to the power in that behalf vested in me, as Speaker of the Legislative
“ Assembly of New South Wales, by the Electoral Act of 1858, I do hereby appoint

“ Thomas Garrett, Esquire,

“ being a Member of the said Assembly, to be a Member of the Committee of Elec-
“ tions and Qualifications in the said Act referred to, during the present Session of
“ the Assembly aforesaid.

“ Given under my Hand, at the Legislative Assembly Chamber,
“ Macquarie-street, Sydney, this eighth day of February, in the
“ year of our Lord one thousand eight hundred and sixty-one.

“ T. A. MURRAY,
“ *Speaker.*”

VOTES No. 19. TUESDAY, 12 FEBRUARY, 1861.

4. Committee of Elections and Qualifications:—The Speaker, pursuant to the requirement of the Electoral Act of 1858, laid upon the Table his Warrant, appointing John Bowie Wilson, Esquire, to be a Member of the Committee of Elections and Qualifications for the present Session, of which the following is a copy:—

“ LEGISLATIVE ASSEMBLY.

“ *By the Honorable the Speaker of the Legislative Assembly
of New South Wales.*

“ Pursuant to the power in that behalf vested in me, as Speaker of the Legislative
“ Assembly of New South Wales, by the Electoral Act of 1858, I do hereby appoint

“ John Bowie Wilson, Esquire,

“ being a Member of the said Assembly, to be a Member of the Committee of Elec-
“ tions and Qualifications in the said Act referred to, during the present Session of
“ the Assembly aforesaid.

“ Given under my Hand, at the Legislative Assembly Chamber,
“ Macquarie-street, Sydney, this twelfth day of February, in the
“ year of our Lord one thousand eight hundred and sixty-one.

“ T. A. MURRAY,
“ *Speaker.*”

VOTES No. 20. WEDNESDAY, 13 FEBRUARY, 1861.

4. Committee of Elections and Qualifications:—The Speaker informed the House that he had, on the 7th instant, received a letter from John Garrett, Esquire, resigning his appointment as a Member of the Committee of Elections and Qualifications, and that he had, on the 8th instant, laid upon the Table his Warrant appointing Thomas Garrett, Esquire, to fill the vacancy so created. Also, that he had, yesterday, received a letter from Alexander Walker Scott, Esquire, resigning his appointment as a Member of the same Committee, and had laid upon the Table his Warrant on the same day, appointing John Bowie Wilson, Esquire, to fill that vacancy.

VOTES No. 21. THURSDAY, 14 FEBRUARY, 1861.

8. Member of Committee of Elections and Qualifications Sworn:—Thomas Garrett, Esquire, sworn at the Table by the Clerk, as a Member of the Committee of Elections and Qualifications for the present Session, pursuant to the requirement of the 70th Section of the Electoral Act of 1858.
-

VOTES No. 24. WEDNESDAY, 20 FEBRUARY, 1861.

- Member of Committee of Elections and Qualifications:—John Bowie Wilson, Esq., sworn at the Table, by the Clerk, as a Member of the Committee of Elections and Qualifications for the present Session, pursuant to the requirement of the 70th Section of the Electoral Act of 1858.
-

VOTES No. 26. FRIDAY, 22 FEBRUARY, 1861.

5. Committee of Elections and Qualifications:—Mr. Hay, as Chairman, brought up a Report from, and laid upon the Table the Minutes of Proceedings and Evidence taken before, the Committee of Elections and Qualifications, to whom was referred, on the 5th February, 1861, a Petition from William Palmer Moffat, of Balmain and Sydney, against the Election and Return of Thomas Ware Smart, Esquire, as Member for the Electoral District of The Glebe.
-

1861.

NEW SOUTH WALES.

ELECTION PETITION.
(MOFFAT v. SMART.)

REPORT FROM THE COMMITTEE OF ELECTIONS
AND QUALIFICATIONS.

THE Committee of Elections and Qualifications, duly appointed on the 16th January, 1861, under the provisions of the Electoral Act of 1858, to whom was referred, on the 5th February, 1861, a Petition, from William Palmer Moffat, of Balmain and Sydney, against the Election and Return of Thomas Ware Smart, Esquire, as Member for the Electoral District of "The Glebe," have determined and do hereby accordingly declare :—

1. That Thomas Ware Smart, Esquire, the sitting Member, has been duly elected as Member for the Electoral District of "The Glebe."
2. That the Petition of William Palmer Moffat is not frivolous or vexatious.

JOHN HAY,
Chairman.

*Legislative Assembly Chamber,
Sydney, 22 February, 1861.*

**MINUTES OF THE PROCEEDINGS OF THE COMMITTEE OF
ELECTIONS AND QUALIFICATIONS.**

In the matter of the Petition of William Palmer Moffat, Esquire, of Balmain and Sydney, in the Colony of New South Wales, Solicitor, complaining of the Election and Return of Thomas Ware Smart, Esquire, as Member for the Electoral District of The Glebe, and praying "That the Return to the Writ for the said Election of a Member to serve in the Legislative Assembly, for the said Electoral District, may be amended, and " that your Petitioner may be declared duly elected."

TUESDAY, 29 JANUARY, 1861.

MEMBERS PRESENT:—

Mr. Dickson,	|	Mr. Parkes,
		Mr. Walsh.

In attendance,—
The Clerk Assistant.

There not being a quorum present one hour after the time appointed for meeting, the Committee adjourned, in accordance with the provision of the 71st Section of the Electoral Act of 1858, till Friday next.

O. F. KELLY,
2nd Clerk Assistant.

FRIDAY, 1 FEBRUARY, 1861.

MEMBERS PRESENT:—

Mr. Scott,	|	Mr. J. Garrett,
Mr. Dickson,		Mr. Macleay.

In attendance,—
The 2nd Clerk Assistant.

There not being a Quorum present one hour after the time appointed for meeting, the Committee adjourned till Thursday next.

O. F. KELLY,
2nd Clerk Assistant.

THURSDAY, 7 FEBRUARY, 1861.

MEMBERS PRESENT:—

Mr. Parkes,	|	Mr. Dickson,
Mr. Macleay,		Mr. J. Garrett.

In attendance,—
The 2nd Clerk Assistant.

There not being a Quorum present one hour after the time appointed for meeting, the Committee adjourned till Wednesday next.

O. F. KELLY,
2nd Clerk Assistant.

WEDNESDAY, 13 FEBRUARY, 1861.

MEMBERS PRESENT:—

Mr. Hay,	|	Mr. Macleay,
Mr. Walsh,		Mr. Parkes.

In attendance,—
The 2nd Clerk Assistant.

There not being a Quorum present one hour after the time appointed for Meeting, the Committee adjourned till Tuesday next.

O. F. KELLY,
2nd Clerk Assistant.

TUESDAY, 19 FEBRUARY, 1861.

MEMBERS PRESENT:—

Mr. Parkes,	|	Mr. Walsh,
Mr. Dickson,		Mr. T. Garrett,
	Mr. Macleay.	

In attendance,—
The 2nd Clerk Assistant.

1. On motion of Mr. Parkes, seconded by Mr. Dickson, Mr. Hay was elected to the Chair.
2. In the absence of the Chairman, Mr. Walsh took the Chair.

3. The Clerk, by direction of the Chairman, read the Petition of William Palmer Moffat, Esquire, referred to the Committee on the 5th February, 1861, complaining of the Election and Return of Thomas Ware Smart, Esquire, as Member for the Electoral District of The Glebe, as follows :—

To His Excellency the Administrator of the Government of New South Wales.

The humble Petition of William Palmer Moffat, of Balmain and Sydney, in the Colony of New South Wales, Solicitor,—

SHewETH :—

That an Election was held on the fourteenth day of December last, for the Electoral District of The Glebe.

That the said Electoral District was composed of Balmain and the Glebe, at each of which places, on the said day of Election, a Polling Place was held, and a Poll taken.

That Geoffrey Egar, Esq., Thomas Ware Smart, Esq., and your Petitioner were Candidates at the said Election to serve as Members of the Legislative Assembly, for the said Electoral District.

That all the votes taken at said Election were not taken by ballot, inasmuch as the vote of Rowan Ronald, Esquire, Justice of the Peace, who can read, and is not blind, was taken openly and without his entering the Polling Booth.

That other questions than those allowed by the forty-sixth section of the Electoral Act of one thousand eight hundred and fifty-eight were put by the Presiding Officer to persons entitled and claiming to vote at said Election, and inquiries as to the right of certain persons to vote was permitted contrary to the said Act, whereby certain persons were prevented from voting who had a legal right to vote, although they said they were prepared to vote upon the qualification, and claimed a right to vote, and were positively refused, whereby also the result of said Election was affected.

That a large number of votes duly recorded, as your Petitioner is informed and verily believes, in his favor on that day were rejected by the Presiding Officer in ascertaining the gross number of votes for each of said Candidates, whereby a great many persons were disfranchised—more than enough to have given your Petitioner a clear majority of votes, and the result of said Election deeply affected.

That on the close of the Poll at Balmain on that day, before returns were had from the Glebe, it was announced, as it was afterwards declared to be true, that the said Thomas Ware Smart, Esquire, and your Petitioner, had in Balmain an equal number of votes in their favor at that Election.

That on the close of the Poll at the Glebe on that day, the Presiding Officer received from the Poll Clerk a statement of the votes recorded in favor of each of said Candidates, when there appeared one hundred and ninety-three in favor of the said Thomas Ware Smart, one hundred and ninety-six in favor of your Petitioner, and one hundred and eight in favor of the said Geoffrey Egar, Esquire.

That the said respective numbers were duly taken and recorded by the Presiding Officer at the Glebe, as your Petitioner is informed and believes, but were altered by erasure, and other numbers substituted by the Presiding Officer, whereby the Official Return of the Poll Clerks was ignored; a false Return made of the votes taken at that Polling Place, and the existing majority in favor of your Petitioner reduced to a minority.

That, according to the votes actually returned by the Government Poll Clerks to the Presiding Officer, as recorded at the Glebe in your Petitioner's favor, your Petitioner had a clear majority of votes, and ought to have been declared returned as the Member for said Electorate.

That the Returning Officer to whom the said Writ was duly issued, for the Election of Members to serve in the Legislative Assembly for the said Electoral District, on the fourteenth day of December aforesaid, declared Thomas Ware Smart, Esquire, to be duly elected as such Member, and the said Returning Officer thereupon returned to the same Writ, that Thomas Ware Smart, Esquire, was duly elected as aforesaid.

That, by reason of the premises, the said Thomas Ware Smart, Esquire, was illegally and improperly returned, as the Member for the said Electoral District, and that by reason thereof your Petitioner ought to have been, and claims to be returned.

That your Petitioner has paid into one of the Banks regulated by Act of Council, within the said Colony, namely, the Commercial Bank, the sum of One Hundred Pounds to the credit of the Speaker of the said Legislative Assembly, in relation to this Petition, as appears by the Bank deposit receipt hereto appended.

Your Petitioner, therefore, humbly prays that the Election and Return of the said Thomas Ware Smart, Esquire, as a Member of the Legislative Assembly for the said Electoral District, may be declared to be wholly null and void, and that it may be declared that your Petitioner was thereby elected, and ought to have been returned instead of the said Thomas Ware Smart, Esquire, and that the Return to the Writ, for the said Election of Members to serve in the Legislative Assembly for the said Electoral District, may be amended accordingly, and that your Petitioner may be declared duly elected.

And your Petitioner, as in duty bound, will ever pray, &c., &c.

WILLIAM PALMER MOFFAT.

Dated at Sydney this 4th day of
February, A.D. 1861.

4. Committee deliberated as to their course of proceeding, and,—
On motion of Mr. Macleay it was Resolved,—That the Petitioner be required to proceed in the first instance to support the allegations in his Petition affecting the validity of the Election.—*Carried.*
The Committee then adjourned till Wednesday next.

O. F. KELLY,
2nd Clerk Assistant.

WEDNESDAY, 20 FEBRUARY, 1861.

MEMBERS PRESENT :—

Mr. Walsh,	|	Mr. Dickson,
Mr. Parkes,	|	Mr. Macleay,
	Mr. T. Garrett.	

In attendance,—
The 2nd Clerk Assistant.

1. On motion of Mr. Macleay, the Chair was taken by Mr. Dickson, in the absence of the Chairman.
2. The Clerk having, by direction of the Chairman read the Minutes of previous Meetings, the same were confirmed.

Present,—
The Sitting Member.
The Petitioner.

At this stage of the proceedings the Chairman entered the room and took his place, Mr. Dickson having vacated the chair.

3. The Petitioner addressed the Committee in favor of an adjournment, on the ground that the notice given him of this day's meeting was too short to enable him to communicate with his Counsel and Witnesses,—And, having withdrawn ;
The Committee deliberated on the proposal, and, strangers being again admitted, Petitioner was informed that, in accordance with his request, the Committee had agreed to adjourn till 10½ o'clock to-morrow, when he would be required to proceed with his case.
The Committee adjourned till Thursday next.

O. F. KELLY,
2nd Clerk Assistant.

THURSDAY, 21 FEBRUARY, 1861.

MEMBERS PRESENT :—

John Hay, Esquire, in the Chair.

Mr. Parkes,	|	Mr. Macleay,
Mr. Walsh,	|	Mr. T. Garrett,
Mr. Dickson,	|	Mr. Wilson.

In attendance,—
The 2nd Clerk Assistant.

1. The Clerk having, by direction of the Chairman, read the Minutes of last Meeting, the same were confirmed.
Strangers being admitted—

Present,—
The Sitting Member.
The Petitioner.

The Petitioner addressed the Committee, particularizing the points upon which he desired to question the Election and Return of Thomas Ware Smart, Esquire, as Member for the Electoral District of The Glebe.

Charles Tompson, Esquire (*Clerk of the Legislative Assembly*), called in, sworn, and examined.

The Witness handed in the following Documents :—

1. Writ of Election for the Glebe Electorate.
2. Balloting Papers ditto.
3. Letter transmitting same.
4. Oath taken by Sitting Member.

James Shoobert, Esquire (*Returning Officer for The Glebe*), called in, sworn, and examined ; and—

The 2nd Clerk Assistant having, by direction of the Chairman, opened the parcel purporting to contain the voting papers in this case, and strangers having withdrawn—

The Committee deliberated upon the course to be pursued in reference to the numerous packages contained in the said parcel, as handed in by the Clerk of the Legislative Assembly, and the same having been marked,—

Strangers were admitted, and the Witness being re-called, was further examined.

Mr. C. F. Gorton (*Poll Clerk*), called in, sworn, and examined.

Mr.

Mr. W. J. Langdon (*Scrutineer*), called in, sworn, and examined.
 E. Holloway, Esquire (*Presiding Officer*), called in, sworn, and examined.
 Mr. C. F. Gorton (*Poll Clerk*), called in and further examined.

Strangers having withdrawn,—

The Committee deliberated as to the further conduct of the Inquiry.

Mr. R. L. Scrutton (*Scrutineer*), called in, sworn, and examined.

J. Bradly, Esquire, (*Presiding Officer*), called in, sworn, and examined.

The Petitioner, having informed the Committee that he had no further evidence to offer, addressed the Committee.

The Sitting Member then addressed the Committee, and the parties withdrew.

The Committee deliberated as to their future proceedings, and decided on adjourning till to-morrow, with the view of considering the advisability of having a scrutiny of the Ballot Papers contained in the parcel marked 2 A, and endorsed as containing "Voting Papers, Glebe."

The Committee adjourned till to-morrow.

O. F. KELLY,
2nd Clerk Assistant.

FRIDAY, 22 FEBRUARY, 1861.

MEMBERS PRESENT:—

John Hay, Esquire, in the Chair.

Mr. T. Garrett,	|	Mr. Walsh,
Mr. Wilson,	|	Mr. Macleay,
Mr. Dickson,	|	Mr. Parkes.

In attendance,—

The 2nd Clerk Assistant.

1. The Clerk, by direction of the Chairman, having read the Minutes of last Meeting, the same were confirmed.

The Committee proceeded to deliberate upon the question under discussion at the last meeting, viz, as to the advisability of having a scrutiny of the Ballot Papers taken in the Booth A to L, at the Glebe, the correctness of the Return, with that exception, having been admitted by the parties.

Mr. Macleay moved, and Mr. T. Garrett seconded the motion,—

That the Committee do now proceed to a scrutiny of the Voting Papers, taken at the Polling Booth A to L, at the Glebe.—*Carried.*

The Committee then proceeded to the scrutiny (the Petitioner having entered the Room), at the conclusion of which, the Committee proceeded to deliberate with respect to the admissibility of certain Voting Papers.

The Petitioner having withdrawn—and being re-admitted,—

The Chairman declared the result of the scrutiny as follows:—

Thomas Ware Smart, Esq.	116
William Palmer Moffat, Esq.	109
Geoffrey Egar, Esq.	56

Shewing a majority of 7 for the Sitting Member,—

Five (5) Voting Papers having been rejected as informal.

The Petitioner then withdrew.

The Committee deliberated as to the substance of the Report to be laid before the House in this case.

Mr. Walsh moved, and Mr. Macleay seconded the following Resolutions, viz.:—

Resolved,—

- (1.) That Thomas Ware Smart, Esquire, the Sitting Member, has been duly elected.
- (2.) That the Petition of William Palmer Moffat is not frivolous or vexatious.
- (3.) That the conclusions at which the Committee have arrived be embodied in a Report, to be drawn up by the Chairman, and presented to the House.—*Carried.*

The Chairman instructed to ask leave of the House to adjourn the Sittings of the Committee *sine die*.

Committee then adjourned until Thursday next.

O. F. KELLY,
2nd Clerk Assistant.

COMMITTEE

OF

ELECTIONS AND QUALIFICATIONS.

THURSDAY, 21 FEBRUARY, 1861.

PRESENT :—

Mr. Dickson,	Mr. Macleay,
Mr. T. Garrett,	Mr. Walsh,
Mr. Hay,	Mr. Wilson.

John Hay, Esq., in the Chair.

W. P. Moffat, Esq., appeared in support of the Petition; T. W. Smart, the Sitting Member, appeared on his own behalf.

Charles Tompson, Esq., called in, and, having been sworn, was examined :—

1. *By Mr. Moffat* : You are Clerk of the Legislative Assembly? Yes.
2. Do you produce the Writ of Election for the Glebe Electorate? I do. I produce a Writ certifying to the return of Thomas Ware Smart, Esq., as a Member of the Legislative Assembly of New South Wales for the Electoral District of The Glebe. (*The witness produced the same.*)
3. Did any papers connected with that Return accompany the Writ? This is the naked Writ. That Writ was transmitted to me by the Colonial Secretary, with a letter, dated 6th January, 1861, enclosing a list, signed by the Governor, of all the Members who had been returned to serve in pursuance of the Writs issued for the General Election, in the usual course, after a General Election. It is something in the nature of what the Clerk of the Crown does in the British Parliament. The Governor certifies to all these names.
4. *By Mr. Walsh* : You are the proper person to have the custody of this Writ, and you produce it? I produce it.
5. *By Mr. Moffat* : Did any paper accompany that Writ from the Returning Officer? I received, subsequently, a parcel, indorsed "Voting Papers of the Electoral District of the Glebe," and signed by the Returning Officer, "J. Shoobert, dated December 14th, 1860." This parcel is in exactly the same state as I received it. I have never opened it. (*The witness produced the same.*) I also received this letter from the Returning Officer. (*The witness read the same.*) I presume in this letter he alludes to the bundle of papers I have just handed in, although they came to me separately.
6. *By Mr. Parkes* : The letter accompanied the papers? The letter came by post. The ballot papers I think came by private hand. The certificate that is on it I wrote at the moment I received it.
7. *By Mr. Moffat* : Are there any papers in connection with this Return? Not connected with the Return. I have the Oath taken by Mr. Smart, and also the Electoral Roll.
8. I believe Mr. Smart was sworn in as a Member of the Assembly? Yes. I produce the Oath taken by Mr. Smart as a Member of the Assembly. (*The witness handed in the same.*)
9. On what day was that? The 10th of January, on which day Mr. Smart took his Seat. I also produce the Electoral Roll, with Mr Smart's signature as Member for the Glebe. (*The witness produced the same.*) I have no other papers to produce. I may say in addition that Mr. Smart has frequently sat and voted since.

C. Tompson,
Esq.
21 Feb., 1861.

J. Shoobert, Esq., called in, and, having been sworn, was examined :—

10. *By Mr. Moffat* : Were you the Returning Officer for the Glebe Electorate at the last January Election? Yes.
11. That is divided into two parts—the Glebe and Balmain? Yes; at least there are two polling-places. I do not know that it is necessarily considered as divided into two parts.
12. There are two polling-places? Yes.
13. What was the result of the poll in Balmain as between Mr. Smart and me? It was equal.
14. Did you appoint a Presiding Officer in the Glebe? I did, two.
15. Mr. Edward Holloway and Mr. James Bradley? Yes.
16. Did they make any written return to you at the close of the poll at the Glebe? Yes.
17. In writing? Yes.
18. Do you produce it? No, it is in the Council Chambers.

J. Shoobert,
Esq.
21 Feb., 1861.

- J. Shoobert,
Esq.
21 Feb., 1861.
19. Did you transmit it with the balloting papers? Yes.
20. *By the Chairman*: To whom did you transmit it? To the Clerk of the Council, as by law provided.
21. *By Mr. Moffat*: To the Clerk of the Assembly? To the Clerk of the Assembly.
22. *By the Chairman*: It was addressed to the Clerk of the Assembly? Yes.
23. When you said Council you meant the Assembly? I beg pardon if I said Council, I meant Assembly.
24. *By Mr. Moffat*: Is that the parcel you returned (*handing the parcel produced by Mr. Tompson, marked No. 2*)? Yes.
25. *By Mr. Parkes*: Is that your writing? Yes.
26. The parcel is just in the same state as when you forwarded it? Yes, in just the same state.
27. *By Mr. Moffat*: Excepting the indorsement on it? Yes; it is indorsed by the Clerk as having been received by him.
28. *By Mr. Parkes*: The parcel has never been opened since you returned it? No. (*The parcel was then opened by the 2nd Clerk Assistant, and a parcel taken therefrom, No. 2 A, was handed to the witness.*) Of course I know nothing of this, except that I enclosed the documents I received. I can say nothing of the contents of the documents—they were furnished me from the Clerk.
- (*The Committee having examined the contents of the parcel, selected a paper, 2 C, therefrom, which was handed by the Chairman to Mr. Moffat.*)
- The Chairman to Mr. Moffat*: This is the statement of the Presiding Officer and scrutineers, of the state of the poll in booth A to L, at the Glebe—I presume that is the paper you wish to put in Mr. Shoobert's hands?
- Mr. Moffat*: Yes, that is one of the documents.
29. *By the Chairman*: (*Handing the paper 2 C to witness*) Is that the document which was received by you as the statement of the Presiding Officer, countersigned by the poll clerk and scrutineers at the Glebe, at the poll-booth from A to L? Yes, that is it.
30. *By Mr. Moffat*: Do you discover any crasures there of the numbers? There has been some scratching there apparently.
31. Can you tell from it as it stands now what alteration has been made? No, but I see the words "sixteen" here and "twenty" on the top.
32. *By the Chairman*: Sixteen altered to twenty? Sixteen altered to twenty.
33. Has there not also been an alteration (*referring to the number attached to Mr. Moffat's name*) above? There seems to have been an alteration, but I could not pretend to say what it has been.
34. *By Mr. Moffat*: Do you think it has been "one hundred and twenty"? Certainly not; there is no room for the word "twenty" there, the last figure has apparently been a 2—I should take it to have been a 12.
35. *By the Chairman*: Does that correspond with this tally (*referring to the tallies accompanying the certificate of return, 2 C*)? Yes, it corresponds with that, that has evidently been 112.
36. And the other has been 116? It appears so.
37. *By Mr. Moffat*: Do you remember what was the majority? No, I cannot say I do.
38. Was it eleven? I think it was eleven—I have no doubt the state of the poll is here.
39. Was there any other return you received from Mr. Holloway in connection with the Glebe election? Not that I am aware of—whatever I received is here.
40. *By Mr. Walsh*: Did you receive a duplicate of that (*Exhibit 2 C*)? I am not aware; if I did it is here; I do not think so.
41. *By the Chairman*: Will you examine this paper, and say whether there was a duplicate of this document? (*The witness examined Exhibit 2 C.*) No.
42. Did you in any case receive duplicates of the statements of the Presiding Officers? I never have done nor do I believe I did in this case; if I had, it would have been here; I believe I did not.
43. Are you aware that by the 52nd Section of the Electoral Act it is directed that the Presiding Officer should transmit to the Returning Officer a duplicate statement signed by him and countersigned by the poll clerk and any of the scrutineers who may be present? (*The witness referred to the Act.*)
44. Were you aware of that? I cannot say I was; I thought I was pretty well up in the Act.
45. In point of fact you did not receive such duplicate? No, I should say not, unless there is one sealed up with the Glebe papers, and that I received this as a duplicate.
46. *By Mr. Parkes*: That could not have been? No; then I did not receive it.
47. *By the Chairman*: The Act specifies that he shall seal up all the ballot papers, and at the same time transmit to you a written statement of the poll, and at the next possible opportunity to send you a duplicate? Yes. There seems to have been some neglect in the matter.
48. Did you make up your numbers from the numbers as they appear now to have been altered? Yes, just as they appear here. No doubt I made my return from that.
49. Namely, 120 for Mr. Smart, and 110 for Mr. Moffat? Yes.
50. *By Mr. Walsh*: You have some papers in that parcel, I presume, which would give us the exact majority? In the parcel. Yes, no doubt my papers will shew. I have no doubt the list is here; sealed up here. (*Referring to parcel No. 2.*)
- Mr. Walsh* inquired of Mr. Moffat whether there was any dispute about the fact that the declared majority was eleven.
- Mr. Moffat* replied that there was no dispute about that.

Mr.

Mr. Shoobert: No doubt the paper is sealed up with the Balmain papers. I remember the majority of the two places combined was eleven.

51. *By Mr. Parkes*: The majority of Mr. Smart over Mr. Moffat? The majority of Mr. Smart over Mr. Moffat.

J. Shoobert,
Esq.
21 Feb., 1861.

52. Did you notice, looking at that paper, that the tallies—the pen strokes—did not agree with the numbers at the foot of them? I never counted them till now.

53. Have you counted them now? Yes, I see now that the pen strokes in one column are 116, while the number is 120, and the strokes in the other are 112 while the figures are 110. But this is the return (*referring to the certificate on the opposite side of the sheet of paper*), and I do not think I even looked at that.

Mr. Charles Frederick Gorton was called in, and, having been sworn, was examined:—

54. *By Mr. Moffat*: Were you one of the poll clerks at the Glebe during the last general election? Yes.

Mr. C. F.
Gorton.

55. In booth from A to L? Yes.

56. Did you take the usual declaration? Yes.

21 Feb., 1861.

57. Do you remember the result in your own polling booth at the close of the poll on the 14th December last? Yes, I believe it was—Mr. Moffat, 116; Mr. Smart, 112; and Mr. Eagar, 58. I think those were the numbers.

58. *By the Chairman*: Are you sure—you say Mr. Smart was how many? I think I made Mr. Moffat, 116; Mr. Smart, 112; and Mr. Eagar, 58.

59. *By Mr. Moffat*: On those numbers being given did the Presiding Officer do anything? My numbers differed by four from the scrutineers.

60. Will you answer my question—on the receipt of the numbers did the Presiding Officer do anything? He desired me to put down the scrutineers' numbers instead of my own, as they were three to one.

61. Was any indorsement made upon any paper by the Presiding Officer of the numbers given by you—was any indorsement made by Mr. Holloway when you gave that return? I think he signed the return at the first.

62. Corresponding to the numbers you have stated? Yes.

63. At the time you made the return you presumed it to be correct? I did.

64. Subsequent to your giving that return was any count made by the Presiding Officer of the votes? The Presiding Officer called out the numbers, and I took them down on the usual form.

65. After that return by you was made did anything take place? An alteration of four was made, because the scrutineers' numbers and mine differed.

66. That was after these amounts had been indorsed? I would not be positive whether Mr. Holloway signed before or after.

67. I ask whether the numbers you gave were indorsed? Yes.

68. That was, 116 for myself, 112 for Mr. Smart, and 58 for Mr. Eagar? I think those were the numbers.

69. Will you state what took place? There were three differed from me, and made four more for Mr. Smart than I did; and Mr. Holloway said there was scarcely time to count the papers over again, as he had to take them over to Balmain, and that I had better take the numbers of the scrutineers, as there were three to one. I did as he desired me.

70. Without any re-count? Without any re-count.

71. Will you look at that (*handing Exhibit 2 C to witness*)—is that your name? Yes.

72. *By the Chairman*: Your signature? My signature.

73. And you made these alterations? I made these alterations. The number was 116; four were added, which made 120.

74. Do you not remember that you told us just now that Mr. Moffat polled 116 and Mr. Smart 112—does that not shew that before the alteration was made the numbers were for Mr. Smart 116 and for Mr. Moffat 112? It appears so here.

75. Is that not the paper you signed as containing the correct numbers? Yes.

76. *By Mr. Moffat*: Now are you prepared to say that the number of 58 for Mr. Eagar is correct? I did not take particular notice of the numbers at the time—this 58 I might have made a mistake in, but this is the paper that was altered afterwards.

77. That was made up from your count in the first instance? Yes.

78. Your count in the first instance appears to be 116 for Mr. Smart and 112 for Mr. Moffat? Yes; the "sixteen" is plain here.

79. Will you look at the tallies on the other side of the paper—were these made by you? Yes, these are my tallies.

80. Will you state how many tallies there are for Moffat? 110 and these 2.

81. How many did you make? It is altered to 110.

82. You say you made these tallies—how many are there? 112 and these 2 (*referring to two strokes at the foot of the tally*) were taken out.

83. How many for Smart? 120.

84. The number of tallies? 116.

85. Then when you said just now there were 116 votes for Mr. Moffat and 112 for Mr. Smart, were you right? No, I was not; but I have not seen this paper since the day of election.

86. Having refreshed your memory by referring to the tallies you made and the paper you signed, will you now say what were the numbers? The numbers were 112 for Mr. Moffat and 116 for Mr. Smart.

- Mr. C. F. Gorton. 87. *By Mr. Parkes* : Did you ever make any other count? Yes.
 88. For this same election? Yes.
 89. Then you abandoned your own count and adopted that of the scrutineers? Yes; Mr. Holloway desired me to do so.
 21 Feb., 1861. 90. *By the Chairman* : You yourself wrote this with your own hand (*referring to the alteration*)? I did.
 91. *By Mr. Moffat* : Were these names signed before you made the alteration? No, because the scrutineers would not sign it at all before the alteration had been made.
 92. *By the Chairman* : Did Mr. Holloway sign before the alteration was made? I will not be positive.
 93. *By Mr. Moffat* : Do you observe that Mr. Holloway's name is in different ink, and that it corresponds with the line above? Yes.
 94. Did an altercation take place between the scrutineers and the poll clerk as to the number? Yes.
 95. Did that take place before Mr. Holloway signed that or after? I could not say whether Mr. Holloway signed that before, or whether he was signing. He was about signing at the time the altercation took place.
Mr. Parkes : It would be better for Mr. Gorton to state in his own way what did take place at the time of the altercation.
Mr. Gorton : Two of the scrutineers made four more for Mr. Smart than my numbers shewed, and then the Presiding Officer said there would scarcely be time to count them over again, as he had to take the state of the poll from the Glebe to Balmain. The two scrutineers refused to sign the certificate unless the alteration were made; and he said, as there were two to one against me, he would take their two numbers instead of mine, and he desired me to alter mine.
 96. *By Mr. Parkes* : Who were the two scrutineers? Mr. Scrutton was one and Mr. Jabez Bunting the other.
 97. *By Mr. Moffat* : For whom were they the scrutineers? Mr. Scrutton was—I do not know whether he was for Mr. Smart; one was for Mr. Smart and the other for Mr. Eagar.
 98. *By Mr. Wilson* : Were there other two scrutineers? There were three scrutineers; one for each member.
 99. How did the three tally? The third did not interfere.
 100. *By the Chairman* : Who was he—Mr. Langdon? Yes.
 101. Were you the only poll clerk? Yes.
 102. The difference was between you and the scrutineers? Yes.
 103. *By Mr. Parkes* : You made these alterations in consequence of the scrutineers refusing to sign it? Yes; by desire of the Presiding Officer, under whose order I was.
 104. To settle the dispute? Yes.
 105. *By Mr. Smart* : Did you not fill in the number and sign the return yourself, before you compared your numbers with the scrutineers'? I think not.
 106. Is it not your duty to sign the return before the scrutineers are called upon to sign it? Yes.
 107. Did you not present the return to the three scrutineers with the numbers filled in? Yes.
 108. Are you quite sure that you signed this before you asked the scrutineers to sign it? Yes.
 109. And before you signed it you filled in these numbers yourself? Yes.
 110. Before you compared your additions with them? Yes.
 111. And the scrutineers refused to sign? Yes.
 112. The three scrutineers? Yes.
 113. Did they not shew that they all agreed with their tallies? Yes.
 114. Did Mr. Langdon agree as to the numbers? Yes.
 115. You said just now that Mr. Langdon did not interfere? Two of them called out their numbers, but Mr. Langdon did not say anything.
 116. Did they not agree as to the numbers? Yes.
 117. And they refused to sign because they said your numbers were incorrect? Yes.
 118. Did not Mr. Langdon? I think not.
 119. At all events they all agreed to the numbers you afterwards put down? Yes.
 120. Upon the recommendation of the Returning Officer you corrected the numbers according to the scrutineers' returns? Yes.

Mr. William Joseph Langdon called in, and, having been sworn, was examined:—

- Mr. W. J. Langdon. 121. *By Mr. Moffat* : You were scrutineer on my behalf at the Glebe, at the last Election for the Glebe and Balmain? Yes.
 21 Feb., 1861. 122. In what polling-place—what booth? A to L.
 123. Where Mr. Gorton was poll clerk? Yes.
 124. Do you remember the numbers that were given by the poll clerk at the close of the poll in that booth? I cannot exactly remember the numbers now, but I know there was some difficulty with the poll clerk and ourselves; that he made it more than we made it.
 125. Do you remember whether Mr. Smart, Mr. Eagar, or myself had the majority as declared by the poll clerk at first? I could not swear to that; I believe the poll clerk stated that you had the greatest number of votes, and we disagreed with him, and then he altered his paper to our number.

126. Have you any doubt whatever that the poll clerk returned me as having a majority to the Presiding Officer? I would not swear.

127. Have you any doubt of it? I did not expect to come here, therefore the whole thing has escaped out of my head.

128. Have you any doubt that the poll clerk returned me to the Returning Officer as having the majority before this dispute took place? No, I have not; but I could not swear that he gave to the Returning Officer an account of the number in your favor any more—

129. I am referring to what took place on the first occasion; I am not referring to the erasure, or the effect of the erasure, I am referring to the first statement of the numbers by the poll clerk to the Presiding Officer on the close of the poll? I could not say, for we had such a dispute about it at the time, I forget how the numbers stood; but I know the poll clerk made you more than we did.

130. Do you believe he gave me the majority? I could not swear to that. I know every body thought you were elected, according to Mr. Gorton, the poll clerk; he made you more than we did.

131. Have you any doubt in your mind that Mr. Gorton gave me a larger number of votes than Mr. Smart got, and that a dispute arose subsequently as to the difference of numbers, and that the Presiding Officer took the numbers of the scrutineers? No.

132. There was a difference between the numbers given by the poll clerk and your numbers as scrutineers? Yes, that was the dispute—as to the numbers.

133. Will you briefly state your remembrance of what took place from the first statement of the numbers by the poll clerk to the Presiding Officer up to the time you all signed? I recollect, after we had all gone over the ballot papers—I think it was Mr. Bunting—one of the other scrutineers, disagreed with us and the poll clerk, by one or two votes, but to make that all right he gave way. Then we had a dispute with the poll clerk, and he made Mr. Moffat more than we did; but he was willing to take our numbers.

134. Was that done? Yes, it was; I saw it done.

135. Do you remember the time when Mr. Holloway, the Presiding Officer, signed the paper which you likewise signed? Yes.

136. Do you remember whether he signed first, or did he sign after any of you? I think he signed it first.

137. Do you remember whether he signed before the alteration was made? No; after, I think.

138. Will you swear he did? Yes.

139. Will you tell us what circumstance brings that to your recollection? Because I recollect the erasure of the numbers.

140. Who erased them? The poll clerk. He then handed the paper to Mr. Holloway, and Mr. Holloway signed it, and I think I signed it last. I do not know whether my name is last or not.

141. That is your impression? Yes.

142. If you look at that (*Exhibit 2 C*) you will see that you did not sign last—if you are mistaken on that point might you not be mistaken on the other? I see I have signed the third.

143. Look at this writing—(*handing Exhibit 2 C to witness*)—is not that certificate written in different ink from the signature? Yes.

144. Looking at that, do you think that “We, the undersigned” was written immediately upon the indorsement of the original number before the alteration took place? No, it was not.

145. Do I understand you that there is a difference in the ink—that the name of the poll clerk, and of the three scrutineers, is much blacker than the signature of Mr. Holloway and the certificate? This was written after the numbers were made correct, and we all signed it.

146. Did Mr. Holloway, the Presiding Officer, sign it as the Presiding Officer before he submitted it to you for your signature? Yes; he inserted his name there.

147. Is it the fact that after he submitted it to you, as so signed by him, you protested against the numbers as certified by him? I could not swear to that. The fact of the matter is I could not swear positively about that, for this might have been altered before Mr. Holloway put his name or after, but I believe it was afterwards.

148. You will not swear whether it was before or afterwards? No; not either.

149. Your memory is not very good—you thought your name was at the bottom of the return and you now find it is the third from the bottom? Yes.

150. But, at all events, the alterations, whatever they were, took place without any recounting of the votes? Yes; there was no counting over at all—Mr. Holloway put the papers on one side and said “If you cannot agree, you must count them over yourselves.”

151. Do you remember the number of votes you had? 110, I think—I gave you my paper.

152. Is that it (*handing a paper to witness*)? No; that is not mine.

153. Is that it (*handing another paper to witness*)? No.

154. *By Mr. Garrett*: Was there a duplicate copy of this paper (*Exhibit 2 C*)? No; I do not know anything of any other.

155. *By the Chairman*: You signed only one statement—you did not sign any duplicate? No.

156. *By Mr. Smart*: Mr. Bunting, I believe, was my scrutineer? Yes.

157. And he made his return one or two more than Mr. Scrutton in my favor? Yes.

158. But, to agree with your numbers, he struck the one or two out? No; we had an argument over it.

159. However, he did so? Yes.

160. You and Mr. Scrutton agreed as to the final state of the poll? Yes.

161. That was before Mr. Gorton brought you this paper to sign? Yes.

162. When Mr. Gorton brought you this paper to sign, did you refuse to sign it because you did not agree with him as to the numbers? Yes.

Mr. W. J.
Langdon.

21 Feb., 1861.

- Mr. W. J. Langdon.
21 Feb., 1861.
163. Had you all previously agreed as to the numbers—as to the final state of the poll? Yes.
164. As you refused to sign his paper, Mr. Gorton took your numbers? Yes, by the direction of Mr. Holloway.
165. Did Mr. Gorton make the erasures after you had objected to his numbers? Yes.
166. And adopted your numbers as correct? Yes.
167. After he had made the corrections did you sign the paper? Yes.
168. Is that correct? Yes.
169. And the numbers were agreed upon by the three scrutineers? Yes.
170. Placing me how many a-head? I do not remember.
171. You were all agreed? Yes.
172. *By the Chairman*: Will you look at this paper, and see what the numbers are there? Yes, they are 110, and 120.
173. That was the number you made? 110 we made for Mr. Moffat, and 120 for Mr. Smart; but the poll clerk made Mr. Moffat's more.
174. How many more—will you say what was the number for Mr. Smart before Mr. Gorton made the erasure? 116, I think; it appears to have been a 6 this (*referring to the erasure in the paper 2 C*).
175. Did the Presiding Officer count the number of votes in your presence? No; they were counted—I think the poll clerk counted them, and we tallied them with the number, and they corresponded.
176. They do not seem exactly to have corresponded? Our numbers, the scrutineers' numbers, did, but they did not come at all right with them.
177. Who counted them? I think it was Mr. Gorton, the poll clerk.
178. Did you count the votes? No.
179. Did any other of the scrutineers count the votes? No.
180. Did the Presiding Officer? I think not.
181. Did he do so in your presence? No.
182. *By Mr. Walsh*: Were the papers taken from the ballot-box in your presence? Yes.
183. Who took them out? Mr. Holloway.
184. Did he not count them? No; he took them out and put them on the file, and said Moffat—Smart—Eagar.
185. Were they counted and put on three separate files? No, all on one file.
186. He called the name as he put it on the file? Yes.
187. And the poll clerk took the names down? We all took them down.
188. *By the Chairman*: In point of fact, the Presiding Officer depended on the tally as taken down by the poll clerk and scrutineers? Yes; because when we wanted to go over them again, he pushed them on one side, and said, "If you do, you must count them yourselves."
189. *By Mr. Garrett*: When the Returning Officer took the papers out of the ballot-box, he said Moffat—Smart—Eagar, and put them on the file? Yes; he took them out and put them on the file.
190. Saying for whom the votes were? Yes.
191. *By Mr. Wilson*: You referred to the difference in the appearance of the ink, do you not think it might be caused by the difference of the pen? It appears very much like it.

Edward Holloway called in, and, having been sworn, was examined:—

- E. Holloway.
21 Feb., 1861.
192. *By Mr. Moffat*: You were one of the Presiding Officers at the Glebe election? Yes.
193. The poll closed on the 14th December last? I think so; it was closed at four o'clock.
194. I refer to the election wherein Mr. Smart and myself were two candidates—do you remember who was your poll clerk? Mr. Gorton.
195. Do you remember at the close of the poll Mr. Gorton handing you in a return of the votes of Messrs. Smart and Eagar, and myself? He did not hand in a return; I remember that he gave me a paper.
196. Will you state to the Committee the particulars? At the close of the poll, I commenced with a Mr. Jabez Bunting, who was scrutineer for Mr. Smart. I said, "What do you make the number of the return?" He answered, "So-and-so"—what they were I forget now. Then I went to Mr. Scrutton, and then to Mr. Langdon, Mr. Moffat's scrutineer, and found that the scrutineers agreed. Mr. Gorton told me that some three or four votes did not agree. He said, "As three are against me, I presume they must be right, and that I am wrong." I thought so too.
197. When the ballot-box was opened to take out the papers, in getting the number of votes did you not take out the papers, and call out each candidate's name? Yes.
198. And put it on the file? Yes I did—all of them.
199. Just as you got them? Yes.
200. Each one of the scrutineers kept a tally? Yes, of course, as I have explained.
201. You kept no tally yourself? I took the usual course.
202. Mr. Gorton, the poll clerk, kept a tally, and the scrutineers kept a tally? Yes.
203. When taking the papers out of the ballot-box, did you keep a tally yourself? I did not.
204. Who kept a tally for you? On all election occasions, it was kept by the poll clerk. My duty was to open the ballot-box, examine the votes, and give out the candidate's name for whom each voter recorded his vote.
205. *By the Chairman*: The tally was taken by the poll clerk. Yes.

206. *By Mr. Moffat*: Did you see Mr. Gorton indorse the statement on the back of his E. Holloway paper? I did; I saw him write on both papers.
207. What paper? A duplicate and the copy which you have. 21 Feb., 1861.
208. Who signed the duplicate? All present; the same parties signed both papers.
209. What did you do with that duplicate? I have asked that question outside, and it appears it was locked up in a box with the other papers, and sealed up.
210. Sealed up? So Mr. Gorton says. There was great confusion at the time; there was anxiety and confusion—*anxiety to get back to Balmain.*
211. *By Mr. Wolsh*: You have no distinct recollection of the circumstances? No distinct recollection; but I know there was a duplicate.
212. *By the Chairman*: Are you sure there was a duplicate? Quite sure.
213. Signed by all the parties? Yes; I did not write out the duplicate, it was written by Mr. Gorton.
214. *By Mr. Moffat*: You remember when Mr. Gorton signed the paper? I do.
215. When did you sign it? I signed the paper, to the best of my belief, after the scrutineers and Mr. Gorton signed it. I think so, I am not sure about that; but that I did sign it, I am quite convinced.
216. Do you think you did not sign it before they did? I think it was after; I think so.
217. Is your certificate before their names, or is it after their names? I really do not remember; all that I remember is, that it is on the paper I signed.
218. Did a dispute arise as to the number given in? The scrutineers agreed.
219. Was there any dispute between the scrutineers and the poll clerk as to the number given? As to the number, I do not understand you; there was a discrepancy between the numbers of the three scrutineers and the poll clerk.
20. Did any argument or dispute arise in consequence of that discrepancy? I was very angry with the poll clerk.
221. Never mind about that? I think that is an answer, for that shews there must have been some words. I was annoyed that the votes did not exactly tally.
22. In consequence of your anger, was there anything done by the poll clerk; was the difference reconciled, and how? Yes, it was. There were three gentlemen—opponents—who were watching each other closely, and as they agreed, I felt convinced they must be right, and that the poll clerk was wrong.
223. You did not say he felt convinced? He told me so.
224. Was the alteration made in the numbers? Yes, he tallies the numbers, and gives them in, convinced that he had made a mistake.
225. There was no re-counting? No.
226. You undertake to swear the mistake was not made by the three scrutineers? Certainly not; it is possible, but not probable, that the mistake was made by them.
227. *By the Chairman*: Was there any discrepancy among the scrutineers themselves as to the number? There was only for a moment. Mr. Smart's scrutineer had one less for Mr. Smart than he was entitled to, but he gave in at once.
228. Then there were only two of the scrutineers that agreed? The other one gave in.
229. But still his count was one less for Mr. Smart? Yes, it was one less.
230. It did not agree with the count of the other two scrutineers; in point of fact, there were only two out of four who agreed as to the number? Just so.
231. When you say you asked the scrutineers, one by one, what the tally was, what tally do you allude to? I will explain. (*Witness illustrated the method adopted on paper.*)
232. When was that tally taken? As I open the box I say, "So and So, So and So," and put the papers on the file.
233. Your duty was to count the number of votes for each of the candidates—did you depend upon yourself, or the tally of any one else, for the number? I depended, as is usual on such occasions, upon the tally kept by the poll clerk.
234. But you did not adopt the tally taken by the poll clerk? No, I did not; because I believed it to be incorrect.
235. Not from your own knowledge? I believed it to be incorrect from the agreement of the scrutineers.
236. How many of the scrutineers? I believe all of the scrutineers: I say that the one who did not agree with the others immediately gave way.
237. Did he count the votes over in the meantime? I am not prepared to say that.
238. Did you refer to the tally, and find that he had made a mistake? It was against him, the mistake was—or rather, against Mr. Smart.
239. Are you prepared to swear that the number to which you put your name is the correct number? The correct number, in the opinion of all the parties in the booth after Mr. Gorton had given way, and said—"There are three against me, I suppose I must be in error."
240. Were all agreed after Mr. Gorton had given way, and Mr. Smart's scrutineer had given way? That difference did not last a second.
241. You said you were very angry with the poll clerk? Yes.
242. Did you express that anger to him? Yes.
243. Do you think that it was in consequence of that, or in consequence of the poll clerk becoming convinced that he had made an erroneous count, that he gave in? I firmly think that—I think that he must have been convinced that he had put the votes down wrong. He had some new method of keeping the tally. I believe he kept a wrong tally. The scrutineers were such thorough opponents, watching each other so closely.
244. *By Mr. Parkes*: Did your poll clerk at first express any desire to adhere to his own return? I do not think he did when he found the others against him.

- M. Holloway. 245. He unhesitatingly gave in? He did.
246. Without any hesitation? Yes; I suggested to him you had better say, "I certify, to the best of my belief, this is correct," instead of which he said "This is correct."
- 21 Feb., 1861. 247. *By Mr. Moffat*: Who wrote the certificate? That is written by Mr. Gorton.
248. The certificate? That is my writing.
249. That is not written by Mr. Gorton? No. Then it would be the other that was—that is his doing.
250. You wrote it (*the certificate*)? Yes; he is an old electioneering officer, and I suppose I wrote it from his dictation.
251. Will you state why my name stands first on the list, if I have not the highest number of votes? I really can't tell you.
252. Will you swear that I have not the largest number of votes, as declared by the poll clerk to you? I could not swear it. I do not think it. I really do not know.
253. Is it not customary in footing up the votes on any occasion, especially at general elections, to write the name of the highest first, next the second, and so on? I suppose it is, or should have been.
254. Did you ever see any departure from that rule in any election matter? I have had so little to do with elections that I can't say; this is only the second occasion that I have presided at an election.
255. Are you aware of any departure from that rule? To be candid, I never heard the question put before.
256. *By Mr. Walsh*: Do you recollect how the names stood on the voting paper? I do.
257. How did the names stand on the voting paper? William Palmer Moffat, Geoffrey Eagar, Thomas Ware Smart.
258. Is that one of the voting papers? Yes; that is one. (*A voting paper—vide Appendix D—was handed in.*)
259. *By the Chairman*: Are you aware that it was, under the Electoral Act, your duty to have a duplicate transmitted to the Returning Officer? Yes.
260. That was not done in this case? You will find a duplicate on examining the contents of the box, similar to that (*pointing to a paper*).
261. Was that transmitted after this? That was left the next morning, the papers were all sealed and locked up in the box. That was the paper taken by me to Mr. Shoobert (*referring to the paper already handed in—2 C*).
262. Was the other transmitted afterwards? It was in the box in Mr. Shoobert's possession.
263. Was it sealed up? Mr. Gorton tells me it is sealed up; I have not the slightest doubt it was sealed up.
264. Was it not your duty to transmit it? I had instructions from the Returning Officer to be, by six o'clock, at Balmain.
265. Will you answer my question, whether it was not your duty to have transmitted both those documents? It was my duty.
266. Did you in reality transmit it? It was placed, to the best of my recollection, in the box, and given to Mr. Shoobert, with all the papers belonging to the election.
267. You say that in counting the number of votes you depended upon your poll clerk? Upon the general agreement of both.
268. You can't say of your own knowledge whether the numbers were correct? I cannot say I counted them, but I examined them; I did what is done in nineteen out of twenty cases in electioneering matters—I took the poll clerk's statement.
269. You did not take the poll clerk's? I did not think it was correct.
270. Is that done in nineteen cases out of twenty? No; I think the poll clerk seldom makes such an error.
271. *By Mr. Walsh*: When you say that this duplicate was sealed up, do you mean sealed up in a parcel with the voting papers? It was placed with them, I depended upon Mr. Gorton as an efficient person, and I think it very likely you will find it.
272. You took one with you to Mr. Shoobert? Yes.
273. And the other remained in the ballot-box with the voting papers? Yes.
274. And was sent the next day? Yes.
275. *By the Chairman*: Was that done of your own knowledge? It was done. It was signed by all the parties. I could not say that it was sent, but I do not think it was left in the booth, for there was no furniture, and it would have been seen if it had been left. I think you will find it there.
276. I may mention that the Returning Officer stated in evidence that he received no such duplicate? Very likely it may be sealed up.
277. One of the scrutineers stated that he did not sign such a paper? I think you will find that he did.
278. In the 52nd section of the Act it is stated that it is the duty of the Presiding Officer to count the number of the votes, then to seal up all the ballot papers; and, "with the least possible delay deliver them or cause them to be delivered together with the Roll supplied to him and signed by him and the poll clerk or clerks to the Returning Officer" And shall at the same time transmit to such Returning Officer a written statement signed by such Presiding Officer and any scrutineers who may be present containing the number in words as well as figures of the votes for each candidate so counted as aforesaid and shall by the next possible opportunity thereafter also transmit a duplicate of such statement signed and countersigned as aforesaid? I think that is for the Returning Officer to do.
279. All these are the duties of the Presiding Officer? I gave my box, with the contents, over the next day. On the night of the election there was very great confusion and press of time. As many as 800 people were waiting at Balmain for the return of the poll.

Mr. C. F. Gorton recalled, and re-examined by Mr. Moffat :—

- 280. Look at that paper—(2 C)—this is your writing—the names of the candidates? Yes.
- 281. And this—(Exhibit 2 C)—will you state why you placed the names in that way on the list before you commenced to number? I did so before I examined this list.
- 282. Does it correspond with this—(Exhibit D)? Yes.
- 283. Will you state why, if I had not the largest number of votes, you put my name first after you had counted up the number of votes? I do not know.
- 284. Will you explain to the Committee how it is that, while Moffat, Eagar, and Smart are put on the heading of the paper, my name is put first on the list to which the aggregate numbers are attached, Mr. Smart's second, and Mr. Eagar's third? I do not know any particular reason.
- 285. You cannot account for it? No.
- 286. Do you remember making a copy of that—(Exhibit 2 C)? Yes.
- 287. When? A copy of this was made, but not of my tallies.
- 288. What did you make a copy of then? I indorsed another paper which is sealed up, I believe.
- 289. Did you show the alteration in the duplicate you sent? It was copied from this.
- 290. Not shewing the alteration? No.
- 291. The duplicate did not shew the alterations? No.
- 292. Then it was not a duplicate? It was not a *fac simile* but it was a duplicate.
- 293. How much did the duplicate contain? The other one contained merely the written numbers on that side (*referring to the side of the paper containing the certificate*).
- 294. *By the Chairman*: Did it contain all upon that side? Yes; including the signatures; but I rather think, in the duplicate, the scrutineers did not sign; they went away before it was written. It contained only the Presiding Officer's and my own signature—but I will not be positive.
- 295. Is that according to the Act—should not the duplicate be signed by the scrutineers? Yes, but the scrutineers will not wait in most cases; they run away to the Committees to give the result of the poll; we cannot compel them to remain.
- 296. If you had the duplicate prepared before they signed the original—could you not get it signed that way? Yes; we might pass the two together. It is not always done that way.
- 297. *By Mr. Moffat*: Was anything on the duplicate except what appears on the face of that sheet? No, I think not.
- 298. Then unless it was explained by the other documents, no one could tell to what that referred? It is marked at the top, I think, the state of the poll.
- 299. I asked you just now, and you said there was nothing but what appeared on the face of the other; if it were so could any one tell to what it referred? No. I think there was also written down the correct state of the poll at the booth A to L, Glebe, at four p.m., on Friday, 14th December, 1860.
- 300. How does your memory serve you to say that, when you said just now that that side was not sent? I merely meant that the tallies were not taken down.
- 301. When you adopted the number at the foot of your tally, did you think you were correct? I did.
- 302. *By the Chairman*: Do you recognize that paper (*handing a parcel to witness*)? 2 B is the Presiding Officer's writing.
- 303. Did you seal that paper? No, the Presiding Officer sealed it.
- 304. You have spoken of this duplicate having been transmitted in a sealed packet? Yes; it was transmitted to the Returning Officer. I do not know whether this (2 C) was transmitted to the Returning Officer, or the other. One was put in the box and the other was sent by hand.
- 305. Was it enclosed along with these voting papers? I believe so; I handed them to the Returning Officer, who made them up.
- 306. The Presiding Officer made them up? Yes.
- 307. *By Mr. Walsh*: If that parcel (*pointing to one*) be the parcel containing the voting papers in the Glebe from A to L, is it likely to contain the paper you refer to? Yes.
- 308. *By the Chairman*: Will you examine these papers at the table? (*Witness examined some.*)
- 309. Are there any other papers but these? No.

Mr. C. F. Gorton.
21 Feb., 1861.

Mr. Robert Law Scrutton called in, and, having been sworn, was examined :—

- 310. *By Mr. Moffat*: Were you Mr. Eagar's poll clerk at the last general election? No, his scrutineer.
- 311. Who was the Presiding Officer in your booth? Mr. Holloway.
- 312. Mr. Gorton was what? Poll clerk.
- 313. Do you remember the number on the first statement of the numbers given by the poll clerk to Mr. Holloway? I have a memorandum on paper taken at the time. (*Witness produced the same.*)
- 314. From A to L? Yes.
- 315. Can you state how the numbers stand? (*Witness handed in a paper.*)
- 316. *By the Chairman*: Will you state the numbers for each candidate? I can't be very positive of these numbers, but I believe there were 116 for Mr. Moffat, 112 for Mr. Smart, and 58 for Mr. Eagar.
- 317. *By Mr. Moffat*: You cannot positively state that? No, for I have not prefixed the names to these numbers.

Mr. R. L. Scrutton.
21 Feb., 1861.

Mr. R. L.
Scrutton.
21 Feb., 1861.

318. Then you were doubtful about the candidates for whom the numbers were polled?
Precisely.
319. Did you ever give Mr. Eagar a copy of the way the numbers stood? Yes, I did.
320. Is that it (*handing a paper to the witness*)? No, it is not.
321. Is that (*handing another paper to witness*)? No, nor that.
322. Whose handwriting is that? I am not aware.
323. Is it Mr. Eagar's? I am not aware; I think it is like Mr. Eagar's. I think I have the paper in my pocket. (*Witness produced a paper which he handed to Mr. Moffat.*)
324. Does that correspond with the fact as it was in your own mind? That was my first conception, but having no names on the paper, and having been informed to the contrary, my impression was shaken.
325. At all events, at the close of the poll, had I a majority as declared by the polling clerk to the Presiding Officer in your booth at the Glebe? Yes.
326. Did any dispute arise subsequently to the giving of the numbers of the poll clerk to the Presiding Officer—did any dispute arise between the scrutineers and the poll clerk? The scrutineers all differed, and we at once stated that we differed, from the poll clerk.
327. Did any altercation or argument take place, or was anything said as to the numbers given by the poll clerk to the Presiding Officer? Yes, there was a statement made to the effect that the Returning Officer was bound by his poll clerk—that he was not to copy our returns; whereon he made out the lists in accordance with that view. When it was handed round to Mr. Smart's scrutineer, he objected, because he knew it to be wrong, and said he would not sign it. I said I would not sign what I believed to be incorrect, and then the Presiding Officer had the list altered to the scrutineers' numbers, I believe by a penknife.
328. At all events, do you say, whatever the numbers were, the first numbers given by the poll clerk gave me a majority? To the best of my belief.
329. Have you any doubt? My belief has been shaken.
330. Have you any doubt? Yes.
331. That the numbers were in my favor? I believe that my impression was caused in consequence of the rotation of the names on my pencil memorandum.
332. Taking the impression that lay in your mind had I a majority, as recorded by the poll clerk? I had that impression at the time.
333. That was subsequently altered? Yes.
334. The numbers—were they subsequently altered? Yes, they were.
335. By the poll clerk? Yes.
336. Did any one direct him to do so? Yes, I think Mr. Holloway, but I did not hear distinctly what was said.
337. By the alteration the original tally was altered entirely? Yes.
338. The poll clerk's tally was entirely laid aside, and the numbers given by the scrutineers adopted? Yes.
339. Do you remember what your number was, as the scrutineer of Mr. Eagar? I have it on paper—56.
340. 56 or 58? 56; I made it two less than the others.
341. Do you remember what Mr. Bunting made it? 58.
342. Do you remember what Mr. Langdon made it? 58.
343. Did Mr. Langdon and Mr. Bunting correspond in the first instance? With Mr. Eagar?
344. No; I am speaking of themselves. Did Mr. Langdon and Mr. Bunting correspond? Did they correspond for each candidate?
345. Did the tally kept by Mr. Langdon, and the tally kept by Mr. Bunting, correspond? Do you mean in every particular, or in respect to one candidate only?
346. In the number for Mr. Smart—I will take Mr. Smart—do you remember whether the tally kept by Mr. Langdon corresponded with the tally kept by Mr. Bunting for Mr. Smart? They did.
347. Did they correspond for me? They did not, by one.
348. Wherein did the difference lie—was it one less? Mr. Bunting—Mr. Smart's scrutineer—made it one less than your scrutineer.
349. For me? Mr. Bunting made it one less than Mr. Langdon.
350. For whom? Mr. Langdon was for Mr. Moffat; Mr. Bunting for Mr. Smart.
351. Then was there any positive agreement as to the tally by the three scrutineers? Do you mean as to one?
352. I mean as to the three candidates; was there a positive agreement in the numbers arrived at? I could not now tell which number was adopted—110 or 109.
353. Before it was agreed to change the number given by the poll clerk to that given by the scrutineers? There was a general intimation given by the Returning Officer that the number of the scrutineers should be adopted.
354. I do not ask that—was there any positive agreement in the numbers before they agreed to adopt the numbers given by the scrutineers? There was no positive agreement.
355. They agreed to agree among themselves first? The Returning Officer said as the three scrutineers agreed in their numbers the amount of the poll clerk must be altered.
356. Did the scrutineers agree in the amount? It was the act of signing that made the agreement—no other; we had no conversation about it.
357. Was there not an intimation that there was very little time to spare? We all felt that.
358. Was it intimated that as there was little time it was better not to count—that it was better to bring the matter to a close any way? I do not know that there was any recommendation in that way. I believe there was something said by the Presiding Officer to the effect that he would not go over the votes again.
359. But he would do what? He said he would not go over them again. I think it terminated there.

360. But there was nothing done. You say a certain amount was given by the poll clerk? This was afterwards changed. Mr. R. L. Scrutton.
361. Upon what principle was that changed—on the agreement of the scrutineers who tallied in the numbers? We entered into no agreement. 21 Feb., 1861.
362. Then your numbers agreed? We had no conversation or no statement that we would agree to so and so.
363. Then it was for convenience sake that a certain number was adopted, and the alteration made—Smart, so many—Moffat, so many—a sort of compromise? There was no comparison; there was an understanding.
364. *By Mr. Smart*: After the Returning Officer closed the poll, did you as Mr. Eagar's scrutineer make up the total—did you agree with my scrutineer and Mr. Moffat's as to the numbers polled for the three candidates? No, I did not.
365. What was the difference? There was a difference of one in one of the candidates votes, and of two in another's.
366. How near did you agree—Mr. Bunting you say gave way in favor—? In favor of Mr. Moffat.
367. Within that one the scrutineers agreed? No, I scored two less for Mr. Eagar.
368. How many did you get as agreed upon by the scrutineers? 110 for Mr. Moffat, 120 for Mr. Smart, and 56 for Mr. Eagar.
369. That was the final conclusion the scrutineers arrived at? No, that was the total of my score.
370. Did that differ from the others, or to what extent? The poll clerk made it 116 for Mr. Smart.
371. When the Deputy Returning Officer gave that return for signature, did you and the other scrutineers refuse to sign it? Yes, Mr. Bunting did.
372. Why did you refuse to sign it? Because it was incorrect.
373. Did the other scrutineers agree for the same reason, because the poll clerk was incorrect? One only did; Mr. Langdon was silent.
374. The scrutineers refused to sign because the poll clerk's return was not correct? Yes.
375. After the scrutineers had stated this return was not correct to the Returning Officer, what was the cause of the alteration? I think it was made simply on the statement that we all tallied.
376. The Deputy Returning Officer agreed to take the scrutineers' as the poll clerk's return? Yes.
377. Your final return was 110 for Mr. Moffat, 120 for Mr. Smart, and 56 for Mr. Eagar? Yes.
378. *By Mr. Moffat*: Mr. Bunting gave 109 for me, did he not? Yes.
379. You gave 56 for Mr. Eagar, and Mr. Bunting gave 58? Yes.
380. The poll clerk's return was ———? 116, I believe, or did, up to a few days since.
381. *By Mr. Walsh*: That paper does not appear to be in your own handwriting (*handing paper* *P*)? It is.
382. There has been one small addition in pencil? ———
383. *By the Chairman*: When did you make that out? On the day following the election.
384. Did you make it at the time? No, I did not.
385. *By Moffat*: Did you make any other pencil memorandum? Yes, I did.
386. Where is that? I have it not. I think I gave it to Mr. Eagar.

Mr. James Bradley called in, and, having been sworn, was examined:—

387. *By Mr. Moffat*: Were you the Presiding Officer at the last general election at the Glebe? Yes. Mr. J. Bradley.
388. In the booth "M to Z"? Yes. 21 Feb., 1861.
389. You remember that when the poll closed at four o'clock you were in the booth where Mr. Holloway was? Yes, I just ran in; we had closed ours about a quarter of an hour before.
390. Did you close a quarter before the hour, or a quarter after it? We were about five minutes after.
391. Will you state what passed under your observation while you were in the booth of Mr. Holloway? A little bit of a dispute was going on, and I believe at that time some differed from the others. I did not know all their names. There was a majority read out—four for you, and afterwards I believe they rectified it.
392. Did you see a penknife used? Yes, Mr. Gorton was making some erasure at the time.
393. Are you positive of this—that I was declared to have a majority of four—that I was in? They were expressing that at the time.
394. *By the Chairman*: Who? I did not know.
395. *By Mr. Moffat*: Did any one deny it when you heard it stated openly? Others said that they thought it was a mistake; they could not tell, and they could not till they went over again. Mr. Holloway said they had better go over it again, and asked me to retire.
396. *By the Chairman*: Were any other persons besides the poll clerk and the scrutineers present with the Returning Officer when you went in? No, except my poll clerk.
397. Did you examine the papers? No; I looked over casually, and saw Mr. Gorton erasing figures, and there was a dispute about four votes, and Mr. Holloway said that he thought it would be best to go over the papers again and count them over.
398. You did not examine the papers so as to see what was written? No; I was merely looking over them casually, because they asked me to retire, not to interrupt, and I went away.

1861.

Legislative Assembly.

NEW SOUTH WALES.

PRIVILEGE.

REPORT

FROM THE

SELECT COMMITTEE

ON

P R I V I L E G E ;

TOGETHER WITH THE

PROCEEDINGS OF THE COMMITTEE,

MINUTES OF EVIDENCE,

AND APPENDIX.

ORDERED BY THE ASSEMBLY TO BE PRINTED,
9 April, 1861.

SYDNEY:
THOMAS RICHARDS, GOVERNMENT PRINTER,
PHILLIP-STREET.

1861.

[Price, 4d.]

191—A

CONTENTS.

	PAGE.
Extracts from the Votes and Proceedings.. .. .	3
Report	5
Proceedings of the Committee	6
List of Witnesses	7
List of Appendix	7
Minutes of Evidence.. .. .	9
<i>Separate Appendix</i>	14

1861.

EXTRACTS FROM THE VOTES AND PROCEEDINGS OF THE
LEGISLATIVE ASSEMBLY.

VOTES, No. 47. WEDNESDAY, 3 APRIL, 1861.

7. Privilege :—Mr. Gray moved, without notice,—

(1.) That a Select Committee, with power to send for persons and papers, be appointed to inquire into and report upon certain language, reflecting upon the character of this House, reported to have been used by His Honor the Chief Justice, while judicially engaged in the Supreme Court of the Colony, on Tuesday, the 2nd instant.

(2.) That such Committee consist of the Speaker, Mr. Windeyer, Mr. Hay, Mr. Parkes, Mr. Walsh, Mr. Wilson, Mr. Wisdom, Mr. Arnold, Mr. Piddington, and the Mover.

Debate ensued.

Mr. Rusden demanded that the said Committee be appointed by Ballot.

* * * * *

And the House continuing to sit till after Midnight :—

THURSDAY, 4 APRIL, 1861, A. M.

* * * * *

Question then put,—(1.) That a Select Committee, with power to send for persons and papers, be appointed to inquire into and report upon certain language, reflecting upon the character of this House, reported to have been used by His Honor the Chief Justice, while judicially engaged in the Supreme Court of the Colony, on Tuesday, the 2nd instant.

And Division called for ; but, there being no Member for the Necs, no Division could be had, and the Speaker declared the Question to have passed in the *Affirmative*.

Whereupon the House proceeded to the Ballot, and the Speaker declared the following Members to be the Committee duly appointed :—Mr. Gray, Mr. Arnold, Mr. Parkes, The Speaker, Mr. Wisdom, Mr. Wilson, Mr. Windeyer, Mr. Hay, Mr. Walsh, and Mr. Piddington.

* * * * *

VOTES, No. 49. FRIDAY, 5 APRIL, 1861.

5. Privilege :—Mr. Gray moved, without notice,—

(1.) That the Select Committee on Privilege, appointed upon the 4th instant, have power to sit on Saturday the 6th, and Monday the 8th instant.

Debate ensued.

Question put and passed.

(2.) That the following Message be carried to the Legislative Council :—

MR. PRESIDENT,

The Legislative Assembly having appointed a Select Committee “ to inquire into and report upon certain language, reflecting upon the character of this House, reported to have been used by His Honor the Chief Justice, while judicially engaged in the Supreme Court of the Colony, on Tuesday, the 2nd instant,” and that Committee being desirous to examine the Honorable John Fletcher Hargrave, Esquire, Member of the Legislative Council, in reference thereto, requests that the Legislative Council will give leave to its said Member to attend accordingly on such day and days as shall be arranged between him and the said Committee.

Legislative Assembly Chamber,
Sydney, 5 April, 1861.

Speaker.

Question put and passed.

* * * * *

SATURDAY,

SATURDAY, 6 APRIL, 1861, A.M.

* * * * *

12. Member of Legislative Council as Witness:—The Speaker reported that, while the House was in Committee on the Chinese Immigration Regulation Bill, the following Message had been received from the Legislative Council:—

MR. SPEAKER,

In answer to the Message from the Legislative Assembly, dated the 5th day of April instant, requesting leave for the Honorable John Fletcher Hargrave, a Member of the Legislative Council, to attend and be examined before a Select Committee of the Legislative Assembly, appointed to inquire into and report upon certain language, reflecting upon the character of the Legislative Assembly, reported to have been used by His Honor the Chief Justice, while judicially engaged in the Supreme Court, the Council acquaints the Assembly that leave has been granted to its said Member to attend and be examined by the said Committee, if he think fit.

*Legislative Council Chamber,
Sydney, 5 April, 1861.*

W. W. BURTON.
President.

VOTES, No. 50. TUESDAY, 9 APRIL, 1861.

- I. Privilege:—Mr. Gray, on behalf of the Chairman, brought up the Report from, and laid upon the Table the Minutes of Proceedings of, and Evidence taken before, the Select Committee, appointed on the 4th instant, to inquire into and report upon certain language, reflecting upon the character of this House, reported to have been used by His Honor the Chief Justice, while judicially engaged in the Supreme Court of the Colony, on Tuesday, the 2nd instant,—

Report read at length, by the Clerk, by direction of the Speaker.

Ordered, That the Report and accompanying Documents be printed.

1861.

PRIVILEGE.

REPORT.

THE SELECT COMMITTEE of the Legislative Assembly, appointed on the 4th instant, "to inquire into and report upon certain language, reflecting upon the character of this House, reported to have been used by His Honor the Chief Justice, while judicially engaged in the Supreme Court of the Colony, on Tuesday, the 2nd instant,"—with power to send for persons and papers,—and further empowered, the day following, "to sit on Saturday the 6th, and Monday the 8th instant,"—have agreed to the following Report:—

Your Committee have examined the Attorney General, Mr. W. Bede Dalley, Mr. J. Williams, Crown Solicitor, Mr. E. K. Sylvester and the Rev. William Ridley, Reporters of the two daily papers, and Mr. James Carroll, a Solicitor of the Supreme Court. These gentlemen were present on the occasion referred to. According to their evidence the language used was as follows:—

A Prisoner arraigned for trial having been permitted to make some observations to the Court, said, "I object to being tried by Your Honor," addressing the Chief Justice, "because you have prejudicial feelings against me." On this, His Honor, mistaking the word "prejudicial" for "political," said, "Why should I have political feelings against you,—are you a Member of Parliament?"

But it does not appear to your Committee that the Chief Justice had any intention to reflect upon the character of your Honorable House which renders it necessary to take further steps in the matter.

T. A. MURRAY,
Chairman.

Legislative Assembly Chamber,
Sydney, 6 April, 1861.

PROCEEDINGS OF THE COMMITTEE.

FRIDAY, 5 APRIL, 1861.

MEMBERS PRESENT:—

The Hon. the Speaker,	Mr. Parkes,
Mr. Arnold,	Mr. Wilson,
Mr. Gray,	Mr. Windeyer.

On motion of Mr. Gray, the Honorable the Speaker called to the Chair.

Committee deliberated relative to the conduct of inquiry into certain language, used on the Bench by His Honor the Chief Justice, reflecting on the character of the House,—ordered on the 4th instant.

It was Resolved:—

That in order to enable an early completion of the inquiry, a motion be made in the House *this day*, that the Committee have power to sit on Saturday the 6th, and Monday the 8th instant.

Mr. Gray requested to move the same.

It was further Resolved:—

(1.) That the Honorable the Attorney General, Mr. W. B. Dalley, Messrs. E. K. Sylvester and W. Ridley, Reporters to the Daily Papers, and Mr. J. Carroll, Solicitor, be examined before the Committee, at the next meeting.

(2.) That a letter be addressed to His Honor the Chief Justice, informing of the appointment of the Committee, and the intention to commence the examination of the witnesses named *To-morrow*, at Ten o'clock—expressly affording His Honor the opportunity of being present.

Motion to be made in the House for transmission of a Message to the Legislative Council, requesting leave to the Honorable J. F. Hargrave, Esq., to attend and be examined.
[Adjourned till to-morrow (Saturday), at *Ten o'clock*.]

SATURDAY, 6 APRIL, 1861.

MEMBERS PRESENT:—

The Honorable the Speaker in the Chair.	
Mr. Arnold,	Mr. Parkes,
Mr. Gray,	Mr. Wilson.

Order of the House, dated yesterday, empowering Committee to sit on Saturday the 6th, and Monday the 8th instant,—before the Committee.

The Honorable J. F. Hargrave, Esq., M.L.C., attending, pursuant to leave granted by the Legislative Council, examined.

Witness withdrew.

W. B. Dalley, Esq., *Barrister-at-Law*, called in and examined.

Letter ordered by Committee yesterday (*Separate Appendix A.*), having been dispatched to the Chief Justice, His Honor's answer, dated Friday evening, addressed to the Clerk of the House, conveying acknowledgments to the Committee, and informing the Chairman of his not proposing to avail of the opportunity to be present (*Separate Appendix B.*), now received,—submitted through the Chairman.

Committee proceeding to deliberate upon the propriety of a question suggested by Mr. Parkes,—

Witness, by leave, retired.

Committee having deliberated, and the suggested inquiry being waived,—

Witness returned,—

And no further examination being required,—

Witness withdrew.

Mr. E. K. Sylvester, *Reporter, S. M. Herald*, called in and examined.

Witness withdrew.

Rev. W. Ridley, *Reporter, Empire*, called in and examined.

Witness withdrew.

And Mr. J. Carroll, also summoned as a witness, not being yet in attendance,—

And Mr. J. Williams, having been requested to attend,—

J. Williams, Esq., *Crown Solicitor*, attending accordingly, called in and examined.

Witness withdrew.

A Member of the House, not of the Committee, requested to withdraw—retiring accordingly.

Committee deliberated upon the evidence already taken, and whether it would be needful to supplement the same in any respect.

And Mr. J. Carroll, a witness, not having yet attended,—

Committee further deliberated in reference to the conclusion of the inquiry, and suggested the nature of Draft Report.

Remaining

Remaining witness being now in attendance,—
 J. Carroll, Esq., *Solicitor of the Supreme Court*, called in and examined.
 Witness excused his late attending, the same being consequent on receipt of summons
 only when recently arriving at his office.
 Witness withdrew.
 Committee having then deliberated upon the necessity or expediency of a further
 meeting, before the settlement of the Draft Report,—
 Consideration of Report resumed,
 And Draft read;—
 When, on motion of Mr. Wilson, the Draft Report, as read, agreed to.
 Report ordered.

LIST OF WITNESSES.

SATURDAY, 6 APRIL, 1861.

	PAGE.
The Hon. J. F. Hargrave, Esq., M.L.C., <i>Attorney General</i>	9
W. B. Dalley, Esq., <i>Barrister-at-Law</i>	10
E. K. Sylvester, Esq., <i>Reporter, S. M. Herald</i>	11
Rev. W. Ridley, <i>Reporter, Empire</i>	11
J. Williams, Esq., <i>Crown Solicitor</i>	12
J. Carroll, Esq., <i>Solicitor</i>	13

LIST OF SEPARATE APPENDIX.

	PAGE.
A.	
Clerk of the Legislative Assembly to His Honor the Chief Justice, 5 April 1861 ..	14
B.	
His Honor the Chief Justice to Clerk of the Legislative Assembly, 5 April, 1861 ..	14

1861.

Legislative Assembly.

NEW SOUTH WALES.

MINUTES OF EVIDENCE

TAKEN BEFORE

THE SELECT COMMITTEE

ON

P R I V I L E G E .

SATURDAY, 6 APRIL, 1861.

Present:—

MR. ARNOLD,	|	MR. MURRAY,
MR. GRAY,	|	MR. PARKES,
MR. WILSON.		

THE HONORABLE THE SPEAKER IN THE CHAIR.

The Honorable John Fletcher Hargrave, Esq., called in and examined:—

1. *By the Chairman:* You are Attorney General? Yes.
2. Were you in the Supreme Court on Tuesday last, the 2nd instant? Yes, in the Criminal Court at Darlinghurst. The Hon. J. F.
Hargrave,
Esq.
3. Were you there on the occasion of the trial of a man of the name of Clarke? Yes, I was there as Attorney General, to conduct the prosecution of Clarke, who was indicted for burglary. 6 April, 1861.
4. You conducted the prosecution? Yes.
5. Did Clarke make any objection—did he say anything at all on that occasion before the trial commenced? Yes, when he was called upon to plead, after having stood up to his name with the other prisoner, he asked the Court whether he might be allowed to address a few observations; the Chief Justice hesitated—I did not see any reason to object on the part of the Crown—and the Chief Justice said he might. Then he, having received permission, said, “I wish to object, Sir, to your Honor’s trying me, as I think you have political feelings against me.” This is as I heard the words. I was surprised, of course. The Chief Justice hesitated, and nothing was said in Court. After a minute, the Chief Justice said, “Political feelings! what, are you a Member of Parliament?” These were the words; and the man replied, “Not yet,” in a loud tone, and I thought a threatening sort of tone. I said nothing, as I did not consider it my duty to interfere on the part of the Crown. The Crown Solicitor, Mr. John Williams, who was near me, on the part of the Crown to conduct the prosecution, said, “The man said prejudicial, not political.” I was about to rise and state that to the Court, when the Chief Justice caught the word himself from the Crown Solicitor, who addressed either his Honor or myself—however, he caught the word “prejudicial,”—and then he said to the prisoner, “What did you mean by prejudicial?” or what you said. The prisoner then entered into a long story about being tried by His Honor at Bathurst two years ago, and sentenced heavily by him; and stated that, when His Honor was passing sentence, he expressed his regret that he was not able to sentence him to be hanged for that offence. That was all that took place, except that the prisoner entered into the detail of the trial in longer terms than I have used. Then the trial proceeded; the man having concluded his statement pleaded guilty. It was then out of my hands as Attorney General, and anything that was done could affect only the sentence and not the trial.

- The Hon. J. F. Hargrave, Esq.
6 April, 1861.
6. That was simply what occurred? Yes.
7. There was no further allusion to Parliament in any way? Not the slightest. I thought the prisoner was about to object to the jurisdiction of the Court, and I could not imagine in what way it could arise. It was evidently a mistake. Of course both the Chief Justice and myself were anxious to allow the prisoner on his trial every possible opportunity of objecting in any way—of protecting himself in any way he thought proper.
8. *By Mr. Parkes*: I gather from your evidence that you understood the prisoner to say "political feeling"? Yes, that was the way I heard it.
9. You understood him as the Chief Justice understood him? Yes; I thought that was the word.

W. B. Dalley,
Esq.

William Bede Dalley, Esq., called in and examined:—

- 6 April, 1861.
10. *By the Chairman*: You are a barrister? Yes.
11. Were you in the Supreme Court on Tuesday last? I was.
12. When a person of the name of Clarke was placed on his trial? Yes.
13. Did any conversation pass between Clarke and His Honor the Chief Justice? On being placed at the Bar, and asked to plead to the indictment which had been then read by the Associate, the prisoner, addressing the Court, said these words, "Before I record my plea may I be permitted to make some observations to the Court." The Chief Justice answered, "The practice is irregular, but I have no objection to your doing so." The prisoner then said, addressing the Judge, "I object to Your Honor sitting as Judge in my case, on account of a prejudicial feeling which I believe you have against me." He pronounced the word "prejudicial" quickly, sharply. The Judge then said, "Are you a Member of Parliament?" To which the prisoner replied, "Not yet." I should have stated that His Honor first of all observed, "How can I have a political feeling against you?" Upon which Mr. Williams, the Civil and Criminal Crown Solicitor, said the prisoner had used the word "prejudicial," not "political." His Honor begged pardon for mistaking the word, and the prisoner then went on to say, "On my trial before you two years ago at Bathurst you exhibited a prejudicial feeling against me." The Chief Justice having been furnished with a memorandum by the Criminal Crown Solicitor, observed to the prisoner, "I find you were tried by me at Bathurst, in April, 1859, for robbery with firearms, and you were then sentenced to transportation for life. This is the sentence the law empowered me to pass upon you, and I presume, from the sentence, that your case was surrounded with aggravated circumstances." The prisoner answered that there were no aggravating circumstances in his case, and that he did not object to the Chief Justice doing all the law permitted him to do; but he objected to his saying, at the time of passing sentence, he was sorry he could not hang him (the prisoner). The prisoner then went on to say that, after he was placed on Cockatoo Island, the Chief Justice addressed a letter to the authorities about him, from which he also inferred that the feeling of the Chief Justice was prejudicial in this case against him. The Chief Justice intimated that he had no recollection of having written this letter. The prisoner then said he was prepared to state the contents of the letter to the Chief Justice if he desired it. The Chief Justice then told him that if he intended to plead guilty, before he was sentenced he would place the whole matter before one of his brother Judges, and that consequently the sentence would be the sentence of two Judges, and not of one; on which the prisoner said he would plead guilty.
14. And did so? And did so.
15. No further conversation occurred? No further conversation occurred.
16. There was no further allusion to Parliament? No further allusion to Parliament.
17. *By Mr. Parkes*: Where were you sitting at the time this language proceeded from the prisoner? I was sitting immediately beneath the dock—immediately in front of the dock—about three feet from where the prisoner was standing.
18. At the table in front of the dock? Yes.
19. Did you distinctly understand the word "prejudicial" when it was first uttered? I did not distinctly understand the word prejudicial when it was first uttered. The prisoner uttered it sharply, quickly, and I think there may have been a possibility of misconception on the part of His Honor, who was at a much more considerable distance from the prisoner than I.
20. You stated in your evidence that the Chief Justice used these words, "How can I have a political feeling against you"? I think those were the words used.
21. Are we to understand these words before and in connection with the words "Are you a Member of Parliament?" or afterwards? He used these words after he had asked the man "Are you a Member of Parliament?"
22. Then in fact he asked two separate questions, other matter intervening, the first being, "Are you a Member of Parliament?" and then, "How can I have a political feeling against you"? Yes, as far as I recollect, it was in that way the language was used. It was after that it was intimated to His Honor by Mr. Williams that the word originally employed by the prisoner was "prejudicial," and not "political."
23. *By Mr. Gray*: Where was the Civil Crown Solicitor, Mr. Williams, sitting? I think he was standing by the table, the table at which the Attorney General usually sits, which was nearer to the Bench which His Honor occupied than I was placed.
24. Then he must have heard the word distinctly? He heard the word "prejudicial," I presume, from the circumstance of his correcting the Chief Justice.
25. *By Mr. Parkes*: Were the jurors sworn at the time? The Jury are not sworn till the plea

plea of the prisoner is recorded, and in the event of pleading "Guilty," of course the functions of a Jury are superseded. The Jury were empanelled; they were in the box.

26. Was there anything which struck you particularly in the manner in which all this took place?

(An objection was raised to the question. The witness withdrew. The Committee deliberated, and resolved, "That the question be not put.")

W. B. Dalley,
Esq.
6 April, 1861.

E. K. Sylvester, Esq., called in and examined:—

27. *By the Chairman:* You report for the *Sydney Morning Herald*? Yes.

28. Were you in the Supreme Court, the Criminal Court, on Tuesday last? Yes.

29. Do you remember a prisoner of the name of Clarke being put upon his trial? Yes.

30. Do you remember upon his being called upon to plead that he made any remarks? Yes.

31. Will you be good enough to relate to the Committee any conversation, or any remarks, that fell from him or any person in Court at that time? On being called upon to plead, Clarke said, "Before I record my plea may I make a few remarks?" The Chief Justice replied, "Well, it is very irregular, but I will not object to it;" and Clarke then proceeded to state that he had an objection to be tried or sentenced by His Honor the Chief Justice, and in a very vehement, and, as I considered it, a very insulting, manner. He never used the words "Your Honor," or "Sir," in any shape or way. He said as he knew that he had a prejudicial feeling against him—he did not use the word "prejudicial," but he used the word—as I reported it, or intended to report it, but I have not a copy of the *Herald* with me to refer to—"prejudicial." He pronounced it "prejudicial," or "prejudicial." I wrote it in my report "prejudicial." When he came to this expression—and he meant prejudicial no doubt—the Chief Justice interrupted him, and said, "What possible political feeling can I have against you—are you a Member of Parliament?" Clarke replied, "Not yet." Mr. Williams, the Crown Prosecutor, then rose and quietly said to the Chief Justice, "I think your Honor has mistaken 'prejudicial' for 'political.'" The Chief Justice said, "Prejudicial was it?—it was a mistake." That was all that passed. I am quite certain it was all that passed.

32. No further conversation took place? No, not till Clarke had completed the statement of his objection to the Chief Justice trying him. The Chief Justice did not say another word beyond what I have said in reply to Mr. Williams' suggestion.

33. The prisoner ultimately pleaded guilty? He afterwards pleaded guilty. He said he should plead guilty during the statement he made to His Honor, but several times the Chief Justice asked him whether he still intended to plead guilty, and cautioned him not to do so. He said it would not favour his case at all, but still the prisoner persisted in pleading guilty.

34. *By Mr. Wilson:* You have stated that the Chief Justice asked him what possible political feeling he could have against him—"Are you a Member of Parliament?"—are you sure the words were placed in that order? I am quite confident of it. I took them down at the time, they are on my notes, and in my report they are the same. I could have no knowledge that these proceedings would result. Why should I transpose the words in any shape or way.

E.K. Sylvester
Esq.
6 April, 1861.

Rev. William Ridley called in and examined:—

35. *By the Chairman:* You report for the *Empire*? Yes.

36. Were you in the Criminal Court on Tuesday last? I was.

37. On the occasion of the trial of a man named Clarke? David Clarke.

38. Will you be good enough to state to the Committee what occurred on that occasion, when he was called on to plead? When the prisoner Clarke was called upon to plead, he said, in effect,—“Before putting in my plea, I would ask leave to be allowed to make some remarks.” The Chief Justice gave him permission. He then said he entered his protest against His Honor sitting as judge in his case, on the ground that His Honor had, on his trial, two years ago, at Bathurst, exhibited strong prejudicial feelings against him. I noticed that the prisoner pronounced the word "prejudicial." On this, His Honor inquired how it was possible that he could entertain political feelings against the prisoner, and then added, "Are you a Member of Parliament?" I believe the prisoner said "Not yet," but I am not quite sure whether I heard the prisoner say so, or one who sat next me. I did not clearly understand the words, but I caught the words "Not yet." I could not, however, say of my own knowledge that the prisoner said the words. Then Mr. Williams, the Crown Solicitor, rose and remarked to His Honor that the prisoner had used the word "prejudicial," and not "political"; and His Honor then said that he had been under a mistake as to the word used.

39. What followed? Then the prisoner went on to say that His Honor had spoken very severely on that occasion, and had given him the severest punishment he could. The prisoner said, "Your Honor added you only wished you could hang me." His Honor then said he could not recollect the case at the time, but some one who was present in the Court, I did not observe who, handed His Honor a paper, intimating the character of the crime Clarke was charged with—robbery with firearms. Upon this, His Honor said, seeing the character of the crime, "I have no doubt I did use strong language, as I am in the habit of using strong language in speaking of crimes of that kind"; and added, in explanation of the expression, that robbery with firearms was likely to lead to murder; and therefore he

Rev. W.
Ridley.
6 April, 1861.

thought

Rev. W.
Bidley.

6 April, 1861.

thought too strong an expression could not be used in denouncing such a crime. I may observe, with regard to the whole conversation, that two ideas struck me as worthy of notice: the first was the singular audacity of the prisoner in protesting against being tried by the Chief Justice, and the second was the singular condescension of the Judge in promising, at the close of this singular dialogue, that he would not pass sentence himself without consulting another Judge, so as to dismiss from the prisoner's mind any idea of a prejudice being entertained against him.

40. The man ultimately pleaded guilty? He pleaded guilty. My only idea as to the questions His Honor put was that he wished to impress upon the prisoner the monstrous absurdity of supposing that a man in the prisoner's position could be affected by any political feeling on his part, and he contrasted him with those gentlemen in the country who stood in the most prominent position, and who might be the object of political feeling. He wished to draw a contrast, and selected those in high political station. That is my impression, from the manner of the Judge, of his object in putting it.

41. *By Mr. Arnold*: I observe that you did not report this conversation in the *Empire*? No.

42. Did it strike you as unimportant? Yes, the question itself did not strike me as important.

43. Your impression you reported? Yes.

44. But you did not report this language? No.

45. Did it appear to be looked upon as unimportant by those who heard it in Court—was there no apparent feeling in Court created by it? I think I heard a remark made by some one near me.

46. Did you forget all about it afterwards, or did it maintain an impression upon your mind? I heard it spoken of afterwards.

47. *By Mr. Parkes*: Did you hear it spoken of by many persons? Not that day; not till this notice of it in Parliament.

48. *By Mr. Arnold*: It was not remarked upon much in Court? I did not hear anything, except from one person who was sitting close beside me.

49. *By Mr. Parkes*: You would be sitting where you could not possibly hear remarks made in the body of the Court—in the reporter's box? I think I could have heard what was said.

50. You could not hear what was said at a distance from you in an undertone? No. My instructions in reporting generally in the Court are to make my reports rather short, and I avoid noticing anything unnecessarily.

51. *By Mr. Arnold*: I gather from what you say that the remarks did not strike you as improper, because you say the only impression that remained on your mind was the audacity of the prisoner, and the singular condescension of the Judge? If I were to criticise the remark I might question its propriety, but there was nothing singular about it.

52. Do you mean when you say there was nothing singular about it, that it was the sort of remark you would expect from the Chief Justice? No, I would not say that. It did not strike me as improper at the time, nor did it strike me as singular. The only impression the question made was this, that His Honor seemed to aim to show the prisoner in some strong manner the absurdity of his supposing that he could be the object of any political feeling, and therefore contrasted him with those who stood in a high political position.

53. *By Mr. Parkes*: And who might be the object of political feeling?

John Williams, Esq., called in and examined:—

J. Williams,
Esq.

6 April, 1861.

54. *By the Chairman*: Were you in the Criminal Court on Tuesday, the 2nd instant, on the occasion of the trial of a man named Clarke? Yes.

55. Will you be good enough to relate to the Committee what took place between this man and His Honor the Chief Justice on that occasion? When the man was called upon to plead he objected to being tried before His Honor, on the ground that His Honor was "opposed prejudicially" to him—I understood him to say—there was something before the word "prejudicial"—on a former occasion. My impression was that he said "opposed prejudicial." Whereupon the Chief said—"I do not think I have ever seen you before; opposed politically—political—political; are you a Member of Parliament?" I interposed, and said the prisoner had said "prejudicially opposed." Upon which he said—"Prisoner, I beg your pardon—I misunderstood you—I beg your pardon." Something was said by the Chief that I could not understand, that was immediately before he said "Are you a Member of Parliament?"; and then the Judge stated that in all probability the prisoner had come before him on some former occasion, and he had occasion, believing him to be a bad man, so to express himself.

56. Nothing further took place? Nothing particular.

57. This was the only allusion that was made to the Legislature? Entirely; it came out just in the way I mention. It struck me, as I was standing midway between the Chief and the man, that he had misunderstood, and from his manner and tone that it was an expression of astonishment. It was, in fact, seeing the Chief had made a mistake, that I took the liberty of correcting him, and of telling him that the prisoner had said "prejudicial" and not "political." I may mention that the man afterwards stated that the Chief had written to the authorities at Cockatoo about him. He said he did not recollect it, and the man replied—"Every word I could repeat to your Honor."

58. *By Mr. Arnold*: Are those the words he used—"I could repeat to your Honor"? Yes.

59. He did address the Judge as "your Honor"? Yes, I believe so—yes.

60. Did it strike you that there was any thing intentionally offensive in the manner of the prisoner towards the Judge? No; he was very grave, and very cool.
61. He did not strike you as singularly audacious? No; it struck me that the man was expressing what he felt—that the Judge was unduly prejudiced against him. By the way, I should have mentioned that when the Chief said "Are you a Member of Parliament?" the man answered "Not yet." He answered exceedingly coolly; it did not strike me as being in an insolent, but as in an indifferent manner.
62. One of the witnesses—a reporter to a newspaper—states that the two ideas he derived from the whole conversation were, the singular audacity of the prisoner in addressing the Court, and the singular condescension of the Court towards the prisoner? His manner did not strike me as audacious, he was exceedingly cool, and not at all awed by his position. It struck me as singular that he should object to the Judge while he at the same time intimated his intention to plead guilty.
63. Still there is considerable discretion in the Judge as to the sentence? No doubt.
64. It is not necessarily the case that the same sentence is pronounced by two judges for the same crime? Under these circumstances there could not be the least doubt as to what would be the sentence, as the man was trebly convicted and there were no mitigating circumstances in his case.
65. Did the Chief Justice necessarily know that he was a trebly-convicted prisoner? Not then, unless he had recollected the prisoner, or his case—the fact of his being so came out afterwards. When the prisoner made reference to his former trial I obtained a paper containing his police history, from the sergeant of police, for the Judge said he would look over his notes and see what he had said on the previous trial. My impression was that the Judge was astonished that a man in such a position could imagine that he was the object of a political prejudice. It did not strike me that the man's bearing was audacious it was cool and calm. He certainly spoke to the Chief Justice as if he were His Honor's equal, that might be considered audacious.
66. Did the Chief Justice's remark strike you as singular, or as what you would expect? I thought it unfortunate that he should have made use of that expression; but it appeared to me to convey a sense of astonishment at such a charge from such a man, and to be used for the purpose of shewing the impossibility that there could be any political feeling between the Judge and the prisoner. Of course I need not say that I have seen from the papers the interpretation put upon the expression here, but it did not so strike me at the time. There is a great deal in a man's tone and manner of saying a thing, and of course the circumstances under which it is said give meaning to an expression.
67. Did it appear to occasion no surprise in the Court? I do not know that I mentioned the matter to anybody except to Mr. Dalley on the afternoon of the same day.
68. Was there no evidence of surprise in the Court at the time? No.
69. You did not think much of it yourself? I did not think much of it; I did not look at it in the light in which it has been regarded here. It did not strike me as so intended.
70. *By Mr. Parkes*: In your conversations on the subject since, have you heard any surprise expressed on the part of others? Yes, naturally. Of course those who merely read an expression by itself are not aware of the circumstances or mode in which it is used—some take one view of the case, others may take another.

J. Williams,
Esq.

6 April, 1861.

James Carroll, Esq., called in and examined:—

71. *By the Chairman*: Are you a Solicitor of the Supreme Court? I am.
72. Were you present in the Criminal Court on Tuesday last engaged in the case of the Queen against Clarke? No; I was engaged in the two following cases—I was watching.
73. You were present on the occasion of his being arraigned? I was at the table.
74. Will you be good enough to state to the Committee whether any conversation took place upon that occasion between His Honor the Chief Justice and the prisoner Clarke? Yes; when Clarke and Cavanagh were arraigned, the Chief Justice's son put the usual words to him, and Clarke said "Before pleading, your Honor"—I think he used the word "pleading"—"I beg to dissent from your Honor trying this case." He then went into a long statement of reasons. Clarke has a sort of impediment—to my view something wrong with the palate of his mouth—sometimes he speaks loud, and then he drops his voice. I was very close to him, sitting at the table; the Chief Justice was further away. He made use of the word "prejudicial"—I believe that was the word he made use of at first, but it was so low that I really could not hear it. The Chief said, "Political?—I am not aware—are you a Member of Parliament?" It was said very quickly. I certainly feel that in my opinion—with great respect to the Committee—if I were asked—that to my mind there was no time for the Chief to say anything with a design; it was said quite abruptly—in a moment—quite sudden it was said in my opinion.
75. Did anything follow? Yes. Mr. Williams, the Crown Solicitor, stood up and said, "Your Honor, he did not say political"; he then told him what he did say. The Chief said, "I beg your pardon—I made a mistake," or something—in fact, I did not pay a great deal of attention to it.
76. *By Mr. Arnold*: It did not strike you as anything peculiar? It did not. It struck me that perhaps the Judges here speak a little more than they do at home, where I served my time. I have often remarked that they hold a conversation. It did not strike me at all events as being ———
77. You were not surprised? I was not. I was surprised the next morning when I saw it was taken notice of in that light; then I began to think of it.

J. Carroll,
Esq.

6 April, 1861.

- J. Carroll, Esq.
6 April, 1861.
78. *By Mr. Gray*: When you saw it reported in the paper next morning, you were surprised? I was. It did not strike me at the time—I did not know there was any reference to anything that had occurred—I was surprised then when I saw it noticed.
79. Are you speaking of the notice taken of it in the House or of the words reported in the paper? I read the *Herald* the next day—I saw that a motion had come on—I am not sure who made it.
80. *By Mr. Wilson*: Were you astonished that any notice was taken of it? I will not say that. My impression was that the Chief Justice, if he had intended it, had not taken time enough, for he speaks very abruptly—very quickly. I do not think he took time enough to mean anything. I know if I intended to throw a slur I would think for a moment. I am positive, though I am very quick of hearing, I did not hear the word exactly; there was a doubt upon my mind when Mr. Williams stood up and said it was “prejudicial,” and the Chief Justice said directly, “I beg pardon, I made a mistake.” I say this, that the prisoner throughout the whole of his conduct—and I was there the whole of the case—certainly seemed to have a strong feeling against the Chief Justice, and made use of very strong language, stronger than I ever heard a prisoner use when talking to a Judge.
81. *By Mr. Arnold*: Did he speak disrespectfully to the Judge? Not what I call disrespectful, but the manner of the man. He spoke in a very high tone of voice, with a good deal of determination; he did not seem at all to feel his position; there was a sort of dictatorial way about the whole of his demeanour towards the Judge. He entered into a long statement of how the Chief Justice had written to the authorities at Cockatoo, and that he could do no more; and when the Chief Justice asked what sentence he had given, he said, “You gave me all the law empowered you to give, and said you regretted you could not hang me.” He was then referring to the case at Bathurst.
82. That the Chief Justice did not deny? No. He said, “If I did write to the authorities “at Cockatoo it has escaped my recollection. Very probably I did, for I am one who when “I feel strongly speak strongly.”

SEPARATE APPENDIX.

A.

No. 61-28.

*Legislative Assembly Offices,
Sydney, 5 April, 1861.*

Sir,

I am directed by the Chairman of the Select Committee of the Legislative Assembly, appointed yesterday, “to inquire into and report upon certain language, reflecting upon the character of this House, reported to have been used by His Honor the Chief Justice, while judicially engaged in the Supreme Court of the Colony, on Tuesday, the 2nd instant, with power to send for persons and papers, and to sit on Saturday the 6th, and Monday the 8th instant”—to apprise you of the intention of the Committee to sit to-morrow, Saturday, the 6th instant, and commence with the examination of the gentlemen named in the margin at (10) Ten o'clock.

This information is forwarded for the purpose of affording you the opportunity to be present during such examinations if you think fit.

I have, &c.,

CHA. TOMPSON,
Clerk of Legislative Assembly.His Honor
Sir Alfred Stephen, Knight, Chief Justice,
Supreme Court.

The Hon. the At-
torney-General.
W. B. Dalley,
Esq., Barrister-
at-law.
J. Carroll, Esq.,
Solicitor.
E. K. Sylvester,
Reporter, *S. M.
Herald*.
Rev. W. Ridley,
Reporter, *Empire*

B.

*Hyde Park,
Friday Evening.*

Sir,

On returning home from my Chambers at 5 o'clock this afternoon, I had the honor of receiving your letter, apprising me that a Committee had been appointed by the Legislative Assembly, to inquire into certain language reported to have been used by me on Tuesday last, “reflecting” (so you cite the terms of the Resolution) “on the character of the House;” that the Committee would sit to-morrow morning, for the examination of witnesses named by you; and that the object of your information was, to afford me the opportunity of being present, if I thought fit so to be.

In reply, I beg you to convey my acknowledgments to the Committee, for the permission thus extended to me; and to inform the Chairman, with many thanks for his courtesy, that I do not propose to avail myself of it.

Chas. Tompson, Esq.

I have, &c.,

ALFRED STEPHEN.

1861.

—
Legislative Assembly.
NEW SOUTH WALES.

—
PROPOSED PAYMENT OF MEMBERS OF THE LEGISLATIVE ASSEMBLY.
(RESIDENTS OF THE NORTHERN DISTRICT.)

—
Ordered by the Legislative Assembly to be Printed, 14 March, 1861.
 —

The Honorable the Legislative Assembly of New South Wales, in Parliament assembled.

The humble Petition of the undersigned Residents of the Northern District, in the
 Territory of New South Wales,—

HUMBLY SHEWETH :—

That your Petitioners, urged by the depressed state of this important British Province, evident by the stagnation which pervades every department of industry, in an increasing debt, and a decreasing revenue, while our overcrowded cities are teeming with an unemployed and poverty-stricken population, and our lands are unsettled and untilled, in consequence of the slow progress made during the late Sessions of your Honorable House in those measures of reform so urgently required for the prosperity of this Colony.

We humbly beg to represent to your Honorable House that, in our opinion, the evils previously enumerated are principally owing to the preponderating influence of one class, restricting the advantages to be derived from the occupation of this vast and fertile territory to a few of its inhabitants, who possess no claim to a superiority over their fellow-colonists, either in intelligence, education, or in loyalty to the British Throne. At present no person, however lofty his intellect, great his attainments, and sterling his honesty, unless he be the possessor of wealth or paid by his constituents, can aspire to a seat in the House of Assembly, and thus the people are deprived of the services of men whom they would most confidently trust and willingly delight to honour. Electors must, therefore, continue to entertain the idea that the franchise is incomplete until the man of their choice, however poor in purse, is enabled by the support of the State to represent them in Parliament.

Your Petitioners would also humbly suggest that the high character of your Honorable House might likewise be enhanced by the infusion of the elements of intellectual wealth, should the principle now advocated by your Petitioners be established and become the law of the land, viz., that all persons who devote their time and energy to the public in the Legislative Assembly shall be remunerated for their services.

Therefore, we, your Petitioners, humbly pray that your Honorable House will be pleased to pass a Bill providing for the payment of all Members who may be elected to sit in the next Legislative Assembly of New South Wales.

And your Petitioners, as in duty bound, will ever pray, &c., &c., &c.

[Here follow (270) two hundred and seventy Signatures]

1861.

—
Legislative Assembly.

NEW SOUTH WALES.

REFRESHMENT ROOM SERVANTS.

(PETITION FROM JOHN RYAN AND BRYAN MAGUIRE.)

Ordered by the Legislative Assembly to be Printed, 16 April, 1861.

To the Honorable the Legislative Assembly of New South Wales, in Parliament assembled.

The humble Petition of the Refreshment Room Servants, engaged to attend on the Honorable the Legislative Council and Legislative Assembly,—

RESPECTFULLY SHEWETH :—

That your Petitioners are employed from seven o'clock in the morning until the rising of the House at uncertain hours of the night, with pay at the rate of six shillings and nine-pence per day, which your Petitioners respectfully state is insufficient to enable them to appear before and wait upon your Honorable House in a respectable attire for so long a time.

Your Petitioners further most respectfully state, that, on the prorogation of your Honorable House, they will be discharged without any compensation such as has been already granted to the Extra Messengers for after-hour attendance.

Your Petitioners, therefore, most humbly pray that your Honorable House will be pleased to take their case into humane consideration, and grant them such relief as your Honorable House may deem meet.

And your Petitioners, as in duty bound, will for ever pray.

JOHN RYAN,
 BRYAN MAGUIRE.

Sydney, 9 April, 1861.

1861.

Legislative Assembly.
NEW SOUTH WALES.

DEPARTURE OF GOVERNOR GENERAL FOR INDIA.

Ordered by the Legislative Assembly to be Printed, 11 January, 1861.

W. DENISON,

*Governor General.**Message No. 1.*

The Governor General lays before the Legislative Assembly a Despatch with which he has been honored by one of Her Majesty's Principal Secretaries of State, conveying to him the necessary authority for quitting New South Wales without delay, in order to proceed to India to assume the Government of the Presidency of Madras.

The Governor General is aware that some inconvenience may perhaps result from his departure at the commencement of the Session of Parliament, but it was necessary that Parliament should meet as early as possible, and it was equally necessary that no delay should take place in the assumption by His Excellency of the Government of Madras.

The Governor General avails himself of this opportunity of expressing his confidence that the Members of the Assembly will be guided in their deliberations by an anxious desire to forward the best interests of the Colony.

*Government House,**Sydney, 11 January, 1861.*

[Despatch referred to in Message No. 1.]

New South Wales.
Separate.

Downing-street,
26 October, 1860.

SIR,

I have much pleasure in conveying to you the necessary authority for quitting New South Wales, in the event of your accepting the offer, which has been made to you through the Secretary of State for India, of the Government of Madras, as you may find it expedient to repair to that Presidency without delay.

I cannot allow the connection which has so long existed between you and this Department to cease, without expressing the high sense which Her Majesty's Government entertain of the energy and ability with which you have invariably performed the very responsible duties intrusted to you, to the great advantage of the Colonies over which you have presided.

I have, &c.,

J. RUSSELL.

GOVERNOR SIR W. DENISON,
&c., &c., &c.

1861.

Legislative Assembly.

NEW SOUTH WALES.

DEPARTURE OF THE GOVERNOR GENERAL.
(ADDRESS IN REPLY TO MESSAGE.)

REPORT FROM THE SELECT COMMITTEE

APPOINTED TO PREPARE

ADDRESS IN REPLY TO MESSAGE NO. 1,

IN REFERENCE TO THE

DEPARTURE OF THE GOVERNOR GENERAL FOR INDIA;

TOGETHER WITH THE

PROCEEDINGS OF THE COMMITTEE.

ORDERED BY THE LEGISLATIVE ASSEMBLY TO BE PRINTED,
17 *January*, 1861.

SYDNEY:

THOMAS RICHARDS, GOVERNMENT PRINTER, PHILLIP-STREET.

1861.

1861.

EXTRACTS FROM THE VOTES AND PROCEEDINGS OF THE
LEGISLATIVE ASSEMBLY.

VOTES No. 4. TUESDAY, 15 JANUARY, 1861.

17. Approaching Departure of His Excellency Sir William Denison for India:—Mr. Cowper moved, pursuant to *amended* notice,—
- (1.) That a Select Committee be appointed to prepare a reply to His Excellency's Message No. 1, in reference to his departure from this Colony.
- (2.) That such Committee consist of Mr. Douglas, Mr. Egan, Mr. Hart, Mr. Wilson, Mr. McArthur, Mr. Parkes, Mr. Robertson, Mr. Smart, Mr. Sutherland, and the Mover.
- Question put and passed.
-

VOTES No. 6. THURSDAY, 17 JANUARY, 1861.

1. Approaching Departure of His Excellency Sir William Denison for India:—Mr. Cowper, as Chairman, brought up the Report from, and laid upon the Table the Minutes of Proceedings of, the Select Committee appointed on the 15th instant, to prepare a Reply to His Excellency's Message No. 1, in reference to his Departure from the Colony.
- Ordered to be printed.
-

CONTENTS.

	PAGE.
Extracts from the Votes and Proceedings	2
Report	3
(Draft Address)	4
Proceedings of the Committee	5

1861.

DEPARTURE OF THE GOVERNOR GENERAL.

(ADDRESS IN REPLY TO MESSAGE.)

R E P O R T .

THE SELECT COMMITTEE of the Legislative Assembly, appointed on the 15th instant, “*to prepare a reply to His Excellency’s Message No. 1, “ in reference to his departure from this Colony,”* have agreed to the following Report :—

Your Committee have considered the Message referred to them, and have now the honor to submit the Draft* of an Address to • Annexed. His Excellency the Governor General, in reply thereto.

CHARLES COWPER,

Chairman.

*Legislative Assembly Chamber,
Sydney, 17 January, 1861.*

To His Excellency SIR WILLIAM THOMAS DENISON, Knight Commander of the Most Honorable Order of the Bath, Governor General in and over all Her Majesty's Colonies of New South Wales, Tasmania, Victoria, South Australia, and Western Australia, and Captain-General and Governor-in-Chief of the Territory of New South Wales and its Dependencies, and Vice-Admiral of the same.

MAY IT PLEASE YOUR EXCELLENCY :—

We, Her Majesty's dutiful and loyal Subjects, the Members of the Legislative Assembly of New South Wales, desire to express our thanks for Your Excellency's Message announcing that Your Excellency has been appointed to the Government of the Presidency of Madras.

We offer to Your Excellency our hearty congratulations upon this additional mark of favor from your Sovereign.

We beg leave to approach Your Excellency, on the occasion of your departure for India, for the purpose of expressing our high sense of the able and impartial manner in which, for the period of six years, Your Excellency has presided over the Government of this Colony.

During this period, the difficult and delicate duty of introducing Responsible Government has devolved upon Your Excellency; and we desire to bear our testimony to the successful manner in which that duty has been performed, and to the very general approval which it has elicited.

While acknowledging the benefit of Your Excellency's services in your Official capacity, we also gratefully recognize the advantages which the moral and social interests of the Colony have derived from the unsullied purity of Your Excellency's private life, and the active benevolence which has distinguished Your Excellency's patronage of every useful and charitable Institution.

Allow us, in conclusion, to assure your Excellency that we shall always feel a deep interest in the welfare of your Excellency, Lady Denison, and family. And we pray that the great Disposer of Events may grant you length of days, and with them uninterrupted happiness.

PROCEEDINGS OF THE COMMITTEE.

WEDNESDAY, 16 JANUARY, 1861.

MEMBERS PRESENT :—

Mr. Cowper,	|	Mr. Parkes,
Mr. Egan,	|	Mr. Sutherland,
Mr. McArthur,	|	Mr. Wilson,
Mr. Robertson.		

Committee met pursuant to summons.

The Honorable Charles Cowper, Esquire, called to the Chair.

Copies of Message (No. 1.) from His Excellency the Governor General, communicating a Despatch, authorizing the departure of His Excellency for India,—laid before Committee.

Committee deliberated upon the points to be introduced into the proposed Address,—

And having resolved thereupon, requested the Chairman to prepare a Draft for consideration to-morrow.

[Adjourned till to-morrow, at 12 o'clock.]

THURSDAY, 17 JANUARY, 1861.

MEMBERS PRESENT :—

The Honorable Charles Cowper, Esquire, in the Chair.		
Mr. Egan,	|	Mr. Smart,
Mr. Hart,	|	Mr. Parkes,
Mr. Wilson.		

Committee having met,—

The Chairman submitted a form of Draft Address in reply to Governor General's Message, in reference to his Excellency's departure from the Colony.

Draft Address read and agreed to, paragraph by paragraph.

Motion made (*Mr. Parkes*.) and *Question*,—That the Draft now read be adopted as the Address prepared by this Committee,—*agreed to*.

Report agreed to.

Chairman requested to report to the House.

1861.

Legislative Assembly.
NEW SOUTH WALES.

ADMINISTRATION OF THE GOVERNMENT.
 (ASSUMPTION OF, BY LIEUT. COL. KEMPT.)

Ordered by the Legislative Assembly to be Printed, 23 January, 1861.

JOHN FRAS. KEMPT,
Administrator of the Government.

Message No. 1.

His Excellency Sir William Denison, having taken his departure from the Colony, on the 22nd instant, Lieutenant Colonel Kempt avails himself of the earliest opportunity to inform the Legislative Assembly, that, as the Senior Military Officer Commanding Her Majesty's Forces in New South Wales, he has assumed the Government of the Colony, in virtue of the authority granted to him in that behalf, in a Warrant under Her Majesty's Royal Signet and Sign Manual, dated the 3rd of May, 1859.

Lieutenant Colonel Kempt relies with confidence upon receiving, as Administrator of the Government, the cordial assistance of the Legislative Assembly.

Government House,
Sydney, 23rd January, 1861.

1861.

Legislative Assembly.
NEW SOUTH WALES.

ADMINISTRATION OF THE GOVERNMENT.

(ASSUMPTION OF, BY THE RIGHT HONORABLE SIR JOHN YOUNG.)

Ordered by the Legislative Assembly to be Printed, 22 March, 1861.

JOHN YOUNG,
Administrator of the Government.

Message No. 1.

Sir John Young has the honor of informing the Legislative Assembly that, in virtue of a Commission from the Queen, which bears date Windsor, 18th January, 1861, authorizing him to administer the Government of New South Wales, he has assumed the Government of the Colony under the title of Administrator, pending the arrival, which may be expected by next Mail, of a Commission, under the Great Seal, conveying his formal appointment as Captain General and Governor-in-Chief.

Government House,
Sydney, 22 March, 1861.

1861.

Legislative Assembly.

NEW SOUTH WALES.

COMMISSION FOR ADMINISTRATION OF THE
GOVERNMENT.

(HIS EXCELLENCY SIR JOHN YOUNG.)

Ordered by the Legislative Assembly to be Printed, 22 March, 1861.

SECRETARY OF STATE FOR THE COLONIES to THE RIGHT HONORABLE SIR JOHN
YOUNG, BART., K.C.B., G.C.M.G., &c., &c.
(No. 1.)

*Downing-street,
19 January, 1861.*

SIR,

I have the honor to transmit to you a Commission from the Queen, authorizing you to administer the Government of New South Wales, under the title of Administrator. This Commission is issued to you pending the preparation of the Commission under the Great Seal, conveying your formal appointment as Captain General and Governor-in-Chief in and over that Colony, which, together with the Royal Instructions, will be forwarded to you as soon as those Instruments can be completed. In the meantime, you will be guided by the Commission and Instructions issued to your predecessor, Sir William Denison.

I have, &c.,

NEWCASTLE.

*COMMISSION appointing Sir John Young, Bart., K.C.B., G.C.M.G., Administrator of the Government,
New South Wales.*

VICTORIA R.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to Our Right Trusty and Well-beloved Councillor Sir John Young, Baronet, Knight Commander of Our Most Honorable Order of the Bath, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George,—

GREETING :—

Whereas We did by certain Letters Patent, under the Great Seal of Our United Kingdom of Great Britain and Ireland, bearing date at Westminster, the eighth day of September, one thousand eight hundred and fifty-five, in the Nineteenth Year of Our Reign, constitute and appoint Our Trusty and Well-beloved Sir William Thomas Denison, Knight, to be, during Our pleasure, Our Captain General and Governor-in-Chief in and over Our Colony of New South Wales. And We did provide and declare Our pleasure that, in case of the death or absence out of Our said Colony of the said Sir William Thomas Denison, all and every the powers and authorities by Our said Commission to him granted, should be, and the same were thereby vested in such person as might be appointed by Warrant under Our Sign Manual to be Our Lieutenant Governor of Our said Colony; or in such person or persons as might by Us be appointed in like manner to administer the Government of Our said Colony in such contingency. And whereas We did, by Our Warrant, dated at Windsor, the third day of May, one thousand eight hundred and fifty-nine, in the Twenty-second year of Our Reign, authorize and require that, upon the death of the said Sir William Thomas Denison, or during his absence out of Our said Colony, the Senior Military Officer, for the time being, commanding Our Land Forces in Our said Colony should, until Our further pleasure should be signified, administer the Government thereof. And whereas We have judged it expedient to make other provision for administering the said Government. We do therefore, by these presents, revoke and recall the said Warrant, except so far as the same revokes and determines a certain other previous Warrant therein mentioned; and, in pursuance and exercise of the powers reserved to Us in the afore-mentioned Letters Patent, and of all other powers to Us belonging, We do hereby appoint you, the said Sir John Young, upon the death or absence out of Our said Colony of the said Sir William Thomas Denison, or until Our further pleasure be signified, to administer the Government of Our said Colony and its Dependencies, with the style and title of Administrator of the Government thereof; and We do authorize and require you to execute and perform all and singular the powers and directions contained in Our said recited Commission to the said Sir William Thomas Denison, and all such further orders and instructions as you or he may hereafter receive from Us. And We do hereby Command all and singular Our Officers, Ministers, and loving Subjects in Our said Island, and all others whom it may concern, to take due notice hereof, and to give their ready obedience accordingly.

Given at Our Court at Windsor, this eighteenth day of January, 1861, in the Twenty-fourth year of Our Reign.

By Her Majesty's Command,

NEWCASTLE.

1861.

Legislative Assembly.

NEW SOUTH WALES.

ESCHEATED LANDS OF THE LATE JOHN TAWELL.

(AFFIXING GREAT SEAL OF THE COLONY TO GRANT OF.)

*Ordered by the Legislative Assembly to be Printed, 23 January, 1861.**CORRESPONDENCE between His Excellency Sir William Denison and the Colonial Secretary, relative to the affixing the Great Seal of the Colony to a Grant from the Crown of the escheated Lands of the late John Tawell.*

No. 1.

*Government House,
10 January, 1860.*

MY DEAR COWPER,

I wish to have the copy of the Deed of Grant sent out by the Secretary of State as a guide to the Law Officers, so far as the form of Deed to the Trustees of Mrs. Tawell is concerned. I also want the copy of the Inquisition by which the Crown's title to the particular lands was ascertained.

Yours truly,
W. DENISON.

No. 2.

*Government House,
14 January, 1861.*

MY DEAR COWPER,

I have received the accompanying Deed of Grant from Mr. Billyard, the Attorney of the Trustees of Mrs. Tawell, and having compared it with the draft sent out by the Law Officers in England, and with the descriptions given in the Inquisition, I find it to be correct; and in accordance, therefore, with the instructions I have received from the Secretary of State, I have signed it, and now send it you in order that it may have the Great Seal attached to it, after which I will deliver it to the Attorney of the Trustees, and thus get rid of a very disagreeable matter which has been long pending.

Yours truly,
W. DENISON.

No. 3.

*Government House,
17 January, 1861.*

MY DEAR COWPER,

Will you send back the Grant to Tawell's Trustees with the Seal attached to it. I want to put my initial to an erasure which I perceived in it, and to hand it over to the Attorney for the Trustees before I go: let me have it therefore at once—for I have also to write a Despatch to the Secretary of State on the subject.

Yours truly,
W. DENISON.

No. 4.

16 January, 1861.

MY DEAR SIR WILLIAM,

Your Excellency's note of the day before yesterday, together with the Deed which accompanied it, have been delivered to me by Mr. McCrewether. To that Deed Your Excellency desires me to have the Great Seal of the Colony affixed, in order that the instructions of the Secretary of State may be carried out, and a Grant be issued to the Attorney of the Trustees of Mrs. Tawell, the widow of the late John Tawell, whose property became escheated to the Crown upon his conviction in England, in the year 1845, for felony.

It is with unfeigned regret that I have arrived at the conclusion, that I ought not to be a party in any way to the completion of this document.

The transactions to which it has reference, have formed the subject of very lengthened and elaborate correspondence, between the Imperial and Colonial Governments; and, upon every occasion, the Law Officers of the Colonial Government have maintained, that the course which the Law Advisers of the Imperial Government have recommended, would be contrary to all Colonial precedent and practice, illegal, and unjust. In a letter dated the 1st November, 1851, to the Colonial Secretary, the then Attorney and Solicitor General, Messrs. Plunkett and Mr. (now Sir W. M.) Manning, thus stated the facts:—

“ On the 31st January, 1845, and prior, therefore, to the conviction of John Tawell, his real and personal property in New South Wales was conveyed by him to Messrs. Wm. Tawell and Wm. Bevan, in trust, to sell, if they should think fit, and to apply the proceeds for the benefit of his wife and son, and certain other persons.

“ On the 30th December, 1847, John Tawell's real and personal estate in England, and his chattel property in New South Wales, were, by the Queen's Warrant, granted to the same Trustees upon the Trusts of the above Deed, and, from the terms of the Warrant (which refers to the abovementioned conveyance of the 31st January, 1845, without impugning it,) as well as from the Correspondence with, and Despatches of, the Secretary of State, it is evident that Her Majesty entirely waived her claim by escheat to the real property in New South Wales, and that the same was to be granted for the benefit of the widow and son of Tawell, as soon as the Crown's title to it should have been found by inquisition held in the Colony.

“ On the 26th January, 1848, Messrs. W. Tawell and Wm. Bevan executed and sent out a power of attorney, which is now before us, and of which the enclosed copy has been furnished to us, by which, after reciting the Conveyance of 31st January, 1845, they appointed Messrs. Norton and G. C. Turner their Attorneys, and fully empowered them, ‘ jointly and severally, for them the said W. Tawell and W. Bevan in their names or in the names of their said Attorneys, or either of them,’ to sell and dispose of the lands in question ‘ if the said Attorneys, or either of them, should think expedient,’ and to receive and give receipts for the purchase moneys, ‘ and in the names of the said W. Tawell and W. Bevan and as their acts and deeds, to make, sign, seal, execute and deliver all such releases and discharges as should, or might, be necessary for effectually releasing, conveying, and assuring such lands unto the purchaser or purchasers thereof.’ An Inquisition having been held in the Colony by which the title of the Crown to the lands in question was found, Mr. Turner made sales of those lands to various persons (by public auction we believe) under the authority of the above power of attorney. He subsequently received the purchase money, and executed Conveyances of these lands, and covenants to endeavour to procure Deeds of Grant in the names of W. Bevan and W. Tawell. These acts were strictly within Mr. Turner's powers as a ‘ several’ Attorney of these Trustees. After the sales, applications were made to the Colonial Government for Deeds of Grant in favor of the purchasers, and it is probable that they would have been issued accordingly in 1849, but for a difficulty which had occurred to ourselves in reference to another case of escheat, as to the sufficiency of the terms of the Governor's Commission.

“ It would now seem that, although some portions of the purchase moneys were remitted to Messrs. W. Tawell and W. Bevan, other portions were not so remitted, but have been or are supposed to be lost, through Mr. Turner's reputed insolvency and emigration to California; and, on this ground, Messrs. Tawell and Bevan seek to repudiate the actings of Mr. Turner on their behalf, and to give effect to such repudiation by obtaining grants from the Crown to themselves.

“ It is, we need not say, greatly to be lamented that the widow and son of the deceased Tawell should suffer through the misplaced confidence reposed in Mr. Turner; but it appears to us, that, according to every principle of equity, it is right, that as the loss must unfortunately fall somewhere, it should be borne by them rather than by equally innocent purchasers, who had nothing to do with the selection of, nor any control over, the Agent, who was regularly employed on their behalf.

“ According also to well known principles of the English Courts of Justice, we think it plain, that if Messrs. Tawell and Bevan were now to obtain a legal title to these lands, by means of a Grant from the Crown, they would be estopped in law from setting it up, in derogation of Deeds which are legally as much theirs as if they had executed them in person, and that, in equity, they would be compellable to convey to their vendees the estate acquired from the Crown. It must be admitted, indeed, that, as the Crown has not yet formally divested itself of its absolute power of disposing of the property as it may think fit, the application of these principles of law and equity might be evaded, by changing the Trustees or the Trusts with that view; but of course the Crown would not lend itself to such a scheme.

“ Having thus brought the facts of the case, as far as they are known to us, under the notice of the Governor General, we have now in conclusion to state, most respectfully,
“ that

“ that in our judgment His Excellency ought not to issue the proposed grants to Messrs. W. Tawell and W. Bevan, but that the whole matter should be laid again before the Secretary of State, together with the counter applications made by the several purchasers.”

Subsequently, on the 14th September, 1854, referring to letters which had passed between the Colonial Secretary and the Law Officers, they again entered into a very full statement of the whole subject, and concluded that communication in the following words:—

“ With the strong opinion we entertain in favor of the claims of the purchasers, we do not think it would be right to leave them to their supposed remedy in Equity, against Mrs. Tawell's Trustees as Grantees. Even if a proceeding in Equity could be made practically effectual on either side, it should, in our opinion, be for the Trustees to establish their repudiation of the acts of their agent; but we have reason now to entertain doubts, founded upon high legal authority, whether the equity of the purchasers could be established as against the proposed Crown Grants. If any such mode of deciding the rights of the parties is to be resorted to, we think it should be by an enquiry preceding the issue of the Grants.

“ Our apology for having ventured to trouble you at so very unusual a length upon this matter, must be our humble but firm conviction that the Crown would be misled into an act of clear injustice if the Grants were now to issue to Mrs. Tawell's Trustees, and that we feel that the honor of the local Government, has, at the instance of the representative of Mrs. Tawell and her Trustees, become pledged to the other claimants.”

Again, on the 15th February, 1856, after further time for consideration, and, in reply to another communication from the Colonial Secretary, they informed the Government, that they still retain to the fullest extent, the firm conviction expressed in a former letter, and which I have just quoted, and they respectfully requested to be relieved from the position of apparent acquiescence and adoption, in which they should place themselves, if they were to give instructions to the Civil Crown Solicitor to prepare a Deed of Grant of the property.”

The case was, during my former tenure of office, repeatedly under the consideration of my colleagues and myself, and we have never varied in the view taken by us; that view being entirely in accordance with the sentiments of the Colonial Law Officers, as stated in the letters of November, 1851, September, 1854, and February, 1856. From its delicate and complicated character, however, and from the pressure of other matters constantly occurring with the introduction of Responsible Government, no action was taken by us; but, by the Ministry which succeeded, the subject was brought before the then Crown Law Officers for advice. Those gentlemen, Mr. Wise, the then Attorney General, and now one of the Judges of the Supreme Court, and Mr. Hargrave, then Solicitor General, and now Attorney General, in very carefully drawn opinions, expressed their agreement in the law and equity of the case as originally given and maintained through a series of years, by Mr. Plunkett and Sir William Manning. They also call attention to another point of considerable importance, and state their opinion that, on the grounds therein fully given, “ a grant of this escheated land would not be within the powers possessed by His Excellency according to the law in force within the Colony.” They assert that the Constitution Act does not give him such powers, and that they are not aware of any power vested in the Governor of the Colony by Common or Statute Law which would enable His Excellency to make Grants of Escheats. In reply to a suggestion in your Excellency's Minute of February, 1860, that the opinion should be referred back to the Law Officers, with directions to consider and report upon the mode in which the instructions transmitted by Her Majesty may be carried into effect, so as to give to the persons who purchased the land from the Attorneys of the Trustees an opportunity of applying to a Court of Equity, to compel the Trustees to fulfil the engagement entered into by their Attorney, to give to the purchasers at public auction a good title to the land so purchased, they state that “ they consider the question for their consideration is not whether the Queen can give instructions, but whether the existing documents, when interpreted by fixed rules of legal construction and applied to the facts of the case, have clothed the Governor General with a legal power to grant the escheat in question”; and they adhere to their previously expressed opinion, that Your Excellency “ does not possess such legal power”; and upon being requested by Your Excellency to reconsider the subject, they also state, that they are clearly of opinion that, “ as the matter now stands, nothing can be done by Your Excellency to grant the lands to any one.”

I would respectfully submit to Your Excellency, that the present position of the case is this. A Deed, purporting to be a Grant from the Crown, of Lands in the Colony of New South Wales, has been prepared by a private practitioner without having passed through any Government Department, or having been verified in its details by any of those Officers of the Government through whose hands grants of land invariably pass. It is proposed to be issued by Your Excellency upon the authority simply of instructions from Her Majesty's Secretary of State for the Colonies. I respectfully submit, that if such a proceeding were to be in any way aided by the Colonial Authorities, it would be tantamount to an admission, that grants of land in New South Wales may be made, by direction of the Secretary of State for the Colonies, not only irrespective of the Colonial Government, but in direct opposition to the reiterated protests of the Crown Law Officers of successive Governments, during a long series of years.

It is with great deference and respect, that I now submit for the consideration of Your Excellency, my views upon this very important matter, involving as it does, in my humble judgment, the relative rights of the Imperial and Colonial Authorities. I assure Your Excellency that I deeply regret that such a question should have arisen at the present moment. Nothing but the strongest sense of what is due to the office which I have the honor to hold, and the trust reposed in me, would have induced me to raise it at a time when many questions of great moment must be claiming Your Excellency's anxious consideration.

I beg to remain, &c.,

CHARLES COWPER.

No. 5.

*Government House,
Sydney, 17 January, 1861.*

MY DEAR COWPER,

The whole of the facts relating to the land belonging to Tawell, and escheated to the Crown, have been so thoroughly discussed, that it is altogether unnecessary for me to enter upon the question again.

I would simply observe, that the Law Officers of the Crown who have reported upon the case, appear to have assumed to themselves the power of deciding upon a matter which ought to be brought before a proper legal tribunal, and that the only mode in which this can properly be done, is by the issue of a Grant to the Trustees against whom the purchasers, under the power of attorney given to Turner, could institute a suit in Equity, in order to compel them to fulfil the covenant entered into at the sale as to the completion of the title of the purchasers.

You say that the Law Officers of the Crown have been unanimous in their opinion on this case; I may observe, that the same unanimity has prevailed among the Law Officers in England, and I must confess that I am more inclined to adopt the opinion of the latter than of the former.

All this, however, is beside the case. I, having received specific and reiterated instructions on the part of Her Majesty to cause a Deed to be prepared according to a certain form, to which Deed I am also directed to cause the Great Seal of the Colony to be attached, shall not be justified, if upon the mere opinion of the Law Officers here, (an opinion contradicted by my own reading of the case, and at variance with that of the most experienced Lawyers in England,) I should refuse to comply with these instructions. I am bound, therefore, to insist that the Great Seal of the Colony, which by my Commission is entrusted to my charge, should be affixed to the document which has been prepared accordance with the form and directions sent from England.

I have, however, no wish to make your refusal to affix this Seal a ground for disturbing the present political arrangements. The case is an exceptional one and can never occur again. I shall not, therefore, unless actually compelled to do so, attempt to disturb your tenure of the office of Colonial Secretary, but shall come down to your office and there affix the Great Seal to the Deed in question.

In this way it appears to me that I shall comply with the Queen's Instructions, and at the same time leave the political organization of the Government undisturbed.

Believe me,

Yours very truly,

W. DENISON.

No. 6.

21 January, 1861.

MY DEAR SIR WILLIAM,

Referring to the interview with which Your Excellency honored me on Friday, I now beg respectfully to state the views of my colleagues and myself upon your communication of the 17th instant.

Your Excellency intimates that the question regarding the escheated lands of the late John Tawell, has been so thoroughly discussed that you consider it unnecessary to open it again. And you announce your intention of coming down to the Colonial Secretary's Office and personally affixing the Great Seal of the Colony to the proposed Deed of Grant.

My colleagues and myself have taken into our anxious consideration the position in which such a course of proceeding would place the Ministry; and we have reluctantly arrived at the conclusion, that so long as we remain Your Excellency's Advisers, we should be unable to divest ourselves of the responsibility of this as of all other acts of Government performed with our cognizance.

While duly appreciating the expression of Your Excellency's desire that the political organisation of the Government should not be disturbed, and bearing in mind the serious embarrassment which, more especially at the present juncture of public affairs, would arise from a resignation of the Ministry, we feel that it would be inconsistent with a due sense of the responsibility properly attaching to us, that we should continue to hold office during the performance of an act of which we cannot but wholly disapprove, and which it is proposed to carry out by so unusual an exercise of power.

The proposal which I submitted for Your Excellency's consideration, that the case should be referred back to the Court of Claims, still appears to me as the least objectionable course open for adoption. To that tribunal it was submitted, and I am not able to learn that it was ever formally withdrawn therefrom. And it may not be out of place for me to accompany this communication with a memorandum which has been prepared by the Principal Under Secretary to the Government, a gentleman of long official experience, giving a history of the origin and constitution of that Court, and of the functions with which it is clothed.

I remain, &c.,

CHARLES COWPER.

[Enclosure.]

[Enclosure.]

Some years ago the preparation of Deeds of Grant for lands promised by Governors of the Colony was greatly in arrear. The lands were held, or occupied, under letters or permissions to select, and in some cases, especially in Sydney, without any claim or title beyond that arising from occupation.

2. These lands in many instances passed, by sale or otherwise, out of the possession of those who originally occupied them, or to whom they were promised, and owing to the death, incapacity, or absence of these persons, questions arose as to the proper parties to receive Deeds from the Crown.

3. The parties in possession had no legal title to these lands, but it was the desire of the Government of the day to issue Deeds to those who had fair claims to them, by purchase from the original holders, or by occupation; and in order to decide on these, an Act was obtained by Sir Richard Bourke, in 1833, for the appointment of Commissioners to inquire into the whole circumstances of each case, and to determine, according to equity and good conscience, the persons to receive Deeds under the Great Seal of the Colony. This Act was revised by the existing law (5 Wm. 4th, No. 21—passed in 1835), and the latter contains a provision, that if the persons claiming the lands, or any part thereof, are entitled, in equity and good conscience, to hold the said lands, and to have a grant thereof made and delivered to them under the Great Seal of the Colony, they shall report the same, with the grounds thereof, to the Governor.

4. On an application being made for a Deed by the parties in possession, if accompanied by a letter, properly authenticated, from persons known to the Government as having been promised the land, it has been usual to advertise the intended preparation of the Deeds, and, should there be no opposition to do so at the expiration of a month from the date of the notice; but, in the absence of such a document, the decease of the original proprietors, or of counter-claims being made, the cases were referred to the Commissioners for inquiry and report, as mentioned in paragraph 3.

5. The Governor is not bound to adopt the recommendation of the Commissioners, the object of whose appointment is to assist the Government in arriving at a right decision as to the parties to receive the Deeds; which, as the legal title to the lands is still in the Crown, (or since the passing of the Constitution Act in the name of the Crown for the Colony) may be considered to be issued as an act of grace, or of justice and fairness to the present holders, shewing their equitable claims, rather than as that to which any persons have an absolute right.

6. In the case of Tawell, supposing the lands to be in this position, and that he had no legal title, either to hold or to sell, the property might be considered to be still in the Crown, on behalf of the Parliament of the Colony, which has now the control and disposal of Waste Lands (or what have not been alienated under the Seal of the Colony) and the question as to whom the Deeds should issue, one perhaps for the decision of the Colonial authorities, after inquiry and report by the Commissioners of Claims. If favorable to the persons in possession and adopted by the Government, the Deeds would issue direct to them and in their names.

7. But assuming the whole of the lands to have been granted under the Seal of the Colony, either to Tawell or others, and being forfeited by his conviction, or offence, to be now, in consequence thereof, at the disposal of the Crown, at its pleasure, it would still only be in accordance with the spirit of the Colonial law already referred to, and consistent with the course followed where questions have arisen on claims to grants for lands, not originally promised to, or held by, persons in possession of them, to deal in the same way with this case, which affects property in the Colony, and the interests of Colonists. This would also seem proper if the Colonial Seal, and the record of the Deeds in a Colonial Office be necessary.

8. There is another question connected with the issue of a Deed for Tawell's property generally, that the inquisition includes land to which, under any circumstances, the parties seeking a title can have no claim. It has been stated that those to whom it belongs may otherwise establish their right. To do this, however, would probably necessitate an expensive law suit, of which they would have grounds to complain.

9. A question has also been raised as to the use of the Great Seal of the Colony. The custody of this is given by his Commission to the Governor General, but in what respects the use of it should in any way be controlled, in cases in which the rights of the Colony may be affected, has perhaps never been considered, with reference to the existing Constitution, and a Government responsible to a local Parliament.

10. There are some provisions in the Commission and Instructions of the Governor, which it has been already admitted by the Secretary of State require alteration, and there are others obviously obsolete and not necessary—such as the directions for Land Offices, &c. It is very likely that some alteration will be found in the Commission and Instructions of the new Governor—but not perhaps any relating to the Seal, and other things, which, in bringing into full operation the present Constitution, may require change, although from the comparatively recent introduction of the system of Responsible Government in the Colonies, the necessity of such modifications has not hitherto become apparent.

18 January, 1861.

No. 7.

Government House,
21 January, 1861.

MY DEAR COWPER,

The course suggested by you in your letter is not in any way applicable to the matter in hand, inasmuch as the land escheated to the Crown, on the execution of Tawell, formed part of old Grants to Colonists, of the title to which there was no question; in point of fact, the land in question is now the property of the Crown, and it is in order to bring it under the operation of the law that I issue, as directed by Her Majesty, the Grant to the Trustees of Mrs. Tawell.

I think you have decided unwisely, both in refusing to comply with my directions to affix the Great Seal to the Deed in question, as in so doing you act only in a ministerial capacity, and assume no responsibility, and also in making any act of mine, performed in consequence of positive orders from Her Majesty, a reason for resigning your political position. Whatever course, however, you may decide to adopt, my duty is very clear, and that is to execute the Deed as directed. In order, then, that I may do so, I must request that you will deliver the Great Seal to my Private Secretary, Mr. Mercwether, who will call for it, and who will return it to the office of the Colonial Secretary as soon as I have attached the Seal to the Deed.

I cannot but hope that you will think better of the course to be adopted by you. Your resignation, at the present instant, can only be productive of delay in carrying out the political arrangements of the Session; it cannot change or alter them.

Believe me, &c.,
W. DENISON.

 No. 8.
21 *January*, 1861.

MY DEAR SIR WILLIAM,

The communication which I have just received from Your Excellency leaves me no other course to pursue but to tender my resignation as Colonial Secretary.

In giving up the Great Seal of the Colony, in obedience to Your Excellency's commands, for the purpose indicated, I feel that Your Excellency calls upon me at the same time to give up my office.

My colleagues wish me to state that they concur in this view, and they beg also to tender their resignations to Your Excellency.

I remain, &c.,
CHARLES COWPER.

 No. 9.

Government House,
21 *January*, 1861.

MY DEAR COWPER,

I return the Great Seal after having perfected the Grant to the Trustees of Mrs. Tawell.

Having entire confidence in your political administration of the Colony, I cannot accept the resignation of yourself and your colleagues, and I trust you will not be so ill-advised as to mix up a matter of a character exclusively private, with the general questions of interest to the Colony which are now pending; the only effect of which would be to damage your administration, and diminish your usefulness.

Believe me,
Yours very truly,
W. DENISON.

1861.

Legislative Assembly.

NEW SOUTH WALES.

ESCHEATED LANDS OF THE LATE JOHN TAWELL.
(RETURN IN REFERENCE TO.)

Ordered by the Legislative Assembly to be Printed, 26 April, 1861.

RETURN to an *Address* of the Honorable the Legislative Assembly of New South Wales, dated 29th January, 1861, praying that His Excellency the Administrator of the Government would be pleased to cause to be laid upon the Table of this House,—

“ Copies of all Correspondence between the Imperial and Local
“ Governments, including all Opinions of the Law Officers, and
“ all communications from private parties having reference to
“ the proceedings of the Crown in the matter of the property of
“ the late John Tawell.”

(*Mr. Parkes.*)

SCHEDULE.

NO.	PAGE.
1. Attorney General to Colonial Secretary, forwarding copy of a letter addressed by Mr. Solicitor Norton, respecting Mr. Tawell's escheated estate, with copy of reply to Mr. Norton's letter, 26 August, 1846	5
2. Despatch to Secretary of State on same subject. 28 September, 1846	6
3. Secretary of State in reply, with enclosures. 29 January, 1848.. .. .	6
4. Mr. Solicitor Turner to Colonial Secretary, same subject. 9 June, 1848	7
5. Colonial Secretary in reply. 22 June, 1848	7
6. Attorney General to Colonial Secretary, same subject. 13 June, 1848.. .. .	7
7. Colonial Secretary in reply. 13 June, 1848	7
8. G. C. Turner to Colonial Secretary on same subject, with enclosure. 19 March, 1849	8
9. Same to same, same subject. 18 April, 1849. (Enclosures)	10
10. Same to same, same subject. 22 June, 1849	10
11. Mr. Solicitor Iceton to Colonial Secretary, same subject. 9 August, 1849	10
12. Colonial Secretary in reply. 14 August, 1849	11
13. Mr. Iceton in reply. 21 September, 1849	11
14. Colonial Secretary in reply. 29 September, 1849	11
15. Attorney General's opinion in the Case. 2 October, 1849	11
16. Colonial Secretary to G. C. Turner. 27 October, 1849	12
17. G. C. Turner in reply. 18 January, 1850. (With enclosure)	12
18. Despatch to Secretary of State. 24 June, 1850	12
19. Mr. Iceton to Colonial Secretary, with enclosure. 8 November, 1850	13
20. Colonial Secretary in reply. 26 November, 1850	14
21. Despatch from Secretary of State, with enclosures. 19 April, 1851	15
22. Colonial Secretary to Law Officers on subject, 25 September, 1851. (With enclosures)	16
23. Mr. Iceton to Colonial Secretary. 2 October, 1851	17
24. Colonial Secretary in reply. 16 October, 1851	17
25. Mr. Iceton in reply. 17 October, 1851. (With enclosure)	17
26. Colonial Secretary in reply. 25 October, 1851	18
27. Law Officers' opinion. 1 November, 1851	19
28. Colonial Secretary to Mr. Iceton. 22 November, 1851	20
29. Mr. McCulloch to Colonial Secretary. 16 October, 1851	20
30. Law Officers to Colonial Secretary. 8 November, 1851	20
31. Colonial Secretary to Mr. McCulloch. 22 November, 1851	21
32. James Norton to Crown Solicitor, with enclosures. 11 October, 1851	21
33. Despatch to Secretary of State. 27 January, 1852	32
34. Secretary of State in reply. 6 October, 1853. (Enclosures)	33
35. Colonial Secretary to Law Officers, forwarding despatch. 3 February, 1854	38
36. Law Officers in reply. 1 May, 1854	38
37. T. W. Smart to Colonial Secretary. 10 May, 1854	39
38. Colonial Secretary in reply. 3 June, 1854	40
39. Colonial Secretary to Law Officers. 30 May, 1854	40
40. Law Officers in reply. 2 June, 1854	40
41. Colonial Secretary in reply. 9 June, 1854	41
42. Mr. Billyard to Colonial Secretary 3 June, 1854.	41
43. Colonial Secretary in reply. 9 June, 1854	41
44. T. W. Smart to Colonial Secretary. 5 June, 1854	41
45. Colonial Secretary in reply. 30 June, 1854	42
46. H. Dixson to Private Secretary. 7 July, 1854	42
47. Colonial Secretary in reply. 22 July, 1854	43
48. Law Officers to Colonial Secretary. 14 September, 1854	44
49. Despatch to Secretary of State. 30 October, 1854	46
50. Secretary of State in reply. 23 November, 1854	47
51. Colonial Secretary to Mr. McCulloch. 7 December, 1854	48
52. Same to Thomas Iceton. 7 December, 1854	48
53. Despatch to Secretary of State. 8 March, 1855	48
54. Secretary of State in reply. 1 November, 1855	49
55. Colonial Secretary to Crown Law Officers. 8 February, 1856	56
56. Law Officers in reply. 16 February, 1856	57
57. Despatch to Secretary of State. 18 March, 1856	57
58. Colonial Secretary to Crown Solicitor. 26 February, 1856	57
59. Same to Mr. Iceton. 26 February, 1856	57
60. Same to Mr. McCulloch. 26 February, 1856	58
61. W. Billyard to Colonial Secretary. 19 February, 1856	58

No.	PAGE.
62. Colonial Secretary to T. W. Smart. 1 March, 1856	53
63. Civil Crown Solicitor to Colonial Secretary. 6 March, 1856	58
64. Colonial Secretary in reply. 10 March, 1856	59
65. Civil Crown Solicitor in reply. 15 April, 1856	59
66. Same to Colonial Secretary. 23 July, 1856	60
67. Same to same. 21 October, 1856	60
68. Mr. Billyard to Secretary for Lands and Works. 30 July, 1857.. .. .	66
69. Précis of the Case, by Under Secretary for Lands and Works	67
70. President of the Court of Claims to Secretary for Lands and Public Works. 19 August, 1857	70
71. Civil Crown Solicitor to Under Secretary for Lands and Works. 4 September, 1857	70
72. Norton, Son, & Barker to Commissioners Court of Claims. 2 November, 1857	71
73. Same to same. 2 November, 1857	71
74. Pennington & Hart to President Court of Claims. 21 November, 1857	71
75. W. W. Billyard to Under Secretary for Lands and Works, 4 December, 1857	71
76. Secretary to Crown Law Officers to Under Colonial Secretary. 30 December, 1857	72
77. Norton, Son, & Barker to Colonial Secretary. 8 January, 1858	72
78. Despatch from Secretary of State. 2 December, 1858	73
79. W. W. Billyard to Secretary for Lands and Works. 22 December, 1858	74
80. Same to same. 9 March, 1859	74
81. Civil Crown Solicitor to Under Secretary for Lands and Works. 30 March, 1859	74
82. Memo. of Under Secretary for Lands and Works. 1 April, 1859	74
83. Mr. Billyard to Secretary for Lands. 1 April, 1859	75
84. Civil Crown Solicitor to Under Secretary for Lands and Works. 10 May, 1859	75
85. Despatch from Secretary of State. 30 September, 1859	76
86. Minute of Governor General. 30 December, 1859.. .. .	77
87. Norton, Son, & Barker to Colonial Secretary. 11 January, 1860	78
88. Opinion of Law Officers. 23 January, 1860	78
89. Minute of Governor General. 23 January, 1860	78
90. Law Officers' opinion. 30 January, 1860	79
91. Minute of Governor General	80
92. Law Officers' opinion thereon. 11 February, 1860	80
93. Minute of Executive Council. 20 February, 1860.. .. .	81
94. Despatch to Secretary of State. 1 March, 1860	82
95. Despatch from Secretary of State. 28 March, 1860. (Enclosures)	83
96. Ditto to Secretary of State in reply. 21 June, 1860	86
97. W. W. Billyard to Secretary for Lands. 17 July, 1860	86
98. Under Secretary to Mr. Billyard, in reply. 30 July, 1860	87
99. Despatch from Secretary of State. 8 September, 1860. (Enclosures).. .. .	87
100. Colonial Secretary to Crown Law Officers. 29 December, 1860.. .. .	88
101. Despatch to Secretary of State. 21 January, 1861	88
102. Opinion of Crown Law Officers. 3 January, 1861	89
103. Minute of His Excellency the Governor General	90
104. Further Opinion of Crown Law Officers. 18 January, 1861	91

ESCHEATED LANDS OF THE LATE JOHN TAWELL.

No. 1.

ATTORNEY GENERAL to COLONIAL SECRETARY.

Attorney General's Office,
26 August, 1846.

SIR,

I have the honor to transmit herewith, for the information of His Excellency the Governor, a copy of a letter addressed by Mr. Solicitor Norton to the Civil Crown Solicitor, respecting certain properties in this Colony which belonged to a person named *John Tawell*, who was in the last year tried, convicted, and executed, in England, for murder.

The object of the letter, it will be seen, was to obtain a disclaimer from me, on the part of the Crown, of any right to the property in question, and I have the honor to transmit the reply I have given.

The conveyance laid before me is drawn in regular form, on stamped parchment, dated 31st January, 1845, conveying to trustees all his real and personal property in New South Wales in trust for his wife and child.

The real properties are five acres of land at Double Bay, land at Woolloomooloo purchased from Mr. Laidley, an allotment in Sussex-street, Sydney, and the Quaker's Meeting House in Macquarie-street. The chattel property consists of 80 shares in the Bank of New South Wales, 10 shares of £100 each in the Commercial Bank, and 60 in the Sydney Alliance Company, which, I should say, is altogether worth upwards of £10,000.

From the intimation in Mr. Norton's letter, I anticipate that a Bill in Equity may be filed shortly, and the Attorney General will necessarily be made aware*

I cannot waive any rights which belong to the Crown, and I will, of course, insist on those rights; but I would suggest it to be advisable that the matter should be made known to the Home Government, with the view of ascertaining Her Majesty's pleasure in respect to it.

I have, &c.,
JOHN H. PLUNKETT,
Attorney General.

[Enclosure 1 in No. 1.]

*Sydney, 11 August, 1846. **

Sir,

The late John Tawell, previously to his trial and conviction in England, assigned and assured, amongst other things, his real and personal estate in this Colony to Mr. Bevan and another, as trustees, for the benefit of his wife and family.

The chief part of this property consists of stock in the New South Wales and Commercial Banks and in one of the Marine Assurance Companies in Sydney.

In making the usual application to these institutions for a transfer of the stock to the trustees, I have been called upon for evidence that the Crown does not claim this property.

I am not sure that I am bound to answer this inquiry, but, as I understand, if I do not offer some proof that the Crown will not claim the property, I shall be compelled to proceed against the trustees at law.

Under these circumstances, I have felt entitled to submit the case to you, in the hope that the Attorney General may grant such certificate as will satisfy the parties.

I believe that it is not usual in any case for the Crown to claim the personal estate of a felon, at least that part which he converted or settled previously to his conviction, and I do not well see how it would be possible for the Crown to identify the executed John Tawell with the property he had in this Colony.

George Cooper Turner, Esq.,
Crown Solicitor.

I am, &c.,
J. NORTON.

[Enclosure 2 in No. 1.]

(*Attorney General's reply to Mr. Norton's letter.*)

I do not feel myself justified in doing what is required of me in Mr. Norton's letter to the Crown Solicitor; I must therefore decline to give any such certificate.

As the trial and conviction of John Tawell took place in England, the Colonial Government ought not, in my opinion, to interfere at all, except by direction of the Home Government, or unless the Attorney General, as the Representative of the Crown, be made a party to any legal proceedings that may be instituted on behalf of those claiming the properties in question under the deed.

In the latter event, I deem it right in candour to say, that I am not satisfied the deed now before me is valid in law; and, therefore, I would consider it my duty to claim this property on behalf of the Crown.

I

* Portion torn in the original and separated.

I assume, on the facts stated, that the deed was executed by Tawell on the day it bears date (31st January, 1845), in contemplation of his trial or conviction, and though a conveyance under such circumstances made *bona fide* for a valuable consideration, at any time before conviction, will be valid, I cannot allow that the consideration here is sufficient. (*Vide Shaw v. Bran*, 1 Stack, 319; also, *Jones v. Ashurst Skinn*), in which case it appeared that a father being in Newgate on a charge of robbery made a bill of sale of goods to the intent to make provision for his son. The father was afterwards convicted and executed, and the son brought an action for the goods, and Holt, Chief Justice, held the sale was fraudulent, though admitting that a sale *bona fide*, and for valuable consideration, would be good; yet such a conveyance as the present could not be intended to any other purpose than to prevent a forfeiture and defraud the King, and that it was a fraud at Common Law.

No. 2.

GOVERNOR SIR CHAS. A. FITZ ROY to SECRETARY OF STATE.

28 September, 1846.

SIR,

At the request of Her Majesty's Attorney General in this Colony, I have the honor to transmit the copy of a communication* (and of the enclosure referred to therein), addressed by that officer to the Colonial Secretary, on the subject of an application which he had received from a Solicitor in Sydney, respecting certain properties in this Colony which belonged to the late John Tawell, who was, some time since, executed in England for murder.

The Attorney General, as you will perceive, is anxious to learn Her Majesty's pleasure in this matter.

I have, &c.,

CHAS. A. FITZ ROY.

* See preceding letter.

No. 3.

SECRETARY OF STATE to GOVERNOR SIR CHAS. A. FITZ ROY.

Downing-street,

29 January, 1848.

SIR,

I have received your Despatch, No. 21, of the 28th September, 1846, respecting the property in New South Wales belonging to the late John Tawell, who was executed for murder.

That Despatch having been brought under the consideration of the Lords Commissioners of the Treasury, I transmit to you, for your information and guidance, a copy of a letter from the Assistant Secretary to their Lordships' Board, and I have to request that you will afford any assistance in your power to the legal representatives in the Colony of the parties to whom this grant has been made, including as it does the personal property possessed by John Tawell in New South Wales, for the benefit of Tawell's widow and family, upon certain trusts set forth in the grant.

I have, &c.,

GREY.

[Enclosure in No. 3.]

Treasury Chambers,

25 January, 1848.

Sir,

With reference to Mr. Stephen's letter to the Home Office, of the 23rd March, 1847, respecting the property in New South Wales belonging to the late John Tawell, who was executed for murder, I am commanded by the Lords Commissioners of Her Majesty's Treasury to acquaint you, for the information of Earl Grey, that Her Majesty has been pleased to grant the property of the said John Tawell, which was forfeited to the Crown upon his conviction, to trustees (Messrs. William Bevan and William Tawell), for the benefit of Tawell's widow and family, upon certain trusts, particularly set forth in the said grant.

I am at the same time to transmit to you copy of a letter from Messrs. Bevan and Goodeve, solicitors to the trustees, and to state that, as the grant from the Crown includes the personal property in New South Wales alluded to by the solicitors, their Lordships see no objection to the said property being put into the possession of the trustees under the grant, or their legal representatives in New South Wales.

With respect to the freehold property in New South Wales, their Lordships' solicitor has reported to them that it does not appear that any inquisition has been taken to find the Crown's title thereto, which has generally been required before any grant of Colonial property is made.

I am, &c.,

G. E. TREVELYAN.

The Under Secretary of the
Colonial Department, &c., &c.

(Extract from a Letter from Messrs. Bevan and Goodeve, dated 6th January, 1848.)

Her Majesty having, with the advice of the Lords Commissioners of Her Treasury, been graciously pleased to grant the property of the late John Tawell to Messrs. William Bevan and William Tawell, as trustees for the widow and family of the deceased, and part of such property, consisting of eighty shares in the Bank of New South Wales, and ten shares in the Commercial Bank of Sydney, and sixty shares in the Australian General Assurance Company, which the trustees are desirous of having transferred into their names in the books of the before-mentioned Companies, in order that they may be able to deal with them as may be found necessary, we have to request the favour of your communicating the fact of the grant having been made to Earl Grey, and it would also lay the trustees under an additional obligation if you would at the same time add any further information which you may deem expedient, and request that the Governor of the Colony of New South Wales may be directed to give any assistance which may be necessary for carrying into effect the objects of the grant.

We believe the solicitor to the Treasury has already reported respecting the proceedings which have taken place, and as the trustees are desirous of sending out instructions to their agent at Sydney by the next mail, it would be a great favour if you would have the kindness to expedite the matter as far as practicable.

No. 4.

ESCHEATED LANDS OF THE LATE JOHN TAWELL.

7

No. 4.

G. COOPER TURNER, ESQ., to COLONIAL SECRETARY.

Sydney, 9 June, 1848.

SIR,

I do myself the honor to request that you will inform me whether a despatch has been received by His Excellency the Governor from Earl Grey respecting the property forfeited to the Crown on the conviction of John Tawell; and if so, favour me with a copy of the despatch and its enclosures.

I have, &c.,
G. COOPER TURNER,
Solicitor for Messrs. Tawell and Bevan.

No. 5.

COLONIAL SECRETARY to G. COOPER TURNER, ESQ.

*Colonial Secretary's Office,
Sydney, 22 June, 1848.*

SIR,

I have the honor to acknowledge the receipt of your letter of the 9th instant, and to inform you, in reply to your request, that it would be contrary to official regulations to furnish you with a copy of the Secretary of State's despatch relative to the property in this Colony forfeited to the Crown on the conviction of John Tawell.

I am, however, instructed to acquaint you, that Earl Grey has notified to the Governor that Her Majesty has been pleased to grant the property of Tawell to trustees (Messrs. William Bevan and William Tawell) for the benefit of that person's widow and family, upon certain trusts, particularly set forth in the grant; and instructed His Excellency to afford any assistance in his power to the legal representatives in New South Wales of the parties to whom such grant has been made, including as it does the personal property of Tawell in the Colony.

With respect to the freehold property of John Tawell, it appears that no inquisition has been taken to find the Crown title thereto, which has generally been required before any grant of Colonial property is made.

I have, &c.,
E. DEAS THOMSON.

No. 6.

ATTORNEY GENERAL to COLONIAL SECRETARY.

*Attorney General's Office,
13 June, 1848.*

SIR,

Referring to my letter of the 26th August, 1846, respecting the property of John Tawell, convicted in England of murder, I beg leave to call your attention to an advertisement which has appeared in the *Sydney Morning Herald*, for some days past, to the effect, "that certain properties were to be sold, by order of J. Norton and G. C. Turner, Esquires, the attorneys of William Tawell and William Bevan, on the 21st instant."

I was not a little surprised at Mr. Turner, the Crown Solicitor for Civil Business, having allowed such an advertisement, without any communication with the Government on the subject, which, he informs me on inquiry, he has not had.

I dare say there may be some despatch on the subject from the Home Government, which will allow the sale for the benefit of Tawell's family, but, until I am apprised of it, I consider I am bound to cause public notice to be given that the property belongs to the Crown.

Awaiting your early reply,—

I have, &c.,
J. H. PLUNKETT,
Attorney General.

No. 7.

COLONIAL SECRETARY to ATTORNEY GENERAL.

*Colonial Secretary's Office,
Sydney, 13 June, 1848.*

SIR,

In acknowledging the receipt of your letter of this date, and referring to the correspondence on the same subject in 1846, I am directed by His Excellency the Governor to transmit to you the copy of a despatch, with its enclosures, from the Secretary of State ^{29 January, 1848.} relative to the property of the late John Tawell.

I have, &c.,
W. ELYARD, JUNR.

No. 8.

No. 8.

G. COOPER TURNER, ESQ., to COLONIAL SECRETARY.

354, Castlereagh-street,
Sydney, 19 March, 1849.

SIR,

With reference to your communication of the 22nd June last, acquainting me that Earl Grey had notified to His Excellency the Governor that Her Majesty had been pleased to grant the property of Tawell to trustees (Messrs. W. Bevan and W. Tawell) for the benefit of Tawell's widow and family, and also to instruct His Excellency the Governor to afford any assistance in his power to the legal representatives here of the parties to whom such grant has been made, and further stating that, with respect to the freehold property of John Tawell, that no inquisition had been taken to find the Crown's title thereto, which has generally been required before any grant of confiscated property is made,—

I do myself the honor to state that, with the consent of the Honorable the Attorney General, a commission was issued out of the Supreme Court, and an inquisition held therein, finding the Crown's title to the freehold property of Tawell in this Colony, and to transmit a copy of the commission and inquisition; and, as the legal representative of Messrs. W. Tawell and Bevan in this Colony, I have the honor to request that His Excellency will be pleased to direct that a grant of a portion of the land contained in the inquisition—(a description whereof is herewith transmitted)—may be issued in favour of Mr. Thomas Ware Smart.

I have, &c.,

G. COOPER TURNER.

[Enclosure 1 in No. 8.]

In the Supreme Court of New South Wales.

VICTORIA by the Grace of God of the United Kingdom of Great Britain and Ireland Queen Defender of the Faith and so forth.

To Samuel Frederick Milford Barrister-at-law Esquire George Phillip Foster Gregory Prothonotary of the Supreme Court George John Rogers and James Norton the Younger both of Sydney in our territory of New South Wales Solicitors—

GREETING:

Whereas at the Assizes holden in and for the County of Buckingham in England on the tenth day of March in the year of our Lord one thousand eight hundred and forty-five John Tawell late of the Parish of Farnham Royal in our said County of Buckingham Gentleman was charged with and convicted and attainted of the wilful murder of one Sarah Hart and shortly thereafter suffered death for the same by reason whereof all his lands tenements and hereditaments escheated and became forfeited to the Crown Therefore know ye that we very much trusting in your fidelity industry and care in transacting our affairs have assigned you our Commissioners and do by these presents give unto you any two or more of you full power and authority to inquire as well by the oaths of good and lawful men of our said Colony or otherwise by the testimony upon oath of the like good and lawful men by whom you may be well informed concerning the matters hereby inquired after and by whom the truth of the premises may more plainly appear as by all other ways means and methods whatsoever of what lands tenements and hereditaments and of what annual value and what estates within our Colony of New South Wales the said John Tawell or any other or others was or were seized to his use on the first day of January one thousand eight hundred and forty-five being the day on which the said murder and felony was committed by the said John Tawell or ever afterwards who hath since taken the mesne profits thereof and in whose possession the same then were and of whom and by what service or services and by what tenure the same were holden or are held And also what and what sort of leases or grants of lands tenements or hereditaments for any term or terms of years and what and what sort of annuities or annual rents and what and what sort of goods and chattels and of what value and of what and what sort of debts credits specialities and sums of money the said John Tawell or any other or others for his use had on the said tenth day of March one thousand eight hundred and forty-five on which day the said John Tawell was so convicted as aforesaid or at any time since and all other articles matters and circumstances concerning the premises aforesaid or any of them whatsoever and the said lands tenements hereditaments goods chattels debts credits specialities and sums of money so as aforesaid to be found to enter upon and seize unto our hands And we command you and any two or more of you that at such day and place or days and places as you shall appoint you diligently attend and make strict and effectual inquiry about the premises in manner aforesaid so that you have your inquisition fairly and openly taken thereupon before our Supreme Court at Sydney on the twenty-first day of September next ensuing to be then and there delivered with this our Commission into our said Court under your seals or under the seals of such of you as shall take the same and under the seals of those persons by whom you make the said inquisition And we also command our Sheriff of our said Colony and do hereby give him full power and authority to cause to appear before you any two or more of you at the day and place or days and places which you shall appoint and whereof you shall give him notice any person or persons whom it may be proper to examine in the premises upon their oaths to be taken before you that this our command may be fully executed moreover we give to all and singular our Sheriff bailiffs constables and all other officers ministers and subjects whatsoever strictly in command by the tenor of these presents that they be aiding and assisting in the execution of these presents as becomes them upon peril that shall ensue thereon in case of their neglect herein.

Witness the Honorable Sir Alfred Stephen Knight our Chief Justice of our Supreme Court of New South Wales at Sydney aforesaid the fifth day of August in the twelfth year of our reign.

(L.S.) ALFRED STEPHEN.

G. P. F. GREGORY, (L.S.)
Prothy. and Regr. of the Supreme Court.

The execution of this Commission appears by the Inquisition hereunto annexed.

SAML. FREDK. MILFORD.
G. P. F. GREGORY.
GEORGE J. ROGERS.
JAMES NORTON, JUNR.

[Enclosure

[Enclosure 2 in No. 8.]

New South Wales (to wit).

AN INQUISITION indented and taken at Sydney in the Colony of New South Wales on Tuesday the twenty-second day of August in the twelfth year of the reign of our Sovereign Lady Victoria and in the year of our Lord one thousand eight hundred and forty-eight before Samuel Frederick Milford George Phillip Foster Gregory George John Rogers and James Norton Junior Esquires by virtue of the annexed Commission of our said Lady the Queen and under the seal of the said Supreme Court of New South Wales bearing date the fifth day of August in the said twelfth year of the reign of our said Lady the Queen and before James Middleton (foreman) Jeremiah Murphy John Martyn Lewis Moore Albert Mason John Henry Myers Robert May John Marsh Isaac Moss Thomas Maguire Jeremiah Murphy John Wilson Mullen Thomas Moore being duly impanelled and returned by force of the said Commission and sworn upon the Holy Evangelists to inquire find out and fully inform themselves of what lands tenements and hereditaments and of what annual value and of what estates within the said Colony John Tawell in the said annexed Commission mentioned to have been attained and convicted of felony or any other or others was or were seized to his use on the first day of January one thousand eight hundred and forty-five or ever afterwards and who hath since taken the mesne profits thereof and of whom and by what service or services and by what tenure or tenures the same were holden and whether the same or any and which of them or any and which of them had escheated and devolved and come to Her Majesty and also what and what sort of leases or grants of lands tenements or hereditaments and what and what sort of annuities or annual rents and what and what sort of goods and chattels and of what value and which and what sort of debts credits specialities and sums of money the said John Tawell or any other or others for his use had on the tenth day of March in the year of our Lord one thousand eight hundred and forty-five on which day the said John Tawell was convicted and attainted of felony as aforesaid or at any time since upon their oaths say that the said John Tawell was on the said first day of January one thousand eight hundred and forty-five or at some time afterwards and previous to the day of taking this inquisition seized or possessed of or otherwise entitled to a good estate of inheritance in fee simple in possession to him and his heirs in socage tenure of in and to all that piece or parcel of land in the said County of Cumberland and Parish of Alexandria bounded on or towards the north by the estate of Mr. Justice Dowling one hundred and eight feet on or towards the east by the same estate thirty-four feet eleven inches on or towards the west by the same estate sixty-six feet ten inches and on or towards the south by William-street one hundred and seventeen feet six inches being part of the hereditaments comprised in the thereinbefore in part recited indentures and forming the said lot two together &c. and also all that allotment or parcel of land in our said territory containing by admeasurement eleven perches situated in the Town of Sydney Parish of Saint James County of Cumberland allotment number eleven of section number forty-one and bounded on the east by the building line of Macquarie-street bearing north three degrees fifteen minutes west thirty-nine links on the north by allotment number twelve bearing west two degrees south one hundred and sixty links on the west by allotment number twenty bearing south one degree east fifty and a quarter links and on the south by allotment number ten bearing east five degrees thirty minutes north one hundred and sixty-two links being part of an allotment leased to Samuel Thornton by His Excellency Sir Thomas Brisbane on 30 June 1823 and now granted to the said John Tawell and also all that piece or parcel of land situate lying and being in the Parish of Saint Andrew in the Town of Sydney aforesaid bounded on the west by Sussex-street twenty-four feet on the north by other part of the land comprised in the thereinbefore in part recited grant sold to John Borne and Matthew Shaw respectively sixty-six feet on the east by a lane reserved for the use of the said John Tawell his heirs and assigns in common with the occupiers of the other parts of the land comprised in the said grant forty-one feet ten inches and on the south by a road leading into George-street also reserved for the use of the said John Tawell his heirs and assigns in common with the occupiers of the other parts of the lands comprised in the said grant and also all that piece or parcel of land situate lying and being in the Parish of Saint Andrew aforesaid bounded on the west by Sussex-street twenty-two feet on the north by the premises of Mr. Knowles Bryant and others seventy-four feet two inches on the east by the reserved lane aforesaid twenty-two feet four inches and on the south by the said lands of the said John Byrne and Matthew Shaw seventy feet one inch together with the use of the reserved lane and road hereinbefore mentioned and also all that piece or parcel of land or ground containing by admeasurement four acres two roods and thirty-five perches situate and being in the County of Cumberland and Parish of Alexandria aforesaid bounded on the east by a private road of twenty feet width by a line south six chains and seven links on the north by land belonging to Mr. James Barker by a fenced line east seven chains and eighty-four links on the west by the road leading from the South Head to Sydney seven chains and forty-five links and on the south by land belonging to Mr. Henry Mace by a line west seven chains to the commencing corner together with the free use and enjoyment of the said private road in common with the owners and occupiers of the adjoining land and also with all houses &c. and the said jurors upon their oaths aforesaid say that the said lands tenements and hereditaments became and are escheated and forfeited to the use of Her said Majesty but as to who hath taken the mesne profits thereof and as to what and what sort of leases or grants of lands tenements or hereditaments for any term or terms of years and what and what sort of annuities or annual rents and what and what sort of goods and chattels and of what nature and what sort of debts credits specialities and sums of money the said John Tawell or any other or others to his use had on the tenth day of March one thousand eight hundred and forty-five on which day he was convicted and attainted of felony as aforesaid the jurors aforesaid are not informed In witness whereof the abovenamed Samuel Frederick Milford George Phillip Foster Gregory George John Rogers and James Norton junior and also the jurors aforesaid have to this inquisition taken the day and year first above mentioned set their hands and affixed their seals on the same day and year and at the place first above stated.

(L.S.) SAM'L. FREDK. MILFORD.
 (L.S.) G. P. F. GREGORY.
 (L.S.) GEORGE J. ROGERS.
 (L.S.) JAMES NORTON, JUNR.

(L.S.) JAMES MIDDLETON.
 (L.S.) JEREMIAH MURPHY.
 (L.S.) JNO. MARTYN.
 (L.S.) LEWIS MOORE.
 (L.S.) ALBERT MASON.
 (L.S.) THOM. HENRY MYERS.
 (L.S.) ROBT. MAY.
 (L.S.) JOHN MARSH.
 (L.S.) ISAAC MOSS.
 (L.S.) THO. MAGUIRE.
 (L.S.) JEREMIAH MURPHY.
 (L.S.) J. W. MULLEN.
 (L.S.) THOS. MOORE.

[Enclosure 3 in No. 8.]

ALL that piece or parcel of land in the said county of Cumberland and parish of Alexandria bounded on or towards the north by the estate of Mr. Justice Dowling one hundred and eight feet on or towards the east by the same estate thirty-four feet eleven inches on or towards the west by the same estate sixty-six feet ten inches and on or towards the south by William-street one hundred and seventeen feet six inches.

No. 9.

G. COOPER TURNER, ESQ., to COLONIAL SECRETARY.

Sydney, 18 April, 1849.

SIR,

With reference to your communication of the 22nd June last, acquainting me that Earl Grey had notified to His Excellency the Governor that Her Majesty had been pleased to grant the property of Tawell to trustees (Messrs. W. Bevan and W. Tawell), for the benefit of Tawell's wife and family, and also to instruct His Excellency the Governor to afford any assistance in his power to the legal representatives here of the parties to whom such grant has been made, and further stating that, with respect to the freehold property of John Tawell, no inquisition had been taken to find the Crown's title thereto, which has generally been required before any grant of confiscated property is made,—I do myself the honor to state that, with the consent of the Honorable the Attorney General, a commission was issued out of the Supreme Court, and an inquisition held thereon, finding the Crown's title to the freehold property of Tawell in this Colony (a copy of which commission and inquisition have been furnished to you); and, as the legal representative of Messrs. Wm. Bevan and Wm. Tawell in this Colony, I have the honor to request, that His Excellency the Governor will be pleased to direct that a grant of a portion of the land contained in the inquisition (a description whereof is herewith transmitted) may be issued in favour of Mr. Hugh Dixson, of Sydney.

I have, &c.,

G. COOPER TURNER,
Attorney for Messrs. Tawell and W. Bevan.

[Enclosure in No. 9.]

DESCRIPTION of Land, formerly belonging to John Tawell, purchased by Hugh Dixson.

ALL that allotment or parcel of land in our said territory containing by admeasurement eleven perches situated in the town of Sydney parish of Saint James county of Cumberland allotment No. eleven of section No. forty-one and bounded on the east by the building line of Macquarie-street bearing north three degrees fifteen minutes west thirty-nine links on the north by allotment number twelve bearing west two degrees south one hundred and sixty links on the west by allotment number twenty bearing south one degree east fifty and a quarter links and on the south by allotment number ten bearing east five degrees thirty minutes north one hundred and sixty-two links.

No. 10.

G. COOPER TURNER, ESQ., to COLONIAL SECRETARY.

George-street,

Sydney, 22 June, 1849.

SIR,

With reference to my communication to you of the 19th March last, requesting that His Excellency the Governor would be pleased to direct that a grant of the land (a description whereof was therewith transmitted) might be issued in favour of Mr. T. W. Smart,—I do myself the honor to request, that a reply to my communication may be sent to Messrs. Carr and Owen, the solicitors for Mr. Smart.

I have, &c.,

G. COOPER TURNER.

No. 11.

T. ICETON, ESQ., to COLONIAL SECRETARY.

354, Castlereagh-street,

Sydney, 9 August, 1849.

SIR,

Sometime since my client, Mr. Hugh Dixson, purchased at public auction a property in Macquarie-street, formerly belonging to John Tawell, which had been escheated to the Crown, and which it was represented at the sale would, in conformity with instructions from the Right Honorable the Secretary of State, be granted to the legal representatives in this Colony of Messrs. Bevan and Tawell, to whom Her Majesty had been graciously pleased to express Her intention of granting J. Tawell's estate. An application from Messrs. Norton and Turner, the representatives of Messrs. Bevan and Tawell, for a grant in favour of my client, was thereupon forwarded to you, which application has, I understand, been referred to the Crown Law Officers.

On behalf of Mr. Dixson it is my duty to represent to you that the delay which has occurred in completing his title is a serious inconvenience to him, and I have respectfully to request that you will have the goodness to cause instructions to be given in the proper quarter, that this long-pending matter may be brought to a conclusion with as little further delay as possible.

I have, &c.,

THO. ICETON.

No. 12

No. 12.

COLONIAL SECRETARY to T. ICETON, ESQ.

*Department of Lands,
Sydney, 14 August, 1849.*

SIR,

Your letter, under date the 9th instant, on the subject mentioned below, has been duly received and referred for the report of the Crown Law Officers.

2. As soon as the necessary information has been obtained a further communication will be made to you.

I have, &c.,
W. ELYARD, JUNR.

SUBJECT:—Tawell's Escheated Estate.

No. 13.

T. ICETON, ESQ., to COLONIAL SECRETARY.

Sydney, 21 September, 1849.

SIR,

I am under the necessity of drawing your attention to my letter to you of the 9th August last, applying, on behalf of Mr. Hugh Dixson, for grant of land in Macquarie-street, formerly belonging to John Tawell, which, by your letter of the 14th August, you informed me had been referred to the Law Officers of the Crown, and to which I have received no reply.

I have, &c.,
THO. ICETON.

No. 14.

COLONIAL SECRETARY to T. ICETON, ESQ.

*Colonial Secretary's Office,
Sydney, 29 September, 1849.*

SIR,

Your letter, under date the 21st instant, on the subject mentioned below, has been duly received and referred for the report of the Crown Law Officers.

2. As soon as the necessary information has been obtained a further communication will be made to you.

I have, &c.,
W. ELYARD, JUNR.

SUBJECT:—On the subject of Mr. Hugh Dixson's claim to a Grant of Land in Macquarie-street, formerly the property of the late John Tawell.

No. 15.

ATTORNEY GENERAL'S OPINION IN THE CASE.

I am of opinion that the lands forfeited to the Crown in consequence of the conviction of Tawell come under the provisions of the Land Sales Act, 5th and 6th Victoria, ch. 36, sec. 23.

Lands coming to the Crown under such circumstances are not within any of the exceptions in that Act to enable the Governor to issue a grant to the trustees of Tawell's family.

Although I incline to think the Legislature did not contemplate the repeal of the 47th Geo. III, sec. 2, ch. 24, which was expressly enacted to authorize grants in such cases as the present, and which statute is in force in England, I am of opinion it is repealed by the 5th and 6th Vict., ch. 36, so far as regards the Australian Colonies, and consequently the Governor has no power to issue a grant.

It is evident from the last paragraph in Mr. Trevelyan's letter, that the Lords of the Treasury did not foresee any such difficulty in issuing a grant after inquisition.

I fear there is no way of removing the difficulty but by Act of Parliament.

J. H. PLUNKETT,
Attorney General.

2 Oct., 1849.

No. 16.

No. 16.

COLONIAL SECRETARY to G. COOPER TURNER, ESQ.

*Colonial Secretary's Office,
Sydney, 27 October, 1849.*

SIR,

With reference to your letter of the 22nd June last respecting the claim of Mr. T. W. Smart to a grant of certain land, formerly the property of the late John Tawell, I now do myself the honor to annex, for your information, a copy of the opinion of the Attorney General, which has been taken in the matter, and to add that a copy has also been forwarded to Messrs. Carr and Owen, as the solicitors of Mr. Smart, in compliance with your request.

See foregoing opinion.

I have, &c.,
W. ELYARD, JUNR.

No. 17.

G. COOPER TURNER, ESQ., to COLONIAL SECRETARY.

*452, George-street,
Sydney, 18 January, 1850.*

SIR,

With reference to yours of the 27th October last, transmitting a copy of an opinion given by the Honorable the Attorney General in consequence of an application made by Mr. Smart for a grant of certain land (formerly the property of the late John Tawell) escheated to the Crown, to the effect that such lands could not be granted here, being affected by the provisions of the Land Sales Act 5 and 6 Vict., cap. 36, sec. 23, and not within any of the exceptions in that Act,—I do myself the honor, in reply, to transmit a copy of an opinion given by Mr. Foster thereon, from which it will appear that that gentleman differs from the Honorable the Attorney General.

I have, therefore, to request that the matter may be again brought under the consideration of the Law Officers of the Crown, and would beg to remark that, if lands escheated to the Crown *per defectum tenentis* come under the provisions of the Land Sales Act, that that Act would repeal, by implication, all former laws passed respecting escheated lands, and abridge the Queen's prerogative right to such properties.

I have, &c.,
G. COOPER TURNER,
Attorney for Messrs. Tawell and Bevan.

[Enclosure in No. 17.]

I am inclined to think that the lands forfeited to the Crown in consequence of Tawell's conviction do not come under the provisions of the Land Sales Act 5 and 6 Vict., c. 36. The 23rd section of that Act expressly declares what shall be intended by the words "Waste Lands" used in that Act, viz.:—
"Lands vested in Her Majesty, &c., and which have not been already granted or contracted to be granted."

Now these lands have been already granted to Tawell or to some person under whom he claimed, and, consequently, in my opinion, have ceased to be Waste lands.

24 January, 1848.

W. FOSTER,
360, Castlereagh-street.

No. 18.

GOVERNOR SIR CHAS. A. FITZ ROY to SECRETARY OF STATE.

24 June, 1850.

TAWELL AND COOPER.

Question, whether their properties on reverting to the Crown become part of the general demesne of Waste Lands?

MY LORD,

I had the honor to receive your Lordship's despatch, No. 15, dated the 29th January, 1848, respecting property in this Colony which belonged to the late John Tawell, executed for murder, and thereby became escheated to the Crown, and which your Lordship informed me Her Majesty had been pleased to grant to trustees, for Tawell's widow and children.

2. In pursuance of your Lordship's despatch, the necessary inquisition was held, and certain real property was adjudged to have belonged to the criminal, and the same was put up to public sale for the benefit of the trustees.

3. About the same time the landed property of one James Cooper having become escheated to the Crown, in consequence of his decease without heirs, was also brought to public sale for the public benefit.

4. When it became necessary to consider the proper forms of titles to be given to the purchasers of the properties of the persons abovenamed, a very important question arose, which, owing to a difference of opinion between the Crown Law Officers consulted, imposes upon me the necessity of bringing the subject under your Lordship's attention, with the view of receiving further instructions respecting it.

5.

5. It is not doubted by the Law Officers that the lands were originally alienated by valid grants from the Crown; nor does it seem to be considered that the forfeiture has annulled these grants.

6. The main question on which the Crown Law Officers have come to opposite conclusions is, whether the properties of Tawell and Cooper have, on reverting to the Crown, become parts and parcels of the general demesne of Waste Lands, which the Act 5 and 6 Vict., cap. 36, was intended to regulate. The Attorney General has arrived at the affirmative opinion.

7. When the point was first mooted in Tawell's case, Mr. Foster was Solicitor General, and his opinion was adverse to that of the Attorney General, being to the effect that the lands having been already granted to Tawell, or to some other person under whom he claimed, had ceased to be Waste Lands.

The opinion of Mr. Manning, the present Solicitor General, which is given at considerable length, accords with that of Mr. Foster, and is thus expressed—"I have come to the conclusion that the (Waste Land Sales) Act does not apply to the escheated lands, and that they are consequently capable of being disposed of by the Crown in any other such way as may be deemed most expedient."

8. The Attorney General, looking upon the escheated lands of Tawell as under the operation of the Act, conceives that I cannot issue a grant except for the benefit of the Land Fund, and that the prerogative of the Queen can only be restored in this instance by an Act of Parliament.

9. The Solicitor General, who regards the properties in both cases to be distinct from the Waste Lands of the Crown, states his opinion in the case of Cooper—which is in this respect applicable to that of Tawell—to be, that the lands cannot, under my Commission, be conveyed to the purchasers, as upon reference to that document, he finds that the power delegated, with respect to the disposal of lands, is confined to Waste Lands.

10. I have the honor to transmit to your Lordship copies of the following papers, which will more specifically explain this subject:—

Mr. Attorney General Plunkett's opinion on Tawell's case, 2nd October, 1849.

Mr. Solicitor General Foster's opinion on the same, 24th January, 1848.*

Mr. Attorney General's opinion on Cooper's case, 8th May, 1850.†

Mr. Solicitor General Manning's opinion thereon, 10th May, 1850.†

I have, &c.,

CHS. A. FITZ ROY.

No. 19.

T. ICETON, ESQ., to COLONIAL SECRETARY.

Sydney, 8 November, 1850.

SIR,

I am under the necessity of calling your attention to the correspondence respecting my client, Mr. Hugh Dixson's, claim to a grant of the land in Macquarie-street, formerly the property of John Tawell, deceased.

I submit that it is indisputable that this property escheated to, and is now vested in, the Crown, and that it is not subject to the provisions of the Waste Lands Act; and that whatever doubts may have at one time been thought to exist upon these points must, after the consideration and discussions which have taken place, be held to have had no foundation.

This being the case, the only question left open is, as to His Excellency the Governor's power to grant the land in question to my client, as the purchaser from Tawell's representatives, in pursuance of the instructions contained in Earl Grey's despatch. I submit that His Excellency has the necessary authority, but that if there should be any doubt upon the point the Government will not incur any liability or responsibility of any sort by making the grant, while my client will, in all probability, be a great loser in consequence of the Government not making it. My client is the only party who could by any possibility be damaged by the invalidity of the grant if it should be invalid; he is willing to take the risk of the grant being void, and of maintaining its validity by legal proceedings if necessary.

I have therefore, on his behalf, to request that His Excellency will be pleased to give directions for the issue of the deed of grant in Mr. Dixson's favour.

His Excellency will observe that my client has been waiting for his grant since February, 1849.

I enclose a copy of the conveyance from Tawell's trustees to my client of the land in question.

I have, &c.,

THO. ICETON.

[Enclosure in No. 19.]

THIS Indenture made the fifteenth day of May in the year of Our Lord one thousand eight hundred and fifty between William Tawell of Earl's Colne in the County of Essex in that part of the United Kingdom of Great Britain and Ireland called England draper and William Bevan of the Old Jewry in the City of London Esquire of the one part and Hugh Dixson of the City of Sydney tobaccoist of the other part Whereas the said William Tawell and William Bevan lately contracted and agreed with the said Hugh Dixson for the absolute sale to him of the hereditaments hereinafter described at

or

* See Enclosure to Mr. Cooper Turner's letter of 18th January, 1850.

† Not now with papers.

or for the price or sum of three hundred and seventy-five pounds now this Indenture witnesseth that in pursuance of the said recited contract and in consideration of the sum of three hundred and seventy-five pounds of lawful money of Great Britain in hand paid by the said Hugh Dixon to the said William Tawell and William Bevan on the execution of these presents the receipt whereof the said William Tawell and William Bevan do hereby respectively admit and acknowledge and therefrom do respectively release and discharge the said Hugh Dixon his heirs executors administrators and assigns they the said William Tawell and William Bevan do and each of them doth grant bargain sell alien release and confirm unto the said Hugh Dixon and his heirs all that allotment or parcel of land situate in Macquarie-street in the City of Sydney in the said Colony being allotment number eleven of section forty-one and bounded on the east by the building line of Macquarie-street aforesaid bearing north three degrees fifteen minutes west thirty-nine links on the north by allotment number twelve bearing west two degrees south one hundred and sixty links on the west by allotment number twenty bearing south one degree east fifty and a quarter links and on the south by allotment number ten bearing east five degrees thirty minutes north one hundred and sixty-two links together with the chapel or meeting-house messuage or tenement and buildings thereon erected and built and together with the rights members and appurtenances thereunto belonging and all the estate right title and interest of the said William Tawell and William Bevan respectively therein and thereto To have and to hold the said hereditaments and premises hereby assured with their appurtenances unto the said Hugh Dixon and his heirs to the only proper use and behoof of the said Hugh Dixon his heirs and assigns for ever And the said William Tawell and William Bevan do hereby for themselves their heirs executors and administrators hereby covenant with the said Hugh Dixon his heirs and assigns that notwithstanding any act matter or thing done or permitted by the said William Tawell and William Bevan or either of them to the contrary the said William Tawell and William Bevan have in themselves good right by these presents to release or otherwise assure the said hereditaments and premises with their appurtenances to the uses aforesaid according to the true intent of these presents and also that the said hereditaments and premises shall or may be peaceably held and enjoyed accordingly without any eviction or interruption from or by the said William Tawell or William Bevan or any person or persons rightfully claiming or to claim through under or in trust for them or either of them free from or by the said William Tawell and William Bevan their heirs executors or administrators kept indemnified against all former or other estates rights titles charges and incumbrances created or occasioned by the said William Tawell and William Bevan or either of them or any person or persons claiming through under or in trust for them or either of them or by their or either of their act default privity or procurement And also that the said William Tawell and William Bevan and every person rightfully claiming any estate right title or interest in or to the said hereditaments and premises or any part thereof through under or in trust for them will at any time or times hereafter at the request and costs of the said Hugh Dixon his heirs or assigns make do and execute every such act deed conveyance or assurance for more effectually assuring the said hereditaments and premises or any part thereof with their appurtenances according to the true intent of these presents as by the said Hugh Dixon his heirs or assigns or his or their counsel in the law shall be reasonably advised and required and as shall be tendered to be done or executed In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

W. TAWELL, (l.s.)
By G. COOPER TURNER, his Attorney.

W. BEVAN, (l.s.)
By G. COOPER TURNER, his Attorney.

Signed with the name and sealed with the seals
and delivered as the acts and deeds of the
said William Tawell and William Bevan by
George Cooper Turner Esquire the duly con-
stituted Attorney of the said William Tawell
and William Bevan in the presence of

EDWARD NETTLESHIP, Accountant, Sydney.

RECEIVED the day and year first within written of and from the within named Hugh Dixon the sum of three hundred and seventy-five pounds being the consideration money within expressed to be paid by him. £375.

Witness—EDWARD NETTLESHIP.

W. TAWELL,
By G. COOPER TURNER, his Attorney.

W. BEVAN,
By G. COOPER TURNER, his Attorney.

Received into the Office for the Registration of Deeds &c. at Sydney on the tenth day of July A.D. 1850 at a quarter past twelve o'clock in the afternoon from John Russell Jones of Sydney a sworn copy of the within conveyance verified by the said J. Russell Jones and numbered 931 book 18.

ALFRED ELYARD,
Chief Clerk of the Supreme Court.

No. 20.

COLONIAL SECRETARY to T. ICEYTON, ESQ.

Colonial Secretary's Office,
Sydney, 26 November, 1850.

SIR,

In reply to your letter of the 8th instant, respecting Mr. Hugh Dixon's purchase of a portion of escheated property in Macquarie-street, I have the honor to inform you that, the matter having been referred for the directions of the Right Honorable the Secretary of State, no decision can be come to until after the receipt of a despatch from His Lordship to the effect desired by you.

I have, &c.,
W. ELYARD, JUNR.

No. 21.

No. 21.

SECRETARY OF STATE to GOVERNOR SIR CHAS. FITZ ROY.

Downing-street,
19 April, 1851.

SIR,

I have to acknowledge the receipt of your despatch of the 24th June last, No. 117, bringing under my notice the difficulties which had presented themselves to you, when endeavouring to carry out your instructions with respect to the disposal of the escheated property of the late John Tawell, in consequence of the differences of opinion which prevailed among your late and present legal advisers, as to how far the property referred to is affected by the provisions of the Land Sales Act, and, consequently, whether you would be legally empowered to make a grant of the escheated land, or dispose of the proceeds for the benefit of the parties in whose favour the Crown has waived its right.

And you request to be furnished with further instructions for your guidance in the matter.

Having communicated on the subject with the Lords Commissioners of the Treasury, I now transmit, for your information, the copy of a letter which has been received in reply from that Board, enclosing a copy of the opinion which has been obtained from Her Majesty's legal advisers on the questions raised in the Colony, together with a form of grant (which has been prepared by their lordships' solicitor) to be made under the Great Seal of the Colony of New South Wales, of certain lands and hereditaments in that Colony, found to have escheated to Her Majesty, for the benefit of Sarah Tawell, the wife of the late John Tawell, and his family.

You will perceive that it is the opinion of Her Majesty's legal advisers, that the escheated lands of the late John Tawell do not come within the operation of the Land Sales Act; and I have to instruct you to act in strict accordance with the directions contained in the accompanying letter from the Secretary to the Treasury, respecting the filling up the form of grant, in order that the transfer of the property may be completed.

I have, &c.,
GREY.

[Enclosures in No. 21.]

(1.)

Treasury Chambers,
11 April, 1851.

Sir,

I am directed, by the Lords Commissioners of Her Majesty's Treasury, to transmit to you herewith copy of the opinion of the Attorney and Solicitor General, and of the report of the solicitor to this Board, dated 1st instant, together with a form of grant of certain lands and hereditaments in New South Wales, found to have escheated to Her Majesty, for the benefit of Sarah Tawell, the widow of the late John Tawell, and his family; and I am to request you will move Earl Grey to cause the same to be forwarded to the Governor of New South Wales, with instructions to him to cause the requisite information to be obtained, and a statement of the formal proceedings taken for this purpose, to be inserted in the proposed grant, which document may then be perfected and passed under the Great Seal of the Colony, to complete the transfer of the property for the benefit of the widow and children of the late John Tawell.

H. Merivale, Esq.

I am, &c.,
C. E. TREVELLYAN.

(2.)

Copy of Opinion.

We are of opinion that the escheated lands of the late John Tawell, in New South Wales, are not waste lands within the meaning of the above statutes, and that they cannot be legally granted by the Governor of the Colony to the nominees of the Crown. But that Her Majesty may grant them to trustees, for Tawell's widow and children, in the same manner as any other lands which have escheated to the Crown in any Colony, and are not affected by the provisions of any Act of Parliament.

*Lincoln's Inn, 4 March, 1851.*JOHN ROMILLY.
A. E. COCKBURN.

(3.)

Treasury, 1 April, 1851.

Sir,

In pursuance of My Lords' directions, signified by your letter of the 19th ultimo, I have prepared the enclosed form of grant, under the Great Seal of the Colony of New South Wales, of certain lands and hereditaments in that Colony, found to have escheated to Her Majesty, for the benefit of Sarah Tawell, the wife of the late John Tawell, and his family.

G. C. Lewis, Esq.

I am, &c.,
GEO. MAULE.

(4.)

VICTORIA by the Grace of God of the United Kingdom of Great Britain and Ireland Queen
Defender of the Faith and so forth To all to whom these Presents shall come—

GREETING—

Whereas by an inquisition taken at Sydney in our Territory of New South Wales on the twenty-second day of August in the twelfth year of our Reign and in the year of our Lord 1848 by virtue of our Commission issued out of and under the Seal of our Supreme Court of our said Territory bearing date the fifth day of August in the said twelfth year of our Reign it was found that
John

John Tawell was on the first day of January 1845 or at some time afterwards and previous to the day of taking of such inquisition seized or possessed of or otherwise entitled to a good estate of inheritance in fee simple in possession to him and his heirs in socage tenure of in and to all that piece or parcel of land in our county of Cumberland and parish of Alexandria in the said Territory bounded on or towards the north by the estate of Mr. Justice Dowling 108 feet on or towards the east by the same estate 34 feet 11 inches on or towards the west by the same estate 66 feet 10 inches and on or towards the south by William-street 117 feet 6 inches. And also all that allotment or parcel of land in our said Territory containing by admeasurement 11 perches situated in the town of Sydney parish of Saint James county of Cumberland allotment No. 11 of section No. 41 and bounded on the east by the building line of Macquarie-street bearing north 3 degrees 15 minutes west 39 links on the north by allotment No. 12 bearing west 2 degrees south 160 links on the west by allotment No. 20 bearing south 1 degree east 50½ links and on the south by allotment No. 10 bearing east 5 degrees 30 minutes north 162 links being part of an allotment leased to Samuel Thornton by His Excellency Sir Thomas Brisbane the then Governor of our said Colony on 30th day of June 1823 and afterwards granted to the said John Tawell. And also all that piece or parcel of land situate lying and being in the parish of Saint Andrew in the town of Sydney aforesaid bounded on the west by Sussex-street 24 feet on the north by other part of the land comprised in a certain grant which the land now being described forms part sold to John Borne and Matthew Shaw respectively 66 feet on the east by a lane reserved for the use of the said John Tawell his heirs and assigns in common with the occupiers of the other parts of the land comprised in the said grant 41 feet 10 inches and on the south by a road leading into George-street also reserved for the use of the said John Tawell his heirs and assigns in common with the occupiers of the other parts of the lands comprised in the said grant and also all that piece or parcel of land situate lying and being in the parish of Saint Andrew aforesaid bounded on the west by Sussex-street 22 feet on the north by the premises of Mr. Knowles Bryant and others 74 feet 2 inches on the east by the reserved lane aforesaid 22 feet 4 inches and on the south by the said lands of the said John Byrne and Matthew Shaw 70 feet 1 inch together with the use of the reserved lane and road thereinbefore mentioned and also all that piece or parcel of land or ground containing by admeasurement 4 acres 2 roods and 35 perches situate and being in the county of Cumberland and parish of Alexandria aforesaid bounded on the east by a private road of 20 feet width by a line south 6 chains and 7 links on the north by land belonging to Mr. James Barker by a fenced line east 7 chains and 84 links on the west by the road leading from the South Head to Sydney 7 chains and 15 links and on the south by land belonging to Mr. Henry Mace by a line west 7 chains to the commencing corner together with the free use and enjoyment of the said private road in common with the owners and occupiers of the adjoining land and also with all houses &c. And it was further found that the said lands tenements and hereditaments became and were escheated and forfeited to our use. And whereas we were graciously pleased on the humble petition of Sarah Tawell the widow of the said John Tawell by our Royal Warrant under our Royal Sign Manual bearing date the 30th day of December in the year of our Lord 1847 to give and grant certain lands and hereditaments situate in our county of Hertford in that part of our United Kingdom of Great Britain and Ireland called England late of the said John Tawell found to have escheated to us to William Tawell of Earls Colne in our County of Essex in that part of our said United Kingdom called England draper and William Bevan of the Old Jewry in our City of London in that part of our said United Kingdom called England upon certain trusts. And whereas it has been recommended to us by the Commissioners of our Treasury that it will be proper to grant and it is our will and pleasure to grant the said lands and hereditaments in our said Colony of New South Wales so found to have become escheated to us as aforesaid on the like trusts as in our said in part recited Royal Warrant of the 30th December 1847. Now know ye that we taking the premises into our Royal consideration do hereby give and grant unto the said William Tawell and William Bevan and their heirs all and singular the hereditaments and premises mentioned in the said inquisition taken in our said Colony of New South Wales and thereby found to have escheated to us with the appurtenances To hold unto and to the use of them the said William Tawell and William Bevan and their heirs upon the like trusts and to and for the like intents and purposes and subject to the same powers and provisos as are mentioned or referred to in our said Royal Warrant of the 30th day of December A. D. 1847 with respect to the lands and hereditaments thereby granted to them the said William Tawell and William Bevan or such of the said trusts intents and purposes as are now existing and capable of taking effect. In testimony whereof we have caused this our Grant to be sealed with the seal of our said Territory.

Witness our trusty and well-beloved Sir William Thomas Denison Knight Governor General in and over all our Colonies of New South Wales Van Diemen's Land Victoria South Australia and Western Australia and Captain General and Governor-in-Chief of our Territory of New South Wales and its Dependencies at Government House Sydney in New South Wales aforesaid this day of _____ in the _____ year of our reign and in the year of our Lord 1856.

No. 22.

COLONIAL SECRETARY to CROWN LAW OFFICERS.

*Colonial Secretary's Office,
Sydney, 25 September, 1851.*

GENTLEMEN,

I have the honor, by direction of the Governor General, to transmit to you, for your information, a copy of a despatch, dated 19th April last, addressed to His Excellency by the Secretary of State for the Colonies, on the subject of the disposal of the escheated property of the late John Tawell, together with its enclosures, containing a copy of the opinion obtained from Her Majesty's legal advisers; also, a form of grant of certain lands and hereditaments in favour of Sarah Tawell, the wife of the late John Tawell, and his family.

2. I have to request that you will cause the necessary steps to be taken for the fulfilment of the instructions therein contained, for filling up the form of grant.

I have, &c.,
E. DEAS THOMSON.

[See Enclosures to foregoing Despatch.]

No. 23.

T. ICETON, Esq., to COLONIAL SECRETARY.

Sydney, 2 October, 1851.

SIR,

Referring to your letter of the 26th November, 1850, in which you state that Mr. Dixon's application for a grant of the land in Macquarie-street, purchased by him from the representatives of the late John Tawell, had been referred for the directions of the Right Honorable the Secretary of State, I have now the honor to renew that application, as I understand that the Secretary of State's directions have been received.

In my former communications I forwarded you a request from the trustees for the issue of a grant in Mr. Dixon's favour, and a copy of the registered conveyance from them to Mr. Dixon of the land in question.

Requesting the favour of your early attention,

I remain, &c.,
THO. ICETON.

No. 24.

COLONIAL SECRETARY to T. ICETON, Esq.

*Colonial Secretary's Office,
Sydney, 16 October, 1851.*

SIR,

I have the honor to acknowledge the receipt of your letter of the 2nd instant, renewing your application for a grant to Mr. Hugh Dixon of the land in Macquarie-street, purchased by him from the representatives of the late John Tawell, and in reply to inform you, by direction of His Excellency the Governor General, that the matter has now been referred to the Crown Law Officers, in order that the necessary steps may be taken for carrying out the instructions received from the Secretary of State for the Colonies, relative to the filling up of the form of grant.

I have, &c.,
W. ELYARD, JUNR.

No. 25.

T. ICETON, Esq., to COLONIAL SECRETARY.

Sydney, 17 October, 1851.

SIR,

I have the honor to acknowledge the receipt of your letter of the 16th instant, in reply to my renewed application for a grant to Mr. Dixon of land purchased by him of the representatives of the late John Tawell, and in which you inform me that the matter has been referred to the Law Officers, in order that the necessary steps may be taken for carrying out the instructions of the Secretary of State relative to the filling up of the form of grant.

I have now the honor to request that you will have the goodness to cause all the previous papers in this matter to be forwarded to the Crown Law Officers, including the despatch of the Right Honorable the Secretary of State of 28th January, 1848; the request of the trustees (signed by their duly authorized attorney) for a grant to be made in Mr. Dixon's favour; and a copy of the conveyance from the trustees to Mr. Dixon of the land in question.

My client having bought this land from the trustees, upon the faith of the before mentioned despatch, and having paid the trustees the purchase money, I have, on his behalf, most respectfully but earnestly to protest against a grant of the property being made to the trustees; and to request that His Excellency the Governor General will be pleased to direct the issue of a grant in my client's favour.

I beg to draw His Excellency's attention to the important fact that, but for a difference of opinion between His Excellency's former legal advisers, the grant would long since have been issued in favour of my client, and that the present reference to them would not have become necessary.

I do myself the honor to transmit herewith a copy of a deed of covenant, by which the trustees bound themselves to use their utmost endeavours to obtain a grant for Mr. Dixon, and to request that you will have the goodness to forward the copy, with the other documents, to the Crown Law Officers.

I have, &c.,
THO. ICETON.

[Enclosure in No. 25.]

THIS Indenture made the fifteenth day of May in the year of Our Lord one thousand eight hundred and fifty between William Tawell of Earls Colne in the County of Essex in England draper and William Bevan of the Old Jewry in the City of London Esquire of the one part and Hugh Dixon of the City of Sydney tobaccoconist of the other part Whereas by an indenture bearing date the thirty-first day of January one thousand eight hundred and forty-five and made between John Tawell therein described of the one part and the said William Tawell and William Bevan of the other part the said John Tawell conveyed and assured unto and to the use of the said William Tawell and William Bevan and their heirs

heirs all and every the freehold estates of whatsoever nature or description the same might be of him the said John Tawell in New South Wales and elsewhere in Australia. And whereas at the Assizes holden in and for the County of Buckingham in England aforesaid on the tenth day of March one thousand eight hundred and forty-five the said John Tawell was convicted and attainted of murder and felony. And by an inquisition taken at Sydney aforesaid on the twenty-second day of August one thousand eight hundred and forty-eight in pursuance of a commission of Her Majesty the Queen issued out of the Supreme Court of New South Wales and under the seal of the said Court bearing date the fifth day of August one thousand eight hundred and forty-eight it was found that the said John Tawell was on the first day of January one thousand eight hundred and forty-five on which day the said murder and felony had been committed or at some time afterwards and previous to the day of taking the said inquisition seized or possessed of or otherwise entitled to a good estate of inheritance in fee simple in possession to him and his heirs in socage tenure of in and to amongst other lands and hereditaments the land and hereditaments hereinafter described whereby the said lands and hereditaments became and were escheated and forfeited to the use of Her said Majesty. And whereas Her Most Gracious Majesty has through the Right Honorable Earl Grey Her Majesty's Secretary of State for the Colonies been pleased to notify to His Excellency the Governor of the Territory of New South Wales aforesaid Her Majesty's intention of granting the real property of the said John Tawell to the said William Tawell and William Bevan their heirs and assigns. And also to instruct His Excellency the said Governor to afford any assistance in his power to their legal representatives in the Territory of New South Wales aforesaid for recovering and rendering available the said real property. And whereas the said William Tawell and William Bevan lately contracted and agreed with the said Hugh Dixon for the absolute sale to him of the said hereditaments hereinafter described at or for the price or sum of three hundred and seventy-five pounds. And whereas the said William Tawell and William Bevan have requested His Excellency the Governor of the Territory aforesaid to be pleased to direct that a grant of the said lands and hereditaments hereinafter described so contracted by them to be sold as aforesaid may be issued in favour of the said Hugh Dixon and His Excellency the said Governor has accordingly been pleased to direct that such grant as aforesaid may issue in favour of the said Hugh Dixon his heirs and assigns which said grant has been prepared but not yet issued. And whereas by an indenture bearing even date with these presents and made between the said William Tawell and William Bevan of the one part and the said Hugh Dixon of the other part in consideration of the sum of three hundred and seventy-five pounds paid by the said Hugh Dixon to the said William Tawell and William Bevan the said William Tawell and William Bevan conveyed and assigned unto and to the use of the said Hugh Dixon his heirs and assigns. All that allotment or parcel of land situate in Macquarie-street in the City of Sydney in the said Colony being allotment number eleven of section number forty-one and bounded on the east by the building line of Macquarie-street aforesaid north three degrees fifteen minutes west thirty-nine links. On the north by allotment number twelve bearing west two degrees south one hundred and sixty links. On the west by allotment number twenty bearing south one degree east fifty and a quarter links and on the south by allotment number ten bearing east five degrees thirty minutes north one hundred and sixty-two links. Together with the chapel or dwelling-house mesuage or tenement and buildings thereon erected and built and the appurtenances to the same belonging. And whereas at the time of the said sale it was agreed between the said parties hereto that the said William Tawell and William Bevan should use their utmost endeavours to procure the said grant to be issued as aforesaid. Now this indenture witnesseth that in consideration of the premises they the said William Tawell and William Bevan do and each of them doth hereby for himself his heirs executors and administrators covenant promise and agree with and to the said Hugh Dixon his heirs or assigns and each of them that they the said William Tawell and William Bevan their heirs executors and administrators shall and will use his and their utmost endeavours at the costs of the said Hugh Dixon his heirs or assigns to procure for the said Hugh Dixon his heirs or assigns or assist him or them in procuring the said grant from the Crown in favour of the said Hugh Dixon his heirs and assigns to which the said Hugh Dixon has become entitled under the circumstances hereinbefore set forth. In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

(L.S.)

W. TAWELL,

By G. COOPER TURNER, his Attorney.

(L.S.)

W. BEVAN,

By G. COOPER TURNER, his Attorney.

Signed with the name and sealed with the seals and delivered as the acts and deeds of the said William Tawell and William Bevan by George Cooper Turner Esquire the duly constituted attorney of the said William Tawell and William Bevan in the presence of

EDWARD NETTLESHIP,
Accountant, of Sydney.

No. 26.

COLONIAL SECRETARY to T. ICETON, Esq.

Colonial Secretary's Office,
Sydney, 25 October, 1851.

SIR,

In acknowledging the receipt of your letter of the 17th instant, urging the issue of a grant in favour of Mr. Hugh Dixon of certain land purchased by him from the representatives of the late John Tawell, I have the honor to inform you that your communication has been referred to the Crown Law Officers, together with the former papers on the subject.

I have, &c.,

W. ELYARD, JUNR.

No. 27.

No. 27.

CROWN LAW OFFICERS to COLONIAL SECRETARY.

*Attorney General's Office,
Sydney, 1 November, 1851.*

SIR,

In reply to your letter of the 26th September last, upon the subject of the grants of land which Earl Grey has directed to be issued in favour of Messrs. W. Tawell and W. Bevan, for the benefit of the widow and family of the late John Tawell, we have the honor to state that, being aware from previous official correspondence with reference to these lands that sales of them had been made in the Colony in the names of these trustees, and grants applied for by the purchasers, we requested the Civil Crown Solicitor to obtain all necessary information upon the subject.

2. That officer has accordingly collected such information, and has placed before us much official correspondence, obtained from your office, and a variety of documents, to all of which we have given very attentive consideration; and we find the following to be the leading features of the case.

3. On the 31st January, 1845, and prior, therefore, to the conviction of John Tawell, his real and personal property in New South Wales was conveyed by him to Messrs. W. Tawell and W. Bevan, in trust to sell, if they should think fit, and to apply the proceeds for the benefit of his wife and son, and certain other persons.

4. On the 30th December, 1847, John Tawell's real and personal estate in England, and his chattel property in New South Wales, were, by the Queen's warrant, granted to the same trustees upon the trusts of the above deed; and from the terms of the warrant (which refers to the above-mentioned conveyance of 31st January, 1845, without impugning it), as well as from the correspondence with, and despatches of, the Secretary of State, it is evident that Her Majesty entirely waived her claim by escheat to the real property in New South Wales, and that the same was to be granted for the benefit of the widow and son of Tawell, as soon as the Crown's title to it should have been found by inquisition held in the Colony.

5. On the 26th January, 1848, Messrs. W. Tawell and W. Bevan executed and sent out a power of attorney, which is now before us, and of which the enclosed copy has been furnished to us, by which, after reciting the conveyance of 31st January, 1845, they appointed Messrs. Norton and G. C. Turner their attorneys, and fully empowered them, "jointly and severally, for them the said W. Tawell and W. Bevan, in their names, or in the names of their said attorneys, or either of them," to sell and dispose of the lands in question, "if the said attorneys, or either of them, should think expedient," and to receive and give receipts for the purchase moneys, "and in the names of the said W. Tawell and W. Bevan, and as their acts and deeds, to make, sign, seal, execute, and deliver, all such releases and discharges as should or might be necessary for effectually releasing, conveying, and assuring such lands unto the purchaser or purchasers thereof."

6. An inquisition having been held in the Colony, by which the title of the Crown to the lands in question was found, Mr. Turner made sales of these lands to various persons (by public auction we believe) under the authority of the above power of attorney. He subsequently received the purchase money, and executed conveyances of these lands, and covenants to endeavour to procure deeds of grant, in the names of W. Bevan and W. Tawell. These acts were strictly within Mr. Turner's powers as a "several" attorney of these trustees.

7. After the sales, applications were made to the Colonial Government for deeds of grant in favour of the purchasers, and it is probable that they would have been issued accordingly, in 1849, but for a difficulty which had occurred to ourselves in reference to another case of escheat, as to the sufficiency of the terms of the Governor's Commission.

8. It would now seem that, although some portions of the purchase moneys were remitted to Messrs. W. Tawell and W. Bevan, other portions were not so remitted, but have been, or are supposed to be, lost through Mr. Turner's reputed insolvency and emigration to California; and on this ground Messrs. Tawell and Bevan seek to repudiate the actings of Mr. Turner on their behalf, and to give effect to such repudiation by obtaining grants from the Crown to themselves.

9. It is, we need not say, greatly to be lamented that the widow and son of the deceased Tawell should suffer through the misplaced confidence reposed in Mr. Turner; but it appears to us that, according to every principle of equity, it is right that, as the loss must unfortunately fall somewhere, it should be borne by them rather than by equally innocent purchasers, who had nothing to do with the selection of nor any control over the agent who was regularly employed on their behalf.

10. According also to well known principles of the English Courts of Justice, we think it plain that, if Messrs. Tawell and Bevan were now to obtain a legal title to these lands by means of a grant from the Crown, they would be estopped in law from setting it up in derogation of deeds which are legally as much theirs as if they had executed them in person, and that in equity they would be compellable to convey to their vendees the estate acquired from the Crown. It must be admitted indeed that, as the Crown has not yet formerly divested itself of its absolute power of disposing of the property as it may think fit, the application of these principles of law and equity might be evaded by changing the trustees or the trusts with that view; but, of course, the Crown would not lend itself to such a scheme.

11. Having thus brought the facts of the case, as far as they are known to us, under the notice of the Governor General, we have now in conclusion to state, most respectfully, that in our judgment His Excellency ought not to issue the proposed grants to Messrs. W. Tawell and W. Bevan, but that the whole matter should be laid again before the Secretary of State, together with the counter application made by the several purchasers.

We have, &c.,

J. H. PLUNKETT,
Attorney General }
W. M. MANNING,
Solicitor General.

No. 28.

COLONIAL SECRETARY to T. ICETON, ESQ.

*Colonial Secretary's Office,
Sydney, 22 November, 1851.*

SIR,

Referring to my letter of the 25th ultimo, relative to Mr. Hugh Dixson's claim to a portion of the escheated estate of the late John Tawell, I have the honor, by the direction of the Governor General, to inform you, that, under a report received from the Law Officers of the Crown, His Excellency considers it necessary to refer the matter again to the Right Honorable the Secretary of State for the Colonies.

I have, &c.,
W. ELYARD, JUNR.

No. 29.

A. H. M'CULLOCH, ESQ., to COLONIAL SECRETARY.

*No. 219, Elizabeth-street, Sydney,
16 October, 1851.*

SIR,

Having recently been favoured by Mr. James Norton, solicitor, with the inspection of some correspondence received by him from Messrs William Tawell and William Bevan, of England, (the trustees to whom all the property in this Colony belonging to the late John Tawell was conveyed prior to his decease,) in which it is intimated that they have procured instructions to be forwarded from the Colonial Office to His Excellency the Governor General, for the preparation of a grant in their favour of all the property here, upon similar trusts to those declared in Her Majesty's Warrant granting the English property to them; I have the honor, on behalf of Mr. Thomas Moore, to represent to you, for the information of His Excellency, that Messrs. Tawell and Bevan (through their legally constituted representative, Mr. George Cooper Turner, who was at the time Civil Crown Solicitor,) have already regularly sold and conveyed, for a valuable consideration, which was duly paid, part of this property, situate in Sussex-street, Sydney, to Mr. Moore, in whose favour it was agreed at the sale a grant was to be applied for by Mr. Turner (and which he afterwards frequently stated he had done), and was to have been issued, but the preparation of which has been hitherto only awaiting the receipt of some further authority for that purpose, which His Excellency was advised it would be necessary to procure from Her Majesty. I now understand that Messrs. Tawell and Bevan, in violation of this sale, are contriving to obtain a grant to themselves, and their avowed purpose is to attempt to sell a second time. In virtue of his purchase and conveyance, and, in consequence of statements made by Messrs. Tawell and Bevan's representative, being in daily expectation of the grant being issued to him, Mr. Moore has expended a considerable sum in building upon the land sold to him. Under these circumstances, the issuing of any grant of this land to Messrs. Tawell and Bevan would, I submit, be a clear injustice to Mr. Moore, and inflict irremediable injury upon him. I therefore beg respectfully to request that His Excellency will deem it proper, before the preparation of a grant to Messrs Tawell and Bevan is further proceeded with, to direct the matter to be investigated, and the rights of the parties interested to be inquired into.

I have, &c.,
A. H. M'CULLOCH.

No. 30.

CROWN LAW OFFICERS to COLONIAL SECRETARY.

*Attorney General's Office,
Sydney, 8 November, 1851.*

SIR,

Adverting to your minute on the accompanying letter from Mr. M'Culloch, solicitor for Mr. Thomas Moore, one of the purchasers from the representatives of the late John Tawell's estate.

In reply we have the honor to refer you to our communication upon this subject, bearing date the 1st November instant, No. 144.

We have, &c.,
J. H. PLUNKETT,
Attorney General.
W. M. MANNING,
Solicitor General.

No. 31.

No. 31.

COLONIAL SECRETARY to A. H. McCULLOCH, ESQ.,

*Colonial Secretary's Office,
Sydney, 22 November, 1851.*

SIR,

Referring to your letter of the 16th October, 1851, relative to Mr. Thomas Moore's claim to a portion of the escheated estate of the late John Tawell, I have the honor, by the direction of the Governor General, to inform you that, under a report received from the Law Officers of the Crown, His Excellency considers it necessary to refer the matter again to the Right Honorable the Secretary of State for the Colonies.

I have, &c.,
W. BLYARD, JUNR.

No. 32.

J. NORTON, ESQ., to CIVIL CROWN SOLICITOR.

Sydney, 11 October, 1851.

SIR,

I have the honor to acknowledge your letter of yesterday's date, and in reply to your inquiries respecting the sale of the real estate of the late John Tawell, to inform you that, by the direction of Mr. George Cooper Turner, Mr. Mort, on the 12th February, 1849, sold by auction the undermentioned parcels of land, viz. :—

- Land at Rose Bay, to Mr. Moore, for £90 ;
- Chapel in Macquarie-street, to Mr. Dixon, for £112 10s. ;
- Land in William-street, to Mr. T. W. Smart, for £61 10s.

And that I have ascertained that Mr. Turner, under the authority contained in a letter of attorney which will accompany this statement, received the principal money and released the lands to the purchasers.

The attorneys of the several purchasers, having become aware that the Crown had been applied to by Messrs. Tawell and Bevan to issue to them grants of the property which had been sold under their authority, informed me that they were about to make an application to the Government to issue grants to their clients of the property they had respectively purchased, and requested me to produce to them, or to the Government, all documents I held on the subject.

I have now the honor to transmit, for the consideration of the Crown Law Officers, the undermentioned documents, viz. :—

1. 31st January, 1845. Copy of Conveyance and Assignment, by John Tawell to William Tawell and William Bevan, of real and personal estate, upon certain trusts.
2. 30th December, 1847. The Queen's Warrant and grant of lands in England.
3. 26th January, 1848. William Tawell and William Bevan joint and several letter of attorney of James Norton and George Cooper Turner.
4. 26th April, 1851. Letter by Tawell and Bevan to J. Norton.
5. 27th August, 1851. J. Norton's reply.

I have, &c.,
J. NORTON.

[Enclosure 1 in No. 32.]

This Indenture made in pursuance so far as respects the release hereinafter contained of the statute for rendering a release as effectuate for the conveyance of freehold estates as a lease and release by the same parties the thirty-first day of the first month called January One thousand eight hundred and forty-five between John Tawell of Berkhamstead in the County of Herts gentleman of the one part and William Tawell of Earls Colne in the County of Essex draper and William Bevan of the Old Jewry in the City of London gentleman of the other part Whereas the said John Tawell is seized and possessed of or otherwise absolutely entitled to the freehold estates in New South Wales following videlicet First all that allotment piece or parcels of land or ground situate and being in the district of Double Bay near Sydney in New South Wales aforesaid called Tivoli containing by admeasurement five acres or thereabouts and which was purchased of one Thomas Horton James of Sydney aforesaid merchant Secondly all that allotment piece or parcel of land or ground situate and being at Darlinghurst near Sydney aforesaid used for building bought by the said John Tawell of the executors of the late Commissary Laidlay of Sydney aforesaid Thirdly all that allotment piece or parcel of land or ground situate and being in Sussex-street Sydney aforesaid used for building bought by the said John Tawell of one John McLean of Sydney aforesaid merchant Fourthly all that messuage or tenement and premises situate and being in Macquarie-street in Sydney aforesaid used by the Society of Friends there as a Meeting House And whereas the said John Tawell is possessed of or absolutely entitled to certain personal estate and effects consisting of First eighty shares in the Bank of New South Wales now standing in the name of the said John Tawell Secondly ten shares of one hundred pounds each in the Commercial Bank of Sydney aforesaid also standing in the name of the said John Tawell and Thirdly sixty shares in the Sydney Alliance Assurance Company also standing in the name of the said John Tawell And whereas the said John Tawell is desirous of settling the said freehold estates and personal estate and effects in favour and for the benefit of his wife Sarah Tawell and his son and only child Henry Augustus Tawell in manner hereinafter mentioned Now this indenture witnesseth that for and in consideration of the natural love and affection which he the said John Tawell hath and beareth to the said Sarah Tawell his wife and also for the said Henry Augustus Tawell his son and for divers other good causes and considerations him the said John Tawell hereunto moving and also for and in consideration of the sum of ten shillings to the said John Tawell paid by the said William Tawell

Tawell and William Bevan on the execution hereof the receipt whereof is hereby acknowledged be the said John Tawell doth hereby grant bargain sell alien release assign transfer assure and confirm and also by virtue of every power or authority hereunto enabling him direct and appoint unto the said William Tawell and William Bevan their heirs executors administrators and assigns respectively All and every the said freehold estates and also all and every the said respective shares hereinbefore described or mentioned and every of them and every part thereof respectively and all other the real and personal estate and effects of what nature or description soever the same may be of him the said John Tawell in New South Wales and elsewhere in Australia Together with the rights members and appurtenances to the said freehold and other (if any) real estates respectively belonging and the full benefit and advantage of all the said premises respectively and every part thereof and all the estate right title interest claim and demand whatsoever at law and in equity of him the said John Tawell in to out of or upon all and singular the premises hereby respectively released and assigned or otherwise assured or intended so to be and every part and parts thereof respectively Together with full power and authority which he the said John Tawell doth hereby irrevocably give and grant to and for the said William Tawell and William Bevan and the survivor of them his executors administrators and assigns and the trustees or trustee for the time being as his attorneys and attorney and in their and his own names or name or in the name of the said John Tawell his executors or administrators to ask demand recover receive and by all lawful ways and means take possession of all and every the said Banking Shares and Insurance Shares and all dividends bonuses sum and sums of money due or to become due in respect thereof and all other sum and sums of money debts property personal estate and effects whatsoever now or hereafter to become due owing payable deliverable or belonging to the said John Tawell his executors or administrators in New South Wales or elsewhere in Australia and as to the said respective shares or any of them respectively when and as they or he shall think fit to ask demand and obtain a transfer or transfers unto their or his own names or name in the books of transfer of the said respective companies or unto such other name or names as they may deem proper and with full power and authority for the said attorneys and attorney if they or he shall deem it expedient to compromise compound arbitrate settle and agree in any manner whatsoever in respect of the same premises or any part of them and on receipt of all or any moneys or effects and for any other of the purposes aforesaid to give sign make and execute good and sufficient receipts releases acquittances and other discharges for the same respectively and all bonds submissions to arbitration composition and other deeds whatsoever and on non-payment or non-delivery of all or any of the premises to bring and commence and carry on all actions suits and other proceedings which shall or may be necessary in and before all or any judges courts tribunals magistrates or other authorities in New South Wales and elsewhere in Australia for the recovery thereof respectively and to prosecute the same to final decree and execution And generally to make do and execute all other acts deeds matters and things in the premises in the same manner in all respects as if he the said John Tawell were personally present and acting therein and with full power which he the said John Tawell doth hereby give and grant unto the said attorneys and attorney to nominate substitute and appoint one or more person or persons for or under them or him and with all the same or with less powers than are hereby given and granted And the said John Tawell doth hereby give and grant unto the said William Tawell and William Bevan and the survivor of them his executors and administrators and the trustees and trustee for the time being of these presents and their and his substitute and substitutes full and free faculty power and authority in the premises so that the want of express power or authority shall not in anywise viciate or invalidate anything they or he may do or cause to be done under or by virtue of the power hereinbefore contained And the said John Tawell doth hereby ratify and confirm all and whatsoever the said attorneys and attorney and their and his substitute and substitutes shall lawfully do or cause to be done in or about the premises to have and to hold all and singular the premises hereby respectively released and assigned or otherwise assured or intended so to be and every part thereof unto and to the use of the said William Tawell and William Bevan their heirs executors administrators and assigns respectively according to the nature and quality thereof respectively but subject to the settlement bearing date the twenty-third day of February one thousand eight hundred and forty-one and in contemplation of the marriage of the said John Tawell with the said Sarah his wife so far as such settlement comprises or effects the said trust premises or any of them or any part or parts thereof and as the trusts of the said settlement are in favour of the said Sarah Tawell and Eliza Sarah Cutforth the daughter of the said Sarah Tawell by her late husband William Cutforth deceased or either of them nevertheless upon and for the trusts intents and purposes and with under and subject to the powers provisions declarations and agreements hereinafter expressed declared and contained of and concerning the same that is to say upon trust in the discretion and of the absolute authority of the trustees or trustee for the time being of these presents either to continue the said trust premises respectively either wholly or partially in their respective present state and in or upon the existing securities and investments for the same respectively or at such time or times as such trustees or trustee shall think proper to make sale and absolutely dispose of all or any part or parts of the said trust premises respectively which shall be of a saleable nature either by public auction or private contract and subject or not subject to any special or other conditions or stipulations as to title or evidence of title or otherwise and generally upon such terms and in such manner as the said trustees or trustee shall judge expedient and also if the said trustees or trustee shall deem it expedient so to do to raise any sum or sums by mortgage of the said trust premises or any part or parts thereof and afterwards to sell the same premises in execution of the trust aforesaid either as mortgaged with or as discharged from any mortgage or mortgages to be so made And also to let for any term or terms of years or from year to year all or any part or parts of the said freehold estates at such rents and subject to such covenants and conditions as the said trustees or trustee shall judge expedient and also generally at their or his absolute discretion to manage and administer all the affairs and concerns of the said trust premises in such manner as they or he shall think most beneficial And as to the net moneys which shall arise or come to the hands of the said trustees or trustee by virtue of the trust aforesaid after paying or retaining all the costs charges and expenses incident to the execution of such trust Upon trust in the first place therout to pay and satisfy all the debts and demands justly due or owing by or from the said John Tawell to any person or persons whomsoever at such time or times and in such order and course of payment as the said trustees or trustee shall judge expedient with full discretionary power to admit such evidence of any or every debt or demand against the said John Tawell or his estate as the said trustees or trustee shall think reasonable and to settle and adjust or refer to arbitration all accounts reckonings disputes and controversies relating to any or every such debt or demand and generally to act in relation to the execution of this trust in such manner as to the said trustees or trustee shall seem expedient And upon further trust in the next place to lay out and invest the surplus of the said moneys in the names or name of the said trustees or trustee in or upon Government three per cent. Consolidated Bank Annuities or in or upon such other permanent stocks funds or securities of the United Kingdom as they or he shall think fit with liberty to alter vary and transpose such investment from time to time at their or his discretion for any other or others of the description aforesaid And upon further trust (after paying thereout unto Alfred Hart otherwise Laurence and Sarah Hart otherwise Laurence the son and daughter of Sarah Hart otherwise Laurence late of Salt Hill in the county of Bucks deceased) an annuity or clear yearly sum of fifteen pounds each or applying the same from time to time as the same shall accrue due and be payable at the discretion of the trustees or trustee for the time being of these presents for their respective maintenance and support for and during their lives and which said annuity of fifteen pounds to each of them the said Alfred Hart otherwise Laurence and Sarah Hart otherwise Laurence is one and the same annuity of fifteen pounds for each of them as is also similarly provided for and secured in and by a certain indenture bearing even date with these presents and made between the same persons respectively as are

parties

parties hereto to pay the dividends interest and income of the same surplus moneys or the stocks funds and securities in or upon which the same shall be invested as aforesaid into the proper hands of the said Sarah Tawell for and during her life for her sole separate use without any power of alienation or anticipation free from the debts engagements and control of her said present or any future husband and for which her receipts alone shall be sufficient discharges. And from and immediately after her decease as to as well the said trust moneys stocks funds and securities as the interest dividends and income thenceforth to accrue due for the same in trust for the said Henry Augustus Tawell his executors administrators and assigns for his and their absolute use and benefit. But in case the said Henry Augustus Tawell shall die under the age of twenty-one years without leaving lawful issue surviving him then in trust for the person or persons who shall be of the blood and of kin to the said John Tawell and who under the statutes for the distribution of intestates' effects would be entitled to his personal estate if he were to die immediately after the decease of the said Henry Augustus Tawell intestate and without leaving a widow or any issue surviving him and to be divided among such persons if more than one in the proportions in which the same would be divisible under the said statutes. Provided always and it is hereby declared and agreed by and between the said parties to these presents that it shall be lawful for the said trustees or trustee for the time being with the consent in writing of the said Sarah Tawell during her life and after her decease to apply during the minority of the said Henry Augustus Tawell all or any part of the interest dividends and income of the said trust funds or any gross sum or sums not exceeding one-half of the principal or value thereof in or towards his maintenance and education or his advancement or preferment in the world. Provided also and it is hereby further declared and agreed that the yearly rents and profits of the said trust premises until sold or converted as aforesaid shall be applied and disposed of in like manner as the interest dividends and income of the said moneys to arise therefrom would if such sale or conversion had taken place be applicable and that the said freehold estates until sold shall be deemed personally for the purposes of these presents. Provided also and it is hereby further declared and agreed that the receipt and receipts in writing of the said trustees or trustee for the time being for any purchase mortgage or other money payable to them or him under or by virtue of these presents shall effectually discharge the person or persons to whom the same shall be given from being answerable or accountable for the misapplication or non-application of the same moneys or from being bound to see to the application thereof. Provided also that in case the said William Tawell and William Bevan or either of them or any future trustees or trustee to be appointed by virtue of this provision shall depart this life or be and remain out of England for more than twelve calendar months at one time or be unable or unwilling to act in the execution of the trusts hereby created before the same trusts shall be fully executed and performed it shall be lawful for the trustees or trustee for the time being of these presents whether declining to act further or not or if none for the proving executors or executor or the administrators or administrator of the last deceased acting trustee with the consent in writing of the said Sarah Tawell during her life and after her decease at the discretion of the person or persons exercising his power to nominate and appoint any person or persons to supply the place of any trustee or trustees so dying being and remaining out of England or being unable or unwilling to act. And that upon any such appointment the trust property shall be conveyed assigned or transferred so as that the same shall and may be effectually vested jointly in the new trustees and old trustees or solely in the new trustees as occasion shall require. Provided also that the trustees hereby appointed and to be appointed as aforesaid respectively and their respective heirs executors or administrators shall not be answerable for the acts receipts or defaults of the other of them or for any loss which may happen in the execution of the trusts aforesaid or in relation thereto and that the trustees and trustee for the time being of these presents respectively shall be at liberty to deduct and retain and to allow to each other out of the trust moneys which shall come to their or his respective hands all costs charges and expenses which may be incurred in or about the execution of the trusts aforesaid or any of them or in relation thereto. And the said John Tawell for himself his heirs executors and administrators doth hereby covenant promise and agree with and to the said William Tawell and William Bevan their heirs executors administrators and assigns respectively that notwithstanding any act matter or thing done or permitted by him to the contrary he the said John Tawell hath good right full power and lawful and absolute authority to convey assign and assure the said premises hereinbefore respectively released and assigned or otherwise assured in manner aforesaid. And also that he the said John Tawell his executors or administrators shall not nor will without the consent of the trustee or trustees for the time being of these presents or the order or decree of some Court of Law or Equity revoke or attempt to revoke invalidate or otherwise impeach the powers hereinbefore contained or any of them. And also that the same premises respectively shall and may be peaceably held and enjoyed and the rents dividends interest and income thereof respectively received accordingly without any interruption whatsoever by the said John Tawell or any other person or persons claiming under him and that free from all incumbrances whatsoever created or occasioned by him. And further that he the said John Tawell and all persons rightfully claiming under him shall and will at the request of the said William Tawell and William Bevan or the survivor of them his heirs or executors or administrators or their or his assigns or *cestui que trust* or any or either of them and at the costs of the said trust premises or of the person or persons making such request make do and execute all such further and other acts deeds conveyances and assurances in the law for more effectually conveying assigning or assuring the said premises respectively according to the true intent and meaning of these presents as by the person or persons making such request as his her or their counsel in the law shall be reasonably advised and required and shall be tendered to be made done or executed. And lastly the said John Tawell doth hereby nominate constitute and appoint James Norton of Sydney aforesaid solicitor and George Cooper Turner (Crown Solicitor) of the same place to be his attorneys and attorney jointly and severally and in case of the death absence or incapacity of both or either of them then the secretary for the time being of the Governor for the time being of the Colony of New South Wales or his deputy or deputies of such secretary to acknowledge these presents as the act and deed of the said John Tawell before the Registrar or other proper officer or authority in Sydney for the purpose of the same being duly registered and recorded according to the laws of the said Colony and to do and procure to be done in the said Colony any and every other act matter or thing necessary or proper for giving full effect to these presents. In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first above-written.

(L.S.) JOHN TAWELL.
(L.S.) WILLIAM TAWELL.
(L.S.) WILLIAM BEVAN.

Signed sealed and delivered by the within-named John Tawell (the words "and old trustee or solely in the new trustees" between the fortieth and forty-first lines of the second skin having been first interlined) in the presence of

J. J. CAPPER,
Clerk to Wm. Bevan;
6 Old Jewry.

Signed sealed and delivered by the within-named William Tawell and William Bevan in the presence of

J. J. CAPPER,
6 Old Jewry.

I Jasper John Capper of No. 6 Old Jewry in the City of London clerk to William Bevan of the same place gentleman do solemnly and sincerely declare that I was present and did see John Tawell of Berkhamstead in the County of Herts gentleman William Tawell of Earls Colne in the County of Essex draper and the said William Bevan severally duly sign seal and as their respective act and deed deliver the indenture hereunto annexed marked with the letter "A" bearing date the thirty-first day of the first month called January one thousand eight hundred and forty-five and made between the said John Tawell of the one part and the said William Tawell and William Bevan of the other part and that the names or signatures "John Tawell" "William Tawell" and "Willm. Bevan" written at the foot of the said indenture, and the name or signature "J. J. Capper" written under each of the attestations indorsed thereon as the witness attesting the due execution thereof by them respectively are the respective proper handwriting of the said John Tawell William Tawell William Bevan and of the said Jasper John Capper And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of an Act made and passed in the sixth year of the reign of His late Majesty William the Fourth intituled "An Act to repeal an Act of the present Session of Parliament intituled an Act for the more effectual abolition of Oaths and Affirmations taken and made in various departments of the State and to substitute Declarations in lieu thereof and for the more entire suppression of voluntary and extra judicial Oaths and Affidavits and to make other provisions for the abolition of unnecessary Oaths."

Declared at the Mansion House in the City of London this 14th day of February 1845 before me

J. J. CAPPER.

(L.S.)

MICHAEL GIBBS.

To all to whom these presents shall come I Michael Gibbs Lord Mayor of the City of London do hereby certify that on the day of the date hereof personally came and appeared before me Jasper John Capper named in the declaration hereunto annexed being a person well known and worthy of good credit and who did before me solemnly and sincerely declare to be true the several matters and things mentioned and contained in the said annexed declaration pursuant to an Act of Parliament passed in the sixth year of the reign of King William the Fourth.

In faith and testimony whereof I the said Lord Mayor have caused the seal of the office of Mayoralty of the said City of London to be hereunto put and affixed and the act and deed marked "A" mentioned and referred to in and by the said declaration to be hereunto also annexed Dated in London the fourteenth day of February in the year of Our Lord one thousand eight hundred and forty-five.

REYNAL.

This and the nine preceding pages contain a true copy of the original conveyance and documents thereto annexed the same having been carefully examined therewith by us,

WM. WORKMAN,

J. H. MILLER,

Clerks to Mr. James Norton,
Solicitor, Sydney, New South Wales.

[Enclosure 2 in No. 32.]

To all to whom these presents shall come we John Kinnersley Hooper, Lord Mayor and the Aldermen of the City of London do hereby certify that Abrao de Pinna who hath signed the annexed instrument is a Notary and Tabellion Public by Royal Authority duly admitted and sworn and that to all acts instruments and other writings by him signed and attested full faith and credit is and ought to be given in Court and without.

In faith and testimony whereof the seal of the Office of Mayoralty of the said City of London is hereunto put and affixed Dated in London this 31st day of January 1848.

REYNAL.

I ABRAO DE PINNA of Bartholomew Lane Royal Exchange in this City of London Notary and Tabellion Public (a General Practitioner) by Royal Authority duly admitted and practising do hereby certify and attest that having along with a clerk in my office carefully collated and examined the paper writing hereunto annexed with a certain Warrant under Her Majesty's Royal Sign Manual and countersigned "W. Gibson Craig" "H. Rich" "Shelburne" bearing date the thirtieth day of December now last past granting certain freehold and leasehold estates situate at Great Berkhamstead in the County of Hertford and certain chattels which escheated and devolved to the Crown on the commission and conviction of felony by John Tawell to trustees upon the trusts therein mentioned or referred to for the benefit of the widow and family of the said John Tawell which warrant after so collating and examining the said copy was by me the said Notary and Tabellion Public returned to Messrs. Bevan and Goodeve of the Old Jewry in the said City of London Attorneys-at-Law the parties who had produced the same to me for the purpose aforesaid—I have found the said copy to be and contain a *verbatim* and *literatim* copy of the said warrant as thereby reference being thereunto had will be plainly found and clearly appear.

In faith and testimony whereof I the said Notary and Tabellion Public being requested have granted these presents by me subscribed notarially and have caused the seal by me used in this behalf to be thereon impressed in London this thirty-first day of January in the year of our Lord one thousand eight hundred and forty-eight.

A. DE PINNA,

Notary Public.

V. R.

VICTORIA by the Grace of God of the United Kingdom of Great Britain and Ireland Queen Defender of the Faith to all to whom these presents shall come—Greeting—Whereas the Commissioners of our Treasury have represented unto us that by an inquisition indented and taken at the house commonly called or known by the name or sign of the "Salisbury Arms" situate at Hertford in our County of Hertford on the seventeenth day of June in the tenth year of our reign before Horatio Waddington George Frederick Pollock and George Benjamin Maule Esquires being three of our Commissioners named in our Commission under our Great Seal in the said inquisition mentioned bearing date at Westminster the twenty-fourth day of April in the tenth year of our reign upon the oaths of twelve good and lawful men of our said County of Hertford in the inquisition mentioned it was found that John Tawell then late of the parish of Farnham Royal in our County of Buckingham gentleman in the said Commission named was on the first day of January in the eighth year of our reign (being the day on which the murder and felony in the said commission mentioned was committed by the said John Tawell) seized to him and his heirs in fee simple of and in all that messuage tenement or dwelling-house

house and outbuildings thereto belonging situate at Marlowes in the Parish of Hemel Hempstead in our said County of Hertford then sometime since erected on a portion of the garden or orchard occupied with a mansion house situated at Marlowes aforesaid heretofore in the occupation of Daniel Desormeaux together with the yard garden and appurtenances to the same messuage and premises belonging which said messuage garden outbuildings and premises were formerly in the occupation of William Byles and then of Josiah Hales and were bounded on the west in front thereof by the high road leading from Hemel Hempstead aforesaid to Two Waters on the east by a field belonging to Mr. Cato on the north partly by a messuage and garden lately belonging to John Glover and then to Mr. Wood and partly by garden ground belonging to The Reverend Joseph Hamilton and on the south by a piece of land or ground theretofore belonging to Mr. John Griffin and since to Thomas Goodson deceased with their and every of their appurtenances And also of and in all that messuage or tenement (formerly called Boxwell's) theretofore in the occupation of John Moore Esquire since of the Reverend Mr. Townsend then late of James Caulfield Browne and then of Jordan Free situate and being in the Town of Berkhamstead Saint Peter otherwise Great Berkhamstead in our said County of Hertford abutting south-east on the messuage or tenement theretofore of Mary Martin spinster and then or then late of John Edward Lane north-west on the messuage or tenement of John Manship Mills and north-east on the Turnpike Road with the appurtenances And also of and in all that close of pasture ground and orchard containing by estimation three acres (more or less) lying near to and behind the said messuage or tenement and premises called Boxwell's in Berkhamstead Saint Peter otherwise Great Berkhamstead in our said County of Hertford formerly in the occupation of the said James Caulfield Browne and then of the said Jordan Free abutting south-east on Berkhamstead School land and south-west on land or premises of Joseph Geery Andrews with the appurtenances And that it was by the said inquisition further found that the said messuages tenements lands and hereditaments were of the annual value of seventy-one pounds in all issues thereof beyond reprises And that it was by the said inquisition further found that the said messuages lands tenements and hereditaments were holden by the said John Tawell of us in free and common socage in right of our Royal Crown but not subject to any services or rent in respect thereof except fealty and had devolved unto us as an escheat in right of our Prerogative Royal And that it was by the said inquisition further found that the said John Tawell was on the tenth day of March in the eighth year of our reign on which day the said John Tawell was convicted of the felony and murder as in the said commission mentioned possessed of And in all that piece or parcel of ground situate on the south-west side of High-street in the Town of Great Berkhamstead in our said County of Hertford bounded on the north-east side by the High-street of Berkhamstead aforesaid on the north-west side thereof by premises belonging to James Field and Frederick Miller on the west side belonging to John Croft Rector and on the south-east by the residence of Mary Sutton and a lane leading to the back entrance of the said piece or parcel of ground to the residence of the said John Croft together with the messuage or dwelling-house coach-house stables and other erections standing and being upon the said piece or parcel of ground and premises now or late in the occupation of Sarah Tawell the widow of the said John Tawell formerly Sarah Cutforth widow with their and every of their appurtenances for the remainder then to come and unexpired of a certain term of twenty-one years commencing on the twenty-ninth day of September in the year one thousand eight hundred and forty by James Field of Berkhamstead aforesaid gentleman to the said John Tawell granted and devised by indenture of lease bearing date the twenty-fourth day of December in the year last aforesaid subject to a proviso for determining the same at the end of the first fourteen years of the said term as therein mentioned and subject to the payment of the yearly rent of sixty pounds and to the covenants in the said indenture of lease contained And that the residue of the said term of years was by the said inquisition found to be of the value of one hundred pounds And that it was by the said inquisition further found that the said John Tawell was on the said tenth day of March in the eighth year of our reign possessed as of his own proper goods and chattels of and in eighty shares of one hundred pounds sterling each in the bank capital stock of the Bank of New South Wales which by the said inquisition were found to be of the value of four thousand pounds And also of and in ten shares of one hundred pounds sterling each of the bank capital stock in the Commercial Banking Company of Sydney in New South Wales aforesaid which were by the said inquisition found to be of the value of five hundred and ten pounds And of and in the several goods and chattels mentioned in the schedule annexed to the said inquisition marked with the letter A which were by the said inquisition found to be of the value of six hundred and twenty pounds And that the said goods and chattels mentioned in the said schedule (except one piece of cambric one pair of spectacles one penknife the last-mentioned gold watch and chain two silk handkerchiefs one box containing a surgical instrument one box of apothecary's scales and weights and a hamper of medicine bottles) were by the said inquisition found to be then in the possession of the said Sarah Tawell and that the said excepted articles were then in the possession of Acton Tindal Esquire then Under Sheriff of our County of Buckingham All which said messuages lands tenements and hereditaments whereof the said John Tawell was by the said inquisition found to have been seized as aforesaid and to have become escheated to us And all which said residue of the said term of years shares in the said Bank of New South Wales and Commercial Banking Company of Sydney goods and chattels of which the said John Tawell was so possessed as aforesaid and which by the inquisition aforesaid were found to have become forfeited to us the said Commissioners had in obedience to our said commission seized into our hands And whereas it has been further represented to us by the said Commissioners of our Treasury that the said John Tawell was also at the time of his conviction possessed as of his own goods and chattels of sixty shares of ten pounds each of the capital stock of the Australian General Assurance Company being the same shares as are in the secondly hereinafter stated indenture of settlement of the thirty-first day of January one thousand eight hundred and forty-five called or described as sixty shares in the Sydney Alliance Assurance Company standing in the name of the said John Tawell and which were not included in the said inquisition but were forfeited to us on the conviction of the said John Tawell And whereas it hath been further represented unto us by the said Commissioners of our Treasury that the said Sarah Tawell of Berkhamstead aforesaid the widow of the said John Tawell did by her memorial presented to them prior to the suing forth of the said commission make discovery of our right and title to the premises comprised in the said inquisition And that the said Sarah Tawell did by her said memorial (amongst other things) state that previously to the marriage between the said Sarah Tawell and John Tawell the said Sarah Tawell was a widow and had one child her daughter Eliza Sarah Cutforth and was entitled to certain personal property which consisted in part of the sum of one thousand pounds new three pounds ten shillings per cent. annuities standing in her name in the books of the Governor and Company of the Bank of England and of ten shares in the Alliance Marine Assurance Company That in the year one thousand eight hundred and forty-one a marriage was agreed upon between the said John Tawell and Sarah Tawell and that in contemplation of such marriage the said John Tawell concurred with the said Sarah Tawell in making a settlement by indenture dated the twenty-second day of February one thousand eight hundred and forty-one of such personal property to which the said Sarah Tawell was then absolutely entitled and by which the said ten shares in the Alliance Marine Assurance Company were by an indenture bearing even date with the said indenture of settlement assigned to and vested in Thomas Squire and Daniel Norris upon certain trusts for the benefit of the said Sarah Tawell and her children by the said John Tawell That by another indenture of settlement made in contemplation of the said marriage and dated the twenty-third day of February, one thousand eight hundred and forty-one the said John Tawell for himself his heirs executors and administrators did covenant with the said Thomas Squire and Daniel Norris that the said John Tawell his heirs executors or administrators should and would assign and transfer unto them six thousand pounds capital stock of the Bank of New South Wales or such other sum of stock or property in New South Wales

Wales aforesaid as should be sufficient to produce the clear sum of six hundred pounds per annum and also after the solemnization of the said then intended marriage between the said John Tawell and Sarah Tawell that the said John Tawell would by his will give and bequeath to the said Sarah Tawell his residuary estate and effects and appoint her one of the executors thereof. And that by the same indenture it was declared that the said trustees should stand possessed of the said trust moneys upon trust to pay the interest and income thereof to the said Sarah Tawell for her life (or her sole and separate use and after her decease in case she should die in the lifetime of the said John Tawell to pay the annual sum of two hundred pounds to Eliza Sarah Cutforth for her life and subject thereto to stand possessed of the said trust moneys and premises for the said John Tawell absolutely. That very shortly after the date and execution of the said indentures of settlement the marriage between the said John Tawell and Sarah Tawell was duly had and that the only issue of the same marriage had been one child and no more namely Henry Augustus Tawell who was then living. That the sum of six thousand pounds capital stock of the said Bank of New South Wales was not nor was any other sum of stock or property whatever either in New South Wales or elsewhere ever in the lifetime of the said John Tawell assigned or transferred unto or into the names of the said Thomas Squire and Daniel Norris as such trustees as aforesaid for the purpose of providing such annuity of six hundred pounds as aforesaid. That certain parts of the freehold hereditaments comprised in the said inquisition were purchased with the moneys arising from the sale of the said ten shares in the Alliance Marine Assurance Company and from the savings of the said Sarah Tawell from her separate income. That the said John Tawell being desirous of settling certain freehold and leasehold estates and chattels personal in favour and for the benefit of the said Sarah Tawell and Henry Augustus Tawell did by an indenture dated the thirty-first day of January one thousand eight hundred and forty-five and made between the said John Tawell of the one part and William Tawell of Earls Colne in our County of Essex draper and William Bevan of the Old Jewry in our City of London gentleman of the other part convey and assign and also appoint the freehold and leasehold estates and also the chattels personal in the same indenture mentioned (which the said Commissioners of our Treasury have represented to us to be the same freehold and leasehold estates and chattels personal comprised in the said inquisition and so seized into our hands as aforesaid or some part or parts thereof) with their appurtenances unto and to the use of the said William Tawell and William Bevan their heirs executors administrators and assigns but subject to the said settlement bearing date the twenty-second day of February one thousand eight hundred and forty-one as to the said ten shares in the Alliance Marine Assurance Company which were therein stated to have been since sold and the produce thereof laid out and advanced under the powers and authorities in such settlement contained in and towards payment of the consideration money for certain of the said freehold hereditaments upon trust to sell the same as therein mentioned and stand possessed of the proceeds thereof upon trust (after paying to Alfred Hart and Sarah Hart an annuity of fifteen pounds each) to pay the income of the same to the said Sarah Tawell for her life and after her decease as well as to the trust moneys stocks funds and securities as the income thereof in trust for the said Henry Augustus Tawell his executors administrators and assigns for his own absolute use and benefit. But in case the said Henry Augustus Tawell should die under the age of twenty-one years without leaving lawful issue living surviving then in trust for the persons who would under the statutes for distribution of intestate's effects be the next of kin of the said John Tawell if he were to die immediately after the said Henry Augustus Tawell and that the said Sarah Tawell did by her said memorial pray relief in the premises. And whereas it hath been further represented to us by the said Commissioners of our Treasury that the said Sarah Tawell hath represented to them that the said John Tawell in further execution of his desire for the benefit of the said Sarah Tawell and Henry Augustus Tawell did by another indenture dated the thirty-first day of January one thousand eight hundred and forty-five and made between the said John Tawell of the one part and the said William Tawell and William Bevan of the other part appoint assign and transfer unto the said William Tawell and William Bevan their executors administrators and assigns (amongst other things) all and every the said respective shares in the said Bank of New South Wales the Commercial Banking Company of Sydney and the Australian General Assurance Company (therein called the Sydney Alliance Assurance Company) respectively and all benefit thereof unto the said William Tawell and William Bevan their executors administrators and assigns (but subject to the said settlement bearing date the twenty-third day of February one thousand eight hundred and forty-one so far as the trusts thereof were in favour of the said Sarah Tawell and Eliza Sarah Cutforth) upon similar trusts to those declared in and by the hereinbefore mentioned indenture of even date with the now-aforesaid indenture. And whereas it hath been further represented to us by the said Commissioners of our Treasury that at the time of the death of the said John Tawell he was indebted to the said William Bevan in the sum of one thousand one hundred pounds for the costs and expenses of and attending the defence of the said John Tawell upon his said trial for the murder of the said Sarah Hart and that the same sum hath been already paid to or retained by the said William Bevan out of the rents interest dividends and profits hereinafter granted or some portion thereof received by him and that the said John Tawell was not indebted to any other person or persons save and except that the said Sarah Tawell hath humbly represented to us that she hath a claim on the property and estate of the said John Tawell for and in respect of the arrears of the said annuity of six hundred pounds and otherwise amounting to the sum of three thousand and sixty pounds or thereabouts in part and on account whereof she hath already received the sum of eight hundred and eleven pounds three shillings and sixpence out of the said rents dividends interest and profits hereinafter granted or some portion thereof. And whereas it hath been further represented to us by the said Commissioners of our Treasury that Isabella Betha Tawell of No. 8 Theberton-street Islington in our County of Middlesex widow did by her memorial presented to them (amongst other things) state that in the year one thousand eight hundred and thirty-three she intermarried with John Downing Tawell son of the said John Tawell that the said John Downing Tawell died on the twenty-eighth day of April one thousand eight hundred and forty-three leaving the said Isabella Betha Tawell his widow him surviving but without issue that the said John Tawell from the decease of his said son paid to the said Isabella Betha Tawell a certain sum per annum for her support and which annual sum was her sole means of support and that the said Isabella Betha Tawell prayed relief in the premises. And whereas it hath been recommended to us by the said Commissioners of our Treasury under all the circumstances of the case that we should grant the said freehold and leasehold estates and also the said chattels personal hereinbefore described or referred to and so seized into our hands as aforesaid and also the said shares in the Australian General Assurance Company to which the said John Tawell was so entitled as aforesaid unto the said William Tawell and the said William Bevan their heirs executors administrators and assigns respectively upon trust to sell the same and to stand possessed of the moneys to arise therefrom upon the trusts after mentioned or referred to. To which we are graciously pleased to condescend. Now know ye that we taking the above circumstances into our Royal consideration do by this our Royal Warrant under our Royal Sign Manual at the recommendation and with the advice of the Commissioners of our Treasury give and grant unto the said William Tawell and William Bevan and their heirs all and singular the said freehold messuages lands tenements and hereditaments hereinbefore particularly mentioned and described and comprised in the said inquisition and so seized into our hands as aforesaid and the appurtenances to the same premises belonging or appertaining and all our estate right title interest property claim and demand whatsoever of in and to the same hereditaments and premises hereby granted and all deeds evidences and writings relating to the said premises belonging to us to have and to hold the said messuages lands tenements hereditaments and premises hereby granted unto and to the use of the said William Tawell and William Bevan their heirs and assigns for ever upon and for the trusts intents and purposes hereinafter declared expressed or referred to concerning the same. And further know ye that we further taking the above circumstances into our Royal consideration do by this our Royal

Warrant

Warrant under our Royal Sign Manual at the recommendation and with the advice of the Commissioners of our Treasury give and grant unto the said William Tawell and William Bevan their executors administrators and assigns all the said shares and chattels real and personal comprised in the said inquisition and so seized into our hands as aforesaid and the appurtenances to the said chattels real belonging and also all and singular the said shares in the Australian General Assurance Company which the said John Tawell was so entitled to as aforesaid at the time of his conviction and all our estate right title term of years interest property claim and demand whatsoever of in and to the same premises respectively and all deeds evidences and writings relating thereto belonging to us to have and to hold the said chattels real hereby granted unto the said William Tawell and William Bevan their executors administrators and assigns during all the residue now to come of the said term of twenty-one years (determinable as in the said indenture of lease mentioned nevertheless) upon the trusts hereinafter expressed declared or referred to concerning the same (subject nevertheless as to the said leasehold premises to the payment of the rent and the observance and performance of the covenants and agreements in and by the said indenture of lease of the twenty-fourth day of December one thousand eight hundred and forty reserved and contained and which on the part of the tenant lessee or assignee are or ought to be paid observed and performed) and to have hold receive and take the said shares in the Bank of New South Wales in the Commercial Banking Company of Sydney and in the said Australian General Assurance Company and all other the said chattels personal hereby granted unto and to the said William Tawell and William Bevan their executors administrators and assigns as to the said chattels comprised in the said Schedule A to the said Inquisition annexed in trust for the said Sarah Tawell her executors administrators and assigns and as to the residue of the said shares and chattels personal upon the trusts hereinafter expressed declared or referred to concerning the same And we do hereby declare that the said William Tawell and William Bevan their heirs executors administrators and assigns respectively shall stand and be seized and possessed of all and singular the said freehold and leasehold hereditaments shares and chattels personal hereinbefore respectively granted (except the said chattels comprised in the said Schedule A) upon trust that they the said William Tawell and William Bevan and the survivor of them and the heirs executors administrators and assigns respectively of such survivor do and shall when and as they or he shall think fit absolutely sell and dispose of the said freehold hereditaments and the said real and personal chattels and shares so granted to them as aforesaid (except as aforesaid) either entirely or altogether or in parcels or lots and either by public auction or private contract for such price or prices as the said William Tawell and William Bevan or the survivor of them or other the trustees or trustee for the time being of these presents shall think reasonable with power to buy in the said premises or any part thereof respectively at any sale or sales by auction and to rescind or vary any contract for sale and to re-sell the premises which shall have been so bought in or the contract for the sale of which shall be so rescinded or abandoned as aforesaid without being in anywise answerable for any loss which may happen thereby respectively and also with power to insert any special or other stipulations in any contract for or conditions of sale either as to title evidence of title or otherwise howsoever and with full power to enter into execute and perform all such contracts agreements assurances acts matters and things for effectuating or completing such sale or sales as to the said William Tawell and William Bevan or the survivor of them or other the trustee for the time being hereof shall seem meet And we do hereby declare that the said William Tawell and William Bevan their heirs executors administrators and assigns shall stand possessed of the moneys to arise from the sale or sales of the said premises hereby respectively granted and to be received on rescinding or varying any contract and also of the rents issue interest dividends and profits to accrue and become due from or in respect of the said freehold and leasehold hereditaments and shares until the same respectively shall be sold and also of the rents profits interest and dividends hereinafter by this our Royal Warrant granted subject as after mentioned upon the trusts hereinafter expressed (that is to say) upon trust in the first place thereout to pay to George Maule Esquire the solicitor for the affairs of our Treasury the sum of one hundred and sixty-six pounds twelve shillings and nine-pence being the amount of the costs charges and expenses incurred by him in the premises in our behalf and in the next place to pay the fees and stamp duty on this our Royal Warrant and in the next place to pay all arrears of the rent which may be due under the said lease and all such costs charges and expenses incurred by or on behalf of the said Sarah Tawell in making discovery of and assisting in the prosecution of our right and title to the premises respectively and all such costs charges and expenses attending the said sale or sales or otherwise to be incurred in or about the execution of the trusts hereby created or any of them such costs charges and expenses to be submitted to the consideration taxation and determination of a respectable solicitor to be named and appointed for that purpose by the said trustees or trustee for the time being and to be approved of by the solicitor for the affairs of our Treasury for the time being and in default of such nomination and appointment then by a respectable solicitor to be named and appointed for the purpose by the solicitor for the affairs of our Treasury for the time being alone and the necessary and reasonable charges of the solicitor so to be appointed as aforesaid to be paid out of the said trust funds and in the next place do and shall pay unto the said Sarah Tawell the sum of one thousand five hundred pounds in full for all claims which she may now have for or in respect of any arrears of the said annuity of six hundred pounds so covenanted to be paid to her as aforesaid by the said John Tawell or for or in respect of any other claim of the said Sarah Tawell on the property hereby granted or any portion thereof and in the next place do and shall pay to the said Isabella Betha Tawell her executors administrators or assigns such a sum of money as will be sufficient to make up an annuity of forty pounds as from the thirteenth day of October one thousand eight hundred and forty-seven up to the date of this our Royal Warrant and subject as aforesaid do and shall stand and be possessed of all the surplus of the said moneys and the income of the said premises till sale and conversion upon and for the trusts intents and purposes and with under and subject to the powers provisions and conditions in and by the said indentures of the thirty-first day of January one thousand eight hundred and forty-five respectively expressed and declared of and concerning the moneys which should come to their hands and which should have arisen from the sale and conversion of the real and personal estate thereby settled and the income thereof or such of the same trusts intents and purposes powers provisions and conditions as are now subsisting undetermined and capable of taking effect except that the said trustees or trustee or this our Royal Warrant do and shall by and out of the income of the said trust moneys stocks funds and securities or of the rents income and profits of the premises hereby granted until sale in the first place pay unto the said Isabella Betha Tawell and her assigns one annuity of forty pounds for her life to commence from the date of this our Royal Warrant and be paid half-yearly without any deduction whatsoever and a proportionate part to be paid up to her decease And we do hereby declare that as regards the provision by the said indenture of settlement of the twenty-third day of February one thousand eight hundred and forty-one intended to be made no part of the property hereby granted shall be considered as applicable under the trusts contained in the said indentures of the thirty-first day of January one thousand eight hundred and forty-five for the payment of the debts of the said John Tawell to the carrying into effect the covenants or engagements of the said indenture of the twenty-third day of February one thousand eight hundred and forty-one and that as regards the said Sarah Tawell the provision hereby made for her shall be taken in full satisfaction of the provision intended to be made by the said settlement of the twenty-third day of February one thousand eight hundred and forty-one both for the said Sarah Tawell and all other parties claiming under the said settlement (save and except so far as relates to the sum of one thousand pounds new three pounds ten shillings per cent. Bank annuities therein mentioned) and of all other claims and demands of the said Sarah Tawell in any part of the estate and effects of the said John Tawell and that the said moneys shall not under the trusts of the said firstly hereinbefore recited indenture of the thirty-first day of January one thousand eight hundred and forty-five

five be liable to the trusts for the replacing the said ten shares in the Alliance Marine Assurance Company as in the said indenture is mentioned. And we do hereby declare that it shall and may be lawful for the said trustees or trustee for the time being of these presents before an absolute sale under the trusts aforesaid to levy and raise any moneys which they or he may think necessary to raise for any of the purposes of this our Royal Warrant by mortgage of all or any part of the freehold and leasehold premises hereby granted so as any such mortgage be made with the consent of the Commissioners of our Treasury for the time being or any three of them signified by writing under their hands. And further we do hereby declare that it shall be lawful for the said trustees or trustee before any sale or sales as aforesaid to lease all and singular the said freehold and leasehold premises or any part thereof respectively for any term not exceeding twenty-one years in possession so as every such lease be made with the consent in writing of the said Sarah Tawell during her life. And we do hereby further direct that it shall be lawful for the said trustees or trustee for the time being of these presents from time to time in their or his discretion to lay out and invest the said trust moneys and premises or any portion thereof at interest on any real security in England or Wales and from time to time at the like discretion to alter and vary the securities in or on which the same shall be invested either to or for other securities of the like nature or to or for securities of the nature prescribed in the said last mentioned indentures of settlement of the thirty-first day of January one thousand eight hundred and forty-five either as occasion shall require or as they shall see fit but so as every such investment or change of investment be made with the consent in writing of the said Sarah Tawell during her life. And we do hereby declare that the receipt and receipts of the trustees or trustee for the time being of these presents shall be a good discharge and good discharges to all persons for any of the trust moneys hereof and shall after payment of the same moneys effectually discharge such persons respectively from seeing to the application or being answerable for the misapplication of the same moneys. And we do hereby further give and grant unto the said William Tawell and William Bevan their executors administrators and assigns the rents issues interest dividends and profits which are now due to us from any person or persons whomsoever for or in respect of the said premises in the said inquisition mentioned after allowing thereout the said payments to or retained by the said William Bevan and Sarah Tawell of the two several sums of one thousand one hundred pounds and eight hundred and eleven pounds three shillings and sixpence as hereinbefore mentioned nevertheless upon the trusts hereinbefore declared of the said premises. And we do hereby give and grant unto the said William Tawell and William Bevan their executors administrators and assigns full power and authority to ask demand sue for recover and receive the same rents interest dividends and profits and to settle and adjust all accounts relating thereto. And these presents shall be to all who shall or may be concerned therein a sufficient warrant Given at our Court at Windsor Castle on the thirtieth day of December in the eleventh year of our reign and in the year of our Lord one thousand eight hundred and forty-seven.

By Her Majesty's Command,
W. GIBSON CRAIG.
H. RICH.
SHELBURNE.

Grant of certain freehold and leasehold estates situate at Great Berkhamstead in the County of Hertford and certain chattels which escheated and devolved to the Crown on the commission and conviction of felony by John Tawell to trustees upon the trusts above-mentioned for the benefit of the widow and family of the said John Tawell.

[Enclosure 3 in No. 32.]

TO ALL to whom these presents shall come we William Tawell of Earls Colne in the county of Essex in England draper and William Bevan of the Old Jewry in the City of London gentleman send greeting Whereas by an indenture bearing date the thirty-first day of January one thousand eight hundred and forty-five and made between John Tawell then of Berkhamstead in the county of Herts gentleman (since deceased) of the one part and us the said William Tawell and William Bevan of the other part After reciting amongst other things that the said John Tawell was seized of certain real estates situated in New South Wales and also that he was possessed of and entitled to eighty shares in the Bank of New South Wales then standing in his name ten shares in the Commercial Bank of Sydney (hereinafter called the Commercial Banking Company of Sydney) also standing in his name And also to sixty shares in the Sydney Alliance Assurance Company (meaning thereby the Australian General Assurance Company hereinafter mentioned) also standing in his name The said John Tawell did grant release and assign to us the said William Tawell and William Bevan our heirs executors administrators and assigns All and every the freehold estates and also all and every the said respective shares therein and hereinbefore mentioned And all other the real and personal estate and effects of what nature or description the same might be of him the said John Tawell in New South Wales and elsewhere in Australia And the said John Tawell did thereby irrevocably give and grant to us the said William Tawell and William Bevan and the survivor of us our executors administrators and assigns power and authority to demand recover receive and take possession of the said Bank shares and Assurance shares and all dividends bonuses and money due or to become due in respect thereof And when and as we should think fit to ask demand and obtain a transfer or transfers into our or either of our names in the books of transfer of the said respective companies or into such other name or names as we might deem proper And whereas at the Assizes holden in and for the county of Buckingham on the tenth day of March one thousand eight hundred and forty-five the said John Tawell was indicted for the murder of one Sarah Hart and tried and found guilty thereof and shortly thereafter suffered death for the same And whereas by an inquisition taken at Hertford on the seventeenth day of June one thousand eight hundred and forty-seven (in pursuance of a Commission under the Great Seal bearing date at Westminster the twenty-fourth day of April one thousand eight hundred and forty-seven) it was found that the said John Tawell was on the said tenth day of March one thousand eight hundred and forty-five possessed as of his own proper goods and chattels of and in eighty shares of one hundred pounds sterling each in the bank capital stock of the Bank of New South Wales and also of and in ten shares of one hundred pounds sterling each of the bank capital stock in the Commercial Banking Company of Sydney in New South Wales aforesaid (Being the same shares as the said eighty shares in the said Bank of New South Wales and the Commercial Bank of Sydney in the hereinbefore recited indenture mentioned) All which said shares had become forfeited to Her present Majesty and which the said Commissioners had in obedience to the said Commission seized into the hands of Her Majesty And whereas Her present Most Gracious Majesty by Her Royal Warrant under Her Royal Sign Manual bearing date at Windsor Castle the thirtieth day of December one thousand eight hundred and forty-seven did give and grant unto us the said William Tawell and William Bevan our executors administrators and assigns (amongst other things) All the said shares mentioned and comprised in the said inquisition And also sixty shares of ten pounds each of the capital stock of the Australian General Assurance Company whereof the said John Tawell was at the time of his said conviction also possessed being the same shares as are in the hereinbefore recited indenture called or described as sixty shares in the Sydney Alliance Assurance Company standing in the name of the said John Tawell To have hold receive and take the same shares unto us the said William Tawell and William Bevan their executors administrators and assigns Upon the trusts in the said warrant declared of and concerning the same And Her said Majesty did also give and grant unto the said William Tawell and William Bevan their
executors

executors administrators and assigns the interest dividends and profits which were then due to Her from any person or persons whomsoever for or in respect of the said premises Now know ye that we the said William Tawell and William Bevan do and each of us doth hereby nominate constitute and appoint James Norton of Sydney in the Colony of New South Wales gentleman and George Cooper Turner of the same place Crown Solicitor and each of them by himself our true and lawful Attorneys and Attorney jointly and severally for us the said William Tawell and William Bevan in our names or in the names or name of our said Attorneys or either of them to enter upon and take possession of all the lands tenements hereditaments and premises within the said Colony which were released to us by the said John Tawell as aforesaid and to manage or let the same to a tenant or tenants thereof for any term or number of years not exceeding twenty-one years or from year to year as our said Attorneys or either of them shall think expedient and at such rent or rents and on such terms and conditions as they shall think proper And also if our said Attorneys or either of them shall think expedient from time to time to sell and dispose of all or any part or parts of the said lands and hereditaments to a purchaser or purchasers thereof for such price or prices as they shall think reasonable and to accept and receive the consideration or purchase money for the same And thereupon for us and in our names or in the names or name of our said Attorneys or either of them to grant such receipts acquittances or discharges as shall be requisite and proper And also for us and in our names and as our acts and deeds to make sign seal execute and deliver all such releases or other discharges as shall or may be requisite and necessary for the purpose of effectually releasing conveying and assuring such lands and hereditaments unto the purchaser or purchasers thereof his her or their heirs and assigns or to such use and upon and for such trusts as he she or they shall direct And we do hereby further authorize and empower our said Attorneys and each of them for us and in our names and as our acts and deeds or in the name and as the act and deed of the survivor of us to sign seal and deliver the several deeds of settlement of the said Banking and Assurance Companies respectively And thereupon for us and in our names or in the name of the survivor of us and to and for our use to ask demand and receive of the person or persons who shall from time to time be liable to pay or account for the same or any other person or persons whomsoever All dividends bonuses or other moneys whether on account of capital or otherwise which now is or are or shall or may from time to time hereafter be or become payable to us or which we are now entitled unto for or in respect of or on account of the said shares of the capital stock of and in the said Banking and Assurance Companies respectively and to give sign and grant sufficient receipts and acquittances for the same And also for us and each of us and in our names or name to make sale of all and every the said shares hereinbefore mentioned or any portion thereof And all other shares or share of or to which we now are or may hereafter be possessed or entitled of and in the said Banking and Assurance Company respectively and to receive and give sufficient acquittances for the purchase moneys thereof respectively And for us and in our names to sign seal execute and deliver all transfers and deeds necessary to complete the same And we do hereby further authorize and empower our said Attorneys and each of them to ask demand and by all legal and effectual ways and means whatsoever to recover and receive of and from all persons whom it shall or may concern to pay or account for the same all and every other sum and sums of money debts goods chattels effects and things whatsoever which now is or are or which shall or may at any time hereafter appear to be due owing payable belonging or appertaining unto us by bonds mortgages notes bills of exchange balance or account current consignment agreement decree judgment execution or by or upon any other account way reason or means soever Also to view state settle liquidate and adjust all or any accounts whatsoever depending between us and any person or persons whomsoever And upon recovery of any such moneys goods chattels or effects for us and in our names and as our acts and deeds to make sign seal and execute and in due form of law deliver all such receipts releases reconveyances surrenders or other effectual acquittances and discharges in the law for the same as shall be requisite and necessary Also in case of neglect or refusal on the part of any person or persons whom it may concern to make account payments and delivery in the premises him or them to compel and for that purpose to make such claims demands arrests seizures levies attachments and sequestrations or prosecute such actions and suits as our said Attorneys shall think fit Also to appear before any Judges Magistrates or other Officers in any Courts of Law or Equity to answer defend and reply in all matters touching or concerning the premises Likewise to submit all or any differences to arbitration in the usual and customary manner or in case the whole amount of any debt or sum of money payable to us cannot be recovered to accept of part in satisfaction of the whole or grant extension of time for payment of the same And generally in and about the premises to do and execute all such acts deeds matters and things which shall or may be requisite and necessary in and about the premises as fully and effectually as we could or might do if personally present And we do hereby empower our said Attorneys and each of them to substitute and appoint one or more Attorney or Attorneys under them or him with the like or more limited powers the same to revoke and others to appoint And we do hereby promise to ratify confirm and allow all and whatsoever our said Attorneys or either of them their or either of their substitute or substitutes shall lawfully do in and about the premises In witness whereof we have hereunto set our hands and seals this twenty-sixth day of January one thousand eight hundred and forty-eight.

Signed sealed and delivered by the above-named) WILLIAM TAWELL. (L.S.)
 William Tawell and William Bevan in the) WILLM. BEVAN. (L.S.)
 presence of

JOSEPH GOODEVE, 6 Old Jewry, London, Solicitor.
 THO. DAVIES, Clerk to Messrs. Bevan & Goodeve, 6 Old Jewry.

I Sarah Tawell widow of the late John Tawell do hereby consent to the above power of Attorney and the sale thereby authorized to be made Dated this twenty-eighth day of January one thousand eight hundred and forty-eight.

SARAH TAWELL.

Witness—
 JOSEPH GOODEVE.
 THO. DAVIES.

We certify that this and the four preceding sheets contain a true and attested copy of the original power of Attorney the same having been carefully examined therewith by us this sixth day of November A.D. 1851.

STEPN. SMITH,
 H. P. ROWLAND,
 Clerks to Messrs. Norton, Son, & Barker,
 Solicitors, Sydney, N.S.W.

[Enclosure 4 in No. 32.]

Old Jewry,
26 April, 1851.

Dear Sir,

Your letter of 8th October, 1850, addressed to Mr. William Tawell, by ship "Earl Grey," and covering draft on Union Bank of Australia for £249 14s. 3d., was received on 31st March last, and has since been acknowledged, I find, by that gentleman.

The contents of your letter have given to Mr. William Tawell and myself, and I need hardly say Mrs. Tawell also, extreme pain. We were aware, by a letter received from Mr. Turner, and dated about the same time as yours, that he was at San Francisco, but he alleged that he had gone there solely upon matters of business, and was on his way to this country. We had no idea whatever that he had fled secretly from your Colony, and your letter is the first intimation of this very distressing fact.

You will please to bear in mind that neither my co-trustee nor myself have ever in any degree given you reason to suppose that we did not look upon your exertions to be quite as necessary and as effectual as Mr. Turner's.

In our letter of January, 1848, and indeed on all other occasions, you are the party first addressed, and we cannot for one moment suppose that you will allow Mrs. Tawell to be a sufferer by anything that may have taken place in respect of Mr. Turner. This premised, we wish to call attention to some of the items in the account sent us by you, and in particular to those of "commission," £334 10s., and cash remitted Bevan and Cooleve, by Mr. Turner, £425 15s. 5d. The first item is one which we can never sanction, more especially when we find the very large sum of £405 2s. 4d. previously charged as costs of the sale—£287 10s. on the sale of £670 worth of property. As to the other item it seems almost needless to tell you that no such sum has ever been remitted by Mr. Turner. The auctioneer's charges on sale, £23 6s. 11d., are twice deducted—you will find once in your own account and once in Mr. Turner's. We shall expect the balance of these three sums, together amounting to £783 12s. 4d., after deducting the sum of £294 19s. 3d., received 31st March last, or £488 13s. 1d., to be remitted to us as soon as convenient. You are far from correct in your account of the proceedings which have been terminated by the sale of the land, and which sale was invalid and of no effect. You will find, on reference to my letter of 26th January, 1848, that we informed you a grant from the Colonial Governor was necessary before any title could be made to the freeholds in New South Wales. Notwithstanding this, and the opinion of your Solicitor General, you appear to have facilitated an illegal sale by your co-trustees, by, to use your own words, "handing him over the power of attorney and all the documents you held." Another sale will now take place under the Governor's Grant, the form of which goes out by this mail from the Colonial Office, and we rely upon your exertions to see that a fair price is this time realized for the property comprised in the grant, which we are told ought to produce at least double the amount of the former forced and illegal sale, if not more. We regret the position in which the purchasers from Mr. Turner are placed, but as it is quite clear he could not make a title in the absence of the grant from the Crown, they will not be without their remedies.

As respects the detention of the sum of £1,200 by the Bank of New South Wales, we have already written an opinion of the illegality of this, as against the Crown, and we have to request you will take immediate proceedings to recover this sum, as Mrs. Tawell is absolutely in want of it; and the pretext upon which it is retained appears to us too unreasonable to admit of much consideration. We regret to hear of the losses sustained by the partners in the Bank of Australia, and most especially your own, but we hope and believe you will not allow this consideration to weigh with you, but will at once apply for and obtain restitution of the £1,200; it is far too serious an item in the trust account to be thus lightly relinquished. The sum of £294 14s. 3d., received 31st ult., can only of course be accepted by us as payment generally on account of the balance due to us from Mr. Turner and yourself, and not as a specific payment for land, the sale of which we do not consider to have been made with our consent, in the absence of a grant.

And now, dear sir, we cannot close a letter most painful to us to be compelled to write, without gratefully observing, both on behalf of Mrs. Tawell and for ourselves, the very moderate account of your own charges, and at same time regretting that you should have allowed any arguments, however specious, to have prevailed over your better judgment so far as to have induced you to deliver up to your colleague a power which was intrusted to you in a cause so sacred, and we rely upon your using every exertion to reinstate Mrs. Tawell in the position which she would have occupied but for that extraordinary infatuation which your letter discloses.

We are, &c.,
WILL. TAWELL & WM. BEVAN.
(Per WILL. BEVAN.)

To James Norton, Esq.,
Sydney, New South Wales.

[Enclosure 5 in 32.]

Sydney, New South Wales,
27 August, 1851.

Gentlemen,

If I could have been astonished at anything, I should have been so at the letter you ventured to address to me respecting the property left by the late Mr. John Tawell in this Colony, and the measures adopted by Mr. Cooper Turner and myself for its disposal and the transmission of the proceeds to England for the benefit of his widow. As I am not likely to trouble you with any further correspondence, I think it due to myself to take a brief review of my conduct during the very many years in which I acted as Mr. Tawell's agent.

When Mr. Tawell first retired from the Colony, he intrusted me with the sole management of his affairs, and the collection of the large sum of money for which he sold his business to Mr. Foss, and he chose to express his gratitude to me for the manner in which his interest was attended to. He afterwards appointed a Mr. Murphy to manage what he was pleased to call a matter of too little consequence to require my aid. On his next visit to the Colony he expressed very great regret at the change he had made—informed me that he had with great difficulty closed his account with Mr. Murphy, and he again placed his affairs in my hands. I continued to act as his agent to the time of his death, and have too many letters in which he expresses his satisfaction at my management to admit of any question that I had at all times acted with the strictest justice and propriety.

When I observed Mr. G. Cooper's name added to mine in the letter of attorney which was forwarded with instructions to dispose of and transmit to England the proceeds of his property, I confess that I entertained a feeling very nearly approaching to disgust, but as Mr. Turner was a gentleman of the first connections in the Colony, and held a legal appointment of very great trust, I agreed to act under your authority.

Before I had finished a perusal of the documents you had forwarded, I received a visit from Mr. Turner, who informed me that he had a letter from his friend Mr. Bevan, and that he had called to look at the documents. I of course produced them, on which he observed, that as they would require a careful perusal, he would take them with him. I saw them no more until after his departure for San Francisco; but a day or two after he had taken them he called on me and said the first step was to hold a Court of Inquisition to find the death of Mr. Tawell and the forfeiture of his property to the Crown, until

until which, the Attorney General had informed him, that no steps could be taken to give effect to the Queen's grant; and that, as he was the Civil Crown Solicitor, of course he should immediately take the necessary steps to effect this object. Had I any right, any reason, to interfere and prevent so necessary a course? The inquisition was held accordingly, and we proceeded to get in and convert the personal estate; and, that no misunderstanding should arise between us, we agreed to open an account in your names in the Commercial Bank, and pay in all moneys which resulted from the estate.

The first obstacle that presented itself was the attachment of the money realized by the sale of the stock of the Bank of New South Wales for a debt due to that institution by the Bank of Australia, to which it was thought (and I apprehend correctly) that Mr. Tawell's stock was, notwithstanding the Queen's grant, liable. On this subject Mr. Turner obtained the best legal advice. It was thought that it could hardly be held to be the intention of the Queen, in granting Mr. Tawell's property to his widow, to defeat any liability to which it was under at the time of his death; and you may recollect that in your Power you authorized the signing of the Bank of New South Wales settlement, which of course involved a conformity to all its provisions.

Having collected the personal estate, Mr. Turner informed me that he had put the real estate into the hands of Mr. Mort for sale. I immediately called on Mr. Mort and explained the arrangement that had been made for the deposit of all moneys in the Commercial Bank, and begged that he would not allow any payments to be made without my concurrence: to this he consented, and it was this notice that secured the deposit which was paid into his hands on the land sale, and which I remitted to you. But Mr. Mort might have refused to enter into such an agreement with me, and if Mr. Turner had insisted on the payment of the proceeds to himself he could have done so—he held your joint and several power of attorney.

In the course of the agency I had ascertained that the joint and several power had been used by Mr. Turner to draw from the Commercial Bank various sums of money. I immediately went to the Bank, drew out the whole of the funds, and lodged them in the joint names of myself and Mr. Turner, by which his draft could not be paid without my signature. Mr. Turner still held his public office, and was received as a man of character; it was, therefore, necessary for me to treat him as such. I told him, however, that, if either party were to appropriate the funds without the consent of the other, it might occasion great difficulty in rendering an account to the trustees. He replied that he had only drawn out sums that were necessary to enable him to establish Mrs. Tawell's claims, and his share of the commission, which he then explained that he intended should be at least 5 per cent. I remonstrated, but could I interfere with your joint and several agent? I did, however, prevent any further use by Mr. Turner of the moneys which had been lodged in the bank.

Mr. Turner afterwards informed me that the purchasers of the real estates had objected to the title, the Law Officers of the Crown being of opinion that, under an Act of the British Parliament, which regulates the sale of Crown Lands within the Colony, the grant of the Queen to Mrs. Tawell was void in law. On this subject I frequently conferred with Mr. Turner, and saw the several opinions he had taken, and up to a very short time before he left the Colony he told me that the sales had not been completed, and, as no application had been made to me by any of the purchasers upon the subject, I had no reason to doubt the truth of his statement: they were, in fact, completed by him a short time before he left, and, as your joint and several attorney, he was enabled to convey the lots to the several purchasers without my knowledge or concurrence, and as the purchase money was paid to you (that is to your duly constituted attorney) I apprehend that you have very much mistaken the law and equity of the case in supposing that the Crown will, by making a new grant to Mrs. Tawell, or to any one for her benefit, lend itself to a gross fraud upon the purchasers. I, for one, will never advocate so dishonest a proceeding.

Any further course you determine to adopt must be prosecuted by some other agent. I cease to represent you, and I shall only notice one paragraph in your letter, which, for unblushing effrontery, I hope, is without a parallel: it is, "You are the party first addressed, and we cannot for one moment suppose that you will allow Mrs. Tawell to be a sufferer by anything that may have taken place in respect of Mr. Turner."

Had Mr. Turner been a personal friend of mine, and had his name been introduced into the power of attorney at my request, or on my recommendation, I might have felt myself under some obligation to contribute towards a loss that had been occasioned by advice so truly unfortunate.

I am, &c.,
J. NORTON.

Messrs. Tawell and Bevan.

[Sub-Enclosure in No. 32.]

New South Wales, }
(to wit.) }

AN Inquisition indented and taken at Sydney in the Colony of New South Wales on Tuesday the twenty-second day of August in the twelfth year of the Reign of Our Sovereign Lady Victoria and in the year of our Lord one thousand eight hundred and forty eight before Samuel Frederick Milford George Phillips Foster Gregory George John Rogers and James Norton junior Esquires by virtue of the annexed commission of our said Lady the Queen and under the seal of the said Supreme Court of New South Wales bearing date the fifth day of August in the said twelfth year of the Reign of our said Lady the Queen and before James Middleton (foreman) Jeremiah Murphy John Martyn Lewis Moore Albert Mason John Henry Myers Robert May John Marsh Isaac Moss Thomas Maguire Jeremiah Murphy John Wilson Mullen Thomas Moore being duly empannelled and returned by force of the said commission and sworn upon the Holy Evangelists to inquire find out and fully inform themselves of what lands tenements and hereditaments and of what annual value and of what estates within the said Colony John Tawell in the said annexed commission mentioned to have been attainted and convicted of felony or any other or others was or were seized to his use on the first day of January one thousand eight hundred and forty-five or ever afterwards and who has since taken the mesne profits thereof and of whom and by what service or services and by what tenure or tenures the same were holden and whether the same or any and which of them had escheated and devolved and come to Her Majesty and also what and what sort of leases or grants of lands tenements or hereditaments and what and what sort of annuities or annual rents and what and what sort of goods and chattels and of what value and what and what sort of debts credits specialties and sums of money the said John Tawell or any other or others for his use had on the tenth day of March A. D. one thousand eight hundred and forty-five on which day the said John Tawell was convicted and attainted of felony as aforesaid or at any time since upon their oaths say that the said John Tawell was on the said first day of January one thousand eight hundred and forty-five or at some time afterwards and previous to the day of taking this inquisition seized or possessed of or otherwise entitled to a good estate of inheritance in fee simple in possession to him and his heirs in socage tenure of in and to all that piece or parcel of land in the said County of Cumberland and Parish of Alexandria bounded on or towards the north by the estate of Mr. Justice Dowling one hundred and eight feet on or towards the east by the same estate thirty-four feet eleven inches on or towards the west by the same estate sixty-six feet ten inches and on or towards the south by William-street one hundred and seventeen feet six inches being part of the hereditaments comprised in the hereinbefore in part recited indentures and forming the said lot two together &c. And also all that allotment or parcel of land in our said Territory containing by admeasurement eleven perches situated in the Town of Sydney Parish of Saint James County of Cumberland allotment number eleven

cleven of section number forty-one and bounded on the east by the building line of Macquarie-street bearing north three degrees fifteen minutes west thirty-nine links on the north by allotment number twelve bearing west two degrees south one hundred and sixty links on the west by allotment number twenty bearing south one degree east fifty and a quarter links and on the south by allotment number ten bearing east five degrees thirty minutes north one hundred and sixty-two links being part of an allotment leased to Samuel Thornton by His Excellency Sir Thomas Brisbane on thirtieth June one thousand eight hundred and twenty-three and now granted to the said John Tawell. And also all that piece or parcel of land situate lying and being in the Parish of Saint Andrew in the Town of Sydney aforesaid bounded on the west by Sussex-street twenty four feet on the north by other part of the land comprised in the hereinbefore in part recited grant sold to John Borne and Matthew Shaw respectively sixty-six feet on the east by a lane reserved for the use of the said John Tawell his heirs and assigns in common with the occupiers of the other parts of the land comprised in the said grant forty-one feet ten inches and on the south by a road leading into George-street also reserved for the use of the said John Tawell his heirs and assigns in common with the occupiers of the other parts of the lands comprised in the said grant. And also all that piece or parcel of land situate lying and being in the Parish of Saint Andrew aforesaid bounded on the west by Sussex-street twenty-two feet on the north by the premises of Mr. Knowles Bryant and others seventy four feet two inches on the east by the reserved lane aforesaid twenty-two feet four inches and on the south by the said lands of the said John Byrnc and Matthew Shaw seventy feet one inch together with the use of the reserved lane and road hereinbefore mentioned. And also all that piece or parcel of land or ground containing by admeasurement four acres two roods and thirty-five perches situate and being in the County of Cumberland and Parish of Alexandria aforesaid bounded on the east by a private road of twenty feet width by a line south six chains and seven links on the north by land belonging to Mr. James Barker by a fenced line east seven chains and eighty-four feet on the west by the road leading from the South Head to Sydney seven chains and forty-five links and on the south by land belonging to Mr. Henry Mace by a line west seven chains to the commencing corner together with the free use and enjoyment of the said private road in common with the owners and occupiers of the adjoining land and also with all houses &c. And the said jurors upon their oaths aforesaid say that the said lands tenements and hereditaments became and are escheated and forfeited to the use of Her said Majesty but as to who hath taken the mesne profits thereof and as to what and what sort of leases or grants of lands tenements or hereditaments for any term or terms of years and what and what sort of annuities or annual rents and what and what sort of goods and chattels and of what nature and what sort of debts credits specialities and sums of money the said John Tawell or any other or others to his use had on the tenth day of March one thousand eight hundred and forty-five on which day he was convicted and attainted of felony as aforesaid. The jurors aforesaid are not informed. In witness whereof the abovenamed Samuel Frederick Milford George Phillip Foster Gregory George John Rogers and James Norton junior and also the jurors aforesaid have to this inquisition taken the day and year first above mentioned set their hands and affixed their seals on the same day and year and at the place first above stated.

(L.S.) SAML. FREDK. MILFORD.
(L.S.) G. P. F. GREGORY.
(L.S.) GEORGE J. ROGERS.
(L.S.) JAMES NORTON, JUNR.

(L.S.) JAMES MIDDLETON.
(L.S.) JEREMIAH MURPHY.
(L.S.) JNO. MARTYN.
(L.S.) LEWIS MOORE.
(L.S.) ALBERT MASON.
(L.S.) JOHN HENRY MYERS.
(L.S.) ROBT. MAY.
(L.S.) JOHN MARSH.
(L.S.) ISAAC MOSS.
(L.S.) THO. MAGUIRE.
(L.S.) JEREMIAH MURPHY.
(L.S.) WM. MULLEN.
(L.S.) THOS. MOORE.

No. 33.

GOVERNOR SIR CHAS. A. FITZ ROY to SECRETARY OF STATE.

27 January, 1852.

JOHN TAWELL.

Forwarding Report of Law Officers, stating their opinion that the Trustees have no claim to a grant of the property sold by them, in the forfeited estate of the executed felon.

My LORD,

Your Lordship's despatch, No. 31, of the 19th April last, with its enclosures, respecting the escheated estate of the late John Tawell, reached me on the 4th of September, and I lost no time in laying the matter before the Law Officers of this Government, in order, as instructed by your Lordship, that the necessary steps might be taken for carrying out the recommendations contained in the letter from the Secretary of the Lords Commissioners of the Treasury, which accompanied the same, for the filling up of a form of grant prepared by their Lordships' solicitor for that purpose, and which your Lordship directed to be issued under the Great Seal of this Colony in favour of Messrs. W. Tawell and W. Bevan, for the benefit of the widow and family of the late John Tawell.

2. I have now the honor to enclose the copy of a report from the Attorney and Solicitor General of this Colony on this subject, by which your Lordship will perceive that, under the circumstances therein mentioned, those officers recommend that the whole case be again laid before your Lordship, together with the several applications made on behalf of the parties resident in this Colony who purchased portions of the property in question, under a certain power of attorney referred to by them.

3. Your Lordship will perceive that the Crown Law Officers are of opinion that Messrs. Tawell and Bevan, the trustees of the late John Tawell, are not, either in law or in equity, entitled to the grant of the portion of the property which has been sold under their authority; and as this report is very lucid, and in my opinion a fair explanation of the whole circumstances of the case, I do not think it necessary that I should trouble your Lordship with any further remarks, particularly as the matter has already been under reference to your Lordship.

I have, &c.,
CHAS. A. FITZ ROY.

No. 34.

No. 34.

SECRETARY OF STATE TO GOVERNOR SIR CHAS. A. FITZ ROY.

*Downing-street,
6 October, 1853.*

SIR,

With reference to your despatch, No. 20, of the 27th January, 1852, enclosing a report from the Attorney and Solicitor General of your Government, in reply to a reference which you made to them, on the receipt of the instructions addressed to you by Earl Grey, on the 19th April, 1851, respecting the disposal of the escheated property in New South Wales belonging to the late John Tawell, an executed felon, in which they state their opinion that the trustees appointed to receive the same for the benefit of Tawell's widow had no claim either in law or in equity to the grant of a portion of the land belonging to the estate which had been sold by them, I transmit, for your information and guidance, the copy of a case submitted, on this point, to the Law Officers of the Crown, together with their opinion thereon, which has been received through the Board of Treasury, and I have to instruct you to proceed with the grant of this property in the manner proposed by the Lords Commissioners of the Treasury, in the letter from that Board, dated 11th April, 1851, of which a copy was transmitted in Earl Grey's despatch above referred to, and according to the form which accompanied that letter.

I have, &c.,
NEWCASTLE.

[Enclosures in No. 34.]

In the Matter of John Tawell, an attainted Felon.

Case as to the Grant of Escheated Property in New South Wales.

Herewith are the following Papers:—

1. Copy of Her Majesty's Warrant of 30th December, 1847, granting certain escheated property of the above-named felon (chiefly in England) to trustees for the benefit of his widow and family.
2. Copy of a letter from Messrs. Bevan and Goodeve to the Treasury, of 6th January, 1848; of a letter from the Secretary of the Treasury to the Colonial Office, of 25th January, 1848; and of a letter from the Colonial Office to the Governor of New South Wales, of 29th January, 1848.
3. Case, and Opinion of the Attorney and Solicitor General as to the power of the Crown to grant the escheated lands in the Colony. In this case will be found a despatch from the Governor of New South Wales, of 24th June, 1850, stating that the title of the Crown to the property in the Colony had been found by Inquisition.

The above opinion was shortly afterwards transmitted, together with a form of grant (prepared in this Country) to the Governor of New South Wales, with instructions to him to cause the grant to be perfected and passed under the Great Seal of the Colony, to complete the transfer of the property for the benefit of the widow and children of the felon.

The following despatch and its enclosures have been received from Sir Charles Fitz Roy in reply:—

*" Government House.
" Sydney, 27 January, 1852.*

" Sir,

" Your Lordship's despatch (No. 31) of the 19th April last, with its enclosures, respecting the escheated estate of the late John Tawell, reached me on the 14th of September, and I lost no time in laying the matter before the Law Officers of this Government, in order, as instructed by your Lordship, that the necessary steps might be taken for carrying out the recommendations contained in the letter of the Secretary of the Lords Commissioners of the Treasury, which accompanied the same, for the filling up of a form of grant prepared by their Lordships' solicitor for that purpose, and which your Lordship directed to be issued under the Great Seal of this Colony in favour of Messrs. W. Tawell and W. Bevan, for the benefit of the widow and family of the late John Tawell.

" 2. I have now the honor to enclose a copy of a report from the Attorney and Solicitor General of this Colony on this subject, by which your Lordship will perceive that, under the circumstances therein mentioned, those officers recommend that the whole case be again laid before your Lordship, together with the several applications made on behalf of the parties resident in this Colony who purchased portions of the property in question, under a certain power of attorney referred to by them.

" 3. Your Lordship will perceive that the Crown Law Officers are of opinion that Messrs. Tawell and Bevan, the trustees of the late John Tawell, are not, either in law or in equity, entitled to the grant of the portion of the property which has been sold under their authority; and as this report is very lucid, and, in my opinion, a fair explanation of the whole circumstances of the case, I do not think it necessary that I should trouble your Lordship with any further remarks, particularly as the matter has already been under reference to your Lordship.

" I have, &c.,

" CHAS. A. FITZ ROY."

*" Attorney General's Office,
" Sydney, 1 November, 1851.*

" Sir,

" In reply to your letter of the 26th September last, upon the subject of the grants of land which Earl Grey has directed to be issued in favour of Messrs. W. Tawell and W. Bevan, for the benefit of the widow and family of the late John Tawell, we have the honor to state that, being aware from previous official correspondence with reference to these lands that sales of them had been made in the Colony in the names of these trustees, and grants applied for by the purchasers, we requested the Civil Crown Solicitor to obtain all necessary information on the subject.

" 2. That officer has, accordingly, collected such information, and has placed before us much official correspondence obtained from your office, and a variety of documents, to all of which we have given very attentive consideration; and we find the following to be the leading features of the case:—

" 3. On the 31st January, 1845, and prior, therefore, to the conviction of John Tawell, his real and personal property in New South Wales was conveyed by him to Messrs. W. Tawell and Bevan, in trust to sell if they should think fit, and to apply the proceeds for the benefit of his wife and son, and certain other persons.

" 4.

" 4. On the 30th December, 1847, John Tawell's real and personal estate in England, and his chattel property in New South Wales, were by the Queen's Warrant granted to the same trustees upon the trusts of the above deed, and from the terms of the warrant (which refers to the above mentioned conveyance of 31st January, 1845, without impugning it), as well as from the correspondence with and despatches of the Secretary of State, it is evident that Her Majesty entirely waived her claim by escheat to the real property in New South Wales, and that the same was to be granted for the benefit of the widow and son of Tawell, as soon as the Crown's title to it should have been found by inquisition held in the Colony.

" 5. On the 26th January, 1848, Messrs. W. Tawell and W. Bevan, executed and sent out a power of attorney, which is now before us, and of which the enclosed copy has been furnished to us, by which, after reciting the conveyance of 31st January, 1845, they appointed Messrs. Norton and G. C. Turner their attorneys, and fully empowered them, jointly and severally, for them the said W. Tawell and W. Bevan, in their names, or in the names of their said attorneys, or either of them, to sell and dispose of the land in question, if the said attorneys or either of them should think expedient, and to receive and give receipts for the purchase moneys, and in the names of the said W. Tawell and W. Bevan, and as their acts and deeds, to make, sign and seal, execute and deliver all such releases and discharges as should or might be necessary for effectually releasing, conveying, and assuming such lands unto the purchaser or purchasers thereof.

" 6. An inquisition having been held in the Colony, by which the title of the Crown to the lands in question was found, Mr. Turner made sale of those lands to various persons (by public auction, we believe) under the authority of the above power of attorney. He subsequently received the purchase money, and executed conveyances of these lands, and covenants to endeavour to procure deeds of grant in the names of W. Bevan and W. Tawell. These acts were strictly within Mr. Turner's powers as a several attorney of these trustees.

" 7. After the sales, applications were made to the Colonial Government for deeds of grant in favour of the purchasers, and it is probable that they would have been issued accordingly in 1849, but for a difficulty which had occurred to ourselves in reference to another case of escheat, as to the sufficiency of the terms of the Governor's Commission.

" 8. It would now seem, that although some portions of the purchase moneys were remitted to Messrs. W. Tawell and W. Bevan, other portions were not so remitted, but have been, or are supposed to be, lost through Mr. Turner's reputed insolvency and emigration to California, and on this ground Messrs. Tawell and Bevan seek to repudiate the actings of Mr. Turner on their behalf, and to give effect to such repudiation by obtaining grants from the Crown to themselves.

" 9. It is, we need not say, greatly to be lamented, that the widow and son of the deceased Tawell should suffer through the misplaced confidence reposed in Mr. Turner, but it appears to us, that according to every principle of equity it is right that, as the loss must unfortunately fall somewhere, it should be borne by them, rather than by equally innocent purchasers who had nothing to do with the selection of, nor any control over the agent, who was regularly employed on their behalf.

" 10. According, also, to well known principles of the English Courts of Justice, we think it plain, that if Messrs. Tawell and Bevan were now to obtain a legal title to these lands by means of a grant from the Crown, they would be estopped in law from setting it up in derogation of deeds which are legally as much theirs as if they had executed them in person, and that, in equity, they would be compellable to convey to their vendors the estate acquired from the Crown. It must be admitted, indeed, that, as the Crown has not yet formally divested itself of its absolute power of disposing of the property as it may think fit, the application of these principles of law and equity might be evaded by changing the trustees or the trusts with that view; but, of course, the Crown would not lend itself to such a scheme.

" 11. Having thus brought the facts of the case, as far as they are known to us, under the notice of the Governor General, we have now, in conclusion, to state most respectfully that, in our judgment, His Excellency ought not to issue the proposed grants to Messrs. W. Tawell and W. Bevan, but that the whole matter should be laid again before the Secretary of State, together with the counter applications made by the several purchasers.

" J. H. PLUNKETT, Attorney General.
" W. M. MANNING, Solicitor General.

" 354, Castlereagh-street,
" Sydney, 19 March, 1849.

" Sir,

" With reference to your communication of the 22nd June last, acquainting me that Earl Grey had notified to His Excellency the Governor that Her Majesty had been pleased to grant the property of Tawell to trustees (Messrs. W. Bevan and W. Tawell) for the benefit of Tawell's widow and family, and also to instruct His Excellency the Governor to afford any assistance in his power to the legal representatives here of the parties to whom such grant has been made, and further stating that, with respect to the freehold property of J. Tawell, that no inquisition had been taken to find the Crown's title thereto, which has generally been required before any grant of confiscated property is made,—I do myself the honor to state that, with the consent of the Honorable the Attorney General, a commission was issued out of the Supreme Court, and an inquisition held therein, finding the Crown's title to the freehold property of Tawell in this Colony, and to transmit a copy of the commission and inquisition, and, as the legal representative of Messrs. W. Tawell and Bevan in this Colony, I have the honor to request, that His Excellency the Governor will be pleased to direct that a grant of a portion of the land contained in the inquisition (a description whereof is herewith transmitted) may be issued in favour of Mr. Thomas Ware Smart.

" G. C. TURNER.

" The Honorable the Colonial Secretary, Sydney.

" Sir,

" Sydney, 8 November, 1850.

" I am under the necessity of calling your attention to the correspondence respecting my client, Mr. Hugh Dixon's, claim to a grant of the land in Macquarie-street, formerly the property of John Tawell, deceased.

" I submit, that it is indisputable that this property escheated to and is now vested in the Crown, and that it is not subject to the provisions of the Waste Lands Act, and that whatever doubts may have at one time been thought to exist upon these points must, after the considerations and discussions which have taken place, be held to have had no foundation.

" This being the case, the only question left open is as to His Excellency the Governor's power to grant the land in question to my client, as the purchaser from Tawell's representatives, in pursuance of the instructions contained in Earl Grey's despatch. I submit that His Excellency has the necessary authority; but, that if there should be any doubt upon the point the Government will not incur any liability or responsibility of any sort by making the grant, while my client will, in all probability, be a great loser in consequence of the Government not making it; my client is the only party who could by any possibility be damaged by the invalidity of the grant, if it should be invalid; he is willing to take the risk of the grant being void and of maintaining its validity by legal proceedings if necessary.

" I

" I have, therefore, on his behalf to request that His Excellency will be pleased to give directions for the issue of the deed of grant in Mr. Dixon's favour.

" His Excellency will observe that my client has been waiting for his grant since February, 1849.

" I enclose a copy of the conveyance, from Tawell's trustees to my client, of the land in question, and have the honor to remain, &c.,

" THOMAS ICETON.

" The Honorable the Colonial Secretary.

" Sydney, 2 October, 1851.

" Sir,

" Referring to your letter of the 26th November, 1850, in which you state, that Mr. Dixon's application for a grant of the land in Macquarie-street, purchased by him from the representatives of the late John Tawell, had been referred for the directions of the Right Honorable the Secretary of State, I have now the honor to renew that application, as I understand that the Secretary of State's directions have been received.

" In my former communications I forwarded your request from the trustees for the issue of a grant in Mr. Dixon's favour, and a copy of the registered conveyance from them to Mr. Dixon of the land in question. Requesting the favour of your early attention,

" I remain, &c.,

" THOMAS ICETON.

" The Honorable the Colonial Secretary.

" Sydney, 17 October, 1851.

" Sir,

" I have the honor to acknowledge the receipt of your letter, of the 16th instant, in reply to my renewed application for a grant to Mr. Dixon, for land purchased by him of the representatives of the late John Tawell, and in which you informed me that the matter has been referred to the Law Officers in order that the necessary steps may be taken for carrying out the instructions of the Secretary of State relative to the filling up of the form of grant.

" I have now the honor to request that you will have the goodness to cause all the previous papers in this matter to be forwarded to the Crown Law Officers, including the despatch of the Right Honorable the Secretary of State of 26th January, 1848, the request of the trustees (signed by their duly authorized attorney) for a grant to be made in Mr. Dixon's favour, and a copy of the conveyance, from the trustees to Mr. Dixon, of the land in question.

" My client having bought this land from the trustees upon the faith of the before-mentioned despatch, and having paid the trustees the purchase money, I have, on his behalf, most respectfully, but earnestly, to protest against the grant of the property being made to the trustees, and to request that His Excellency the Governor General will be pleased to direct the issue of a grant in my client's favour.

" I beg to draw His Excellency's attention to the important fact, that, but for a difference of opinion between His Excellency's former legal advisers the grant would long since have been issued in favour of my client, and that the present reference to them would not have been necessary.

" I do myself the honor to transmit herewith a copy of a deed of covenant by which the trustees bound themselves to use their utmost endeavour to obtain a grant for Mr. Dixon, and to request that you will have the goodness to forward the copy with the other documents to the Crown Law Officers.

* " I have, &c.,

" THOMAS ICETON.

" The Honorable the Colonial Secretary.

" No. 219, Elizabeth-street, Sydney,

" 16 October, 1851.

" Sir,

" Having recently been favoured, by Mr. James Norton, solicitor, with the inspection of some correspondence received by him from Messrs. William Tawell and William Bevan, of England (the trustees to whom all the properties in this Colony belonging to the late John Tawell was conveyed prior to his decease), in which it is intimated that they have procured instructions to be forwarded from the Colonial Office to His Excellency the Governor General for the preparation of a grant in their favour of all the property here, upon similar trusts to those declared in Her Majesty's Warrant granting the English property to them, I have the honor, on behalf of Mr. Thomas Moore to represent to you for the information of His Excellency that Messrs. Tawell and Bevan (through their legally constituted representative Mr. George Cooper Turner, who was at the time Civil Crown Solicitor) have already regularly sold and conveyed, for a valuable consideration, which was duly paid, part of this property, situated in Sussex-street, Sydney, to Mr. Moore, in whose favour it was agreed at the sale a grant was to be applied for by Mr. Turner (and which he afterwards frequently stated he had done), and was to have been issued; but the preparation of which has been hitherto only awaiting the receipt of some further authority for that purpose, which His Excellency was advised it would be necessary to procure from Her Majesty.

" I now understand that Messrs. Tawell and Bevan, in violation of this sale, are contriving to obtain a grant to themselves; and their avowed purpose is to attempt to sell a second time. In virtue of his purchase and conveyance, and in consequence of statements made by Messrs. Tawell and Bevan's representative, being in daily expectation of the grant being issued to him, Mr. Moore has expended a considerable sum in building upon the land sold to him. Under these circumstances, the issuing of any grant of this land to Messrs. Tawell and Bevan would, I submit, be a clear injustice to Mr. Moore, and inflict irremediable injury upon him. I therefore beg respectfully to request that His Excellency will deem it proper, before the preparation of a grant to Messrs. Tawell and Bevan is further proceeded with, to direct the matter to be investigated, and the rights of the parties interested to be inquired into.

" I have, &c.,

" A. H. McCULLOCH."

" The Honorable

" The Colonial Secretary."

It will be observed that the last despatch (of 27th January, 1852) and its enclosures introduced new matter into the case, viz., the sale of a portion of the land in the Colony, under powers stated to be derived from the trustees, and raised the question whether the grant of that portion should not be made to the purchasers instead of the trustees.

A copy of this despatch and enclosures was, therefore, communicated to Messrs. Tawell and Bevan (the trustees), in order that they might submit any observations they might desire to make on the subject.

The following communication has, in consequence, been received by them :—

" 6, Old Jewry,
" London, 9 July, 1853.

" Sir,

" *Re TAWELL.*

" I have been requested by Mrs. Tawell to acknowledge your favour of the 10th March, addressed to Mr. William Tawell and myself, enclosing the copy of a despatch recently received from Sir Charles Fitz Roy, and to express, on behalf of that lady, her grateful sense of the kindness and courtesy which have characterized every proceeding on the part of Her Majesty's Government in reference to this truly unfortunate affair.

" In venturing to make a few observations upon the opinion of the Law Officers of the Crown in the Colony, I do so, not in the capacity of trustee under the deed of 31st January, 1845, but as the friend and adviser of Mrs. Tawell, and her infant son; because I consider the question which has now arisen is not one between the trustees and the purchasers of the land in the Colony, but between those purchasers and the widow and child of the late John Tawell.

" The grant from the Crown to Mr. William Tawell and myself of the property in this country bears date the 30th day of December, 1847; the power of attorney sent out to Messrs. Norton and Turner is dated the 26th day of January, 1848. The inquisition to find the title of the Crown to the lands in the Colony, and on which the grant is now about to issue, was held at Sydney, on the 23rd day of August, 1848; there was no title therefore, even in the Crown, to the real estate in the Colony; nor does the grant to the trustees, of 30th December, 1847, in any way affect to deal with it. On the contrary, all allusion to the real estate in the Colony is studiously avoided.

" In the opinion of the Attorney and Solicitor General of the Colony, great stress is laid on the fact, that the power of attorney, of 26th January, 1848, empowers Messrs. Norton and Turner to sell the land in Sydney. This is no doubt true; but a reference to the letter accompanying that power (a copy of which is now sent) will shew that a prospective sale, after the land had been granted in the Colony, was alone contemplated; and the letter distinctly points the attention of the attorneys to the fact that such land was not included in the grant of 1847, and could not, in the opinion of the Law Officers of the Crown here, be sold until a grant of it had been made under the Great Seal of the Colony. It will be observed that the power of attorney embraced other and much more valuable property than the land in question.

" It is plain, therefore, that, until the Colonial grant was made, the trustees had no power to sell; consequently, their attorneys could derive none, and Mrs. Tawell and her child must be regarded as perfect strangers to the whole transaction with respect to this land, which has been carried out by persons who were not possessed of a shadow of title to it, nor, from anything that appears, would ever have any title. The question at issue is not like an ordinary case of dispute between vendor and purchaser; the contention is between the purchasers and the widow and child, not between the purchasers and the trustees; and the purchasers cannot, by possibility, put themselves in any better position than the trustees, under whom they claim. Now, the trustees never had any claim to the land, either in equity or law; and, therefore, it is submitted, the purchasers can have no such claim. It seems impossible to contend that the interests of these unfortunate persons should be affected by the acts of those who are, in fact, total strangers to the property in every respect.

" This view of the case seems to have been lost sight of by the Attorney and Solicitor General of the Colony. They treat the case as if the trustees had been chosen by the widow or by the Crown, to deal with this property on behalf of the family, whereas there is in fact nothing to shew this in any part of the transaction; the evidence goes entirely the other way, and makes it plain that no trust affecting these lands was ever reposed in Messrs. Tawell and Bevan by any one.

" If, however, the matter is to be regarded as an ordinary case between vendor and purchaser, then it is contended that the purchasers are not entitled to any consideration at the hands of the Crown, on the principle of *caveat emptor*. It is obvious that the least investigation must have convinced a purchaser that Messrs. Norton and Turner could not confer any title to the land, seeing that the persons they represented had themselves no title whatever. A purchaser examining the grant (of which a copy was sent) would have at once seen that the property in New South Wales was not comprised in it; and moreover, if he had made the inquiry which he ought to have done, he would have learnt that at the time the power of attorney was executed the Crown had no complete title, and therefore could grant none. Under these circumstances the purchasers should have repudiated their bargains. They did not do so, and they must abide by the consequences. With their eyes open they paid their money to a man who had no title or means of conferring one, and it does not lie with them now to complain because they found they have bought a shadow.

" Numerous cases could be cited to shew that the view here taken of the position of the purchasers is consistent with the doctrines of our Courts, both of law and equity, and that the purchaser in such a case as the present cannot be allowed to plead mistake as a ground for relief, or for favourable consideration. It may be sufficient to refer to *Hitchcock and Gibbings*, 4 Price, 135.

" It is besides necessary to call attention to the fact that the prices were so inadequate as probably to tempt the purchasers to risk the results of taking a bad title; and if this be the case they must abide by the consequences of the risk they have chosen to adopt, and there would seem to be nothing immoral or improper in the grant being made to fresh trustees for the purposes of sale, repaying to the several purchasers the amounts they have so paid out of the proceeds of a resale. It may be worth while to observe, that only a portion of the property found at the inquisition has been sold, and the deposit money on this portion alone has found its way to the hands of the trustees.

" As the Attorney and Solicitor General (of the Colony) have alluded to the supposed hardship of the case as against the purchasers, it may be only fair to state that Mrs. Tawell had nothing whatever to do with the selection of Mr. Turner, but that he was joined as attorney with Mr. Norton in the power sent out by the trustees solely from the fact of his filling, at that time, the important and responsible situation of Crown Solicitor at Sydney, and that but for the indecent haste with which the purchasers sought to conclude their bargains with that individual at half the real value of the property purchased, they would in all probability have made such an investigation into the title as would have led to the interference of Mr. Norton, the real attorney of the trustees, and thus have prevented the loss which has now been sustained.

" I am, &c.,

" WILLM. BEVAN."

" H. R. Reynolds, Esq., Treasury.

" 6, Old Jewry, London,
" 26 January, 1848.

" Dear Sir,

" We have much pleasure in informing you that the application to the Queen for a grant of the property of the late Mr. John Tawell has been successful, and we hand you herewith an attested copy of the grant made by Her Majesty to us. It is not usual to make this under the Great Seal, as the Sovereign is empowered by the 59 Geo. 3, chap. 51 (to which we beg to refer you) to grant, by warrant, property escheated or forfeited to the Crown. The warrant is not enrolled in any Court here, and therefore we send an attested copy certified by a Notary, and authenticated by the city seal, as the best means in our power of supplying you with authentic evidence of the warrant itself. Of course as that relates to the freehold property here of considerable value, we do not like to expose it to the risk of being lost by a sea voyage.

" We

" We also send you herewith, the following documents, viz. :— copy settlement made on the marriage of John Tawell and Sarah Cutforth, (now Sarah Tawell, widow) dated 23rd February, 1841 ; consent signed by the trustees of that settlement, by Mrs. Tawell agreeing to the shares being transferred to ourselves.

" Power of attorney from ourselves to you, enabling you to act fully in our behalf.

" We trust these documents will enable you to surmount every difficulty, so that the shares may be at once transferred into our names.

" We have applied to the Lords of the Treasury requesting them to inform Lord Grey what has been done by the Crown, in order that he may instruct the Governor of New South Wales to render every assistance (if applied to) for carrying out the objects we have in view, and this they have promised to do, so that we hope you will receive all the aid from the Governor of your Colony which you may require.

" We enclose a copy of the Treasury letter of the 25th January instant.

" We shall be obliged by your using your best exertions for obtaining the immediate transfer of the shares into our names, and receiving all dividends now due thereon. These dividends we will thank you to remit to us with the least possible delay, as they are much wanted here.

" We wish you, also, to sell all the shares except those in the Bank of New South Wales ; the time of the sale, and the price, we must leave in a great measure to your discretion, but as soon as sold we shall be glad to have the proceeds remitted to us. As the shares in the Bank of New South Wales are paying so good a dividend, we think it will be desirable to hold them for the present, but as to this point we shall feel obliged if you will favour us with your opinion.

" We do not send you out any of the certificates for shares in our hands, as it is probable, we think, you have duplicates of them in your own possession. Should it, however, be necessary to do so in order to complete the sales, we shall be obliged by your informing us. The only share certificates we have are for eighty shares in the Bank of New South Wales and ten shares in the Commercial Bank.

" The only property of the late Mr. Tawell in New South Wales, not included in the grant, consists, we believe, of—

" 1. An allotment of freehold land in Double Bay district, called Tivoli.

" 2. An allotment at Darlinghurst.

" 3. An allotment in Sussex-street, Sydney.

" 4. The Friends Meeting House, and land adjoining, situate in Macquarie-street, Sydney.

" 5. Some shares in the Bank of Australia ; we are not aware of the exact number, but shall be glad to be informed of it by you.

" The Crown Officers here inform us that a grant of the land must (if made) be made under the Great Seal of the Colony, and with regard to the shares in the Bank of Australia, we have deemed it prudent on account of the pending suit relative to the affairs of that bank, not to make any application to the Crown for a grant of them at present. You have the certificates of these shares we believe.

" We shall esteem it a favour if you will give us your advice and opinion as to the value of the real property in New South Wales, and the Australian Bank shares ; and also as to the probable expense of the proceedings necessary to obtain a grant of them from the Colonial Government, to the same effect as the grant already made by Her Majesty, so that we may be able to determine as to the expediency of taking steps for obtaining same.

" We are, &c.,

" WM. BEVAN,

" For Tawell and self."

" To James Norton, and

" George Cooper Turner, Esquires."

With regard to the extent of the property and its value, and the quantity sold, and the price, Mr. Bevan states as follows :—

" The property belonging to the felon in New South Wales consisted of—

" 1. An allotment of land situate in the District of Double Bay, near Sydney, called Tivoli, containing five acres or thereabouts.

" 2. An allotment of land situate at Darlinghurst, near Sydney, used for building.

" 3. An allotment of land situate in Sussex-street, Sydney, used for building.

" 4. A messuage or tenement and premises, situate in Macquarie-street, in Sydney, used by the Society of Friends there as a Meeting House.

" Of these four properties Mr. Turner, acting without Mr. Norton's knowledge or sanction, sold the three last named. The auctioneer's account, dated 12th February, 1849, is sent herewith. The net proceeds of the sale, amounting to £646 13s. 1d., have, we are told, been received by Mr. Turner, but the sum of £177 15s. 1d. has alone reached the hands of the trustees.

" In a letter dated Sydney, 17th September, 1847, Mr. Norton writes, ' I do not think the whole of the real property would exceed the value of £1,500.' It is needless to remark that the property was sacrificed by Mr. Turner, and is worth far more than the prices obtained at the sale.

" The following is a copy of the auctioneer's account ;—

" Sydney, 12 February, 1849.

" Sold by order of the attorneys of William Tawell and William Bevan,

" By Thomas S. Mort.—Auction Sale.

" As per terms and conditions of sale. }	" Allotment of land in Sussex-street.....	£ 90 0 0
	" Friends' Meeting House, Macquarie-street	375 0 0
	" Land in William-street	205 0 0
		£670 0 0

" CHARGES.

" Commission, 2½ per cent.	£16 5 0
" Duty, ½ per cent.....	3 5 0
" Advertisements	3 16 11
	23 6 11

" Net proceeds £646 13 1

" Errors excepted."

" THOS. S. MORT,

" p. pro A. Campbell Brown."

The opinion of the Attorney and Solicitor General is requested :—

To whom, and in what manner so much of the lands in the Colony, included in the inquisition, as is stated to have been sold, should be granted.

We are of opinion that the lands in the Colony, included in the inquisition, and stated to have been sold, should, nevertheless, be granted to the trustees for Mrs. Tawell and her children, according to the expectation graciously held out to the latter by the Crown. The power of attorney sent by Messrs. Tawell and Bevan to Messrs. Turner and Norton (and under which the land in question was sold) did not, at the time of the sale, authorize Turner and Norton to sell. No inquisition had then been taken of the land, and the Crown, therefore, had not only not granted the same, but was not even in a condition to grant it.

It appears clear, from the letter of instructions sent by Messrs. Tawell and Bevan to Turner and Norton, that the former did not contemplate the sale of the lands in question, until further directions should be sent out; for they distinctly call attention to the fact that the lands were not included in the grant at that time made by the Crown, and that a grant of the lands would be necessary. It seems clear that their intention was, that an immediate sale of the other property in the Colony should take place, under the power of attorney, but that the land should be subject to future disposition.

Under these circumstances, it appears to us that the grant from the Crown should be made as originally contemplated. If the parties who purchased these lands at the sale have any claim in Equity against the grantees, it will still be open to them to enforce such claim. We see no reason why the Crown should depart from the simple and ordinary course in order to secure claims, the validity of which those who were the intended objects of the Crown's bounty resist, and which arise out of the transactions of, to say the least, a very doubtful character.

The validity of the contracts in question may be a proper subject for inquiry in a Court of Justice, and the grant now to be made by the Crown to the trustees will not affect their liability to perform these contracts, if they are such as ought to be enforced.

A. E. COCKBURN,
RICHARD BETHELL.

August 31, 1853.

No. 35.

COLONIAL SECRETARY to CROWN LAW OFFICERS.

*Colonial Secretary's Office,
Sydney, 3 February, 1854.*

GENTLEMEN,

I do myself the honor, by the direction of His Excellency the Governor General, to forward to you, for your perusal, the accompanying despatch, with its enclosure, which has been received from the Secretary of State for the Colonies, in reference to your report, dated 1st November, 1851, respecting the disposal of the escheated property in this Colony belonging to the late John Tawell, an executed felon.

I have, &c.,
C. D. RIDDELL.

No. 36.

CROWN LAW OFFICERS to COLONIAL SECRETARY.

*Attorney General's Office,
Sydney, 1 May, 1854.*

SIR,

In reply to your letter of the 3rd February last, 54-80, forwarding, for our perusal, the accompanying despatch, with its enclosures, now returned, which was received from the Secretary of State for the Colonies, in reference to our report, dated 1st November, 1851, respecting the disposal of the escheated property in this Colony belonging to the late John Tawell, an executed felon.

2. We do ourselves the honor to inform you, that we have perused the despatch and enclosures, and regret to find, that, after again giving the subject the most careful consideration, we are entirely unable to concur in the opinion of the Attorney and Solicitor General of England. Whether or not that opinion was taken officially does not appear; but we collect, from the whole statement of the case for opinion, that it must have been prepared and submitted by an interested party. We have, therefore, the less difficulty in recording our dissent.

3. But as the despatch of the Secretary of State distinctly instructs His Excellency the Governor General to proceed with the grant of the property in question, as before directed, and, as such despatch and its enclosures are now only sent to us for perusal, we presume that the further discussion of the question which has been under consideration is no longer to be deemed within our province as officers of the Colonial Government, and that the grant will be issued according to the instructions of the Secretary of State.

We have, &c.,

J. H. PLUNKETT,
Attorney General.

W. M. MANNING,
Solicitor General.

P.S.—We beg to inform you this matter should have had our attention before now, but for the absence of the Solicitor General, on leave, and subsequently the interference of the Circuit Courts, which engrossed our attention.

J. H. P.
W. M. M.

No. 37.

T. W. SMART, ESQ., to COLONIAL SECRETARY.

Dowling-street,
10 May, 1854.

SIR,

In the early part of 1849, I purchased at auction of Mr. Mort a portion of land at Darlinghurst, sold by him on account of Messrs. Bevan and Tawell, the trustees of Mrs. Sarah Tawell, widow of John Tawell, who was convicted and attainted in England in March, 1845, at which sale it was represented to the intending purchasers, and held out as an inducement to them, by the auctioneer, in the presence of, and with the authority of Mr. George Cooper Turner, the attorney of the said trustees, and then holding the office of Civil Crown Solicitor, that as Her Most Gracious Majesty had been pleased to order grants to issue to the said trustees, their heirs and assigns, the Colonial Government would, at the request of the attorney or attorneys, issue the grants of the respective properties to the purchasers.

Under this assurance I became the purchaser of the allotment alluded to, and instructed my solicitor, Mr. Carr, to take the necessary steps to obtain the grant, who, with the concurrence and assistance of the acting attorney, Mr. Turner, carried on a correspondence with the Honorable the Colonial Secretary, during the month of March, 1849, and on several other occasions, until February, 1850, when he was apprised that the Governor's Commission did not enable him to seal Letters Patent granting this land, and also, that an authority for that purpose would have to be procured from Her Majesty.

Since that period, viz., February, 1850, I have received no communication on the subject till within the last few days, when, greatly to my astonishment, I was informed, "that the Governor General had instructions from His Grace the Duke of Newcastle to issue a grant in favour of Messrs. Bevan and Tawell, that the grant would shortly be issued, and that their newly constituted attorney, the present Civil Crown Solicitor, Mr. Billyard, had been intrusted to re-sell the property." Thereby repudiating their first sales, and defrauding the purchasers of their justly acquired estate.

I am altogether unable to account for this determination on the part of His Grace the Duke of Newcastle, otherwise than by the supposition that he has been greatly imposed upon and misled by an *ex parte* and wilfully misrepresented statement of the facts of the case, the most flagrant deception being, as I have been informed, that Messrs. Bevan and Tawell's attorneys in this Colony had no *power to sell*.

I would draw your attention to an extract annexed hereto (and marked No. 1), from the original power of attorney now in my possession, from which it will be seen that they, the attorneys, have the fullest authority to sell and convey the real estates

A proof of the legal confirmation of the sales is afforded by the acknowledgements of the auctioneer's account sales, and of the cash deposits paid by the purchasers; yet, in the face of this virtual sanction, the trustees fraudulently seek to disclaim a contract made under their own authority. Under these circumstances I have respectfully to request, that if His Excellency does not feel authorized to issue the grant in my favour, as Messrs. Bevan and Tawell have covenanted under seal with me to procure (see extract appended, marked No. 2), that he will not issue it to Messrs. Bevan and Tawell, unless as trustees for the purchasers, or until the Home Government can be again referred to, and a fuller and more accurate statement of the facts be submitted for their consideration.

I have, &c.,

T. W. SMART.

EXTRACT No. 1.

(From Power of Attorney, dated 26 January, 1848.)

"Now know ye that we the said William Tawell and William Bevan do and each of us doth hereby nominate constitute and appoint James Norton of Sydney in the Colony of New South Wales gentleman and George Cooper Turner of the same place Crown Solicitor and each of them by himself our true and lawful attorneys and attorney jointly and severally for us the said William Tawell and William Bevan in our names or in the names or name of our said attorneys or either of them to enter upon and take possession of all the lands tenements hereditaments and premises within the said Colony which were released to us by the said John Tawell as aforesaid and to manage or let the same to a tenant or tenants thereof for any term or number of years not exceeding twenty-one years or from year to year as our said attorneys or either of them shall think expedient and at such rent or rents and on such terms and conditions as they shall think proper And also if our said attorneys or either of them shall think expedient from time to time to sell or dispose of all or any part or parts of the said lands and hereditaments to a purchaser or purchasers thereof for such price or prices as they shall think reasonable and to accept and receive the consideration or purchase money for the same and thereupon for us in our names or in the names or name of our said attorneys or either of them to grant such receipts acquittances or discharges as shall be requisite and proper and also for us and in our names and as our acts and deeds to make sign seal execute and deliver all such releases or other discharges as shall or may be requisite and necessary for the purpose of effectually releasing conveying and assuring such lands and hereditaments unto the purchaser or purchasers thereof his her or their heirs and assigns or to such use and upon and for such trusts as he she or they shall direct."

I Sarah Tawell widow of the said John Tawell do hereby consent to the above power of attorney and the sale thereby authorized to be made Dated this 28th January, 1848.

SARAH TAWELL.

EXTRACT

EXTRACT No. 2.

(Conveyance, dated 15 May, 1850—Messrs. Tawell and Bevan to T. W. Smart, received in Registrar's Office 15 June, 1850.)

And whereas the said William Tawell and William Bevan have requested His Excellency the Governor of the Territory aforesaid to be pleased to direct that a grant of the said land and hereditaments hereafter described so contracted by them to be sold as aforesaid may issue in favour of the said Thomas Ware Smart And whereas His Excellency the said Governor has accordingly been pleased to direct that such grant as aforesaid may issue in favour of the said Thomas Ware Smart which said grant has in pursuance of such direction been prepared but has not yet issued And lastly that they the said William Tawell and William Bevan their heirs executors and administrators shall and will use their utmost endeavours at the cost of the said Thomas Ware Smart his heirs or assigns to procure for the said Thomas Ware Smart his heirs or assigns or assist him or them in procuring the said grant from the Crown in favour of the said Thomas Ware Smart his heirs and assigns to which the said Thomas Ware Smart has become entitled under the circumstances hereinbefore set forth.

T. W. SMART.

No. 38.

[COLONIAL SECRETARY to T. W. SMART, ESQ., M.C.]

*Colonial Secretary's Office,
Sydney, 3 June, 1854.*

SIR,

Your letter, under date the 8th ultimo, on the subject mentioned below, has been duly received and referred for the report of the Crown Law Officers.

2. As soon as the necessary information has been obtained, a further communication will be made to you.

I have, &c.,
W. ELYARD, JUNR.

SUBJECT:—On the subject of your claim to a portion of the property of the late John Tawell, &c.

No. 39.

COLONIAL SECRETARY to CROWN LAW OFFICERS.

*Colonial Secretary's Office,
Sydney, 30 May, 1854.*

GENTLEMEN,

In reference to your letter of the 1st instant, on the subject of the disposal of the escheated property of the late John Tawell, I now do myself the honor, by the direction of His Excellency the Governor General, to enclose, for your information, the copy of a communication which has since been received from Mr. T. W. Smart, and at the same time to state, that, if you deem it advisable, a copy of your letter, under notice, will be forwarded to the Secretary of State, in order that His Grace may have the opportunity of revising his decision, should he see fit to do so. In a case involving so much valuable property this seems to His Excellency to be the safest course in justice to the parties concerned.

I have, &c.,
W. ELYARD.

No. 40.

CROWN LAW OFFICERS to COLONIAL SECRETARY.

*Attorney General's Office,
Sydney, 2 June, 1854.*

SIR,

In acknowledging the receipt of your letter of the 30th ultimo, conveying a communication from Mr. Smart on the subject of his purchase of part of the escheated property of the late John Tawell, we have the honor to state, that, as His Excellency the Governor General purposes to forward a copy of our letter of the 1st ultimo to the Secretary of State, in order that His Grace may have an opportunity of revising his decision, should he see fit to do so, it occurs to us that we should state the grounds upon which we dissent from the opinion of the Crown Law Officers of England, for which purpose it will be necessary that we should again see His Grace's despatch with its enclosures.

We therefore have the honor to request that you will be good enough to send us those papers for the purpose we have stated.

We remain, &c.,
J. H. PLUNKETT,
Attorney General.
W. M. MANNING,
Solicitor General.

No. 41.

COLONIAL SECRETARY to CROWN LAW OFFICERS.

*Colonial Secretary's Office,
Sydney, 9 June, 1854.*

GENTLEMEN,

I do myself the honor, in compliance with the request contained in your letter of the 2nd instant, to forward to you the despatch, with its enclosures, which was last received from the Secretary of State for the Colonies, on the subject of the escheated property of the late John Tawell, together with all the former papers in the case, for the purpose of enabling you to make such references as may be necessary in preparing for transmission to His Grace with the proposed despatch of His Excellency the Governor General a statement of the grounds upon which you dissent from the opinion of the Crown Law Officers respecting the disposal of certain portions of land in this Colony forming part of the estate in question.

6 October, 1854
Enclosures.I have, &c.,
W. ELYARD.

No. 42.

W. W. BILLYARD, ESQ., to COLONIAL SECRETARY.

*Macquarie-street North,
Sydney, 3 June, 1854.*

SIR,

I do myself the honor to inform you officially, as I have before done verbally, that I have received a power of attorney, duly authenticated, from Wm. Tawell and Wm. Bevan, Esquires, empowering me to apply for and obtain a deed of grant of the lands, messuages, and hereditaments in this Colony which had become forfeited to Her Majesty on the conviction of the late John Tawell of murder, and which had been seized into the hands of Her Majesty, but of which Her Majesty had been graciously pleased to authorize a grant in favour of the widow and child of the deceased.

Messrs. Tawell and Bevan have forwarded me copy correspondence with the Lords of the Treasury, and of the opinion of the Law Officers in England, and they inform me that a form of grant to themselves as trustees for Mrs. Tawell and her child had been transmitted by the Right Honorable the Secretary of State for the Colonies to His Excellency the Governor General, with instructions to cause the same to be completed and issued, and I am, of course, ready to pay the necessary fees thereon, and I will thank you to inform me when I can take up the deed of grant in question.

I have, &c.,
WM. W. BILLYARD.

No. 43.

COLONIAL SECRETARY to W. W. BILLYARD, ESQ.

*Colonial Secretary's Office,
Sydney, 9 June, 1854.*

SIR,

I do myself the honor to acknowledge the receipt of your letter of the 3rd instant, in which you make application, in virtue of a power of attorney which you have received from Messrs. William Tawell and Bevan, for a deed of grant in favour of the widow and children of the late John Tawell, of the lands in this Colony belonging to the estate; and I beg in reply to inform you, by the direction of His Excellency the Governor General, that it has been found necessary to refer to the Crown Law Officers, in connection with this matter, preparatory to submitting it for re-consideration of the Secretary of State.

2. The papers in the case, which have been forwarded to the Attorney and Solicitor General, are open to your inspection, and will shew the grounds upon which His Excellency has deemed it necessary to delay, until an answer to the proposed despatch can be received, acting on the instructions of His Grace alluded to in your letter.

I have, &c.,
W. ELYARD.

No. 44.

T. W. SMART, ESQ., to COLONIAL SECRETARY.

Darling Point, 5 June, 1854.

SIR,

In my letter, addressed to you on the 10th ultimo, on the subject of Messrs. Bevan and Tawell's claim to a grant of the land therein alluded to, I omitted to mention that, since I purchased the property, I have actually expended the sum of five thousand pounds in the erection of five dwelling houses, and have entered into contracts for their completion, which will cost at least nine thousand pounds.

Having

Having become a purchaser, under the circumstances detailed in my letter of the 10th May, and under the assurance that Her Majesty's Government had promised to the vendors that grants should be issued to the purchasers upon application, I had no reason whatever to doubt that the sale was *bonâ fide* and complete; and I trust that when His Excellency takes into consideration the amount I have expended, he will see the great wrong and injustice that will be committed if the land should be granted to parties whose interests have already been disposed of for the fullest consideration.

I have, &c.,
T. W. SMART.

No. 45.

COLONIAL SECRETARY to T. W. SMART, Esq., M.C.

*Colonial Secretary's Office,
Sydney, 30 June, 1854.*

SIR,

Your letter, under date the 5th instant, on the subject mentioned below, has been duly received and referred for the report of the Crown Law Officers.

2. As soon as the necessary information has been obtained, a further communication will be made to you.

I have, &c.,
W. ELYARD.

SUBJECT:—Respecting Messrs. Bevan and Tawell's claim to a deed of grant of certain land at Darlinghurst, of which you have purchased a portion, &c.

No. 46.

H. DIXSON, Esq., to PRIVATE SECRETARY.

Sydney, 7 July, 1854.

SIR,

I have the honor herewith to enclose a memorial for His Excellency the Governor, and shall feel obliged by your forwarding it as early as convenient.

I should also feel obliged if you will apprise His Excellency or his advisers that I have the following documents connected with the subject matter of this memorial, any or all of which I will produce should they so desire.

1. Original grant from the Crown to John Tawell.
2. John Tawell's conveyance on trust to Wm. Tawell and Wm. Bevan, with full powers to sell—attested copy.
3. Her Majesty's Warrant confirming the above conveyance—(N.B. This document has a most important bearing on the part of the moral responsibility of Her Majesty's Government in this matter)—attested copy.
4. Commission and inquisition—attested copy.
5. Tawell and Bevan's conveyance to me—original.
6. Tawell and Bevan's deed of covenant with me—original.

I have, &c.,
HUGH DIXSON,
George-street.

[Enclosure in No. 46.]

To His Excellency Sir CHARLES AUGUSTUS FITZ ROY, Knight Companion of the Royal Hanoverian Guelphic Order, Governor General of all Her Majesty's Australian Possessions, and Captain General and Governor-in-Chief of the Territory of New South Wales and its Dependencies, &c., &c., &c.

The humble memorial of Hugh Dixson, of Sydney, merchant,

MOST RESPECTFULLY SHEWETH:—

That, in the year 1849, your memorialist purchased at public auction, duly advertised, that portion of the property of the late John Tawell, known as the "Friends' Meeting House," in Macquarie-street, Sydney, of which property a grant in trust, for the benefit of the family of the said John Tawell, was specially promised by Her Most Gracious Majesty.

That the trustees of the family of the said John Tawell (viz., William Tawell and William Bevan) did, thereupon, with the full consent of the widow (Sarah Tawell), duly execute and issue a power of attorney in favour of James Norton and George Cooper Turner, Esquires, of Sydney, empowering them absolutely, or either of them, to let, sell, or otherwise dispose of, all, or any portion of the said lands and hereditaments, and to convey and release all such to any purchaser or purchasers thereof—an extract from which power of attorney, together with a copy of the consent of the widow, are herewith annexed. (No. 1.)

That, prior to the disposal of the property in question, the necessary inquisition, before the Supreme Court of this Colony, under commission of Her Majesty the Queen, relative to the titles to the said property, was indented and taken, and every other legal requirement duly complied with.

That one of the said attorneys, viz., George Cooper Turner, Esq., then Civil Crown Solicitor of this Colony, apprised your memorialist to the foregoing effect, and further, that it had been notified to him, by letter from the Honorable the Colonial Secretary, that Her Majesty had been graciously pleased to grant in trust all the property of the late John Tawell to the before-named trustees, and that

that instructions had been received by your Excellency's Government to afford every assistance to the legal representatives in New South Wales, for effectually assuring to them the property and hereditaments so granted.

That, thereupon, your memorialist purchased the said property, situate in Macquarie-street, Sydney, which is included in the above-named inquisition and grant, at its then full market value, under express covenant with the attorneys of the trustees aforementioned, that they would forthwith apply to your Excellency, in order that the Crown grant of the land in question might be issued in the name of your memorialist.

That, upon full payment of the purchase money being tendered and received for the same, a conveyance of the property was duly executed and delivered, in terms of the above-named deed of covenant, in which instrument it is distinctly expressed, as a valuable consideration, that, in compliance with the said attorneys' applications, and in accordance with the instructions to your Government, above referred to, your Excellency had been pleased to direct that a deed of grant of the land in question should be prepared in favour of your memorialist, and that such deed of grant had been prepared accordingly. (*Vide extract from deed of covenant annexed, No. 2.*)

That your memorialist is, however, now informed that, taking advantage of the delay in the issue of the said grant, and of the recently increased value of property in Sydney, the said William Tawell and William Bevan have, in violation of these several covenants, made application to the Imperial Government for the issue to them of the grant of this and other properties, as trustees for the family of the late John Tawell.

That a compliance with such an application, on the part of Her Majesty's Government, would evidently deprive your memorialist of a property which he has fairly and legally purchased, on the faith of the promised grant, and of the covenants and assurances before referred to, and re-grant the same to those to whom, through their appointed attorneys, full payment has been made and acknowledged.

Wherefore, your memorialist most respectfully prays that, taking into consideration the valid and ample authority under which the said property was sold and conveyed, the *bona fide* nature of the purchase and payment for the same, and the several covenants and assurances thereupon entered into, your Excellency will be graciously pleased so to represent to Her Majesty's Secretary of State the facts and vouchers herein set forth, as may relieve your memorialist from the manifest hardship and injustice which a compliance with so inequitable an application would necessarily inflict.

And your Memorialist, as in duty bound, will ever pray, &c.

HUGH DIXSON.

No. 1.

(*Extract from Power of Attorney.*)

Now know ye, that we, the said William Tawell and William Bevan do, and each of us doth hereby nominate, constitute, and appoint James Norton, of Sydney, in the Colony of New South Wales, gentleman, and George Cooper Turner, of the same place, Crown Solicitor, and each of them by himself, our true and lawful attorneys, and attorney, *jointly and severally* for us, the said William Tawell and William Bevan, in our names, or in the names or name of our said attorneys, or either of them, to enter upon and take possession of all the lands, tenements, hereditaments, and premises, within the said Colony, which were released to us by the said John Tawell, as aforesaid, to let, &c., &c. And also, if our said attorneys, or either of them, shall think expedient from time to time to *sell and dispose of all or any part* or parts of said lands and hereditaments, to a purchaser or purchasers thereof, for such price or prices as they shall think reasonable, and to accept and receive the consideration or purchase money for the same, and thereupon for us and in our names, and in the names or name of our said attorneys, or either of them, to grant such receipts, acquittances, or discharges as shall be required and proper; and also for us and in our names, and as our acts and deeds, to make, sign, seal, execute, and deliver, all such releases and other discharges as shall or may be requisite and necessary for the purpose of effectually releasing, conveying, and assuring such lands and hereditaments unto the purchaser or purchasers thereof, his, her, or their heirs or assigns, or to such use, and upon and for such trusts as he, she, or they shall direct.

Signed, sealed, and delivered, in the presence of,—	}	(Signed)	WILLIAM TAWELL,	(L.S.)
JOSEPH GOODEVE, 6, Old Jewry, London, Solicitor.			WILLIAM BEVAN.	(L.S.)
			THOS DAVIES, Clerk to Messrs. BEVAN and GOODEVE.	

(*Copy of consent to foregoing Power of Attorney.*)

I, Sarah Tawell, widow of the said John Tawell, do hereby consent to the said power of attorney, and the sale thereby authorized to be made.

Witness—JOSEPH GOODEVE.
THOS. DAVIES.

SARAH TAWELL.

No. 2.

(*Extract from Deed of Covenant.*)

And whereas, the said William Tawell and William Bevan have requested His Excellency the Governor of the territory aforesaid, to be pleased to direct that a grant of the said lands and hereditaments hereinafter described, so contracted by them to be sold as aforesaid, may be issued in favour of Hugh Dixon, and His Excellency the Governor has accordingly been pleased to direct that such grant as aforesaid may issue in favour of the said Hugh Dixon, his heirs and assigns, which said grant has been prepared, but not yet issued.

W. TAWELL,
By G. COOPER TURNER, his Attorney.
W. BEVAN,
By G. COOPER TURNER, his Attorney.

Witnessed by EDWARD NETTLESHIP.

No. 47.

COLONIAL SECRETARY to HUGH DIXSON, ESQ.

*Colonial Secretary's Office,
Sydney, 22 July, 1854.*

SIR,

Your letter, under date the 7th instant, with its enclosures, on the subject mentioned below, has been duly received and referred for the report of the Law Officers of the Crown.

2. As soon as the necessary information has been obtained, a further communication will be made to you.

I have, &c.,
W. ELYARD.

SUBJECT:—On the subject of your claim to a portion of the property of the late John Tawell, &c., &c.

No. 48.

CROWN LAW OFFICERS to COLONIAL SECRETARY.

*Attorney General's Office,
Sydney, 14 September, 1854.*

SIR,

Referring to our letter to you of the 2nd of last June, and to yours of the 9th of the same month, on the subject of the escheated property of the late John Tawell, and referring also to Mr. Smart's further letter of the 5th of that month, and to Mr. Hugh Dixon's memorial forwarded to us, under blank cover, on the 22nd of July, we have now the honor to report further upon the question—whether the grants of Tawell's lands in the Colony ought to issue to trustees for his widow and her child, or to the persons who purchased from Mr. George Cooper Turner as attorney for Messrs. William Tawell and Bevan?

2. We have once more gone most attentively through the whole of the voluminous mass of papers connected with this matter which you have laid before us, and have again given the subject our best consideration.

3. The result has been a clear confirmation of our former opinion, and the conviction that the Law Officers of England would not have arrived at any other conclusion if they had had the same full information as ourselves, instead of labouring, as they certainly did, under the disadvantage of having to advise upon a case which, both as respects facts and arguments, is evidently one-sided.

4. Even upon the statement before these officers we must take leave to express our dissent from their opinion in two important particulars which form, perhaps, the principal grounds for their report. We refer to the argument in the second paragraph with reference to the *letter of instructions* accompanying the power of attorney to Messrs. Norton and Turner, and to the assumption in paragraph "3," that the claims of the Colonial purchasers "arise out of transactions of, to say the least, a very doubtful character."

5. As respects the letter of instructions we have to remark, that we consider it to be a well established rule that such letters are to be regarded as confidential communications to the attorney which persons dealing with him under his power have no right to see, and by which they cannot legally or equitably be effected, unless express knowledge of their contents be brought home to them. We beg to refer upon this point to the accompanying extract from Mr. Justice Story's treatise on "Agency."*

6. For the assumption that the purchasers' claims arise out of doubtful transactions, we have failed to find any foundation even in the case submitted to the Law Officers of England, and throughout the entire mass of papers before us, there is not a trace of any evidence to support it. Of course, we understand the assumption to be made in a sense implicating the *purchasers* in the real or supposed questionable transactions, as those individuals could not otherwise be prejudiced by Mr. Turner's breaches of duty to his constituents.

7. Whether the purchasers were or were not parties to any such breach of duty, we have no means of judging positively. But, as far as the information before us enables us to judge, we think the imputation is rebutted. The property was sold under advertisements, which Mr. Norton might fairly be supposed to be cognizant of and to have sanctioned. There were abundant grounds for believing, what in fact forms the basis of the present claim for Mrs. Tawell, that the Crown had in effect confirmed the settlement executed by John Tawell in 1845, and relinquished its claim to the Colonial lands in favour of the trustees of that settlement; and the grounds were ample for relying on Mr. Turner's representation that grants would be issued in favour of the purchasers. Mr. Turner, it is to be remembered, was, at the time, Crown Solicitor, and in good repute, and as such officer he had conducted the inquiry upon the escheat. He was, even as appears by Mr. Bevan's letter of 9th July, 1853, "joined as attorney with Mr. Norton *solely from the fact of his filling*, at that time, the important and responsible situation of Crown Solicitor at Sydney." It was expected that his position would carry weight, and would afford facilities for perfecting the title to the properties, and it is not unreasonable to suppose that it had the effect of creating confidence in the minds of the purchasers. We must also remark that the property was sold by public auction, and that the auctioneer employed is a gentleman singularly respected, both in his business and in private life. Whether the price realized was equal to the then value of the land, we have no means of judging; but our experience of the excessive fluctuations in the value of Colonial properties during the last fifteen years, and of the uncertainty of all private estimates of such values, leads us to attach very little weight to the difference between the sum realized and the amount which Mr. Norton valued the property at in September, 1847. For the reasons shewn in the next paragraph, we do not think that the absence of re-grants of the property is likely to have prejudiced the sale; on the contrary, it is not impossible that the expectation of having a fresh grant direct to each purchaser, instead of a conveyance under a power of attorney from an absent party, operated as a recommendation of the property.

* Extract (1) appended.

8. The first paragraph of the opinion of the learned Attorney and Solicitor General of England was evidently written without acquaintance with the course of dealing in the Colony with respect to lands held under *promises* from the Crown. Such lands have, from the earliest days of the Colony, to the present time, been accustomed to pass from hand to hand by sales, and to be regularly conveyed as freeholds, or sometimes to be transferred by simple letters to the Government requesting that the grant might be issued to the vendee. They have also been commonly devised by will and transmitted by descent as estates in fee, although no deed of grant had ever issued. Such titles have been and are recognized by the Courts as good against everybody but the Crown, and as even conferring title in many cases by estoppel or implied trust as against a subsequent Crown grantee. The Crown also has recognized the rights of parties claiming under the original promisee, and has caused several successive Acts of Council to be passed for creating a tribunal to examine and report on claims to grants under promises. And in all such cases, the question has been whether the promise was such as to bind the honor of the Crown, and whether the claimant is the person who "in equity and good conscience" (we quote the words of the Act of Council now in force, 5 Gul. IV, No. 21*), is entitled to the benefit of the promise. Many thousands of land purchases have been made in this Colony, and not a few are made almost daily even now, in which the question on the title has been, and is, whether the purchaser will be in a position to claim a grant under some promise from the Crown. The circumstance, therefore, of the grant in this case not having been actually issued, does not justify the same impressions against a purchaser as would be created in Westminster Hall.

* Extract (2) appended

9. The principle upon which the issue of grants under promises is determined, will be gathered from what we have above stated. There may be arguments suited to the atmosphere of Courts of Law as at present constituted, which may yet be quite unfit to guide the honor of the Crown. For this reason we cannot adopt some of the arguments set forth in the case submitted to the Law Officers of England, whilst others appear to us to be totally inadmissible before any tribunal.

10. The principle we have adverted to would not be admissible in cases in which a party has a clear title to a grant, as in the case of a purchase under the Waste Lands Act. In such cases even derivative claims would be examined only upon principles of law and legal equity. But it has constantly been applied, with the sanction of the Crown, and of the Executive and Legislative Councils of the Colony, to cases in which the promise has approximated to the creation of an absolute title. And *a fortiori* the Crown may adopt "equity and good conscience" as its guide in such a case as this, where the utmost that can be said is, that it has held out some expectation of an act of grace.

11. In reference to the first paragraph of the learned Law Officers' opinion, we would call attention to the fact, that the power of attorney to Messrs. Norton and Turner refers to the settlement of 1845 as conveying the Colonial lands absolutely to the trustees, and does not notice any interposing claim of the Crown, but empowers the attorneys (or either of them) to sell these lands for Messrs. Tawell and Bevan *suis juribus*. The power of attorney does not contemplate the necessity for any inquest or grant, but, without any such qualification as is contained in the letter of instructions, has the following words:—"And also if our said attorneys or either of them shall think expedient from time to time to sell and dispose of all or any part or parts of the said lands and hereditaments to a purchaser or purchasers thereof for such price or prices as they shall think reasonable and to accept and receive the consideration or purchase money for the same." Accordingly, the lands were about to be sold without inquest or grant in June, 1848, when one of ourselves saw the advertisement and caused the sale to be stopped in right of the Crown. The inquest was then held under management of Mr. Turner; and under the instructions of the Secretary of State, conveyed in his despatch of 29th January, 1848, to the Governor of the Colony, Mr. Turner was recognized as "a legal representative in the Colony" of Messrs. Tawell and Bevan, and the right to the Colonial lands conceded to him on their behalf. He thereupon sold under the power, and represented that the Crown would issue grants to the purchasers, as no doubt the Governor was then prepared to do. This power of attorney was expressly sanctioned in writing by Mrs. Tawell.

12. We consider it a most important feature in this case, that the sale appears to have been regularly announced, and a copy of Mr. Mort's account sales transmitted with the deposit, and that the money was received by Messrs. Tawell and Bevan without (as far as it appears) the slightest attempt at a repudiation of the sale until after Mr. Turner had made default in remitting the final payments which he subsequently received from the purchasers. This fact alone would be almost conclusive in a Court of Equity, and is, in our opinion, quite sufficient to bar the claim upon the grace of the Crown, unless, indeed, there were grounds for imputing fraud to the purchasers.

13. One other consideration which presses upon us very strongly is this, that, undoubtedly, there were good grounds at the time of the sale for expecting that grants would be issued to the purchasers at the instance of Mr. Turner, and that a correspondence ensued with the Government which indicates clearly that the grants were in effect promised by the local Government, and would have been issued, but for a formal difficulty which arose, originally in another case, as to whether the terms of the Governor's Commission gave power to execute grants of escheated lands as well as of the "Waste Lands" of the Crown. We were ourselves parties to the consideration of the questions which then arose, and we are satisfied that, but for this difficulty, the grants in question would have issued at that time to the several purchasers, and that it was understood on all hands that they would issue accordingly as soon as the formal difficulty should be removed.

14. Many other considerations of more or less weight have occurred to us on again perusing these papers, but we are unwilling to trespass longer upon your attention. We would, however, beg leave to refer to our report of the 1st December, 1851.

15. With the strong opinion we entertain in favour of the claims of the purchasers, we do not think it would be right to leave them to their supposed remedy in equity against Mrs. Tawell's trustees as grantees. Even if a proceeding in equity could be made practically effectual on either side, it should, in our opinion, be for the trustees to establish their repudiation of the acts of their agent, but we have reason now to entertain doubts, founded upon high legal authority, whether the equity of the purchasers could be established as against the proposed Crown grants. If any such mode of deciding the rights of the parties is to be resorted to, we think it should be by an inquiry preceding the issue of the grants.

16. Our apology for having ventured to trouble you at so very unusual a length upon this matter, must be our humble but firm conviction that the Crown would be misled into an act of clear injustice if the grants were now to issue to Mrs. Tawell's trustees, and that we feel that the honor of the local Government has, at the instance of the representative of Mrs. Tawell and her trustees, become pledged to the other claimants.

We have, &c.,

J. H. PLUNKETT,

Attorney General.

W. M. MANNING,

Solicitor General.

[Extracts.]

(1.)

(Story on Agency, Sec. 73.)

"We are, however, carefully to distinguish in all such cases between the authority given to the agent and the private instructions given to him as to his mode of executing that authority; for although where a written authority is known to exist, or is by the very nature of the transaction presupposed, it is the duty of persons dealing with the agent to make inquiries as to the nature and extent of such authority, and to examine it, yet no such duty exists to make inquiries as to any private letter of instructions from the principal to the agent, for such instructions may well be presumed to be of a secret and confidential nature, and not intended to be divulged to third persons. Indeed it may, perhaps, be doubted, if upon this subject there is any solid distinction between the case of a special authority to do a particular act, and a general authority to do all acts in a particular business. Each includes the usual and appropriate means to accomplish the end. In each case the party ought equally to be bound by the acts of his agent executing such authority by any of those means, although he may have given to the agent separate private and secret instructions of a more limited nature."

(2.)

(5 Gul. IV., No. 21, Sec. IV.)

"And be it further enacted that in hearing and examining all claims to grants as aforesaid the said commissioners shall be guided by the real justice and good conscience of the case without regard to legal forms and solemnities and shall direct themselves by the best evidence that they can procure or that is laid before them whether the same be such evidence as the law would require in other cases or not and in case they or any two of them shall be satisfied that the person or persons claiming such lands or any part or parts thereof is or are entitled in equity and good conscience to hold the said lands and to have a grant thereof made and delivered to such person or persons under the Great Seal of the said Colony they the said commissioners shall report the same and the grounds thereof to the Governor accordingly and shall set forth the situation measurement and boundaries by which the said lands shall and may be described in every such grant Provided however that nothing herein contained shall be held to oblige the Governor to make and deliver any such grant as aforesaid unless His Excellency shall deem proper so to do."

No. 49.

GOVERNOR SIR CHAS. A. FITZ ROY to SECRETARY OF STATE.

30 October, 1854.

JOHN TAWELL.

Respecting disposal of certain escheated property left by him.

SIR,

Adverting to the despatch from His Grace the Duke of Newcastle, of date the 6th October, 1853, No. 130, enclosing the copy of a case submitted to the Law Officers of the Crown, respecting the discovery of certain escheated property in this Colony belonging to the late John Tawell, an executed felon, together with their opinion thereon, and instructing me to cause a grant to be issued for the lands in question to trustees for the benefit of Sarah Tawell and her family, in the manner proposed in the letter from the Board of Treasury, of date the 11th April, 1851, of which a copy was transmitted to me in Earl Grey's despatch of the 19th of the same month; I have the honor to inform you that, upon receipt of this despatch, I caused a copy of it, with its enclosures, to be forwarded for the perusal of the Law Officers of this Government, and I now beg to enclose herewith a copy of a communication which I received from those officers on the subject; which from its tenor induced me to make a further reference to them before acting on the instructions conveyed to me by the Duke of Newcastle.

1st May, 1854.

14th September,
1854.

2. You will perceive from the above communication, and from a subsequent report received from them, a copy of which is also herewith, that, in their opinion, the Law Officers of England would have arrived at the conclusion formerly expressed by the Law Officers of this Government,—namely, that the grant should issue to the parties who purchased the land.

land from Mr. George Cooper Turner, as attorney for Messrs. Tawell and Bevan,—if they had had full information in the case before them, instead of labouring under the disadvantage of having to advise upon a case which, both as respects facts and arguments, is evidently one-sided. This decided opinion of the Law Officers of my Government, in a case involving so much valuable property, impels me, as the safest course, and in justice to the parties concerned, again to refer the matter to Her Majesty's Government, in order that an opportunity may be had of revising the decision of His Grace the Duke of Newcastle, should this be deemed fit after further consideration of the matter.

3. I beg at the same time to transmit herewith copies of the undermentioned communications on the subject received from parties in this Colony interested in the case, viz. :—

1st. From T. W. Smart to the Colonial Secretary, dated 10th May, 1854.

2nd. From the same to the same, dated 5th June, 1854.

3rd. From H. Dixon to the Private Secretary, enclosing memorial, dated 7th July, 1854.

I have, &c.,

CHS. A. FITZ ROY.

No. 50.

SECRETARY OF STATE to GOVERNOR SIR W. DENISON.

Downing-street,

23 November, 1854.

SIR,

With reference to the Duke of Newcastle's despatch to Sir C. Fitz Roy, No. 130, of the 6th October, 1853, directing the transfer, in the manner proposed by the Lords Commissioners of the Treasury, of certain property in New South Wales which belonged to John Tawell, an executed felon, but which on his conviction became forfeited to the Crown, I transmit to you herewith, for your information, the copy of a letter on the subject from the solicitor to their Lordships' Board, and I have to instruct you to report to me without delay the steps which may have been taken in the matter.

I have, &c.,

G. GREY.

[Enclosure in No. 50.]

Treasury,

14 November, 1854.

Sir,

With reference to the case of John Tawell, who some years ago was convicted of murder, I beg to enclose copy of a letter which I have received from the solicitor of Mrs. Tawell, the widow of the felon, relative to the grant recommended by the Attorney and Solicitor General of England to be made by the Crown of certain lands in New South Wales in the widow's favour, and I have to request that you will be so good as to acquaint me whether despatches have been received from the Governor of the Colony on the subject, and to furnish me with any information you may think proper to be communicated to Mrs. Tawell.

H. Merivale, Esq., &c., &c., &c.

I am, &c.,

H. R. REYNOLDS.

[Sub-Enclosure 1 in No. 50.]

6, Old Jewry,

9 November, 1854.

Sir,

Re TAWELL.

In the autumn of last year, you were good enough to apprise me, that the Attorney and Solicitor General of England had given their opinion herein, that the lands in the Colony of New South Wales, included in the inquisition, and stated to have been sold, should nevertheless be granted to the trustees of Mrs. Tawell and her children, according to the expectation graciously held out by the Crown. I was further informed that instructions would go out from the Colonial Office, consequent upon this opinion, directing the grant to be made to us, and Mr. Bilyard, the Crown Solicitor at Sydney, was empowered to apply for this, and otherwise to act on our behalf. From a letter recently come to hand from this gentleman, I find that a further difficulty has been interposed by the Law Officers in the Colony, and that the Government there had determined upon *their* recommendation to refer the matter back again for re-consideration by the Secretary of State for the Colonies. I find it very difficult to persuade Mrs. Tawell that the only result hitherto of the kind intentions of the Government in her and her child's behalf, and of the correspondence which has taken place, is such as I have before alluded to; and I should feel greatly obliged, both on her account, my co-trustee's, and my own, if you would kindly inform me whether any despatch has been received from Sir Charles Fitz Roy on this subject since the grant was directed to be made in our favour.

H. R. Reynolds, Esq.

I am, &c.,

WILLIAM BEVAN.

[Sub-Enclosure 2 in No. 50.]

Downing-street,

23 November, 1854.

Sir,

With reference to the Duke of Newcastle's despatch to Sir C. Fitz Roy, No. 130, of the 6th of October, 1853, directing the transfer, in the manner proposed by the Lords Commissioners of the Treasury, of certain property in New South Wales which belonged to John Tawell, an executed felon, but which, on his conviction, became forfeited to the Crown, I transmit to you herewith, for your information, the copy of a letter on the subject from the solicitor to their Lordships' Board; and I have to instruct you to report to me, without delay, the steps which may have been taken in the matter.

Governor Sir W. Denison,

&c., &c., &c.,
New South Wales.

I have, &c.,

G. GREY.

No. 51.

No. 51.

COLONIAL SECRETARY to A. H. M'CULLOCH, ESQ.

*Colonial Secretary's Office,
Sydney, 7 December, 1854.*

SIR,

Reverting to the letter to you from this department, dated the 22nd November, 1851, in which you were apprised that, under a report from the Crown Law Officers, the matter of Mr. Thomas Moore's claim to a portion of the escheated estate of the late John Tawell had been again referred to the Secretary of State for the Colonies; I have now the honor to inform you, by the direction of His Excellency the Governor General, that a despatch was received in reply, to the effect that the decision previously given, that the whole of the lands in this estate ought to be applied for the benefit of the wife of the late John Tawell, was to be adhered to.

2. It was, however, considered desirable that the Crown Law Officers, at whose instance the case was again brought under the consideration of the Secretary of State, should be afforded an opportunity of perusing the despatch and offering their observations on the subject. From their further report, as well as from the remonstrances made by the parties concerned against the course which was about to be adopted, it appeared to His Excellency that, in a case involving so much valuable property, the best course would be, in justice to the parties concerned, to again submit the matter to the consideration of the Secretary of State, in order that the decision might be revised, if deemed necessary; and this has accordingly been done.

I have, &c.,
W. ELYARD.

No. 52.

COLONIAL SECRETARY to T. ICETON, ESQ.

*Colonial Secretary's Office,
Sydney, 7 December, 1854.*

SIR,

Reverting to the letter to you from this department, dated 22nd November, 1851, in which you were apprised that, under a report from the Crown Law Officers, the matter of Mr. Hugh Dixon's claim to a portion of the escheated estate of the late John Tawell had been again referred to the Secretary of State for the Colonies, I have now the honor to inform you, by the direction of His Excellency the Governor General, that a despatch was received in reply, to the effect that the decision previously given, that the whole of the lands in this estate ought to be applied for the benefit of the wife of the late John Tawell, was to be adhered to.

2. It was, however, considered desirable that the Crown Law Officers, at whose instance the case was again brought under the consideration of the Secretary of State, should be afforded an opportunity of perusing the despatch and offering their observations on the subject. From their further reports, as well as from the remonstrances made by parties concerned against the course which was about to be adopted, it appeared to His Excellency that, in a case involving so much valuable property, the best course would be, in justice to the parties concerned, to again submit the matter to the consideration of the Secretary of State, in order that the decision might be revised, if deemed necessary; and this has accordingly been done.

I have, &c.,
W. ELYARD.

No. 53.

GOVERNOR SIR W. DENISON to SECRETARY OF STATE.

JOHN TAWELL.

Further respecting escheated property of.

3 March, 1855.

SIR,

I have the honor to acknowledge the receipt of your despatch, No. 10, dated 23rd November, 1854, directing me to report, without delay, the steps which had been taken in the matter of the transfer of some property in the Colony, belonging to John Tawell. In reply, I beg to state that my predecessor, in a despatch, No. 150, dated 30th October, 1854, thought it desirable to make a further reference to Her Majesty's Government, with relation to the steps which it might be desirable to take in the matter, and that, pending a reply to this despatch, all proceedings are in abeyance.

I have, &c.,
W. DENISON.

No. 54.

SECRETARY OF STATE to GOVERNOR SIR W. DENISON.

Downing-street,

1 November, 1855.

SIR,

With reference to your despatch, No. 24, of the 3rd of March last, relative to the disposal of the property in New South Wales of John Tawell, a felon, I transmit to you herewith a copy of letter from the Assistant Secretary to the Board of Treasury, with a copy of one from the solicitor to that Board, and the opinion of the Attorney and Solicitor General on the case.

I have to request that you will take the necessary measures for the completion of the grant of the property in question to the trustees of Mrs. Tawell and her family, in the manner suggested by the Treasury solicitor, and in conformity with the opinion of the Law Officers of the Crown.

I have, &c.,

PANMURE.

[Enclosures in No. 54.]

(1.)

Treasury Chambers,
27 October, 1855.

SIR,

With reference to your letters of the 19th February and 15th June last, relative to the disposal of the property of John Tawell, a felon, in New South Wales, I am directed, by the Lords Commissioners of Her Majesty's Treasury, to transmit to you the copy of a letter from the solicitor to this Board, together with the opinion of the Attorney and Solicitor General on the case; and I am to request that you will submit to the Secretary of State the expediency of instructing the Governor of New South Wales to have the grant of the property in question, to the trustees of Mrs. Tawell and her family, completed in the manner suggested by the solicitor, and in conformity with the opinion of the Law Officers of the Crown.

I am, &c.,

C. E. TREVELYAN.

H. Merivale, Esq.

(2.)

Treasury, 15 October, 1855.

SIR,

With reference to the accompanying letter, from the Colonial Office, of the 19th February last, transmitting copy of a despatch from the Governor of New South Wales, with enclosures, relative to the disposal of escheated property of the late John Tawell, an executed felon, I beg leave to report that a copy of the despatch and enclosures was communicated to Messrs. Tawell and Bevan (the proposed trustees for Mrs. Tawell and her family, in whose favour a grant of the property in question, by the Crown, was directed to be made some time since), and those gentlemen having submitted some observations, in reply to the opinion of the Law Officers of the Colony contained in the despatches, a case was submitted, upon these further documents, to the Attorney and Solicitor General, which I have now the honor to enclose, with their opinion thereupon.

Their Lordships will perceive that the Attorney and Solicitor General adhere to their former opinion, namely, that the grant should be to trustees for Mrs. Tawell and her family; and I would beg leave to suggest that their Lordships should request the Secretary of State to direct the Governor of the Colony to have the grant perfected and passed, under the Great Seal of the Colony, without further delay.

The further expenses incurred in this office amount to £25 2s. 6d.

I am, &c.,

JOHN GREENWOOD.

Sir Chas. Trevelyan, K.C.B.

(3.)

In the matter of John Tawell, an attainted felon.

FURTHER CASE as to the grant of escheated property in New South Wales.

The former case and opinion of the Attorney and Solicitor General, in August, 1853, together with the several papers which accompanied the case, are left herewith.

The case and opinion having been transmitted to the Governor of New South Wales, with instructions from the Duke of Newcastle to proceed with the grant of the escheated property in the manner already proposed, according to the form transmitted with the letter of the Board of Treasury, of the 11th April, 1851, the following despatch and its enclosures have been received from Sir Charles Fitz Roy, in reply:—

Government House,
Sydney, 30 October, 1854.

SIR,

Adverting to the despatch from His Grace the Duke of Newcastle, of date the 6th October, 1853, No. 130, enclosing a copy of a case submitted to the Law Officers of the Crown, respecting the disposal of certain escheated property in this Colony belonging to the late John Tawell, an executed felon, together with their opinion thereon, and instructing me to cause a grant to be issued for the lands in question to trustees, for the benefit of Sarah Tawell and her family, in the manner proposed in the letter from the Board of Treasury, of date the 11th April, 1851, of which a copy was transmitted to me in Earl Grey's despatch, of the 19th of the same month,—I have the honor to inform you that, upon receipt of this despatch, I caused a copy of it, with its enclosures, to be forwarded for the perusal of the Law Officers of this Government; and I now beg to enclose herewith a copy of a communication which I received from the Law Officers on the subject, which, from its tenor, induced me to make a further reference to them before acting on the instructions conveyed to me by the Duke of Newcastle.

2. You will perceive from the above communication, and from a subsequent report received from them—a copy of which is also herewith—that, in their opinion, the Law Officers of England would have arrived at the conclusion formerly expressed by the Law Officers of this Government, namely, that the grant should issue to the parties who purchased the land from Mr. George Cooper Turner, as attorney for Messrs. Tawell and Bevan, if they had had full information in the case before them, instead of laboring under the disadvantage of having to advise upon a case which, both as respects facts and arguments, is evidently one-sided. This decided opinion of the Law Officers of my Government, in a case involving so much valuable property, impels me, as the safest course, and in justice to the parties concerned

concerned, again to refer the matter to Her Majesty's Government, in order that an opportunity may be had of revising the decision of His Grace the Duke of Newcastle, should this be deemed fit after further consideration of the matter.

3. I beg, at the same time, to transmit herewith copies of the undermentioned communications on the subject, received from parties in this Colony, interested in the case, viz. :—

1st.—From T. W. Smart to the Colonial Secretary, dated 10th May, 1854.

2nd.—From the same to the same, dated 5th June, 1854.

3rd.—From H. Dixon to the Private Secretary, enclosing memorial, dated 7th July, 1854.

The Right Honorable
Sir George Grey, Bart.

I have, &c.,
CHAS. A. FITZ ROY.

Attorney General's Office,
Sydney, 1 May, 1854.

Sir,

In reply to your letter of the 3rd February last, No. 54-80, forwarding, for our perusal, the accompanying despatch with its enclosures, now returned, which was received from the Secretary of State for the Colonies in reference to our report dated 1st November, 1851, respecting the disposal of the escheated property in this Colony belonging to the late John Tawell, an executed felon.

2. We do ourselves the honor to inform you that we have perused the despatch and enclosures, and regret to find that, after again giving the subject the most careful consideration, we are entirely unable to concur in the opinion of the Attorney and Solicitor General of England. Whether or not that opinion was taken officially does not appear; but we collect from the whole statement of the case for opinion that it must have been prepared and submitted by an interested party; we have, therefore, the less difficulty in recording our dissent.

3. But as the despatch of the Secretary of State distinctly instructs His Excellency the Governor General to proceed with the grant of the property in question as before directed, and as such despatch and its enclosures are now only sent to us for our perusal, we presume that the further discussion of the question which has been under consideration is no longer to be deemed within our province as Officers of the Colonial Government, and that the grant will be issued according to the instructions of the Secretary of State.

We have, &c.,
J. H. PLUNKETT,
Attorney General.
W. M. MANNING,
Solicitor General.

P. S.—We beg to inform you this matter should have had our attention before now but for the absence of the Solicitor General on leave, and subsequently the interference of the Circuit Courts, which engrossed our attention.

The Honorable
The Colonial Secretary.

J. H. P.
W. M. M.

Attorney General's Office,
Sydney, 14 September, 1854.

Sir,

Referring to our letter to you of the 2nd of last June, and to yours of the 9th of the same month, on the subject of the escheated property of the late John Tawell, and referring also to Mr. Smart's further letter of the 5th of that month, and to Mr. Hugh Dixon's memorial forwarded to us under blank cover on the 22nd of July, we have now the honor to report further upon the question—Whether the grants of Tawell's lands in the Colony ought to issue to trustees for his widow and her child, or to the persons who purchased from Mr. George Cooper Turner, as attorney for Messrs. William Tawell and Bevan?

2. We have once more gone most attentively through the whole of the voluminous mass of papers connected with this matter which you have laid before us, and have again given the subject our best consideration.

3. The result has been a clear confirmation of our former opinion, and the conviction that the Law Officers of England would not have arrived at any other conclusion if they had had the same full information as ourselves, instead of labouring, as they certainly did, under the disadvantage of having to advise upon a case which, both as respects facts and arguments, is evidently *one-sided*.*

4. Even upon the statement before these officers we must take leave to express our dissent from their opinion in two important particulars, which form, perhaps, the principal grounds for their report. We refer to the argument in the 2nd paragraph with reference to the *letter of instructions* accompanying the power of attorney to Messrs. Norton and Turner, and to the assumption in paragraph 3 that the claims of the Colonial purchasers "arise out of transactions of, to say the least, a very doubtful character."

5. As respects the letter of instructions, we have to remark that we consider it to be a well established rule that such letters are to be regarded as confidential communications to the attorney, which persons dealing with him under his power have no right to see, and by which they cannot legally or equitably be affected, unless express knowledge of their contents be brought home to them. We beg to refer upon this point to the accompanying extract from Mr. Justice Story's treatise on agency.

6. For the assumption that the purchasers' claims arise out of doubtful transactions, we have failed to find any foundation even in the case submitted to the Law Officers of England, and throughout the entire mass of papers before us there is not a trace of any evidence to support it. Of course we understand the assumption to be made in a sense implicating the purchasers in the real or supposed questionable transactions, as those individuals could not otherwise be prejudiced by Mr. Turner's breaches of duty to his constituents.

7. Whether the purchasers were or were not parties to any such breach of duty, we have no means of judging positively; but, as far as the information before us enables us to judge, we think the imputation is rebutted. The property was sold under advertisements, which Mr. Norton might fairly be supposed to be cognizant of and to have sanctioned. There were abundant grounds for believing, what in fact forms the basis of the present claim for Mrs. Tawell, that the Crown had in effect confirmed the settlement executed by John Tawell in 1845, and relinquished its claim to the Colonial lands in favour of the trustees of that settlement; and the grounds were ample for relying on Mr. Turner's representation that grants would be issued in favour of the purchasers. Mr. Turner, it is to be remembered, was, at the time, Crown Solicitor, and in good repute, and, as such officer, he had conducted the inquisition upon the escheat. He was even, as appears by Mr. Bevan's letter of 9th July, 1853, "joined as attorney with Mr. Norton, solely from the fact of his filling at that time the important and responsible situation of Crown Solicitor, at Sydney." It was expected that his position would carry weight, and would afford facilities for perfecting the title to the properties, and it is not unreasonable to suppose that it had the effect of creating confidence in the minds of the purchasers. We must also remark that the property was sold by public auction, and that the auctioneer employed is a gentleman singularly respected, both in his business and in private life. Whether the price realized was equal to the then value of the land we have no means of judging, but our experience of the excessive fluctuations in the value of
Colonial

* *Note*.—The case here and on the previous letter referred to as having been one-sided, and prepared by an interested party, is that submitted to the Attorney and Solicitor General in August, 1853, and which accompanies the present case. It will be seen that it consisted of,—1st. A Colonial despatch, transmitting a report of the Colonial Law Officers, and, 2nd. The remarks of Messrs. Tawell and Bevan thereon. It was and is, therefore, regarded as embodying both sides of the question involved.

Colonial properties during the last 15 years, and of the uncertainty of all private estimates of such values, leads us to attach very little weight to the difference between the sum realized and the amount which Mr. Norton valued the property at in September, 1847. For the reasons shewn in the next paragraph, we do not think that the absence of re-grants of the property is likely to have prejudiced the sales; on the contrary, it is not impossible that the expectation of having a fresh grant direct to each purchaser, instead of a conveyance under a power of attorney from an absent party, operated as a recommendation of the property.

8. The first paragraph of the opinion of the learned Attorney and Solicitor General of England, was evidently written without acquaintance with the course of dealing in the Colony with respect to lands held under promises from the Crown; such lands have, from the earliest days of the Colony to the present time, been accustomed to pass from hand to hand by sales, and to be regularly conveyed as freeholds, or sometimes to be transferred by simple letters to the Government requesting that the grant might be issued to the vendor. They have also been commonly devised by will, and transmitted by descent as estates in fee, although no deed of grant has ever issued. Such titles have been and are recognized by the Courts as good against every body but the Crown, and as even conferring title in many cases by estoppel, or implied trust, as against a subsequent Crown grantee. The Crown also has recognised the rights of parties claiming under the original promise, and has caused several successive Acts of Council to be passed for creating a tribunal to examine and report on claims to grants under promises, and in all such cases the question has been whether the promise was such as to bind the honour of the Crown, and whether the claimant is the person who "in equity and good conscience" (we quote the words of the Act of Council now in force, 5 Gul. 4, No. 21) is entitled to the benefit of the promise. Many thousands of land purchases have been made in this Colony, and not a few are made almost daily even now, on which the question on the title has been, and is, whether the purchaser will be in a position to claim a grant under some promise from the Crown. The circumstance, therefore, of the grant in this case not having been actually issued, does not justify the same impressions against a purchaser as would be created in Westminster Hall.

See copy of
Clause appended.

9. The principle upon which the issue of grants under promises is determined, will be gathered from what we have above stated. There may be arguments suited to the atmosphere of Courts of Law, as at present constituted, which may yet be quite unfit to guide the honour of the Crown. For this reason we cannot adopt some of the arguments set forth in the case submitted to the Law Officers of England, whilst others appear to us to be totally inadmissible before any tribunal.

10. The principle we have adverted to would not be admissible in cases in which a party has a clear title to a grant, as in the case of a purchase under the Waste Lands Act. In such cases even derivative claims would be examined only upon principles of law and legal equity; but it has constantly been applied with the sanction of the Crown, and of the Executive and Legislative Councils of the Colony, to cases in which the promise has approximated to the creation of an absolute title, and, *a fortiori*, the Crown may adopt "equity and good conscience" as its guide in such a case as this, where the utmost that can be said is that it has held out some expectation of an act of grace.

11. In reference to the first paragraph of the learned Law Officer's opinion, we would call attention to the fact that the power of attorney to Messrs. Norton and Turner refers to the settlement of 1815, as conveying the Colonial lands absolutely to the trustees, and does not notice any interposing claim of the Crown, but empowers the attorneys (or either of them) to sell these lands for Messrs. Tawell and Bevan *suis juris*. The power of attorney does not contemplate the necessity of any inquest or grant, but, without any qualification as is contained in the letter of instructions, has the following words:—"And also if our said attorneys or either of them shall think expedient from time to time to sell and dispose of all or any part or parts of the said lands and hereditals to a purchaser or purchasers thereof for such price or prices as they shall think reasonable, and to accept and receive the consideration or purchase money for the same."

Accordingly, the lands were about to be sold without inquest, or grant, in June, 1848, when one of ourselves saw the advertisement, and caused the sale to be stopped in right of the Crown. The inquest was then held, under the management of Mr. Turner, and under the instructions of the Secretary of State, conveyed in his despatch of 29th January, 1848,* to the Governor of the Colony, Mr. Turner was recognized as a "legal representative in the Colony" of Messrs. Tawell and Bevan, and the right to the Colonial lands conceded to him on their behalf. He thereupon sold under the power, and represented that the Crown would issue grants to the purchasers, as no doubt the Governor was then prepared to do. This power of attorney was expressly sanctioned, in writing, by Mrs. Tawell.

*A copy of this despatch, 29 Jan., 1848, among "copy of letters referred to in case submitted to the Attorney and Solicitor General in August, 1851."

12. We consider it a most important feature in the case that the sale appears to have been regularly announced, and a copy of Mr. Mort's account sales transmitted with the deposit, and that the money was received by Messrs. Tawell and Bevan without (as far as it appears) the slightest attempt at a repudiation of the sale, until after Mr. Turner had made default in remitting the final payments which he subsequently received from the purchasers. This fact alone would be almost conclusive in a Court of Equity, and is, in our opinion, quite sufficient to bar the claim upon the grace of the Crown, unless indeed there were grounds for imputing fraud to the purchasers.

13. One other consideration which presses upon us very strongly is this—that, undoubtedly, there were good grounds at the time of the sale for expecting that grants would be issued to the purchasers at the instance of Mr. Turner, and that a correspondence ensued with the Government which indicates clearly that the grants were in effect promised by the local Government, and would have been issued but for a formal difficulty, which arose originally in another case, as to whether the terms of the Governor's Commission gave power to execute grants of escheated lands, as well as of the "waste lands of the Crown." We were ourselves parties to the consideration of the question which then arose, and we are satisfied that, but for this difficulty, the grants in question would have issued at that time to the several purchasers, and that it was understood on all hands that they would issue accordingly, as soon as the formal difficulty should be removed.

14. Many other considerations of more or less weight have occurred to us on again perusing these papers, but we are unwilling to trespass longer upon your attention. We would, however, beg leave to refer to our report of the 1st December, 1851.†

15. With the strong opinion we entertain in favour of the claims of the purchasers, we do not think it would be right to leave them to their supposed remedy in equity against Mrs. Tawell's trustees as grantees. Even if a proceeding in equity could be made practically effectual on either side, it should, in our opinion, be for the trustees to establish their repudiation of the acts of their agent, but we have reason now to entertain doubts, founded upon high legal authority, whether the equity of the purchasers could be established as against the proposed Crown grants. If any such mode of deciding the rights of the parties is to be resorted to, we think it should be by an inquiry preceding the issue of the grants.

† It is presumed that the report of 1st Nov., 1851, is here meant; there is no report of 1st Dec., 1851.

16. Our apology for having ventured to trouble you at so very unusual a length upon this matter must be our humble but firm conviction that the Crown would be misled into an act of clear injustice if the grants were now to issue to Mrs. Tawell's trustees, and that we feel that the honor of the local Government has, at the instance of the representative of Mrs. Tawell and her trustees, become pledged to the other claimants.

We have, &c.,

J. H. PLUNKETT,
Attorney General.
W. M. MANNING,
Solicitor General.

The Honorable
The Colonial Secretary.

Story on Agency, Section 73.

"We are, however, carefully to distinguish in all such cases between the authority given to the agents, and the private instructions given to him as to his mode of executing that authority; for although where a written authority is known to exist, or is by the very nature of the transaction presumed, it is the duty of persons dealing with the agent to make inquiries as to the nature and extent of such authority, and to examine it, yet no such duty exists to make inquiries as to any private letter of instructions from the principal to the agent, for such instructions may well be presumed to be of a secret and confidential nature, and not intended to be divulged to third persons. Indeed it may, perhaps, be doubted, if upon this subject there is any solid distinction between the case of a special authority to do a particular act and a general authority to do all acts in a particular business. Each includes the usual and appropriate means to accomplish the end. In each case the party ought equally to be bound by the acts of his agent executing such authority by any of those means, although he may have given to the agent separate private and secret instructions of a more limited nature."

5 Gul. IV., No. 21, Section 4.

"And be it further enacted that in hearing and examining all claims to grants as aforesaid the said Commissioners shall be guided by the real justice and good conscience of the case without regard to legal forms and solemnities and shall direct themselves by the best evidence that they can procure, or that is laid before them whether the same be such evidence as the law would require in other cases or not and in case they or any two of them shall be satisfied that the person or persons claiming such lands or any part or parts thereof is or are entitled in equity and good conscience to hold the said lands and to have a grant thereof made and delivered to such person or persons under the Great Seal of the said Colony they the said Commissioners shall report the same and the grounds thereof to the Governor accordingly and shall set forth the situation measurement and boundaries by which the said lands shall and may be described in every such grant provided however that nothing herein contained shall be held to oblige the Governor to make and deliver any such grant as aforesaid unless His Excellency shall deem proper so to do."

Darling Point,
10 May, 1854.

Sir,

* Letter from Mr. Smart, referred to ante —

"In the early part of 1849 I purchased at auction, of Mr. Mort, a portion of land at Darlinghurst, sold by him on account of Messrs. Bevan and Tawell, the trustees of Mrs. Sarah Tawell, widow of John Tawell, who was convicted and attainted in England, in March, 1845, at which sale it was represented to the intending purchasers, and held out as an inducement to them by the auctioneer, in the presence of, and with the authority of Mr. George Cooper Turner, the attorney of the said trustees, and then holding the office of Civil Crown Solicitor, that as Her Most Gracious Majesty had been pleased to order grants to issue to the said trustees, their heirs, and assigns, the Colonial Government would, at the request of the attorney or attorneys issue the grants of the respective properties to the purchasers.

Under this assurance I became the purchaser of the allotment alluded to, and instructed my solicitor, Mr. Carr, to take the necessary steps to obtain the grant, who, with the concurrence and assistance of the acting attorney, Mr. Turner, entered in a correspondence with the Honorable the Colonial Secretary, during the month of March, 1849, and on several other occasions, until February, 1850, when he was apprised that the Governor's Commission did not enable him to seal Letters Patent granting this land, and also that an authority for that purpose would have to be procured from Her Majesty.

Since that period—viz., February, 1850—I have received no communication on the subject till within the last few days, when, greatly to my astonishment, I was informed that the Governor General had instructions from His Grace the Duke of Newcastle to issue a grant in favour of Messrs. Tawell and Bevan, that the grant would shortly be issued, and that their newly-constituted attorney, the present Civil Crown Solicitor, Mr. Billyard, had been instructed to re-sell the property, thereby repudiating their first sales, and defrauding the purchasers of their justly acquired estate.

I am altogether unable to account for this determination on the part of His Grace the Duke of Newcastle, otherwise than by the supposition that he has been grossly imposed upon, and misled by an *ex parte* and wilfully misrepresented statement of the facts of the case, the most flagrant deception being, as I have been informed, that Messrs. Bevan and Tawell's attorneys in this Colony had no power to sell. I would draw your attention to an extract (annexed hereto, and marked No. 1), from the original power of attorney, now in my possession, from which it will be seen that they (the attorneys) have the fullest authority to sell and convey the real estates.

A proof of the legal confirmation of the sales is afforded by the acknowledgments of the the auctioneer's account sales, and of the cash deposits paid by the purchasers; yet, in the face of this virtual sanction, the trustees fraudulently seek to disclaim a contract made under their own authority.

Under these circumstances I have respectfully to request, that if His Excellency does not feel authorized to issue the grant in my favour, as Messrs. Bevan and Tawell have covenanted under seal with me to procure (see Extract appended marked No. 2), that he will not issue it to Messrs. Bevan and Tawell, unless as trustees for the purchasers, or until the Home Government can be again referred to, and a fuller and more accurate statement of the facts be submitted for their consideration,

I have, &c.,
T. W. SMART.

EXTRACT No. 1.

From Power of Attorney dated 26th January, 1848.

Now know ye that we the said William Tawell and William Bevan do and each of us doth nominate constitute and appoint Isaac Norton of Sydney in the Colony of New South Wales gentleman and George Cooper Turner of the same place Crown Solicitor and each of them by himself our true and lawful attorneys and attorney jointly and severally for us the said W. Tawell and W. Bevan in our names or in the names or name of our said attorneys or either of them to enter upon and take possession of all the lands tenements hereditaments and promises within the said Colony which were released to us by the said John Tawell as aforesaid and to manage or let the same to a tenant or tenants thereof for any term or number of years not exceeding twenty-one years or from year to year as our said attorneys or either of them shall think expedient and at such rent or rents and on such terms and conditions as they shall think proper and also if our said attorneys or either of them shall think expedient from time to time to sell and dispose of all or any part or parts of the said lands and hereditaments to a purchaser or purchasers thereof for such price or prices as they shall think reasonable and to accept and receive the consideration or purchase money for the same and thereupon for us and in our names or in the names or name of our said attorneys or either of them to grant such receipts acquittances or discharges as shall be requisite and proper and also for us and in our names and as our acts and deeds to make sign seal execute and deliver all such releases or other discharges as shall or may be requisite and necessary for

the

† A full copy of the power of attorney accompanied the case submitted in August, 1853.

the purpose of effectually releasing conveying and assuring such lands and hereditaments unto the purchaser or purchasers thereof his her or their heirs and assigns or to such use and upon and for such trusts as he she or they shall direct.

I, Sarah Tawell, widow of the said John Tawell, do hereby consent to the above power of attorney and the sale thereby authorized to be made. Dated this 28th January, 1848.

SARAH TAWELL.

EXTRACT No. 2.

CONVEYANCE, dated 15th May, 1850—Messrs. Tawell and Bevan to T. W. Smart—received in Registrar's Office, 15th June, 1860.

And whereas the said W. Tawell and W. Bevan have requested His Excellency the Governor of the Territory aforesaid to be pleased to direct that a grant of the said lands and hereditaments hereinafter described so contracted by them to be sold as aforesaid may be issued in favour of the said Thomas W. Smart. And whereas His Excellency the said Governor has accordingly been pleased to direct that such grant as aforesaid may issue in favour of the said T. W. Smart which said grant has in pursuance of such direction been prepared but has not yet issued. And lastly that they the said W. Tawell and W. Bevan their heirs executors and administrators shall and will use their utmost endeavours at the cost of the said T. W. Smart his heirs or assigns to procure for the said T. W. Smart his heirs or assigns or assist him or them in procuring the said grant from the Crown in favour of the said T. W. Smart his heirs or assigns to which the said T. W. Smart has become entitled under the circumstances hereinbefore set forth.

Darling Point,
6 June, 1854.

Sir,

In my letter addressed to you on the 10th ult., on the subject of Messrs. Bevan and Tawell's claim to a grant of the land therein alluded to, I omitted to mention that, since I purchased the property, I have actually expended the sum of £5,000 in the erection of five dwelling houses, and have entered into contracts for their completion, which will cost at least £9,000.

Having become a purchaser under the circumstances detailed in my letter of the 10th May, and under the assurance that Her Majesty's Government had promised to the vendors that grants should be issued to the purchasers upon application, I had no reason whatever to doubt that the sale was *bonâ fide* and complete, and I think that when His Excellency takes into consideration the amount I have expended, he will see the great wrong and injustice that will be committed, if the land should be granted to parties whose interests have already been disposed of for the fullest consideration.

I have, &c.,
T. W. SMART.

The Hon. the Colonial Secretary.

Sydney, 7 July, 1854.

Sir,

I have the honor herewith to enclose a memorial* for His Excellency the Governor, and shall feel obliged by your forwarding it as early as convenient.

I should also feel obliged if you would apprise His Excellency, or his advisers, that I have the following documents, connected with the subject matter of this memorial, any or all of which I shall produce should they so desire:—

1. Original grant from the Crown to John Tawell.
- †2. John Tawell's conveyance on trust to W. Tawell and Bevan, with full powers to sell—attested copy.
- †3. Her Majesty's Warrant, confirming the above conveyance.—(N.B.—This document has a most important bearing on the part of the moral responsibility of Her Majesty's Government in this matter)—attested copy.
- †4. Commission and inquisition—attested copy.
5. Tawell and Bevan's conveyance to me—original.
6. Tawell and Bevan's deed of covenant with me—original.

* Letter and memorial from Mr. Dixon referred to ante.

† The conveyance on trust is referred to in H. Ms' warrant. Copies of both documents are left herewith.
‡ The inquisition is recited in H. Ms' warrant.

Yours, &c.,
HUGH DIXSON,
George-street.

Geo. H. Fitzroy, Esq.

To His Excellency Sir Charles Augustus Fitz Roy, Knight Companion of the Royal Hanoverian Guelphic Order, Governor General of all Her Majesty's Australian possessions, and Captain General and Governor-in-Chief of the Territory of New South Wales and its Dependencies, &c., &c., &c.

The humble memorial of Hugh Dixon, of Sydney, merchant,—

Most respectfully sheweth:—

That in the year 1849, your memorialist purchased at public auction, duly advertised, that portion of the property of the late John Tawell, known as the "Friends' Meeting House," in Macquarie-street, Sydney, of which property a grant in trust, for the benefit of the family of the said John Tawell, was specially promised by Her Most Gracious Majesty.

That the trustees of the family of the said John Tawell (viz.: W. Tawell and W. Bevan) did, thereupon, with the full consent of the widow (Sarah Tawell), duly execute and issue a power of attorney in favour of James Norton and George Cooper Turner, Esqs., of Sydney, empowering them absolutely, or either of them, to let, sell, or otherwise dispose of all or any portion of the said lands, and hereditaments, and to convey and release all such to any purchaser or purchasers thereof. An extract from which power of attorney, together with a copy of the consent of the widow, are hereunto annexed (No. 1).

That, prior to the disposal of the property in question, the necessary inquisition, before the Supreme Court of this Colony, under Commission of Her Majesty the Queen, relative to the titles to the said property, was indented and taken, and every other legal requirement duly complied with.

That one of the said attorneys, viz., G. C. Turner, Esq., then Civil Crown Solicitor of this Colony, apprised your memorialist to the foregoing effect, and further, that it had been notified to him, by letter from the Honorable the Colonial Secretary, that Her Majesty had been graciously pleased to grant in trust, all the property of the late John Tawell, to the before-named trustees, and that instructions had been received by your Excellency's Government to afford every assistance to the legal representatives in New South Wales, for effectually assuring to them the property and hereditaments so granted.

That thereupon your memorialist purchased the said property, situate in Macquarie-street, Sydney, which is included in the above-named inquisition and grant, at its then full market value, under express covenant with the attorneys of the trustees afore-mentioned, that they would forthwith

apply to your Excellency, in order that the Crown grant of the land in question might be issued in the name of your memorialist.

That upon full payment of the purchase money being tendered and received for the same, a conveyance of the property was duly executed and delivered, in terms of the above-named deed of covenant, in which instrument it is distinctly expressed as a valuable consideration, that in compliance with the said attorneys' applications, and in accordance with the instructions of your Government, above referred to, your Excellency had been pleased to direct that a deed of grant of the land in question should be prepared in favour of your memorialist, and that such deed of grant had been prepared accordingly. (Vide extract from deed of covenant annexed, No. 2.)

That your memorialist is, however, now informed that, taking advantage of the delay in the issue of the said grant, and of the recently increased value of property in Sydney, the said W. Tawell and W. Bevan have, in violation of these several covenants, made application to the Imperial Government for the issue to them of the grant of this and other properties as trustees for the family of the late John Tawell.

That a compliance with such an application on the part of Her Majesty's Government would evidently deprive your memorialist of a property which he has fairly and legally purchased on the faith of the promised grant, and of the covenants and assurances before referred to, and re-grant the same to those to whom, through their appointed attorneys, full payment has been made and acknowledged.

Wherefore your memorialist most respectfully prays that, taking into consideration the valid and ample authority under which the said property was sold and conveyed, the *bonâ fidè* nature of the purchase and payment of the same and the several covenants and assurances thereupon entered into, your Excellency will be graciously pleased so to represent to Her Majesty's Secretary of State the facts and vouchers herein set forth, as may relieve your memorialist from the manifest hardship and injustice which a compliance with so inequitable an application would necessarily inflict.

And your memorialist, as in duty bound, will ever pray, &c.

HUGH DIXSON.

(Schedule referred to.)

EXTRACT from Power of Attorney. (No. 1.)

Now know ye that we the said W. Tawell and W. Bevan do and each of us doth hereby nominate constitute and appoint James Norton of Sydney in the Colony of New South Wales gentleman and George Cooper Turner of the same place Crown Solicitor and each of them by himself our true and lawful attorneys and attorney jointly and severally for us the said W. Tawell and W. Bevan in our names or in the names or name of our said attorneys or either of them to enter upon and take possession of all the lands tenements hereditaments and premises within the said Colony which were released to us by the said John Tawell as aforesaid to let &c. &c. And also if our said attorneys or either of them shall think expedient from time to time to sell and dispose of all or any part or parts of said land and hereditaments to a purchaser or purchasers thereof for such price or prices as they shall think reasonable and to accept and receive the consideration or purchase money of the same and thereupon for us and in our names and in the names or name of our said attorneys or either of them to grant such receipts acquittances or discharges as shall be required and proper and also for us and in our names and as our acts and deeds to make sign seal execute and deliver all such releases and other discharges as shall or may be requisite and necessary for the purpose of effectually releasing conveying and assuring such lands and hereditaments with the purchaser or purchasers thereof his her or their heirs or assigns or to such use and upon and for such trusts as he she or they shall direct.

(L.S.) WILLIAM TAWELL.
(L.S.) WILLIAM BEVAN.

Signed sealed and delivered in the presence of,—

JOSEPH GOODEVE, 6, Old Jewry, London, Solicitor.
THOMAS DAVIES, Clerk to Messrs. Bevan and Goodeve, 6, Old Jewry.

COPY of Consent to foregoing Power of Attorney.

I Sarah Tawell widow of the said John Tawell do hereby consent to the said power of attorney and the sale thereby authorized to be made.

SARAH TAWELL.

Witness—JOSEPH GOODEVE.
THOMAS DAVIES.

EXTRACT from Deed of Covenant. (No. 2.)

And whereas the said William Tawell and William Bevan have requested His Excellency the Governor of the Territory aforesaid to be pleased to direct that a grant of the said lands and hereditaments hereinafter described so contracted by them to be sold as aforesaid may be issued in favour of the said Hugh Dixon and His Excellency the Governor has accordingly been pleased to direct that such grant as aforesaid may issue in favour of Hugh Dixon his heirs and assigns which said grant has been prepared but not yet issued.

(L.S.) W. TAWELL,
By G. C. TURNER, his Attorney.
(L.S.) W. BEVAN,
By G. C. TURNER, his Attorney.

Witnessed by EDWD. NETTLESHIP.

A copy of the foregoing despatch and enclosures having been communicated to Messrs. Tawell and Bevan (the trustees for Mrs. Tawell and her family), for any observations they might desire to make thereon, the following communication has been received from Mr. Bevan:—

6, Old Jewry, 7 May, 1855.

Re JOHN TAWELL.

Sir,

I have to acknowledge and thank you for your letter of the 2nd ultimo, enclosing copies of two reports from the Attorney and Solicitor General of New South Wales, of 1st May and 14th September, 1854, and Mr. Smart's and Mr. Dixon's letters therein referred to, upon the subject of the grant recommended to be made by the Crown to Mr. W. Tawell and myself, upon trusts in favour of the widow and child of the late John Tawell.

It is not my place to remark upon the extraordinary suggestion that the case submitted to the law officers of the Crown here was prepared by or on behalf of the trustees, but it is due to others than myself to observe that I have never even seen any such case, and the observations I have made have been elicited solely by the reports from the law officers of the Colony, and these I cannot doubt were

were brought fully under the notice of the Attorney and Solicitor General of England, when considering their opinion.

In reference to the legal argument of the report, assuming the passage quoted from Mr. Justice Story's work to contain a correct statement of the law, the present case seems unaffected by the principles there laid down; for the letter of instructions does not profess to limit the powers of Messrs. Norton and Turner with respect to such parts of the forfeited property as were capable of being dealt with by the trustees, but merely points out that part, although nominally included in the power, could not properly be dealt with under it, as not being vested in the trustees at the time of the execution of the power. The purchasers must, however, be taken to have been cognizant of this fact, independently of the letter, as the most cursory investigation of Turner's title, or the least inquiry into the position of the property, would have led to a reference to the letter of instructions, and would have shewn that the Crown Warrant did not profess to include, or to affect the real estate of Tawell in Australia. The letter of instructions merely points to a fact, notice of which is brought home to the purchasers in another way equally effectual, and therefore, were there no such letter, Her Majesty's advisers must have come to the conclusion embodied in their opinion, though possibly on other grounds.

As to the facts newly imported into the case, much stress is laid on the absence of evidence of any fraud or other impropriety in the purchases, save what appears on the face of them, as having been effected by an agent without authority. It is true there is no evidence of the sales having been made at an under value, although looking at the enormous disproportion to the present prices of land there can be little doubt of it; but I apprehend the advisers of the Crown, when they speak of the transactions being "of at least a doubtful character," do not refer to inadequacy of price, but to the internal evidence presented by the conduct of the parties purchasing, viz., the dealing with *one* only of the attorneys, and this the newly added one (the other, the attorney always hitherto acting, remaining on the spot, a reference to whom would have immediately upset the transaction), taking a title from a person who really had none to give, and being satisfied with a conveyance taken hastily from him alone, when the exercise of the most ordinary caution would have disclosed the fact that they were dealing with a hypocrite.

The next fact relied on by Messrs. Plunkett and Manning is the custom of the Crown of making grants in pursuance of promises. The argument they found on this custom seems to me to proceed on an entirely false analogy. Where land is vested in the Crown by virtue of its original sovereignty in the Colony, and has never been vested in any private individual, it is easy to see that where the promiser deals with his incipient right by way of alienation, &c., nice questions may arise as to the person entitled to avail himself of the promise, and it is both natural and proper that the Crown should seek to find out the person really entitled to the benefit of it, on principles less technical and precise than those which regulate the devolution of property between private persons. But the argument of the Attorney and Solicitor General of England is based on the undoubted fact, that the property was not in the Crown at the time when the power of attorney was given, that there *could not* therefore be at that time any Crown grantee, and therefore no one professing to be the grantee of the Crown could deal with the property. The Crown having no interest in the land of which it could dispose, could not make a promise, but were it even so, it cannot be said that Messrs. Tawell and Bevan were promisees of the grant of the lands at the time they executed the power, for although the warrant from the Crown does recognise the settlement of January, 1845, which included the real estate of Tawell in the Colony, it does so only for the purpose of declaring the trusts of the property actually granted, and there is nothing on the face of the warrant which holds out any anticipation of a grant being about to be made to those gentlemen of the estate in question. In short, there was no right, incipient or otherwise, in them at the time they executed the power; and although there was a power in the Crown of acquiring the land on the performance of certain acts, those acts had not been performed, nor had any expectation been held out which the vendor could make use of, that a grant would be made to their purchasers when the Crown was in a position to make it. In the cases referred to by the Australian Law Officers, the title of the Crown is complete, but it was not so here at the time the supposed promise was made.

I do not see how the reference to Mr. Turner, in the despatch of 29th February, 1848, can affect the question. No doubt he was the legal representative of Mrs. Tawell's trustees for some purposes, but the real character of his position cannot be effected by any such expression having been used; that expression being fully explained by the position of Mr. Turner with reference to the personal estate of Tawell under the Crown grant and power of attorney. I have not seen the despatch in question, but, I assume, there is nothing material in it beyond the words quoted in the report.

Some stress is laid on the fact that Turner held out expectations of grants being made at the time of the sale, he being then Crown Solicitor; and that, in point of fact, grants would have been made long since but for certain legal difficulties arising out of differences of opinion amongst the law officers. If, in fact, as now appears to be the case, Turner had no authority to make such promises, there being no evidence of any such authority having been given him, beyond the fact of his holding the office of Crown Solicitor, no weight can be given to them. A person relying on them, of course, did so at his peril, and cannot now complain that he was deceived. It may be perfectly true that grants would have been made long since had no fresh element appeared in the case, leading to a more thorough investigation of its real features; but it does not follow that after that more thorough investigation, the same course will be adopted. It would rather seem to be a source of gratification to the Crown, to have the opportunity thus put in its way of preventing the commission of acts of gross injustice.

The fact relied on as most important, is that of the signature of Mrs. Tawell having been appended to the power.

This is explained by her as having been done solely with the object of testifying her assent to the change of investment of the personality.

In a recent letter to the trustees, that lady says "the more I reflect upon the communication from Sydney, the more I feel anxious that the Right Honorable the Lords of the Treasury should be made acquainted with the fact inducing my name to be appended to the power of attorney sent out to Messrs. Norton and Turner. I will copy a provision made in the grant signed 30th day of twelfth month, 1847.—But so as every such investment or change of investment be made with the consent 'in writing of the said Sarah Tawell during her life'; hence it was clear that the personal property 'in the banks in Sydney could not be removed without my written consent.'" It was with this view alone she gave it, being at the time fully aware of the letter of instructions accompanying the power.

Independently of this, however, even if it should turn out on examination that Mrs. Tawell did expressly sanction the power in the form referred to, her act ought not surely be allowed to prejudice her child, she having only a life interest in the property, and having no power to prejudice his right as remainderman by any consent or other act.

Much is attempted to be made of the fact that no objection was made to the sales when the accounts were transmitted. Messrs. Tawell and Bevan could not of course object to the sales of their own attorneys. They are not now repudiated by them, but by Mrs. Tawell; so that the acquiescence of the trustees, by being thus silent, cannot affect her, even were it in itself important. It was also stated, that money was received on account of the deposit without objection on the part of Tawell and Bevan. This statement is contrary to the fact; no money was received until Norton sent the deposit, subsequently to Turner's flight; and the firm of Bevan and Goodeve, then on behalf of Mrs. Tawell immediately and most strongly repudiated the sales, and intimated to Mr. Norton that a re-sale was intended, as the following extract from the letter to Mr. Norton will shew "you are far from correct in your account of the proceedings which have been terminated by the sale of the land, and which sale was *invalid and of no effect*. You will find on reference to our letter of 26th January,

"January, 1848, that we informed you a grant from the Colonial Governor was necessary before any title could be made to the freeholds in New South Wales; notwithstanding this, and the opinion of your Solicitor General, you appear to have facilitated an illegal sale by your co-trustee, by, to use your own words, 'handing him over the power of attorney and all the documents you held.' Another sale will now take place under the Governor's grant, the form of which goes out by this mail from the Colonial Office, and we rely upon your exertions to see that a fair price is this time realized for the property comprised in the grant, which we are told ought to produce at least double the amount of the former forced and illegal sale, if not more. We regret the position in which the purchasers from Mr. Turner are placed, but as it is quite clear he could not make a title in the absence of the grant from the Crown, they will not be without their remedies."

I do not know that I have left any portion of the long and studied report of the law officers of Sydney unnoticed; the 15th clause suggests "a further inquiry to precede the issue of the grant." After 8 years successful opposition and delay on the part of the local Government, these gentlemen, when driven into a corner, think this the course more suited to the "honour and justice of the Crown!"

I have, &c.,

H. R. Reynolds, Esq.,
Solicitor, Treasury.

WILLM. BEVAN.

The Attorney and Solicitor General are requested to advise the Lords of the Treasury, as to the course which it will be proper for their lordships to adopt, with reference to the grant of the escheated property.

We have considered the further report of the law officers of the Colony, and the arguments urged therein; we adhere to the opinion given by us on this case, of the date of 31st August, 1853.

Without adverting to the different facts in dispute between the law officers in the Colony and Mr. Bevan, we consider the following facts to be beyond dispute:—

The deceased Tawell having been convicted of felony, his lands in the Colony escheated, with the rest of his property, to the Crown. Her Majesty, in December, 1847, was pleased to grant the rest of the property, consisting of lands in England and personalty in Australia, to Messrs William Tawell and William Bevan, as trustees, for the benefit of Tawell's widow and child; but no inquisition having been then taken of the lands in the Colony, the grant was silent as to these.

In this state of things, the trustees send a power of attorney to Messrs. Norton and Turner in Australia authorizing them to enter upon the lands there (of which they, Tawell and Bevan were trustees under a former conveyance from Tawell, the felon,) and to sell them, and also to dispose of the personal property; but they accompanied this power of attorney by a letter of instructions, in which they communicated to Turner and Norton, that the lands in question were not included in the Royal grant of December, 1847, and that a further grant would be necessary; very plainly shewing that they did not consider these lands as comprehended, for the present at least, within the power of attorney, or intend them to be sold by virtue thereof, or under the then circumstances.

Nevertheless Mr. Turner proceeds to sell the lands in question and misappropriates the proceeds.

At the time of the sale no grant of these lands had been made by the Governor of the Colony. It is alleged by the purchasers that Mr. Turner gave his assurance that the necessary grant would be made; it does not appear he had any authority to give such assurance.

It is alleged on behalf of the trustees, and not denied, that the sales were effected at very inadequate prices, at all events, with reference to the present value of land in that part of the Colony.

Mrs. Tawell on behalf of herself and her child now seeks to repudiate the transaction.

It is argued by the law officers of the Colony that, inasmuch as the power of attorney gave authority to sell these lands, the instructions contained in the accompanying letter to Turner and Norton cannot be used by the grantors of the power to qualify the extent of the power, on the faith and strength of which the purchasers bought. To give full effect to this argument it must be assumed that the purchasers were made aware of the terms of the power of attorney and purchased on the strength of it.

But if they did, they must have at once become aware of the informality of the title; for, the power recites the attainder of Tawell, and shews, therefore, that his property had escheated to the Crown; and while it sets forth the grant by the Crown of his personalty in the Colony, it is silent as to his real estate. This at least should have excited suspicion and provoked inquiry, and if such inquiry had been made, more especially of the other attorney, Norton, the real state of the facts would doubtless have been disclosed.

It is alleged, on the part of the trustees and Mrs. Tawell, that Mr. Norton took no part in these transactions, and was never referred to, and that the sales were hurried and the prices inadequate.

We have no means of judging of the absolute truth of these allegations, but we think enough is shown to justify us in designating these transactions as "doubtful;" and we think that the course that we have advised, namely, that a grant should be made, as originally contemplated, to the trustees, for Mrs. Tawell and her child, leaving to the other parties to enforce their claims, either for the conveyance of the lands or for repayment of the purchase money, as they may be entitled, in a Court of Equity, will best meet the justice and general merits of the case.

It is urged by the law officers in the Colony, that a promise of a grant once made by the Crown ought to be acted upon; more especially as the practice in the Colony has been to treat a promise from the Crown as equivalent to an absolute grant, with reference to contracts relating to land. But, in the first place, it is obvious that the practice referred to relates to waste lands, which the Crown has always been in the habit of granting away in large quantities, and can have no application to a case like the present. In the second place, no promise of a grant had been made by any competent authority at the time these sales took place.

If any assurance to that effect was given by Turner, it appears to have been given without authority. It is true he was then Government Solicitor, but he was not acting in that capacity when he gave such assurance, nor, if he had been, would his mere official capacity have authorized him to do so.

For these reasons we adhere to our former opinion.

A. E. COCKBURN.
RICHARD BETHELL.

No. 55.

COLONIAL SECRETARY to CROWN LAW OFFICERS.

*Colonial Secretary's Office,
Sydney, 8 February, 1856.*

GENTLEMEN,

1 Nov., 1855.

I am directed by His Excellency the Governor General to transmit to you, for your information and guidance, a copy of a despatch which has been received from the Secretary of State, relative to the disposal of the property in this Colony of John Tawell, a felon, and to request that you will instruct the Civil Crown Solicitor accordingly.

I have, &c.,

W. ELYARD.

No. 56.

No. 56.

CROWN LAW OFFICERS to COLONIAL SECRETARY.

*Attorney General's Office,
Sydney, 15 February, 1856.*

SIR,

In acknowledging your letter of the 8th instant, No. 115, transmitting for our information and guidance a copy of a despatch which has been received from the Secretary of State, relative to the disposal of the property in this Colony of the late "John Tawell," an attainted felon, we have the honor to state, that, having perused the further opinion of the Law Officers of England, we still retain, to the fullest extent, the firm conviction expressed in our letter of the 30th October, 1854, namely:—"That the Crown would be misled into an act of clear injustice if the grants were now to issue to Mrs. Tawell's trustees, and that we feel that the honor of the local Government has, at the instance of the representative of "Mrs. Tawell and her trustees, become pledged to the other claimants."

2. We would therefore very respectfully request to be relieved from the position of apparent acquiescence and adoption in which we should place ourselves if we were to give the proposed instructions to the Civil Crown Solicitor.

3. We would take the liberty of suggesting that such instructions should be given direct to the Civil Crown Solicitor, to whom alone the duty of preparing deeds of grant ordinarily belongs, and who would act only as conveyancing solicitor to the Government, and would not be regarded as its responsible adviser in the matter.

We have, &c.,
J. H. PLUNKETT,
Attorney General.
W. M. MANNING,
Solicitor General.

No. 57.

SIR W. DENISON to SECRETARY OF STATE.

John Tawell—respecting Conveyance to Trustees of Property for Family of.

18 March, 1856.

SIR,

In reply to Lord Panmure's despatch, No. 35, dated 1st November, 1855, requesting that the necessary measures might be taken for the completion of the grant of the felon named in the margin, to the trustees of Mrs. Tawell and her family, I have the honor to inform you that instructions have been given to the Crown Solicitor to prepare the deed accordingly.

I have, &c.,
W. DENISON.

No. 58.

COLONIAL SECRETARY to CIVIL CROWN SOLICITOR.

*Colonial Secretary's Office,
Sydney, 26 February, 1856.*

SIR,

With reference to the correspondence that has taken place on the subject of the disposal of the property of the late John Tawell, an attainted felon, I do myself the honor, by the direction of the Governor General, to inform you that a despatch has been received from the Secretary of State, directing the completion, without any further delay, of the grants of the property in question to the representatives of Mrs. Tawell and her family, and to request that you will take the necessary steps for carrying out the instructions of Her Majesty's Government.

I have, &c.,
W. ELYARD.

No. 59.

COLONIAL SECRETARY to THOMAS ICETON, Esq.

*Colonial Secretary's Office,
Sydney, 26 February, 1856.*

SIR,

With reference to my letter of the 7th December, 1854, respecting Mr. Hugh Dixon's purchase of certain land, forming part of the property of the late John Tawell, I do myself the honor to inform you that instructions have been received from the Secretary of State, in reply to the further reference made to him on the subject, for the completion of the grant of the said property to the representatives of Mrs. Tawell and her family, and that the Civil Crown Solicitor has accordingly been instructed to take the necessary steps for that purpose.

I have, &c.,
W. ELYARD.

No. 60.

No. 60.

COLONIAL SECRETARY to A. H. M'CULLOCH, Esq.

*Colonial Secretary's Office,
Sydney, 26 February, 1856.*

SIR,

With reference to my letter of the 7th December, 1854, respecting Mr. Thomas Moore's purchase of certain land, forming part of the property of the late John Tawell, I do myself the honor to inform you that instructions have been received from the Secretary of State, in reply to the further reference made to him on the subject, for the completion of the grant of the said property to the representatives of Mrs. Tawell and her family, without any further delay, and that the Civil Crown Solicitor has accordingly been instructed to take the necessary steps for that purpose.

I have, &c.,
W. ELYARD.

No. 61.

W. W. BILLYARD, Esq., to COLONIAL SECRETARY.

*Macquarie-street,
Sydney, 19 February, 1856.*

SIR,

Referring to your letter to me of the 9th June, 1854, No. 462, in answer to my application for a deed of grant to Messrs. Tawell and Bevan, as trustees for the widow and child of the late John Tawell, of the lands in this Colony belonging to his estate, and informing me that it had been found necessary to refer to the Crown Law Officers, preparatory to submitting this matter for the re-consideration of the Secretary of State for the Colonies, I do myself the honor to inform you, that I have recently received a letter from Messrs. Tawell and Bevan enclosing copy of the further opinion (dated 8th October last) of Sir A. E. Cockburn and Sir R. Bethell, the English Attorney and Solicitor General, in which they express their adherence to their former opinion, that the grant ought to issue to the trustees notwithstanding the report of the law officers here; and that they had learnt at the Colonial Office that instructions had been forwarded to His Excellency the Governor General, for the grant to be made to Messrs. Tawell and Bevan, as originally ordered.

I have the honor, therefore, to request that instructions may now be given for the issue of the grant to those gentlemen, and that the Colonial Treasurer may be directed to hand the same, and any other deeds of grant in the Treasury relating to Tawell's estate to me, as the duly authorized attorney of Messrs. Tawell and Bevan, on payment of the fees due thereon.

I may add that a draft form of the deed of grant, prepared I believe by the Solicitor to the Treasury, has been forwarded to me, and that I shall be happy to do all that is necessary in the preparation of the grant, should you think proper to direct me to do so.

I have, &c.,
WM. W. BILLYARD.

No. 62.

COLONIAL SECRETARY to T. W. SMART, Esq.

*Colonial Secretary's Office,
Sydney, 1 March, 1856.*

SIR,

With reference to my letter of the 3rd June, 1854, respecting the disposal of certain land, forming part of the property of the late John Tawell, I do myself the honor to inform you that instructions have been received from the Secretary of State, in reply to the further reference made to him on the subject, for the completion of the grant of the said property to the representatives of Mrs. Tawell and her family, and that the Civil Crown Solicitor has accordingly been instructed to take the necessary steps for that purpose.

I have, &c.,
W. ELYARD.

No. 63.

CIVIL CROWN SOLICITOR to COLONIAL SECRETARY.

*Civil Crown Solicitor's Office,
Sydney, 6 March, 1856.*

SIR,

Referring to your letter of the 26th ultimo, No. 168, requesting me to take the necessary steps for the completion of the deed of grant of the property of the late John Tawell, to the representatives of Mrs. Tawell and family, I do myself the honor to request that you will furnish me with the copy warrant of Her Majesty, relating to the English real estates, and the form of grant of the Colonial estates, transmitted to you by the Right Honorable the Secretary of State, and the other documents relating to this matter in your possession.

I have, &c.,
WM. W. BILLYARD,
Civil Crown Solicitor.

No. 64.

No. 64.

COLONIAL SECRETARY to CIVIL CROWN SOLICITOR.

*Colonial Secretary's Office.**Sydney, 10 March, 1856.*

SIR,

In compliance with the request contained in your letter of the 6th instant, No. 53, I do myself the honor to transmit to you the form of grant to be made to the representatives of Mrs. Tawell and her family, of certain land belonging to the late John Tawell, an attainted felon, together with all the other documents in this office connected with the case in question.

I have, &c.,

W. ELYARD.

No. 65.

CIVIL CROWN SOLICITOR to COLONIAL SECRETARY.

*Civil Crown Solicitor's Office,**Sydney, 15 April, 1856.*

SIR,

Referring to your letter of the 10th ultimo, No. 204, transmitting form of grant to be made to the representatives of Mrs. Tawell and her family, of lands in this Colony formerly belonging to the late John Tawell, an attainted felon, I now do myself the honor to send you the engrossment thereof, and have to request that you will obtain the signature of His Excellency the Governor General, and cause the Seal of the Territory to be affixed thereto, and when so signed and sealed, the same may be completed in the usual manner, by enrolment and registration in the proper offices.

As the grant is made upon the trusts mentioned in Her Majesty's Royal Warrant of the 30th December, 1847 (an attested copy of which is with the papers I received from you), it will be necessary that such attested copy should accompany the grant, as it forms an essential link in the chain of title.

I return the whole of the papers, and have, &c.,

WM. W. BILLYARD.

[Enclosure 1 in No. 65.]

Forwarded to the Surveyor General, in order that the descriptions may be verified.

B.C., 22 April, 1856.

W. ELYARD.

[Enclosure 2 in No. 65.]

It is evident that, with the exception of the allotment in the parish of St. James, the description of which has been verified, all the descriptions are of portions of land obtained from private individuals; those in the parish of Alexandria appear to form parts of the Riley Estate. Verification without survey, which I presume is not intended, is impracticable.

25 April, 1856.

GEO. BARNEY, S. G.

[Enclosure 3 in No. 65.]

But, as the grant will now be issued by the Government, I think there should be no doubt as to the correctness of the descriptions; for, if by any chance the rights of other parties were interfered with, they would most likely look to the Government for redress. At all events, the Surveyor General might say whether, under the circumstances, a survey might be necessary.

B.C. 30 April, 1856.

M. F. 20.

[Enclosure 4 in No. 65.]

HAVING instructed the Assistant Surveyor to survey the allotments referred to, and furnish new descriptions of the land claimed, I have received a report, of which I enclose a copy, and from which it will appear that the case is involved in such difficulty as renders it extremely questionable whether the Government can with safety convey the lands referred to, in any other terms than the general terms of the inquisition, and of the draft deed herewith returned.

Surveyor General's Office,
26 July, 1856.GEO. BARNEY,
S. G.

[Enclosure 5 in No. 65.]

Sir,

Sydney, 23 July, 1856.

With reference to your letter, No. 56-800,* dated 3rd May, 1856, addressed to Assistant Surveyor Gordon (and forwarded by that officer to me), enclosing descriptions of four allotments of land, which I am required to survey and to furnish new descriptions of, in order that they may be granted to the representatives of Mrs. John Tawell and heirs; I have the honor to report, that although the descriptions may serve to identify the lands in a general way, yet they are too vague and uncertain for plans and descriptions to be made out with the accuracy required from a public Survey Department. There appear to me to be also reasons why these accurate descriptions (if possible) should not be given in the present case.

The lands were found (or said) to escheat and be forfeited to the Crown on the attaint of the late John Tawell, by a Court of Inquisition held at Sydney, on 22nd August, 1848; from the proceedings of which Court the descriptions were obtained.

Her Majesty has been graciously pleased to allow the said lands (*i.e.*, such as would legally escheat to the Crown on such attainiture,) to revert to the representatives of the widow of the late John Tawell and her family, and has directed a grant to be made to that effect; but as the Government are not now in possession, nor have ever taken any means to recover possession of the said lands from the parties now holding them, it might perhaps be advisable, in drawing out the grant, to make use only of the descriptions as given in the deed of inquisition.

I have been informed that some of the land now claimed by the representatives of Mrs. Tawell and family was purchased in the year 1839 at public sale, by a Mr. Nolan, from Mr. Austin (then of the Water Police), who had purchased from Tawell, who again had previously purchased from John M'Laren, who had received a grant thereof from the Crown during the Government of Sir Ralph Darling. Mr. Nolan has moreover informed me, that he and his family have been in uninterrupted possession of the land and premises ever since he purchased them.

Under these circumstances, it appears to me that the Government will be granting land which they had previously granted, and had never recovered or been in possession of since.

The Surveyor General,
&c., &c., &c.

I have, &c.,

M. E. L. BURROWES.

* Not with papers.

No. 66.

CIVIL CROWN SOLICITOR to COLONIAL SECRETARY.

*Civil Crown Solicitor's Office,
Sydney, 23 July, 1856.*

Sir,

Referring to my letter of 15th April last, transmitting engrossment of deed of grant to the representatives of Mrs. Tawell for execution, I do myself the honor to state that, on inquiry as to the cause of the great delay which has taken place in this matter, I have been informed at your office, and also at the Surveyor General's, that the descriptions of the land to be granted are so indefinite as to require a verification before the grant can be completed.

2. Endeavouring to adhere as nearly as might be to the form of grant prepared in the office of the Solicitor to the Treasury, and which referred to the lands as being those described in the inquisition, I inserted the lands according to such description in the grant.

3. Upon consideration, however, I admit the propriety of the Surveyor General's objection; and Mr. Darvall, with whom I have consulted, is of opinion that with such uncertainty the grant would be void, and the intention of Her Majesty's Government probably be defeated.

4. Such description would be sufficient in an old country like England, where it is common to convey estates simply by name, without stating any commencing point, or even boundaries. A much greater degree of minuteness is, however, necessary in a new country, and in order to carry out the intentions of Her Majesty's Government, it is absolutely necessary to depart from the strict letter of the instructions, and to insert by proper descriptions the various parcels of land intended to be granted.

5. I beg leave, accordingly, to withdraw the engrossment formerly sent, and to request that the Surveyor General may be instructed to furnish perfect descriptions of the land intended to be granted.

6. In order to assist in identifying the property, I have given to Mr. Burrowes, of the Survey Department, a valuation of it by Mr. Hume, the architect.

7. The description in the inquisition was taken from the title deeds then produced by Mr. G. C. Turner, my predecessor, who handed them over to the different purchasers.

8. As the grant must necessarily, therefore, be re-engrossed, I have taken the opportunity of adding to it in another respect, without, however, deviating from the instructions. The addition is simply by the annexure of a copy of Her Majesty's Warrant, which is referred to in the habendum, as containing the trusts upon which the land is to be held, in order that they may appear from the annexure itself, and thus avoid future trouble and disputes as to the trusts, through the possible difficulty of identifying the attested copy of that warrant, at present in your possession, with the warrant referred to in the grant.

9. I herewith enclose draft of grant, as now amended, for approval by His Excellency the Governor General, to be completed when the Surveyor General shall have furnished the amended descriptions.

10. As I have no doubt that the Home Government will be desirous of carrying out Her Majesty's gracious intentions in favour of Mrs. Tawell and her child, I feel satisfied that His Excellency will facilitate this object as much as possible.

11. It is perhaps right that I should add, that I am acting in this matter, not only as Civil Crown Solicitor, but also as the private attorney of the grantees, and that I some time ago retained Mr. Darvall as their counsel.

12. The proposed alterations in the grant are indicated in red ink in the draft sent herewith, and I cannot conceive any possible objections to them.

I have, &c.,
WM. W. BILLYARD,
Civil Crown Solicitor.

No. 67.

CIVIL CROWN SOLICITOR to COLONIAL SECRETARY.

Sydney, 21 October, 1856.

Sir,

Referring to your letter* of the 12th August last, No. 465, transmitting copy report of Assistant Surveyor Burrowes on the subject of the amended deed of grant in favour of the representatives of Mrs. Tawell, wherein Mr. Burrowes stated with regard to a portion of the land in Sussex-street, included in the grant, that it had been sold by the late Mr. Tawell to Mr. Austen, and that it now belonged to a Mr. Nolan, I do myself the honor to inform you, that, having made a search in the Registry Office, I find that Mr. Burrowes' statement is correct, and that the land in question cannot equitably be claimed by Mrs. Tawell's representatives. I have therefore deemed it my duty, so far to deviate from the instructions of the Right Honorable the Secretary of State, as to omit this land from the grant.

With respect to the other lands comprised in the grant, viz., the remaining allotment in Sussex-street—the land at Rose Bay—in William-street and Macquarie-street, I have had the same carefully surveyed by Mr. Surveyor Wells, and accurate descriptions prepared by him.

Mr.

* Not traceable.

Mr. Wells, as is generally known, is a very old and experienced surveyor, who has been long in practice in Sydney, and he is ready, if necessary, to identify the premises contained in the descriptions as amended with those contained in the inquisition, by his solemn declaration.

There is, of course, no doubt that the intention of Her Majesty's Home Government was, that Mrs. Tawell and her child should have the *property*, and not a mere ineffectual grant, and Mr. Darvall having advised, with respect particularly to the land in William-street, that as to it the grant as originally prepared, would be void for uncertainty, I have, in order to carry out Her Majesty's most gracious intention, had the necessary amendments made.

Even without any further evidence, there can be no doubt about the identity of the properties, inasmuch as the parties now in possession all claim their titles through Messrs. Tawell and Bevan's former representatives, Messrs. Turner and Norton; and the English Law Officers and other eminent counsel in England have already advised that they have neither legal nor equitable claims to the properties. Under such circumstances it is immaterial to them in what form the grant issues, and no others have a right to complain.

If, on the other hand, the grant were to issue according to the descriptions in the inquisition, the effect may be that in the face of the opinions of these high legal authorities to the contrary, Mr. Smart, and the other claimants, may hold possession of the properties in defiance of Mrs. Tawell's representatives and Her Majesty's instructions.

Believing, for these reasons, that His Excellency the Governor General will now direct the grant to issue as amended, I do myself the honor to transmit engrossment thereof for completion.

I have, &c.,
WM. W. BILLYARD.

[Enclosure 1 in No. 67.]

VICTORIA by the Grace of God of the United Kingdom of Great Britain and Ireland Queen Defender of the Faith and so forth To all to whom these presents shall come—Greeting—Whereas by an inquisition taken at Sydney in our Territory of New South Wales on the twenty-second day of August in the twelfth year of our reign and in the year of Our Lord one thousand eight hundred and forty eight by virtue of our Commission issued out of and under the Seal of our Supreme Court of our said territory bearing date the fifth day of August in the said twelfth year of our reign It was found that John Tawell was on the first day of January one thousand eight hundred and forty-five or at some time afterwards and previous to the day of taking of such inquisition seized or possessed of or otherwise entitled to a good estate of inheritance in fee simple in possession to him and his heirs in socage tenure of in and to amongst other hereditaments All that piece or parcel of land in our County of Cumberland and parish of Alexandria in our said territory bounded on or towards the north by the estate of Mr. Justice Dowling one hundred and eight feet on or towards the east by the same estate thirty-four feet eleven inches on or towards the west by the same estate sixty-six feet ten inches and on or towards the south by William-street one hundred and seventeen feet six inches forming lot two together &c And also all that allotment or parcel of land in our said territory containing by admeasurement eleven perches situated in the town of Sydney parish of St. James County of Cumberland allotment number eleven of section number forty-one and bounded on the east by the building line of Macquarie-street bearing north three degrees fifty minutes west thirty-nine links on the north by allotment number twelve bearing west two degrees south one hundred and sixty links on the west by allotment number twenty bearing south one degree east fifty and a quarter links and on the south by allotment number ten bearing east five degrees thirty minutes north one hundred and sixty-two links being part of an allotment leased to Samuel Thornton by His Excellency Sir Thomas Brisbane the then Governor of our said Colony on the thirtieth day of June one thousand eight hundred and twenty-three and afterwards granted to the said John Tawell And also all that piece or parcel of land situate lying and being in the parish of Saint Andrew in the town of Sydney sforesaid bounded on the west by Sussex-street twenty-four feet on the north by other part of the land comprised in a certain grant and of which the land now being described forms part sold to John Borne and Matthew Shaw respectively sixty-six feet on the east by a lane reserved for the use of the said John Tawell his heirs and assigns in common with the occupiers of the other parts of the land comprised in the said grant forty-one feet ten inches and on the south by a road leading into George-street also reserved for the use of the said John Tawell his heirs and assigns in common with the occupiers of the other parts of the lands comprised in the said grant And also all that piece or parcel of land or ground containing by admeasurement four acres two rods and thirty-five perches situate and being in the County of Cumberland and parish of Alexandria aforesaid bounded on the east by a private road of twenty feet width by a line west six chains and seven links on the north by land belonging to Mr. James Barker by a fence line east seven chains and eighty-four links on the west by the road leading from the South Head to Sydney seven chains and forty-five links and on the south by land belonging to Mr. Henry Mace by a line west seven chains to the commencing corner together with the free use and enjoyment of the said private road in common with the owners and occupiers of the adjoining land and also with all houses &c and which said several hereditaments are hereinafter more particularly described And it was further found that the said lands tenements and hereditaments became and were escheated and forfeited to our use And whereas we were graciously pleased on the humble petition of Sarah Tawell the widow of the said John Tawell by our Royal Warrant under our Royal Sign Manual bearing date the thirtieth day of December in the year of Our Lord one thousand eight hundred and forty-seven to give and grant certain lands and hereditaments situate in the County of Hertford in that part of our United Kingdom of Great Britain and Ireland called England late of the said John Tawell found to have escheated to us to William Tawell of Earls Colne in our County of Essex in that part of our said United Kingdom called England draper and William Bevan of the Old Jewry in our City of London in that part of our said United Kingdom called England Upon certain trusts for the benefit of the said Sarah Tawell and the family of the said John Tawell as therein mentioned And whereas it has been recommended to us by the Commissioners of our Treasury that it will be proper to grant and it is our will and pleasure to grant the said lands and hereditaments in our said Colony of New South Wales so found to have become escheated to us as aforesaid on the like trusts as in our said in part recited Royal Warrant of the thirtieth December one thousand eight hundred and forty-seven Now know ye that we taking the premises into our Royal consideration do hereby with the advice of the Executive Council of the said Colony give and grant unto the said William Tawell and William Bevan and their heirs all and singular the hereditaments and premises mentioned in the said inquisition taken in our said Colony of New South Wales and thereby found to have escheated to us with the appurtenances and which said hereditaments are more particularly described as follows All that piece or parcel of land in the County of Cumberland and parish

of Alexandria and Colony of New South Wales commencing at the north-east corner of allotment number fourteen Ambrose Hallen's four acres and thirty-four perches and bounded on the north by a line bearing east eighteen degrees south one hundred and eight feet on the east by a line bearing south eighteen degrees west thirty-four feet eleven inches on the south by William-street bearing westerly to Ambrose Hallen's eastern boundary line one hundred and seventeen feet six inches and on the west by a line bearing north eighteen degrees east sixty-six feet ten inches which said piece or parcel of land comprises a portion of James Laidley's grant number fifteen of five acres two roods and eight perches as described as number six in the parish of Alexandria in the Government notice dated twenty-ninth September one thousand eight hundred and thirty-one to be called "Rosebank" And also all that piece or parcel of land containing by admeasurement eleven perches situated in the City of Sydney parish of Saint James County of Cumberland and Colony of New South Wales commencing at a mark on the building line of Macquarie-street distant three hundred and forty-two links southerly from the building line of Hunter-street which mark is also the north-east corner of allotment number ten of section number forty-one and bounded towards the east by the building line of Macquarie-street being a line bearing north three degrees and fifteen minutes west thirty-nine links towards the north by allotment number twelve being a line bearing west two degrees south one hundred and sixty links towards the west by allotment number twenty being a line bearing south one degree east fifty and a quarter links and towards the south by allotment number ten being a line bearing east five degrees thirty minutes north one hundred and sixty-two links being the land described in the Government notice of twenty-sixth October one thousand eight hundred and thirty-nine as lot eleven of section forty-one And also all that piece or parcel of land situate lying and being in the parish of Saint Andrew in the City of Sydney commencing at a mark on the east side of Sussex-street with its intersection with the north side of Walton's-lane which mark is distant sixty-seven feet northerly from the south-west corner of John McLaren's grant of three roods thirteen perches described in the Government charts as number six of section number nine and bounded on the west by Sussex-street being a line bearing north fourteen degrees thirty minutes west twenty-four feet on the north by land of John Byrne and Matthew Shaw being a line bearing easterly sixty-six feet on the east by Victoria-lane bearing southerly forty-one feet ten inches and on the south by Walton's-lane running westerly to Sussex-street And also all that piece or parcel of land containing by admeasurement four acres two roods and thirty-five perches situate and being in the County of Cumberland parish of Alexandria and Colony of New South Wales commencing at a mark on the South Head New Road being at the distance of six chains fifty links northerly from the southern boundary line of Breakwell's sixty acres grant and bounded on the south by the land of Henry Mace being a line bearing east seven chains on the east by a road twenty feet wide being a line bearing north six chains and seven links on the north by the land of James Barker being a line bearing west seven chains eighty-four links to the South Head New Road and on the west by the South Head New Road seven chains and forty-five links being a portion of the land described in the Government notice of tenth September one thousand eight hundred and thirty number two Alexandria Samuel Breakwell's sixty acres To hold the said several lands and hereditaments unto and to the use of the said William Tawell and William Bevan and their heirs upon the like trusts and to and for the like intents and purposes and subject to the same powers and provisos as are mentioned or referred to in our said Royal Warrant of the thirtieth day of December in the year of our Lord one thousand eight hundred and forty-seven a copy whereof is contained in the schedule hereunder written with respect to the lands and hereditaments thereby granted to them the said William Tawell and William Bevan or such of the said trusts intents and purposes as are now existing and capable of taking effect.

SCHEDULE HEREINBEFORE REFERRED TO:—

V. R.

VICTORIA by the Grace of God of the United Kingdom of Great Britain and Ireland Queen Defender of the Faith To all to whom these presents shall come—Greeting—Whereas the Commissioners of our Treasury have represented unto us that by an inquisition indented and taken at the house commonly called or known by the name or sign of the "Salisbury Arms" situate at Hertford in our County of Hertford on the seventeenth day of June in the tenth year of our reign before Horatio Waddington George Frederick Pollock and George Benjamin Maule Esquires being three of our Commissioners named in our Commission under our Great Seal in the said inquisition mentioned bearing date at Westminster the twenty-fourth day of April in the tenth year of our reign upon the oaths of twelve good and lawful men of our said County of Hertford in the said inquisition mentioned it was found that John Tawell then late of the parish of Farnham Royal in our County of Buckingham, gentleman in the said Commission named was on the first day of January in the eighth year of our reign (being the day on which the murder and felony in the said Commission mentioned was committed by the said John Tawell) seized to him and his heirs in fee simple of and in all that messuage tenement or dwelling-house and out-buildings thereto belonging situate at Marlowes in the parish of Hemel Hempstead in our said County of Hertford then some time since erected on a portion of the garden or orchard occupied with a mansion-house situate at Marlowes aforesaid heretofore in the occupation of Daniel Desormeaux together with the yard garden and appurtenances to the same messuage and premises belonging which said messuage garden outbuildings and premises were formerly in the occupation of William Eyles and then of Josiah Hales and were bounded on the west in front thereof by the high road leading from Hemel Hempstead to Two Waters on the east by a field belonging to Mr. Cato on the north partly by a messuage and garden lately belonging to John Glover and then to Mr. Wood and partly by garden ground belonging to the Reverend Joseph Hamilton and on the south by a piece of land or ground theretofore belonging to Mr. John Griffin and since to Thomas Goodson deceased with their and every of their appurtenances And also of said in all that messuage or tenement (formerly called Boxwells) theretofore in the occupation of John Moore Esquire since of the Reverend Mr. Townsend then late of James Caulfield Browne and then of Jordan Free situate and being in the town of Berkhamstead Saint Peter otherwise Great Berkhamstead in our said County of Hertford abutting south-east on the messuage or tenement theretofore of Mary Martin spinster and then or then late of John Edward Lane north-west on the messuage or tenement of John Manship Mills and north-east on the turnpike road with the appurtenances And also of and in all that close of pasture ground and orchard containing by estimation three acres (more or less) lying near to and behind the said messuage or tenement and premises called Boxwells in Berkhamstead Saint Peter otherwise Great Berkhamstead in our said County of Hertford formerly in the occupation of the said James Caulfield Browne and then of the said Jordan Free abutting south-east on Berkhamstead School land and south-west on land or premises of Joseph Geary Andrews with the appurtenances And that it was by the said inquisition further found that the said messuages tenements lands and hereditaments were of the annual value of seventy-one pounds in all issues thereof beyond reprises And that it was by the said inquisition further found that the said messuages lands tenements and hereditaments were holden by the said John Tawell of us in free and common socage in right of our Royal Crown but not subject to any services or rent in respect thereof except fealty and had devolved unto us as an escheat in right of our Prerogative Royal And that it was by the said inquisition further found that the said John Tawell was on the tenth day of March in the eighth year of our reign on which day the said John Tawell was convicted of the felony and murder as in the said Commission mentioned possessed of and in all that piece or parcel of ground situate on the south-west side of High-street in the town of Great Berkhamstead in our said County of Hertford bounded on the north-east side by the High-street of Berkhamstead aforesaid on the north-

north-west side thereof by premises belonging to James Field and Frederick Miller on the west side belonging to John Croft rector and on the south-east by the residence of Mary Sutton and a lane leading to the back entrance of the said piece or parcel of ground to the residence of the said John Croft together with the messuage or dwelling-house coach-house stables and other erections standing and being upon the said piece or parcel of ground and premises now or late in the occupation of Sarah Tawell the widow of the said John Tawell formerly Sarah Cutforth widow with their and every of their appurtenances for the remainder then to come and unexpired of a certain term of twenty-one years commencing on the twenty-ninth day of September in the year one thousand eight hundred and forty by James Field of Berkhamstead aforesaid gentleman to the said John Tawell granted and demised by indenture of lease bearing date the twenty-fourth day of December in the year last aforesaid subject to a proviso for determining the same at the end of the first fourteen years of the said term as therein mentioned and subject to the payment of the yearly rent of sixty pounds and to the covenants in the said indenture of lease contained And that the residue of the said term of years was by the said inquisition found to be of the value of one hundred pounds And that it was by the said inquisition further found that the said John Tawell was on the said tenth day of March in the eighth year of our reign possessed as of his own proper goods and chattels of and in eighty shares of one hundred pounds sterling each in the bank capital stock of the Bank of New South Wales which by the said inquisition were found to be of the value of four thousand pounds And also of and in ten shares of one hundred pounds sterling each of the bank capital stock in the Commercial Banking Company of Sydney in New South Wales aforesaid which were by the said inquisition found to be of the value of five hundred and ten pounds and of and in the several goods and chattels mentioned in the schedule annexed to the said inquisition marked with the letter A which were by the said inquisition found to be of the value of six hundred and twenty pounds And that the said goods and chattels mentioned in the said schedule (except one piece of cambric one pair of spectacles one penknife the last mentioned gold watch and chain two silk handkerchiefs one box containing a surgical instrument one box of apothecary's scales and weights and a hamper of medicine bottles) were by the said inquisition found to be then in the possession of the said Sarah Tawell and that the said excepted articles were then in the possession of Acton Tindal Esquire then Under Sheriff of our County of Buckingham all which said messuages lands tenements and hereditaments whereof the said John Tawell was by the said inquisition found to have been seized as aforesaid and to have become escheated to us And all which said residue of the said term of years shares in the said Bank of New South Wales and Commercial Banking Company of Sydney goods and chattels of which the said John Tawell was so possessed as aforesaid and which by the inquisition aforesaid were found to have become forfeited to us the said Commissioners had in obedience to our said Commission seized into our hands And whereas it has been further represented to us by the said Commissioners of our Treasury that the said John Tawell was also at the time of his conviction possessed as of his own goods and chattels of sixty shares of ten pounds each of the capital stock of the Australian General Assurance Company being the same shares as are in the secondly hereinafter stated indenture of settlement of the thirty-first day of January one thousand eight hundred and forty-five called or described as sixty shares in the Sydney Alliance Assurance Company standing in the name of the said John Tawell and which were not included in the said inquisition but were forfeited to us on the conviction of the said John Tawell And whereas it hath been further represented unto us by the said Commissioners of our Treasury that the said Sarah Tawell of Berkhamstead aforesaid the widow of the said John Tawell did by her memorial presented to them prior to the suing forth of the said Commission make discovery of our right and title to the premises comprised in the said inquisition And that the said Sarah Tawell did by her said memorial (amongst other things) state that previously to the marriage between the said Sarah Tawell and John Tawell the said Sarah Tawell was a widow and had one child her daughter Eliza Sarah Cutforth and was entitled to certain personal property which consisted in part of the sum of one thousand pounds new three pounds ten shillings per cent annuities standing in her name in the books of the Governor and Company of the Bank of England and of ten shares in the Alliance Marine Assurance Company That in the year one thousand eight hundred and forty-one a marriage was agreed upon between the said John Tawell and Sarah Tawell and that in contemplation of such marriage the said John Tawell concurred with the said Sarah Tawell in making a settlement by indenture dated the twenty-second day of February one thousand eight hundred and forty-one of such personal property to which the said Sarah Tawell was then absolutely entitled and by which the said ten shares in the Alliance Marine Assurance Company were by an indenture bearing even date with the said indenture of settlement assigned to and vested in Thomas Squire and Daniel Norris upon certain trusts for the benefit of the said Sarah Tawell and her children by the said John Tawell That by another indenture of settlement made in contemplation of the said marriage and dated the twenty-third day of February one thousand eight hundred and forty-one the said John Tawell for himself his heirs executors and administrators did covenant with the said Thomas Squire and Daniel Norris that the said John Tawell his heirs executors or administrators should and would assign and transfer unto them six thousand pounds capital stock of the Bank of New South Wales or such other sum of stock or property in New South Wales aforesaid as should be sufficient to produce the clear sum of six hundred pounds per annum and also after the solemnization of the said then intended marriage between the said John Tawell and Sarah Tawell that the said John Tawell would by his will give and bequeath to the said Sarah Tawell his residuary estate and effects and appoint her one of the executors thereof And that by the same indenture it was declared that the said trustees should stand possessed of the said trust moneys upon trust to pay the interest and income thereof to the said Sarah Tawell for her sole and separate use and after her decease in case she should die in the lifetime of the said John Tawell to pay the annual sum of two hundred pounds to Eliza Sarah Cutforth for her life and subject thereto stand possessed of the said trust moneys and premises for the said John Tawell absolutely That very shortly after the date and execution of the said indentures of settlement the marriage between the said John Tawell and Sarah Tawell was duly had and that the only issue of the same marriage had been one child and no more namely Henry Augustus Tawell who was then living That the sum of six thousand pounds capital stock of the said Bank of New South Wales was not nor was any other sum of stock or property whatever either in New South Wales or elsewhere ever in the lifetime of the said John Tawell assigned or transferred unto or into the names of the said Thomas Squire and Daniel Norris as such trustees as aforesaid for the purpose of providing such annuity of six hundred pounds as aforesaid That certain parts of the freehold hereditaments comprised in the said inquisition were purchased with the moneys arising from the sale of the said ten shares in the Alliance Marine Assurance Company and from the savings of the said Sarah Tawell from her separate income That the said John Tawell being desirous of settling certain freehold and leasehold estates and chattels personal in favour and for the benefit of the said Sarah Tawell and Henry Augustus Tawell did by an indenture dated the thirty-first day of January one thousand eight hundred and forty-five and made between the said John Tawell of the one part and William Tawell of Earls Colne in our County of Essex draper and William Bevan of the Old Jewry in our City of London gentleman of the other part convey and assign and also appoint the freehold and leasehold estates and also the chattels personal in the same indenture mentioned (which the said Commissioners of our Treasury have represented to us to be the same freehold and leasehold estates and chattels personal comprised in the said inquisition and so seized into our hands as aforesaid or some part or parts thereof) with their appurtenances unto and to the use of the said William Tawell and William Bevan their heirs executors administrators and assigns but subject to the said settlement bearing date the twenty-second day of February one thousand eight hundred and forty-one as to the said ten shares in the Alliance Marine Assurance Company which were therein stated to have been since sold and the produce thereof laid out and advanced under the powers and authorities in such settlement contained

in

n and towards payment of the consideration money for certain of the said freehold hereditaments upon trust to sell the same as therein mentioned and stand possessed of the proceeds thereof upon trust (after paying to Alfred Hart and Sarah Hart an annuity of fifteen pounds each) to pay the income of the same to the said Sarah Tawell for her life and after her decease as well as to the trust moneys stocks funds and securities as the income thereof in trust for the said Henry Augustus Tawell his executors administrators and assigns for his own absolute use and benefit. But in case the said Henry Augustus Tawell should die under the age of twenty-one years without leaving lawful issue him surviving then in trust for the persons who would under the statutes for distribution of intestate effects to be the next of kin of the said John Tawell if he were to die immediately after the said Henry Augustus Tawell. And that the said Sarah Tawell did by her said memorial pray relief in the premises. And whereas it hath been further represented to us by the said Commissioners of our Treasury that the said Sarah Tawell hath represented to them that the said John Tawell in further execution of his desire for the benefit of the said Sarah Tawell and Henry Augustus Tawell did by another indenture dated the thirty-first day of January one thousand eight hundred and forty-five and made between the said John Tawell of the one part and the said William Tawell and William Bevan of the other part appoint assign and transfer unto the said William Tawell and William Bevan their executors administrators and assigns (amongst other things) all and every the said respective shares in the said Bank of New South Wales the Commercial Banking Company of Sydney and the Australian General Assurance Company (therein called the Sydney Alliance Assurance Company) respectively and all benefit thereof unto the said William Tawell and William Bevan their executors administrators and assigns (but subject to the said settlement bearing date the twenty-third day of February one thousand eight hundred and forty-one so far as the trusts thereof were in favour of the said Sarah Tawell and Eliza Sarah Outford) upon similar trusts to those declared in and by the hereinbefore-mentioned indenture of even date with the now stating indenture. And whereas it hath been further represented to us by the said Commissioners of our Treasury that at the time of the death of the said John Tawell he was indebted to the said William Bevan in the sum of one thousand one hundred pounds for the costs and expenses of and attending the defence of the said John Tawell upon his said trial for the murder of the said Sarah Hart and that the same sum hath been already paid to or retained by the said William Bevan out of the rents interest dividends and profits hereinafter granted or some portion thereof received by him. And that the said John Tawell was not indebted to any other person or persons save and except that the said Sarah Tawell hath humbly represented to us that she hath a claim on the property and estate of the said John Tawell for and in respect of the arrears of the said annuity of six hundred pounds and otherwise amounting to the sum of three thousand and sixty pounds or thereabouts in part and on account whereof she hath already received the sum of eight hundred and eleven pounds three shillings and sixpence out of the said rents dividends interest and profits hereinafter granted or some portion thereof. And whereas it hath been further represented to us by the said Commissioners of our Treasury that Isabella Betha Tawell of No. 3 Thebarton-street Islington in our County of Middlesex widow did by her memorial presented to them (amongst other things) state that in the year one thousand eight hundred and thirty-three she intermarried with John Downing Tawell son of the said John Tawell. That the said John Downing Tawell died on the twenty-eighth day of April one thousand eight hundred and forty-three leaving the said Isabella Betha Tawell his widow him surviving but without issue. That the said John Tawell from the decease of his said son paid to the said Isabella Betha Tawell a certain sum per annum for her support and which annual sum was her sole means of support. And that the said Isabella Betha Tawell prayed relief in the premises. And whereas it hath been recommended to us by the said Commissioners of our Treasury under all the circumstances of the case that we should grant the said freehold and leasehold estates and also the said chattels personal hereinbefore described or referred to and so seized into our hands as aforesaid and also the said shares in the Australian General Assurance Company to which the said John Tawell was so entitled as aforesaid unto the said William Tawell and the said William Bevan their heirs executors administrators and assigns respectively upon trust to sell the same and to stand possessed of the moneys to arise therefrom upon the trusts after mentioned or referred to. To which we are graciously pleased to condescend. Now know ye that we taking the above circumstances into our Royal consideration do by this our Royal Warrant under our Royal Sign Manual at the recommendation and with the advice of the Commissioners of our Treasury give and grant unto the said William Tawell and William Bevan and their heirs all and singular the said freehold messuages lands tenements and hereditaments hereinbefore particularly mentioned and described and comprised in the said inquisition and so seized into our hands as aforesaid and the appurtenances to the same premises belonging or appertaining. And all our estate right title interest property claim and demand whatsoever of in and to the same hereditaments and premises hereby granted. And all deeds evidences and writings relating to the said premises belonging to us to have and to hold the said messuages lands tenements hereditaments and premises hereby granted unto and to the use of the said William Tawell and William Bevan their heirs and assigns for ever upon and for the trusts intents and purposes hereinafter declared expressed or referred to concerning the same. And further know ye that we further taking the above circumstances into our Royal consideration do by this our Royal Warrant under our Royal Sign Manual at the recommendation and with the advice of the Commissioners of our Treasury give and grant unto the said William Tawell and William Bevan their executors administrators and assigns all the said shares and chattels real and personal comprised in the said inquisition and so seized into our hands as aforesaid and the appurtenances to the said chattels real belonging. And also all and singular the said shares in the Australian General Assurance Company which the said John Tawell was so entitled to as aforesaid at the time of his conviction. And all our estate right title term of years interest property claim and demand whatsoever of in and to the same premises respectively. And all deeds evidences and writings relating thereto belonging to us to have and to hold the said chattels real hereby granted unto the said William Tawell and William Bevan their executors administrators and assigns during all the residue now to come of the said term of twenty-one years (determinable as in the said indenture of lease mentioned) nevertheless upon the trusts hereinafter expressed declared or referred to concerning the same (subject nevertheless as to the said leasehold premises to the payment of the rent and the observance and performance of the covenants and agreements in and by the said indenture of lease of the twenty-fourth day of December one thousand eight hundred and forty reserved and contained and which on the part of the tenant lessee or assignee are or ought to be paid observed and performed) And to have hold receive and take the said shares in the Bank of New South Wales in the Commercial Banking Company of Sydney and in the said Australian General Assurance Company and all other the said chattels personal hereby granted unto and by the said William Tawell and William Bevan their executors administrators and assigns as to the said chattels comprised in the said schedule A to the said inquisition annexed in trust for the said Sarah Tawell her executors administrators and assigns and as to the residue of the said shares and chattels personal upon the trusts hereinafter expressed declared or referred to concerning the same. And we do hereby declare that the said William Tawell and William Bevan their executors administrators and assigns respectively shall stand and be seized and possessed of all and singular the said freehold and leasehold hereditaments shares and chattels personal hereinbefore respectively granted (except the said chattels comprised in the said schedule A) upon trust that they the said William Tawell and William Bevan and the survivor of them and the heirs executors administrators and assigns respectively of such survivor do and shall when and as they or he shall think fit absolutely sell and dispose of the said freehold hereditaments and the said real and personal chattels and shares so granted to them as aforesaid (except as aforesaid) either entirely or altogether or in parcels or lots and either by public auction or private contract for such price or prices as the said William Tawell and William Bevan or the survivor of them or other the trustees or trustee for the time being

being of these presents shall think reasonable with power to buy in the said premises or any part thereof respectively at any sale or sales by auction and to rescind or vary any contract for sale and to re-sell the premises which shall have been so bought in or the contract for the sale of which shall be so rescinded or abandoned as aforesaid without being in anywise answerable for any loss which may happen thereby respectively and also with power to insert any special or other stipulations in any contract for or conditions of sale either as to title evidence of title or otherwise howsoever and with full power to enter into execute and perform all such contracts agreements assurances acts matters and things for effectuating or completing such sale or sales as to the said William Tawell and William Bevan or the survivor of them or other the trustee for the time being hereof shall seem meet And we do hereby declare that the said William Tawell and William Bevan their heirs executors administrators and assigns shall stand possessed of the moneys to arise from the sale or sales of the said premises hereby respectively granted and to be received on rescinding or varying any contract and also of the rents issues interest dividends and profits to accrue and become due from or in respect of the said freehold and leasehold hereditaments and shares until the same respectively shall be sold And also of the rents profits interest and dividends hereinafter by this our Royal Warrant granted subject as after mentioned upon the trusts hereinafter expressed (that is to say) upon trust in the first place thereout to pay to George Maule Esquire the solicitor for the affairs of our Treasury the sum of one hundred and sixty-six pounds twelve shillings and nine pence being the amount of the costs charges and expenses incurred by him in the premises in our behalf And in the next place to pay the fees and stamp duty on this our Royal Warrant And in the next place to pay all arrears of the rent which may be due under the said lease and all such costs charges and expenses incurred by or on behalf of the said Sarah Tawell in making discovery of and assisting in the prosecution of our right and title to the premises respectively and all such costs charges and expenses attending the said sale or sales or otherwise to be incurred in or about the execution of the trusts hereby created or any of them such costs charges and expenses to be submitted to the consideration taxation and determination of a respectable solicitor to be named and appointed for that purpose by the said trustees or trustee for the time being and to be approved of by the solicitor for the affairs of our Treasury for the time being and in default of such nomination and appointment then by a respectable solicitor to be named and appointed for the purpose by the solicitor for the affairs of our Treasury for the time being alone and the necessary and reasonable charges of the solicitor so to be appointed as aforesaid to be paid out of the said trust funds And in the next place do and shall pay unto the said Sarah Tawell the sum of one thousand five hundred pounds in full for all claims which she may now have for or in respect of any arrears of the said annuity of six hundred pounds so covenanted to be paid to her as aforesaid by the said John Tawell or for or in respect of any other claim of the said Sarah Tawell on the property hereby granted or any portion thereof And in the next place do and shall pay to the said Isabella Betha Tawell her executors administrators or assigns such a sum of money as will be sufficient to make up an annuity of forty pounds us from the thirteenth day of October one thousand eight hundred and forty-seven up to the date of this our Royal Warrant and subject as aforesaid do and shall stand and be possessed of all the surplus of the said moneys and the income of the said premises till sale and conversion upon and for the trusts intents and purposes and with under and subject to the powers provisions and conditions in and by the said indentures of the thirty-first day of January one thousand eight hundred and forty-five respectively expressed and declared of and concerning the moneys which should come to their hands and which should have arisen from the sale and conversion of the real and personal estate thereby settled and the income thereof or such of the same trusts intents and purposes powers provisions and conditions as are now subsisting undetermined and capable of taking effect except that the said trustees or trustee of this our Royal Warrant do and shall by and out of the income of the said trust moneys stocks funds and securities or of the rents income and profits of the premises hereby granted until sale in the first place pay unto the said Isabella Betha Tawell and her assigns one annuity of forty pounds for her life to commence from the date of this our Royal Warrant and to be paid half-yearly without any deduction whatsoever and a proportionate part to be paid up to her decease And we do hereby declare that as regards the provisions by the said indenture of settlement of the twenty-third day of February one thousand eight hundred and forty-one intended to be made no part of the property hereby granted shall be considered as applicable under the trusts contained in the said indentures of the thirty-first day of January one thousand eight hundred and forty-five for the payment of the debts of the said John Tawell to the currying into effect the covenants or engagements of the said indenture of the twenty-third day of February one thousand eight hundred and forty-one and that as regards the said Sarah Tawell the provision hereby made for her shall be taken in full satisfaction of the provision intended to be made by the said settlement of the twenty-third day of February one thousand eight hundred and forty-one both for the said Sarah Tawell and all other parties claiming under the said settlement (save and except so far as relates to the sum of one thousand pounds new three pounds ten shillings per cent. bank annuities therein mentioned) and of all other claims and demands of the said Sarah Tawell or any part of the estate and effects of the said John Tawell And that the said moneys shall not under the trusts of the said firstly hereinbefore recited indenture of the thirty-first day of January one thousand eight hundred and forty-five be liable to the trusts for the replacing the said ten shares in the Alliance Marine Assurance Company as in the said indenture is mentioned And we do hereby declare that it shall and may be lawful for the said trustees or trustee for the time being of these presents before an absolute sale under the trusts aforesaid to levy and raise any moneys which they or he may think necessary to raise for any of the purposes of this our Royal Warrant by mortgage of all or any part of the freehold and leasehold premises hereby granted so as any such mortgage be made with the consent of the Commissioners of our Treasury for the time being or any three of them signified by writing under their hands And further we do hereby declare that it shall be lawful for the said trustees or trustee before any sale or sales as aforesaid to lease all and singular the said freehold and leasehold premises or any part thereof respectively for any term not exceeding twenty-one years in possession so as every such lease be made with the consent in writing of the said Sarah Tawell during her life And we do hereby further direct that it shall be lawful for the said trustees or trustee for the time being of these presents from time to time in their or his discretion to lay out and invest the said trust moneys and premises or any portion thereof at interest on any real security in England or Wales and from time to time at the like discretion to alter and vary the securities on or on which the same shall be invested either to or for other securities of the like nature or to or for securities of the nature prescribed in the said last-mentioned indenture of settlement of the thirty-first day of January one thousand eight hundred and forty-five either as occasion shall require or as they shall see fit but so as every such investment or change of investment be made with the consent in writing of the said Sarah Tawell during her life And we do hereby declare that the receipt and receipts of the trust as or trustee for the time being of these presents shall be a good discharge and good discharges to all persons for any of the trust moneys hereof and shall after payment of the same moneys effectually discharge such persons respectively from seeing to the application or being answerable for the misapplication of the same moneys And we do hereby further give and grant unto the said William Tawell and William Bevan their executors administrators and assigns the rents issues and interest dividends and profits which are now due to us from any person or persons whomsoever for or in respect of the said premises in the said inquisition mentioned after allowing thereout the said payments to or retainers by the said William Bevan and Sarah Tawell of the two several sums of one thousand one hundred pounds and eight hundred and eleven pounds three shillings and sixpence as hereinbefore mentioned Nevertheless upon the trusts hereinbefore declared of the said premises And we do hereby give and grant unto the said William Tawell and William Bevan their executors administrators and assigns full power and authority

to

to ask demand sue for recover and receive the same rents interest dividends and profits and to settle and adjust all accounts relating thereto And these presents shall be to all who shall or may be concerned therein a sufficient warrant Given at our Court at Windsor Castle on the thirtieth day of December in the eleventh year of our reign and in the year of our Lord one thousand eight hundred and forty-seven.

By Her Majesty's command,
W. GIBSON CRAIG.
H. RICH.
SIELBURNE.

In testimony whereof we have caused this our grant to be sealed with the Seal of our said Territory.

Witness our trusty and well-beloved Sir William Thomas Denison Knight Governor General in and over all Her Majesty's Colonies of New South Wales Tasmania Victoria South Australia and Western Australia and Captain General and Governor-in-chief of the Territory of New South Wales and its Dependencies and Vice-Admiral of the same at Government House Sydney this _____ day of _____ in the _____ year of our reign and in the year of our Lord one thousand eight hundred and fifty _____

[Enclosure 2 in No. 67.]

PERRAHS the Surveyor General should see the descriptions introduced into the grant, in the first place? 29.

Yes.

Surveyor General accordingly.

Blank Cover,
29 October, 1856.

W. F.

To be returned.

(Enclosure 3 in No. 67.)

The object of submitting this deed for my observations of the descriptions prepared by Mr. Wells was, I apprehend, that a report might be furnished on the propriety and safety of the use of these descriptions, and irrespectively of course of all questions of title to the lands described.

My report then will embrace two main features, viz. :—

- 1st. The identity of the lands described by Mr. Wells with those described by the inquisition.
- 2nd. The correctness and perfectness of Mr. Wells' descriptions in themselves. For the sake of clearness, the report in regard to each portion of land is separate.

Portion in William-street.

The description of this portion by the inquisition places the land on the north side of William-street, and makes Mr. Justice Dowling's "Estate" bound it on the west, north, and east, William-street being the south boundary. If by Mr. Justice Dowling's "Estate" he meant No. 8 of the Woolloomooloo allotments, which was granted to that gentleman (and the south boundary of which as a line bearing east 18 degrees south, and crossing William-street diagonally), it is clear that the land described is a portion of the said grant to Mr. Dowling, and that the position on William-street is within the boundaries of that grant, but not precisely determined. The description by Mr. Wells is of a portion of Laidley's grant (allotment No. 15), which grant lies to the south of, and is separated from Mr. Dowling's grant, by a road about 50 links wide, which has now been superseded by William-street. The only possibility then, by which the land described by Mr. Wells can be identical with that described by the inquisition, is, that Mr. Justice Dowling's "Estate" embraced the whole or parts of Laidley's grant, and of Hallor's grant, which adjoins it; and also the road which divided those two grants from Mr. Dowling's grant. This it is believed is not the case.

Apart from the identity of the portions of land, there is in Mr. Wells' description an inconsistency with fact; for from the most authoritative surveys of the locality by this department, it appears that the space between the north boundary of Laidley's grant, and the north side of William-street is upwards of 20 feet less from north to south than stated in that description, that is, that were the south boundary described as a line, instead of William-street, about two-fifths of the land described would be upon the street. The description also includes a portion of Dowling-street.

Portion in Macquarie-street.

Both descriptions of this portion agree with its boundaries according to the maps of this office.

Portion in Sussex-street.

This portion is part of a subdivision of a portion originally granted by the Crown. The two descriptions are apparently of the same land, although the lanes are not named in the inquisition description; and there is a discrepancy in the orthography of the name Byrne—Berne mentioned in the two descriptions.

The surveys of this department do not afford any test of the accuracy of this description.

Portion on the South Head Road.

The portions described are probably identical, and there is nothing in the surveys of this department to shew that Mr. Wells' description, which is perfect in itself, is erroneous. The inquisition description does not however state which South Head Road the land adjoins, and is otherwise most imperfect.

I may add, that I am still of opinion that the Government incurs a dangerous responsibility in issuing deeds, except in the terms of description used in the inquisition; and that that responsibility would be increased by adopting the descriptions prepared by Mr. Wells, of lands regarding which the Government Surveyor had found such difficulties as prevented his proceeding.

GEO. BARNEY,
Surveyor General.

Surveyor General's Office,
Sydney, 18 November, 1856.

No. 68.

W. W. BILLYARD, Esq., to SECRETARY FOR LANDS AND PUBLIC WORKS.

Macquarie-street North,
Sydney, 30 July, 1857.

SIR,

Having understood that upwards of six months ago the papers relative to a grant to trustees in favour of Mrs. Tawell and her child* were transferred to your department, I do myself the honor to request the favour of a reply to my letter to the Colonial Secretary, of the 21st October, 1856, with which I forwarded the engrossment of an amended form of grant for execution.

* A brief Precis of the case is submitted herewith.

I have repeatedly called at your office for a reply to my letter. My clients complain bitterly of the great delay that has taken place, and, unless I am enabled to report satisfactory progress by the next mail, they intend, I believe, to petition Her Majesty in Council on the subject.

I have, &c.,
WM. W. BILLYARD.

No. 69.

PRECIS of the Case by Under Secretary for Lands and Works.

TAWELL'S CASE.

A BRIEF history of this case appears to be requisite to a proper understanding of the question now at issue:—

2. John Tawell, who was convicted of the crime of murder in England in 1845, was, at the time of the commission of the offence for which he was afterwards executed, possessed of real and personal property in this Colony. Previously to his trial and conviction he assigned this property, real and personal, to trustees, for the benefit of his wife and family.

3. Mr. James Norton, the solicitor, sought to secure Tawell's property for the trustees, and with this view applied to the Attorney General (11th August, 1846) for a disclaimer of the Crown's claim thereto. This, Mr. Attorney General Plunkett declined to give, for the reasons alleged in his minute on Mr. Norton's letter.

3. Having asserted the rights of the Crown to the property left by Tawell, Mr. Plunkett advised the Governor to submit the matter to the Queen, for Her Majesty's pleasure thereon.

4. Sir Charles Fitz Roy accordingly reported the case Home, in a despatch dated 23th September, 1846, No. 21.

4. Earl Grey replied, that the Queen was pleased to grant the property, real and personal, on certain trusts, for the benefit of Tawell's widow and family (29th January, 1848.) But in the enclosure to this despatch, being a letter from the Secretary to the Lords of the Treasury (25th January, 1848) attention was drawn to the fact, that, as regards the real property, no inquisition had been made to ascertain the Crown's claim. (The copy of the letter said to be enclosed in Sir Charles Trevelyan's letter is not now, if ever, with these papers.)

5. By this time another solicitor, Mr. George Cooper Turner, appears to have been associated with Mr. Norton to act for the trustees. These gentlemen caused the properties to be advertised for sale. The Attorney General, being as yet uninformed of the Queen's pleasure, interposed (13th June, 1848), and thereupon the nature of Earl Grey's despatch was made known to both the Attorney General and Mr. Turner, at that time Civil Crown Solicitor, in reply to an inquiry from him (9th June, 1848.)

6. A Commission was accordingly issued with the consent of the Attorney General, and an inquisition held finding the Crown's title to Tawell's freehold property in this Colony, as follows:—

(1.) All that piece or parcel of land in the County of Cumberland, and Parish of Alexandria, bounded on or towards the north by the estate of Mr. Justice Dowling, one hundred and eight feet; on or towards the east by the same estate, thirty-four feet eleven inches; on or towards the west by the same estate, sixty-six feet ten inches; and on the or towards south by William-street, one hundred and seventeen feet six inches, being part of the hereditaments comprised in the thereinbefore in part recited indentures and forming the said lot 2, together, &c. (1.) Land in William-street.

(2.) And, also, all that allotment or parcel of land in our said territory, containing, by admeasurement, eleven perches, situated in the Town of Sydney, Parish of St. James, County of Cumberland, allotment No. 11, of section No. 41, and bounded on the east by the building line of Macquarie-street, bearing north three degrees fifteen minutes, west thirty-one links; on the north by allotment No. 12, bearing west two degrees, south one hundred and sixty links; on the west by allotment No. 20 bearing south one degree, east fifty and a quarter links; and on the south by allotment No. 10, bearing east five degrees thirty minutes, north one hundred and sixty-two links, being part of an allotment leased to Samuel Thornton by His Excellency Sir Thomas Brisbane, on 30th June, 1823, and now granted to the said John Tawell. (2.) Land in Macquarie-street.

(3.) And, also, all that piece or parcel of land situate, lying, and being in the Parish of St. Andrew, in the Town of Sydney aforesaid, bounded on the west by Sussex-street, twenty-four feet; on the north by other part of the land comprised in the thereinbefore in part recited grant, sold to John Borne and Matthew Shaw, respectively, sixty-six feet; on the east by a lane, reserved for the use of the said John Tawell his heirs and assigns in common with the occupiers of the other parts of the lands comprised in the said grant, forty-one feet ten inches; and on the south by a road leading to George-street, also reserved for the use of the said John Tawell his heirs and assigns in common with the occupiers of the other parts of the lands comprised in the said grant. (3.) Land in Sussex-street.

(4.)

(4.) Other land
Sussex-street

(4.) And, also, all that piece or parcel of land situate, lying, and being in the Parish of St. Andrew aforesaid, bounded on the west by Sussex-street twenty-two feet; on the north by the premises of Mr. Knowles Bryant and others seventy-four feet two inches; on the east by the reserved land aforesaid twenty-two feet four inches; and on the south by the said lands of the said John Byrne and Matthew Shaw, seventy feet one inch together with the use of the reserved land and road hereinbefore mentioned.

(5.) Land in
Parish of Alex-
andria.

(5.) And, also, all that piece or parcel of land or ground, containing by admeasurement four acres, two roods, and thirty-five perches, situate and being in the County of Cumberland and Parish of Alexandria aforesaid, bounded on the east by a private road of twenty feet width by a line south six chains and seven links; on the north by land belonging to Mr. James Barker by a fenced line east seven chains and eighty-four links; on the west by the road leading from the South Head to Sydney seven chains and forty-five links, and on the south by land belonging to Mr. Henry Mace by a line west seven chains to the commencing corner. Together with the free use and enjoyment of the said private road, in common with the owners and occupiers of the adjoining land, and also with all houses, &c.

7. In forwarding copies of the commission and inquisition to the Colonial Secretary (19th March, 1849) Mr. Cooper Turner requested that a grant of a portion found in the inquisition, and of which he added a description, being the land in William-street, should issue to Mr. Thomas Ware Smart.

8. The description given by Mr. Turner of the land in William-street is an exact copy, as far as it goes, of the description in the inquisition, but it omits all the words in the latter description which are underscored. This may, or may not be, of consequence. After carefully perusing the inquisition, I cannot find what it is that is alluded to, as the "hereinbefore recited indentures, &c." I am disposed to think that these words, occurring perhaps in some deed or conveyance wherein they had a meaning, have been transcribed literally into the inquisition, where they do not appear to convey any meaning.

9. Mr. Turner, in like manner, requested that a grant of the land in Macquarie-street should issue to Mr. Hugh Dixon. (18 April, 1849.)

10. Both these requests were forwarded to the Attorney General, who, after considerable delay, gave it as his opinion that the Governor could not legally issue the grant. (2nd October, 1848.)

11. Mr. Turner replied (18th January, 1850) by transmitting a precisely opposite opinion from Mr. Barrister Foster. This was sent to Mr. Plunkett, who however retained his opinion, referring at the same time to the opinion given by himself and Mr. Manning in another and parallel case.

12. At this stage Sir Charles Fitz Roy brought the case again under the notice of the Home Government, by a despatch dated 24th June, 1850, No. 117.

13. Earl Grey's reply, dated 19th October, 1851, was received apparently in September of that year. It covered a letter from the Secretary to the Treasury, forwarding an opinion from the Attorney General and Solicitor General of England adverse to Mr. Plunkett's, and a form of grant prescribed by them to be used in granting the land to trustees.

14. This despatch and its enclosure were referred for the further opinion of the Law Officers on the 26th September, and their reply is dated the 8th November, 1851. (51-10,600.) (Intermediately a claim had been preferred to the Sussex-street property, on behalf of Mr. Moore. 51-10,048.)

15. For the equitable considerations fully set forth in that letter the local Law Officers were still of opinion that the grant should not issue, but that the whole matter should be again submitted to the Home Government. I do not detail these reasons because this part of the question is no longer an open one. It was so reported in a despatch dated 27th January, 1852, No. 20.

16. The reply from the Duke of Newcastle is dated 6th October, 1853, and was received on 20th January, 1854. It transmitted a further case and opinion of the Attorney General and Solicitor General of England, and conveyed an instruction to proceed with the issue of the deed as before directed.

17. Before acting upon this instruction the Governor General deemed it proper to afford the local Law Officers a perusal of it. (See their reply, 1st May, 1854, 154-3,835.)

18. A strong appeal was now made by Mr. Smart, the purchaser from Mr. Cooper Turner of the William-street property (10th May, 54-4193), and the matter seemed to Sir Charles Fitz Roy of so much moment that he caused the case to be again referred to the Law Officers, with an intimation that, if they desired it, he would submit it once more to the Secretary of State.

19. The result was the elaborate opinion given in the letter of the Law Officers, of 14th September, 1854, which, with Mr. Smart's appeal, and Mr. Dixon's memorial also (54-6207), was sent to the Secretary of State in a despatch, dated 30th December, 1854, No. 150.

20. A despatch from Sir George Grey to the present Governor General, dated 23rd November, 1854, inquiring the steps that had been taken in the matter, crossed Sir Charles Fitz Roy's despatch of 30th December.

21. In January, 1856, a despatch, dated 1st November, 1855 (No. 35), was received from Lord Panmure (M. 189), covering letters from the Secretary and Solicitor to the Treasury respectively, and a further case and opinion by the English Law Officers, who, as might naturally be expected, adhered to the view first entertained by them.

22. This further opinion was sent to the local Law Officers for their guidance. They, retaining a strong sense of the injustice about to be done, requested that they might be relieved from the responsibility of directing the preparation of the grant, but suggested that such instruction should go direct to the Civil Crown Solicitor (56-1,688.)

23. The Civil Crown Solicitor was instructed accordingly, on 26th February, 1856, and all the parties interested were simultaneously informed of the intention of the Government at once to issue the grant.

24. Mr. Billyard, as Crown Solicitor, who also, in his private capacity, represented the trustees of Mrs. Tawell, prepared the deed, and submitted it for signature (56-3,611); but, as a usual and necessary precaution, the draft deed was referred to the Surveyor General, to verify the description inserted therein, so that, in fact, it should be seen what land the Crown was about to grant.

23. The Surveyor General, for the reasons indorsed on 56-3,611, could not verify the description unless he measured the lands. Here commences the difficulty in this perplexing case, which now remains to be solved. The Surveyor General, having been asked to measure, if measurement were necessary, replied, forwarding a copy of the report of Mr. Assistant Surveyor Burrowes. This report, besides shewing reasons why it was next to impossible to identify the lands by the descriptions taken from the inquisition, and why it was, in his opinion, not desirable that any new measurement should be attempted, disclosed, for the first time, the fact, that some of the land included in the description given in the inquisition had, previously to 1839, been alienated by Tawell, and that it was then and had for many years been in the uninterrupted possession of a Mr. Nowlan.

24. Just at this time Mr. Billyard addressed a further letter to the Colonial Secretary (23rd July, 56-6,338.) In this letter he alludes to the indefiniteness of the descriptions; admits the force of the objection taken to them on this score; cites an opinion of Mr. Darvall to the effect that grants issued on such descriptions would be void for uncertainty; begs to withdraw his previous engrossment, and prefers a request that the Surveyor General may be instructed to furnish perfect descriptions.

25. When Mr. Billyard penned that letter he had not received the copy of Mr. Burrowes' report; upon perusal of that report, he addressed a further letter to the Colonial Secretary (56-8309), in which he admits the truth of the statement as regards Nowlan's land, which he accordingly omits from the deed; again urges the necessity for proper descriptions, and states that he has himself caused the other lands to be accurately surveyed by Mr. Wells, (a person by the way of very indifferent character,) who is prepared to identify, by sworn declaration, the premises so described by him with those described in the inquisition. There is one circumstance alleged in this letter of Mr. Billyard which merits some attention. He asserts that there should be no difficulty in identifying the lands in question, because the parties in possession all derive their titles through the former representatives of Mrs. Tawell's trustees.

26. In reply, the Surveyor General in his last report urges more strongly the impossibility of performing the task assigned him, more especially with regard to the William-street property, and shews good grounds at all events for distrusting Mr. Wells' description.

27. On one hand, therefore, the Surveyor General declares that he cannot furnish reliable descriptions of the lands claimed on behalf of the trustees, and that there is nothing for it but to fall back upon the vague descriptions used in the inquisition. On the other hand, Mr. Billyard urges that the deeds if issued on these descriptions would be void, and that the claim of his clients would thereby be virtually defeated.

28. After bestowing considerable labour and thought on this very embarrassing case, I may perhaps be permitted to offer a suggestion for its solution. I believe the Surveyor General's difficulties are real; I believe, likewise, that Mr. Billyard's objection is well founded—I mean of course in a practical sense; its force in a legal point is vouched for by high authority. In this difficulty I offer the suggestion with deference, that the case should be referred to the Court of Claims. As the land is still in the Crown this would be the usual and appropriate course, where contending claims to portions of land are pressed on the Government. In fact, it was to settle in a satisfactory manner conflicting claims—that is, equitable claims to lands not yet formally alienated by the Crown—that that peculiar tribunal was established.

29. But, in suggesting this course, I do not mean that the case should be referred to the Court of Claims as an open one in dispute between AB and CD; *that* would now be a practical disobedience of the positive instruction of the Secretary of State; but that it should go, as has been done before, as a *special case*, in which the right of Mrs. Tawell's trustees is admitted by the Crown, in order that the Commissioners—who have the advantage of being empowered to take evidence on oath, as well as to compel the attendance of witnesses and the production of papers—should by such testimony as the representatives in the Colony of the Tawell trust can prefer, or the court itself procure may with the assistance of a surveyor (if needed) make such a report as will enable the Government to determine the proper metes and bounds according to which the lands set forth in the inquisition (less the portion in Sussex-street not now claimed on behalf of the trustees) may be granted to the trustees.

6 August, 1857.

N.B.—The papers are arranged chronologically, but those which appear essential to the action of the case are marked with the letters of the alphabet.

MEMO.—The course suggested is the only one I see open; I think it is a case which, though of a somewhat unusual character, is just one of that character in which the Government ought to be guided by the report of a legal tribunal, the object being to carry out its implied obligations without any risk of interference with the rights of others.

Refer to the Court of Claims to inquire and report upon the exact boundaries of the lands as set forth in the inquisition, according to which the deeds may be issued to Tawell's trustees, excluding the portion not now claimed by them.

The Court must be authorized to call upon the Surveyor General to afford the necessary professional assistance.

J. H.

No. 70.

PRESIDENT OF THE COURT OF CLAIMS to SECRETARY FOR LANDS AND PUBLIC WORKS.

42, Elizabeth-street North,
10 August, 1857.

SIR,

Mr. Purefoy and Mr. Butler join with me in requesting your attention to the following questions which have arisen in the discharge of our functions as Commissioners of the Court of Claims:—

Memo:—This may be referred to the law officers as suggested. Practically the Government has always regarded the reference of a case to the Court of Claims as an admission that the land was, or ought to be, out of the Crown, and that the Commissioners should report in whose favour the deed was to issue. The proviso at the end of the 3d Clause was, I have reason to believe, introduced to prevent the Court from entertaining claims to land the title to which to some extent had not been previously admitted.

21st. The question may be referred to the law officers. It seems to me that the Act of the Commissioners can scarcely be justified in deciding upon a claim which has not been expressly referred to them. And, at any rate, I think they ought not to have such a power. It would be well, however, in all cases where a case is to be remitted to the Court of Claims, that a month's notice should be given in the GAZETTE, and persons having counter claims invited to bring such claims forward when the whole might be referred. But this would necessitate a change of the Act with respect to the payment of fees so as to make them fall upon the unsuccessful as well as the successful claimants.

J.H.
21st.
Civil Crown Solicitor.
S.O., 23 Aug., 1857.
M.F.

First. Whether, upon the reference to us by the Governor of the claim of any person to a grant of land, we are at liberty, and if so, whether we are bound, to entertain the adverse claim of any other person to the same land; and to report in his favour if justified by the evidence, without a previous application to the Governor by him, and an express reference to us by the Governor of such adverse claim?

Secondly.—Whether, upon the withdrawal or abandonment of his claim by an original claimant, pending our inquiry, we are at liberty, without such second express reference, and if so, whether we are bound, to report in favour of some other claimant, whose claim may be established by the evidence?

Thirdly.—Whether we are at liberty, without such second express reference, and if so, whether we are bound to recognise and report in favour of the claim of any person to whom the original claimant shall convey or assign his interest, pending the inquiry before us?

You will perhaps deem it right to take the opinion of the Law Officers of the Crown upon these questions, the solution of which will depend upon the construction of the Act of Council, 5 William IV., No. 21, section 3, and more particularly of the proviso at the end of that section.

We take the liberty of addressing this communication to you on the ground of its being stated in the "Administrative arrangements," that you are the Minister who will correspond with us.

We shall be much obliged by an early answer, as a case is now pending in which one of the questions immediately arises.

I have, &c.,

C. K. MURRAY,
President.

No. 71.

CIVIL CROWN SOLICITOR to UNDER SECRETARY FOR LANDS AND WORKS.

Civil Crown Solicitor's Office,
Sydney, 4 September, 1857.

SIR,

Referring to the minute of Mr. Secretary Hay on the letter, enclosed herein, addressed to him by the President of the Commission of the Court of Claims, submitting questions relative to powers of the Commission, I have the honor to inform you that I have conferred with Mr. Solicitor General in the matter, and that I send to you, herewith, a copy of his opinion for the information of the Honorable the Secretary for Lands and Public Works.

I have, &c.,

WM. W. BILLYARD,
Civil Crown Solicitor.

[Enclosure in No. 71.]

(COPY—OPINION.)

I AM of opinion, that if, upon investigation of a particular claim referred, the evidence should shew that the claimant was not entitled in consequence of some other person having rights thereto, the Commissioners might very properly state the special circumstances in their report, under sec. 5 of the Act; but they are not called upon, and ought not to make any specific adjudication in favour of, or against any other claim than that referred to them.

Secondly.—I think that, upon withdrawal or abandonment of the original claim, the Commissioners are *functi officio*, and should report against such claim and decline to examine into any other.

Thirdly.—No adjudication should be made in favour of the claim of any assignee, pending the inquiry, but the proper course would be to report as to the title of the claimant at the time of the reference, though I see no objection to the report containing a statement of any special circumstances shewing that the claimant's title was encumbered by subsequent dealings therewith. I do not, however, consider that they are bound to make such special report.

EDWARD WISE,
Solicitor General.

Sept. 4, 1857.

No. 72.

NORTON, SON, & BARKER to COMMISSIONERS, COURT OF CLAIMS.

Sydney, 2 November, 1857.

(Court of Claims Cases, 1422 and 1423.)

SIR,

We are instructed by Mr. Hugh Dixon to enter a *caveat* against the claim of the trustees of Mrs. Tawell for a grant of the land described in your notice in the *Government Gazette*, dated the 22nd of September last, and to request that a grant of the said land may be issued to him, on the ground that Mrs. Tawell's trustees, by their duly appointed attorney, Mr. George Cooper Turner, sold the land by public auction, and conveyed it to Mr. Dixon, by whom the full amount of purchase money was duly paid.

The Attorney and Solicitor General of the Colony long since advised the Government that Mr. Dixon, and other persons claiming under the trustees under similar circumstances, were legally and equitably entitled to grants of the lands purchased by them respectively. We beg to refer the Commissioners to the correspondence in the Colonial Secretary's Office on this subject.

We are, &c.,

NORTON, SON, & BARKER.

No. 73.

NORTON, SON, & BARKER to COMMISSIONERS, COURT OF CLAIMS.

Sydney, 2 November, 1857.

(Court of Claims Case, 1421.)

SIR,

We are instructed, on behalf of Thomas Ware Smart, Esq., to enter a *caveat* against the claim of the trustees of Mrs. Tawell for a grant of the land described in your notice in the *Government Gazette*, dated the 22nd of September last, and to request that a grant of the said land may be issued to him, on the ground that Mrs. Tawell's trustees, by their duly appointed attorney, Mr. George Cooper Turner, sold the land by public auction, and conveyed it to Mr. Smart, by whom the full amount of purchase money was duly paid.

The Attorney and Solicitor General of the Colony long since advised the Government that Mr. Smart, and other persons claiming under the trustees under similar circumstances, were legally and equitably entitled to grants of the lands purchased by them respectively. We beg to refer the Commissioners to the correspondence in the Colonial Secretary's Office on this subject.

We are, &c.,

NORTON, SON, & BARKER.

No. 74.

MESSRS. PENNINGTON & HART to COMMISSIONERS, COURT OF CLAIMS.

Sydney, 21 November, 1857.

GENTLEMEN,

On behalf of Mr. Thomas Moore, of Sydney, we hereby give notice, that we intend to oppose the issuing of a deed of grant to trustees for the widow and family of the late John Tawell, of an allotment of land in Sussex-street, Sydney (being case No. 1423), the said land having been sold to the said Thomas Moore by Messrs. Tawell and Bevan.

We have, &c.,

PENNINGTON & HART.

No. 75.

CIVIL CROWN SOLICITOR to UNDER SECRETARY FOR LANDS AND WORKS.

Sydney, 4 December, 1857.

SIR,

Referring to your letter* of 3rd September last, on the subject of the land to be granted to trustees in favour of Mrs. Tawell and child, informing me that you had deemed it advisable to refer the matter to the Commissioners of Claims, in order that they might inquire and report upon the exact boundaries of the lands to be granted; and referring also to the former correspondence, and more particularly to my letters of 23rd July and 21st October, 1856, to the Honorable the Colonial Secretary, urging reasons why the grant should issue with the amended descriptions therein referred to, and to which I would again respectfully draw your attention,—I now do myself the honor to inform you, that, having carefully considered the propriety of the proposed reference, and taken the opinion of two leading counsel thereon, they are of opinion, in which I concur, that the Court of Claims has no jurisdiction in this matter, and that the proceedings before them and their decision would be

* Not traceable.

be no more binding than a description taken from the survey of a Government surveyor, and that the proposed reference would be useless and injudicious, and ought not to be proceeded with.

I have the honor, therefore, to request that the reference to the Commissioners of Claims may be withdrawn, and to state, that I am now prepared to accept a grant in the form originally ordered by the Right Honorable the Secretary of State, excepting only the omission of one of the allotments in Sussex-street, since found to have been sold and conveyed by Tawell in his lifetime, referred to in my letter of 21st October, 1856,—and by the addition of a copy of Her Majesty's Warrant, which I shall insert for the reason given in my letter, before referred to, of 23rd July, 1856.

In a few days, therefore, I shall forward the grant, amended as above, for execution and completion.

I have, &c.,
WM. W. BILLYARD.

No. 76.

SECRETARY TO CROWN LAW OFFICERS to UNDER COLONIAL SECRETARY.

Attorney General's Office,
Sydney, 30 December, 1857.

SIR,

I am directed to forward herewith to you a copy memorandum of the Honorable the Solicitor General (Mr. Lutwyche) in the case of the late John Tawell, and to request that you will have the goodness to bring it under the notice of the Honorable the Colonial Secretary at your earliest convenience.

I have, &c.,
W. E. PLUNKETT,
Secretary to Law Department.

[Enclosure in No. 76.]

TAWELL'S CASE.

MEMORANDUM for the perusal of the Honorable the Colonial Secretary.

AFTER a careful examination of all the papers relating to this voluminous case, the following conclusions may, I think, be safely drawn therefrom:—

1. It is not now open to the Law Advisers of the Crown in this Colony to dispute the accuracy of the opinion given by the Attorney and Solicitor General of England; and the grant to Messrs. Tawell and Bevan, as trustees for Mrs. Tawell and her son, must issue in accordance with the directions given by successive Secretaries of State.

As against the Crown, the purchasers by auction have no *locus standi*; but their position will be very different as against the Crown's grantees; and bearing in mind that the inquisition was found on the 22nd August, 1848, and that the sale by the agent for the trustees did not take place till February, 1849, I see little reason to doubt that, either by a *scire facias* or by a suit in equity, the purchasers will obtain the relief they desire.

2. The grant, when issued, must correspond substantially with the description of the parcels as found by the jury on the inquisition.

A practical difficulty has here interposed itself, and is not at present removed, though perhaps the lapse of a short time may suffice for its removal. The description of the William-street property (built upon by Mr. Smart) in the inquisition is said to be so vague, that if the grant followed it literally the grant itself would be void for uncertainty. The Surveyor General has been applied to, to identify the property and give a correct description, for the purpose of inserting such description in the deed of grant; but he has declared the accomplishment of such a task to be next to impossible, and it has been referred to the Court of Claims, to inquire into and report upon the exact boundaries of the lands, as set forth in the inquisition. Their report has not yet been received, and it would be useless to speculate upon what it may be; but one thing is quite clear, viz.: that the Crown, in preparing the grant, must reject altogether solemn declarations made by the surveyor of an interested party. The title of the Crown is founded upon the inquisition, and whether the description in the finding be right or wrong, it must be substantially adopted.

3. Assuming a correct description to have been obtained, a *scire facias* ought, I think, to issue on the part of the Crown, before the grant can pass the great Seal of the Colony.

This deduction is founded upon inferences of fact, not upon facts stated. If the possession was vacant at the time the inquisition was found, no *scire facias* would be necessary; but if there was no such vacant possession at the time of office, found, and no seizure was made on the part of the Crown within a year and a day afterwards, the *scire facias* must precede the grant. And it appears to me that whatever their title might be, Tawell and Bevan were in possession of the land, by their agent (Turner) on the 22nd August, 1848. It appears, further, that they retained possession for six months afterwards, and that the land was sold under their power of attorney; and therefore, unless affirmative evidence could be produced of a seizure by the Crown, within the time limited, the purchasers are entitled to notice by a *scire facias*.

ALFRED P. LUTWYCHE,
Solicitor General.

29 December, 1857.

No. 77.

MESSRS. NORTON, SON, AND BARKER to COLONIAL SECRETARY.

Sydney, 8 January, 1858.

SIR,

By the direction of Mr. Thomas Ware Smart, of Sydney, we have the honour to request that Her Majesty's Government will be pleased to cause a grant to be issued to him of all that parcel of land in the County of Cumberland and Parish of Alexandria, in the territory of New South Wales; bounded on or towards the north by land formerly the estate of the late Sir James Dowling, one hundred and eight feet; on or towards the east by the same estate, thirty-four feet eleven inches; on or towards the west by the same estate, sixty-six

sixty-six feet ten inches; and on or towards the south by William-street, one hundred and seventeen feet six inches, being a portion of a larger parcel of land originally granted to James Laidley, of which Mr. Smart is now and has for the last seven years been in possession by his several tenants.

This land was formerly the property of one John Tawell, who, in the month of March, 1845, was convicted and attainted.

Some time before Tawell's conviction he conveyed this land, with all other real estate belonging to him, to William Tawell and William Bevan, in trust for his wife.

After his execution it was alleged and found that the property had become escheated and forfeited to the Crown, and Her Majesty was pleased to direct that the lands should be granted to the said trustees.

In the year 1849 the said trustees, Messrs. Tawell and Bevan, with the concurrence of Mrs. Tawell, and with the knowledge and sanction of the Crown Law Officers of this Colony, caused the property to be put up for sale by public auction, when Mr. Smart became the purchaser for the sum of £205, which he duly paid to Mr. George Cooper Turner, who was then the Civil Crown Solicitor and the attorney and agent of the said trustees in this Colony, appointed by power of attorney. And, on the 15th day of May, 1850, a conveyance was made and executed in Mr. Smart's favour.

Since the said purchase Mr. Smart has expended £13,000 in the erection of the buildings now standing upon the said land.

At the time of the purchase by Mr. Smart the said trustees entered into the necessary covenants for procuring a grant of the land and perfecting the title to the purchaser, and Mr. Turner, the Civil Crown Solicitor, undertook to do all that was necessary for the purpose of obtaining the said grant.

Mr. Smart is aware that the trustees have since applied to Her Majesty's Government to have the grant issued to them, notwithstanding the sale and conveyance and the receipt of the purchase money by their duly appointed agent; but he respectfully submits that if the grant is made to them, manifest injustice will be done.

Mr. Smart will be prepared to verify the statements herein made at any time, and in any manner the Government may desire.

We have, &c.,
NORTON, SON, & BARKER.

No. 78.

SECRETARY OF STATE to GOVERNOR SIR W. DENISON.

Downing-street,
2 December, 1858.

SIR,

With reference to your despatch, No. 49, of 18th March, 1856, in which you report that instructions had been given to the Crown Solicitor to prepare the deed for the completion of the grant of the property of John Tawell to the trustees of his wife and family, I transmit to you a copy of a letter from one of the trustees, and I trust that every exertion may be made by the local Government for settlement of this business.

I should be glad to be informed whether it is possible that the arrangement will be brought to a speedy conclusion.

I have, &c.,
E. B. LYTTON.

[Enclosure in No. 78.]

6 Old Jewry,
23 November, 1858.

In re John Tawell, deceased.

Sir,

On the 1st November, 1855, a despatch was sent from the Colonial Office to the Governor of New South Wales, directing a grant of certain property in that Colony to be issued, without delay, in favour of Mr. William Tawell and myself upon trusts for the benefit of the widow and child of the late John Tawell.

This despatch was founded upon the reiterated opinion of Sir A. E. Cockburn and Sir E. Bethell, the Attorney and Solicitor General, given in the previous month of October, in consequence of the refusal of the Law Officers at Sydney to act upon the opinion originally given by those gentlemen under date of 31st August, 1853; that opinion being, that a grant of the lands therein referred to should be made to my co-trustee and myself, notwithstanding a previous sale of them by Mr. George Cooper Turner, the then Crown Solicitor at Sydney, under an alleged power from us; and which sale the Attorney and Solicitor General declared to be, in their opinion, unauthorized and inoperative.

Notwithstanding the despatch of the 1st of November, 1855, and the opinion on which it was founded, the Law Officers at Sydney declined to draw the grant or to be in any way parties to its issue, and the matter was, as we understand, subsequently referred by the Colonial Government to the Commissioners of Claims; Mr. Billyard, the Crown Solicitor, and our agent in Sydney objected, however, to this course, and has requested that the grant may be prepared and issued as originally ordered by the Secretary of State. Up to the present time, we are without any information of the issuing of such a grant, although we feel confident from the well known energy and attention of Mr. Billyard, that he would have given us the earliest possible intimation had such been the case.

I need scarcely point out for your consideration that the delay which has taken place, and the expense which has been incurred from the opposition in the Colony, have been very deeply felt by Mrs. Tawell and ourselves, and would respectfully ask the favour of your interference to bring this matter now to a close; thirteen years having nearly elapsed since the property escheated, and eleven since it was restored by the Crown, whose gracious intentions in behalf of Mrs. Tawell and her child have been hitherto frustrated, if not defeated.

The Right Honorable
Sir Edwd. Bulwer Lytton, Bart.,
Secretary of State for the Colonies.

I have, &c.,
WILLM. BEVAN,
(for Mr. Wm. Tawell and myself)

No. 79.

No. 79.

W. W. BILLYARD, ESQ., to SECRETARY FOR LANDS AND WORKS.

Sydney, 22 December, 1858.

SIR,

* Not traceable.

Referring to my letters of 4th* and 21st December last, relative to the grant of Mrs. Tawell and her child of the escheated estate of her late husband, I have the honor again to call your attention to this matter.

I would beg most respectfully to urge, that, as the subject matter of the proposed grant is the property of the Imperial and not of the Colonial Government, and the revenue of the Colony is not in any way affected by it (for, if not given to Mrs. Tawell, the proceeds of these properties would, when sold, fall into the Imperial Treasury), His Excellency does not act herein so much as Governor of the Colony, but as representative of Her Majesty for a particular purpose, and, therefore, the instructions of the Home Government for the issuing of this grant should be complied with, without inquiring into the validity of the reasons for such instructions.

For these reasons, and seeing that my client has not only been put to great inconvenience, but has sustained considerable loss by the delay that has taken place, I would beg leave most earnestly to request that the grant may be returned to me, in order that I may carry out the instructions contained in the Honorable the Colonial Secretary's letter to me of 26th February, 1856, and which would have been long since completed but for the advice of Mr. Darvall, that the descriptions of the property to be granted should be amended; but which amendments, as you are aware, my client has agreed to waive.

I have, &c.,

WM. W. BILLYARD.

No. 80.

W. W. BILLYARD to SECRETARY FOR LANDS AND WORKS.

Macquarie-street,

Sydney, 9 March, 1859.

Re GRANT TO TAWELL'S TRUSTEES.

SIR,

I have the honor to request that you will be so good as to submit the papers connected with this matter to the Attorney and Solicitor General for their opinion.

Having perused the opinion of Mr. Lutwyche, I am wholly at a loss to understand how a writ of *scire facias* can issue prior to the grant, as there is nothing for it to operate upon, and I do not see how the Supreme Court could entertain the matter in its present stage, as the legal and equitable estate in the property is, until the grant, vested in Her Majesty.

I have, &c.,

WM. W. BILLYARD.

No. 81.

CIVIL CROWN SOLICITOR to UNDER SECRETARY FOR LANDS AND WORKS.

Civil Crown Solicitor's Office,

Sydney, 30 March, 1859.

SIR,

I have the honor to inform you that I am directed by Mr. Solicitor General Hargrave to return to you the accompanying papers, which relate to "Tawell's case," and which I laid before him on the 16th instant, in compliance with your instructions.

I am further directed by Mr. Solicitor General to state, that this matter seems to have been delayed by references to the Surveyor General's Office, and other delays, after the papers had left the consideration of the Crown Law Officers (in February, 1856. *Vide* 56-168), who seem to have most fully examined the subject; and that he does not see upon what points of law his opinion is requested in the present stage of the matter.

I have, &c.,

WM. W. BILLYARD,

Civil Crown Solicitor,

(per J. JACKSON.)

No. 82.

MEMO. of Under Secretary for Lands and Works.

THE whole history of this case is very fully given in the enclosed *precis*, and the more important points, on which the opinion of the present Law Officers was desired, are,—

1. Shall the grant issue, as directed by the Secretary of State, according to the descriptions of the land given in the finding of the inquisition, which embrace land admitted to have been alienated by Tawell *before* his conviction, and which, in other cases, are so imperfect, that the grant to be issued thereupon (so advised Mr. Darvall) would be void for uncertainty?

2.

2. Shall the proposed reference to the Court of Claims proceed (Mr. Lutwyche was under the impression that it was being proceeded with)—the object being, *not* to determine who shall receive the grant, but to take evidence, on oath, as to the now identity and boundaries of the land to be conveyed?

1st April.

P.S.—Mr. Lutwyche advised the issue of a *scire facias*, but the solicitor for the claimants (Mr. Billyard) suggests, that, as the fee is still in the Crown, there is nothing for a *scire facias* to operate upon.

No. 83.

W. W. BILLYARD, ESQ., to SECRETARY FOR LANDS AND WORKS.

*Macquarie-street,
Sydney, 1 April, 1859.*

Re TAWELL.

SIR,

Adverting to my letter of the 30th ultimo, as Crown Solicitor, No. 59-97, in which I was directed by the present Solicitor General to inform you that he did not see upon what points of law his opinion was requested, as the Crown Law Officers in February, 1856, had advised fully on the matter, I now do myself the honor to request that the engrossment of the grant forwarded by me to the Honorable the Colonial Secretary, on the 21st October, 1856, may now be returned to me, in order that I may re-engross it, omitting one of the allotments in Sussex-street, Sydney, while in my letter to you of the 4th December, 1857, I informed you that I had ascertained had been conveyed by Tawell in his lifetime.

It would be satisfactory to me to be in a position to inform my clients by the April mail that this grant was duly completed.

I have, &c.,
WM. W. BILLYARD.

No. 84.

CIVIL CROWN SOLICITOR to UNDER SECRETARY FOR LANDS AND WORKS.

*Civil Crown Solicitor's Office,
Sydney, 10 May, 1859.*

TAWELL'S CASE:

SIR,

In returning to you, herewith, the papers in this case, I have the honor to inform you, that it seems to Mr. Solicitor General Hargrave that the Governor General's Commission, dated 8th September, 1855, extending only to waste or unsettled lands, and only authorizing "the granting and disposing of such lands according to the provisions in that behalf contained," &c., confers no authority on His Excellency to execute the proposed grant to the English donees of Tawell's escheated lands in this Colony.

2. Mr. Solicitor General Hargrave observes, that Mr. Attorney General Plunkett, and Mr. Solicitor General Manning, appear to him to have fully considered the point, so far as it turns on the construction of the words "waste lands," in their opinion on Cooper's estate, May 10th, 1850, and that he fully agrees in Mr. Solicitor General Manning's elaborate reasoning on the point.

3. Mr. Solicitor General Hargrave considers that the 47th and 50th sections of the New South Wales Constitution Act, 18 & 19 Vic., cap. 54, throw considerable doubt on the right of the donees to these escheats.

I have, &c.,
WM. M. BILLYARD,
Civil Crown Solicitor.
(Per J. Jackson.)

It appears to me that the Solicitor General has overlooked the fact that a copy of a particular form of grant has been transmitted to me, with directions under the hand of the Secretary of State, to cause such a grant to be issued under the Great Seal of the Colony, the land being at the time the property of the Crown, not as being a part of the waste land of the Crown, which was to be dealt with according to the provisions of the Land Sales Act, but as property fallen to the Crown by escheat, and which the Queen, by letter from the Secretary of State, has directed to be disposed of in a certain manner. The only difficulty which occurs is, the determination of the boundary of the land to be granted; and I should wish to know whether there is any objection to the course proposed by Mr. Lutwyche, viz., that of submitting the question to the Board of Claims—I mean the question of the boundaries of the land in question—not the right and title to the land.

W. D.

1 August, 1859.

No. 85.

No. 85.

SECRETARY OF STATE to GOVERNOR SIR W. DENISON.

Downing-street,
30 September, 1859.

SIR,

With reference to my predecessor's despatch, No. 45, of the 2nd December last, requesting to be informed when it was probable that the conveyance of the property of the late John Tawell to the trustees of his wife and family would be completed, and expressing a hope that every exertion would be made by the local Government for the settlement of the business, I transmit to you the copy of a letter I have received from Mr. Bevan, and of the reply which I have caused to be addressed to that gentleman.

I have, &c.,
NEWCASTLE.

[Enclosure 1 in No. 85.]

6, Old Jewry,
19 September, 1859.

My Lord Duke,

I have the honor to enclose a copy of a correspondence which took place between the late Secretary of State for the Colonies and myself, and have now respectfully to ask your Grace whether any and what further communication has been received on the subject from the Colony since the 8th December last, the date of Sir Edward B. Lytton's letter.

To His Grace
The Duke of Newcastle.
&c., &c., &c.Remaining, &c.,
WILLIAM BEVAN,
(For Mr. Wm. Tawell and myself.)

[Sub-Enclosure in No. 85.]

6, Old Jewry,
23 November, 1858.

Sir,

In re John Tawell, deceased.

On the 1st of November, 1855, a despatch was sent from the Colonial Office to the Governor of New South Wales, directing a grant of certain property in that Colony to be issued without delay, in favour of Mr. William Tawell and myself, upon trusts for the benefit of the widow and child of the late John Tawell.

This despatch was founded upon the reiterated opinion of Sir A. E. Cockburn and Sir R. Bethell, the then Attorney and Solicitor General, given in the previous month of October, in consequence of the refusal of the Law Officers of Sydney to act upon the opinion originally given by those gentlemen under date of 31st August, 1855; that opinion being, that a grant of the lands therein referred to should be made to my co-trustee and myself, notwithstanding a previous sale of them by Mr. George Cooper Turner, the then Crown Solicitor at Sydney, under an alleged power from us, and which sale the Attorney and Solicitor General declared to be in their opinion unauthorized and inoperative.

Notwithstanding the despatch of 1st November, 1855, and the opinions on which it was founded, the Law Officers at Sydney declined to draw the grant or to be in any way parties to its issue, and the matter was, as we understood, subsequently referred by the Colonial Government to the Commissioners of Claims. Mr. Billyard, the Crown Solicitor and our agent at Sydney, objected however to this course, and has requested that the grant may be prepared and issued as originally ordered by the Secretary of State. Up to the present time we are without any information of the issuing of such a grant, although we feel confident, from the well known energy and attention of Mr. Billyard, that he would have given us the earliest possible intimation had such been the case.

I need scarcely point out, for your consideration, that the delay which has taken place, and the expense which has been incurred, from the opposition in the Colony, have been very deeply felt by Mrs. Tawell and ourselves, and would respectfully ask the favour of your interference to bring this matter now to a close—thirteen years having nearly elapsed since the property escheated, and eleven since it was restored by the Crown, whose gracious intentions on behalf of Mrs. Tawell and her child have been hitherto frustrated, if not defeated.

I have, &c.,
WM. BEVAN,
(For Mr. Wm. Tawell and myself.)The Right Honorable
Sir E. B. Lytton,
&c., &c., &c.*Downing-street, 8 December, 1858.*

Sir,

I am directed by Secretary Sir E. B. Lytton to acknowledge the receipt of your letter of the 23rd ultimo, in which you represent the delay which has occurred in the completion of the grant of the property of the late John Tawell, in New South Wales, to the trustees of Mrs. Tawell and her family.

In reply, I am directed to acquaint you, that, in a despatch dated the 18th March, 1856, the Governor of New South Wales reported that instructions had been given to the Crown Solicitor to prepare the deed of grant for that purpose. No further communication has been received on the subject from the Colony, but Sir E. Lytton will transmit a copy of your present application to Governor Sir William Denison, with the expression of a hope that every exertion may be made by the local Government for the final settlement of this business, and will request a report on the present state of the case.

I am, &c.,
CARNARVON.

[Enclosure 2 in No. 85.]

Downing-street, 3 October, 1859.

Sir,

In reply to your letter of the 19th ultimo, I am directed by the Duke of Newcastle to inform you, that the Governor of New South Wales was written to respecting the property of the late John Tawell, on the 2nd December last, in the terms promised in Lord Carnarvon's letter to you of the 8th of that month, but that no reply has yet been received. A further communication will be addressed to Sir William Denison by the next mail, though it is to be hoped that some report will shortly be received from him on the subject.

William Bevan, Esq.

I am, &c.,
HERMAN MERIVALE.

No. 86.

No. 86.

MINUTE with reference to Tawell's case.

I HAVE gone carefully over all the papers connected with the long outstanding case of the disposal of the property of the murderer John Tawell; and the following short sketch of the circumstances which have led to the present application will enable the Members of the Executive Council to form an opinion of the course which it will be desirable to adopt, in order to bring this vexed question to a close.

Tawell was hanged early in 1845. When he was in prison, he gave over by deed all his property in New South Wales, real and personal, to certain trustees, for the benefit of his wife and children. When, however, these trustees, through their attorney here, commenced dealing with the property, they were stopped by a notification on the part of the Attorney General, that this, having belonged to a felon, had by his conviction and death escheated to the Crown.

A reference was then made by the Governor to the Secretary of State, in order to ascertain the mode in which the Crown wished the property to be dealt with; and in reply, it was notified to him that Her Majesty had been pleased to grant the property of the felon to certain trustees (these being the persons previously appointed by Tawell himself), for the benefit of the widow and the children. These trustees having sent out a power of attorney to certain persons in the Colony, these, or rather one of them, in pursuance of the power vested in him, proceeded to sell some of the land which formed a portion of the property of the felon, and then called upon the Colonial Government to issue a grant to the purchaser.

This demand raised a question as to the power of the Government to issue such a grant. It was said that land escheated to the Crown became by such escheat part of the waste land of the Crown, and must as such be dealt with in accordance with the provisions of the Australian Land Sales Act. On the other hand, it was asserted that these lands, having been already granted by the Crown, were withdrawn from that part of the property of the Crown which the Act in question was intended to deal with; but from this arose another question as to the power of the Governor, under his Commission, to grant, without special reference to Her Majesty, property other than "*Waste Land.*" A reference was made to the Secretary of State on these points; and the opinion of the Law Officers in England was to the effect that the escheated property did not come within the provisions of the Waste Lands Act, but that the Governor had no power, under his Commission, to grant away escheated property. A form of grant was therefore sent out, with directions that this should be properly filled up, and that it should issue under the Great Seal of the Colony to the trustees before alluded to.

So far everything appears to have been plain and simple. Doubts as to the power of the Governor had been entertained and cleared up, and directions were given for the purpose of enabling the Governor to carry into effect the intention of Her Majesty as regarded the widow and children of the felon. Other considerations, however, were now introduced, which complicated the question. The attorney of the trustees had sold a portion of the property by public auction, with the *tacit* approval, at all events, of the Crown Law Officers, before the deed of grant had transferred the property to the trustees; and the purchasers under this sale complained that their interests would be damaged were a grant to issue to the trustees. The fact being that the special attorney of the trustees, by whose authority the sale was made, had turned out to be a rogue, and had absconded with a part, at all events, of the proceeds of the sale.

A further reference was then made to the Secretary of State, containing an opinion on the part of the then Law Officers, that the trustees were not in law or equity entitled to the property, and this having been referred to the Law Officers in England, produced an elaborate opinion from them to the effect that the grant ought to issue to the trustees as directed by Her Majesty, and that the persons who had purchased from the attorney of the trustees should be left to their remedy at law or in equity, by which the trustees might be compelled to fulfil the promises made by their agent.

References have since been made backwards and forwards, but the result in all cases has been the same, and in 1856 directions were given for the preparation of the grant to the trustees; here however a fresh difficulty interposed itself.

The inquisition which determined the title of the Crown to the landed property of the felon gave but vague description of the boundaries, and, in one instance, included in that property a portion of land which had been sold by Tawell previous to the commission of the offence for which he was executed. The Surveyor General reports that the boundaries cannot now be so clearly made out as to render it advisable to give a fresh description upon the authority of the Government, and recommends that the boundaries, as stated in the inquisition, should be inserted in the grant. The attorney for the trustees objects to this upon the ground that the grant, as he is advised, would be void for uncertainty, and the question which the Government is now called upon to decide is, in what form the grant should issue? I mean so far as the description of the property is concerned.

A few remarks will, I trust, serve to clear away much of the complication which has been imported into this case by an attempt to make the Government the judge of questions of law and of equity with which in fact it has nothing to do.

The decision of Her Majesty was, that the grant should issue to the trustees for the benefits of the widow and orphan children of the felon. With the doings of these trustees and of their attorney the Government have no concern. The demand that the Crown should recognize the transactions of these parties or any of them by issuing deeds of grant, as from itself, to purchasers by auction of trust property, is altogether unprecedented, and it

would seem to have been entertained more as covering, in some measure, the negligence of the Law Officers in permitting the sale of what was in strict locality "*Crown property*" by a private individual, than from any idea that such a grant could ever properly issue. The property of the land is in Her Majesty, and it is by her transferred to certain trustees for a specified purpose. Should a grant issue to other than the trustees, they would be altogether debarred from taking any legal steps to vindicate their claim to the land. While the Government would take upon itself to decide, without reference to any legal tribunal, a complicated case involving questions of law and equity.

It appears then to me that the first thing to be done is to carry out the instructions of Her Majesty, and, by placing the property in the legal power of the trustees, to give to them the means of completing the title of the purchasers, and to the latter the power of compelling them to do so by due course of law.

I come now to the question of the mode in which the boundaries of the properties are to be described in the grant, and here I am disposed to agree with the Surveyor General, and to recommend that the description given in the inquisition should be taken.

In point of fact the Government have no other data than that which the inquisition affords upon which to determine the property which has escheated to the Crown. It is not for the Survey Department to alter or modify a document of this kind. Should an error have crept into it, there are probably legal means by which it may be rectified, and as to the assertion that such a grant would be void for uncertainty, that is a matter which it is for the courts of law to decide.

Upon a full consideration then of all the circumstances of the case, I am of opinion that the deed of grant should issue to the trustees in the form decided by the Lords Commissioners of the Treasury, and that the boundaries of the property should be described therein in the terms used in the inquisition.

30 Dec., 1859.

W. DENISON.

No. 87.

MESSRS. NORTON, SON, & BARKER, to COLONIAL SECRETARY.

Sydney, 11 January, 1860.

SIR,

We have the honor to bring under your notice, and to request your early consideration of the letters addressed by us to your predecessor, bearing date respectively the 8th January, 23rd* March, and 28th* July, 1858, written on behalf of Mr. Thomas Ware Smart, respecting the land in William-street, purchased by him from the duly appointed attorney of the trustees of Mrs. Tawell, the widow of John Tawell, deceased:

*Not now traceable.

As Mr. Smart has expended a very large sum of money upon this property, and can take no step to get his title to the property perfected, until he has ascertained the determination of the Government upon the conflicting claims, we beg respectfully to request that you will, as early as possible, inform us of the determination of the Government in the matter.

We have, &c.,
NORTON, SON, & BARKER.

No. 88.

OPINION of Law Officers.

IN re TAWELL'S ESTATE.

WE have perused these papers, and referring to the passage in His Excellency's minute,—“That the Governor has no power, under his Commission, to grant away escheated property,”—we should be glad to be furnished with a copy of such further authority, or new Commission, under which it is supposed that he would have or has now any such authority.

EDWD. WISE,
Attorney General.
JOHN F. HARGRAVES,
Solicitor General.

Crown Law Offices,
Sydney, 23 January, 1860.

No. 89.

MINUTE of the Governor General.

By my Commission I am directed “to do and execute all things that shall belong to my command, and the trust reposed in me according * * * ” to such instructions as are therewith given me, or which may, from time to time, thereafter be given to me, under “our Sign Manual and Signet, or by our order in our Privy Council, or by or through “one of our principal Secretaries of State, &c.” For this latter see despatch, No. 31, dated 19 April, 1851, enclosing opinion of Law Officers and form of grant.

W. D.

23 January, 1860.

No. 90.

No. 90.

OPINION of the Honorable the Attorney General and the Solicitor General in re Tawell's Estate.

REFERRING to the Governor General's present Commission, dated 8th September, 1855, it appears to us that the only legal power to grant any lands of the Colony is conferred upon His Excellency in the following clause:—

“ And we do hereby give and grant to you, the said Sir William Thomas Denison, full power and authority, by and with the advice of the said Executive Council, to grant in our name and on our behalf, *any waste or unsettled lands* in us vested, within our said Colony, which said grants are to be passed and sealed with the Great Seal of our said Colony; and, being entered *upon record* by such public officer or officers as shall be appointed thereunto, shall be effectual in law against us, our heirs, or successors: Provided nevertheless, that in granting or disposing of such lands, you do conform to and observe the provisions in that behalf contained in any law which is or shall be in force within our said Colony, or within any part of our said Colony, for regulating the sale and disposal of such lands.”

This clause, in our opinion, only refers to “waste and unsettled” lands, which those of Tawell are not. (See 5 and 6 Vic., sec. 23, Land Regulations, page 6; and former opinions of the Crown Law Officers here and in England.)

It is suggested, indeed, that His Excellency can grant those escheats to such persons as Her Majesty may direct, through one of the Secretaries of State, and the previous part of His Excellency's said Commission is quoted in support of this view.

Those previous words are as follows:—

“ To do and execute all things that shall belong to your said command, and the trust we have reposed in you according to the *several powers, provisions, and directions granted* or appointed you by *virtue of this Commission*, and of a Bill passed in the year one thousand eight hundred and fifty-four, by the Legislative Council of our said Colony, intituled, “*An Act to confer a Constitution on New South Wales, and to grant a Civil List to Her Majesty*,” as assented to by us in the exercise of the powers vested in us by an Act of Parliament, passed in the Session holden in the eighteenth and nineteenth years of our reign, intituled, “*An Act to enable Her Majesty to assent to a Bill, as amended, of the Legislature of New South Wales, to confer a Constitution on New South Wales, and to grant a Civil List to Her Majesty*,” AND according to such instructions as are herewith given to you, or which may, from time to time hereafter, be given to you, under our Sign Manual and Signet, or by our order in our Privy Council, or by us through one of our Principal Secretaries of State, AND according to such laws as are or shall hereafter be in force in our said Colony of New South Wales and its dependencies aforesaid.”

We have considered the effect of these words, and are clearly of opinion that they do not enlarge the powers to grant land conferred by the Commission in the passage first cited, and that therefore a grant of this escheated land would not be within the powers possessed by His Excellency according to the laws in force in this Colony.

The Constitution Act certainly does not give it to him, and we are not aware of any power vested in the Governor of a Colony by common or statute law which would enable His Excellency to make such grant of escheats as specified in the despatch referred to.

Whether Her Majesty has now the power of conveying those escheats by grant under 47 Geo. III, sec. 2, c. 24 (See Chitty's Prerogative, 234, 236), and in what precise mode this should be exercised, are difficult questions, upon which we do not consider ourselves called upon to give an opinion.

As escheats are a portion of the hereditary revenues of the Crown, we are of opinion that any escheats arising since the new Constitution Act must be dealt with by the Colonial Legislature by virtue of the provisions of that Act (ss. 47-50), which are in the widest terms; whereas in all the Imperial civil list statutes, escheats have been specially reserved. (See 1 Vic., c. 2, 1 Wm. 4, c. 25, and the preceding statutes.)

It may be a question whether these words might not extend to escheats which had already vested in Her Majesty.

We think ourselves bound also to state, that we fully concur in the opinions of the Attorney and Solicitor General of New South Wales, as to the extreme injustice of now granting Tawell's escheats to Mrs. Tawell, and thereby ignoring all the circumstances that took place in the Colony, and especially repudiating the contracts of sale, and covenants by the agents, under the power of attorney, that the grants should be issued to the purchasers, and for further assurance.

That power was executed by the very trustees now claiming the grant, and expressly specified LANDS in New South Wales, which the trustees knew were not at that time formally granted to them.

This power was also expressly assented to by Mrs. Tawell.

EDWARD WISE,
Attorney General.

JOHN F. HARGRAVE,
Solicitor General.

30th January, 1860.

No. 91.

MINUTE of Governor General.

I HAVE read carefully the report of the Law Officers, which, in point of fact, leaves the matter in *statu quo*.

The report commences by analyzing the power given to the Governor by his Commission, and re-stated the admitted objection, that unless duly authorized by Her Majesty, the Governor has no power, under that Commission, to grant any other than *waste land*, but the report then goes on to state, in substance, that the Queen, who issues that Commission, has no power (although the mode in which that power is to be exercised is clearly stated in the Commission) to give instructions to the Governor how to deal with land which, having escheated to the Crown, has become, as stated by the Law Officers, part of Her Majesty's hereditary revenue.

Two questions with regard to hereditary revenue are interpolated into the report, neither of which have any reference to the land in question—

1st.—The right of the Colony to land escheated since the passing of the Constitution Act.

This has nothing to do with the right to the land in question, which fell into the possession of the Crown by escheating, previous to the passing of the Constitution Act.

2nd.—The right of the Colony to escheat, which had vested in Her Majesty previous to the passing of the Constitution Act.

This, again, can have nothing to do with the land in question, Her Majesty having, long previous to the passing of the Constitution Act, granted the land in question to trustees, for the benefit of the widow and children of Tawell.

The whole question, with regard to which the Government seek for information from the Law Officers, is that upon which the report states that these officers do not feel called upon to give an opinion, namely: the precise mode in which the directions of Her Majesty, relative to lands in this Colony, the hereditary property of the Crown, should be carried into effect.

Some action must take place, in order to determine in a proper and a legal manner the right of the present occupants of the land, who have, at present, no title but that of possession; neither can they, until some action is taken by the Crown, get any legal title.

The opinion given by the Law Officers at the termination of their report, of the equity of the claim of the occupants to the land, can go for nothing, unless substantiated by a proper judicial decision.

I think, therefore, that the report ought to be referred back to the Law Officers, with directions to consider and report upon the mode in which the instructions transmitted by Her Majesty may be carried into effect, so as to give to the persons who purchased the land from the attorneys of the trustees an opportunity of applying to a Court of Equity to compel the trustees to fulfil the engagement entered into by their attorney, to give to the purchasers, at public auction, a good title to the land so purchased.

W. DENISON.

The Crown Law Officers will be so good as to reconsider their report, with reference to the special point submitted by His Excellency.—W.F. February 9, 1860.—B.C.

The papers in this case are now returned, with further opinion of the Crown Law Officers thereon. W.E.P. The Principal Under Secretary, B.C.—February 13, 1860.

No. 92.

FURTHER Opinion in re Tawell.

WE have respectfully perused the observations made by His Excellency the Governor General on our opinion, dated the 30th ultimo, and have reconsidered the matter; but remain of opinion that the Governor General's Commission does not in law, either by itself, or when supplemented by the despatch mentioned, give authority to the issue of grants of escheated lands.

We would in the first place respectfully suggest to His Excellency, that the statement at the foot of the 2nd page of His Excellency's observations, that "Her Majesty, previously to the passing of the Constitution Act, had granted the lands in question to trustees for the benefit of the widow and children of Tawell," is wholly a misapprehension, as it is because nothing amounting *in law* to a grant has been executed by the Queen that the present discussion has arisen.

We would also in the second place respectfully point out, that the question for our consideration is not whether the Queen "CAN give instructions to the Governor, &c.," but whether the existing documents, when interpreted by fixed rules of legal construction, and applied to the facts of the case, have clothed him with the legal power to grant the escheat in question; and we adhere to our previously expressed opinion, that His Excellency does not possess such legal power.

In reply to the concluding sentence of His Excellency's observations, we beg respectfully to submit that it is rather the professional duty of Her Majesty's legal advisers in England to report, at least in the first instance, upon such further steps (if any) as will surmount the legal difficulties pointed out in our former opinion.

Precedents

Precedents must have occurred with respect to lands in the other Colonies; and, upon so difficult a question appertaining so peculiarly to the prerogative of the Queen, in her personal capacity, it would be premature for us now to advise. Nor is it possible to give an opinion as to the effect of the Colonial laws upon the subject, until we see upon what further documents we may have to advise.

At present we are clearly of opinion, that, as the matter now stands, nothing can be done by His Excellency to grant the lands in question to any one.

We regret much that His Excellency should think any paragraph of our former opinion unnecessarily interpolated. We can only say, that, as Legal Advisers, we did our best to render our opinion intelligible, when read in connection with the numerous elaborate opinions of previous Crown Law Advisers, who have written on this intricate matter; and that we have applied to the points in doubt our utmost knowledge of constitutional and Colonial law.

EDWARD WISE,
Attorney General.
JOHN F. HARGRAVE,
Solicitor General.

11th February, 1860.

No. 93.

MINUTE of Executive Council.

20 February, 1860.

HIS Excellency the Governor General lays before the Council a despatch from the Right Honorable the Secretary of State for the Colonies, in which, referring to a previous despatch on the subject of the issue of a deed of grant of certain escheated lands in this Colony, formerly the property of John Tawell, a felon, His Grace again directs attention to the question, and encloses the copy of a letter from the trustees of Tawell's widow pressing for a settlement of the matter.

2. Therewith His Excellency also lays before the Council all the correspondence which had previously passed in reference to the case, together with the following additional documents, viz. :—

1st. A minute by His Excellency containing a *precis* of the case, and an expression of his own views as to the mode in which the question should be now dealt with.

2nd. A joint opinion from the Law Officers to whom this minute had been referred.

3rd. A second minute by His Excellency remitting this opinion for reconsideration, and

4th. The further opinion of the Law Officers.

3. For the purposes of this record it is necessary to state that, in the year 1845, Tawell was convicted in England of the crime of murder and hanged, being at the time of his trial and conviction possessed of real and personal property in this Colony.

This property was claimed by the Crown as an escheat, but Her Majesty was subsequently pleased to grant it to certain trustees for the benefit of Tawell's widow and children.

These trustees having sent out a power of attorney to persons in this Colony, some of the lands were sold, and an application was made to the Government to issue a deed of grant to the purchasers.

This application raised two questions :—

1st. As to the power of the Government to issue such a grant, doubts being entertained whether the escheated land had not by such escheat become part of the "Waste Lands" of the Crown, and therefore liable to be dealt with under the provisions of the "Waste Lands Act," and

2nd. If not, whether the Governor had any power, under his Commission, to grant without special reference to Her Majesty any other than "Waste Lands"?

The then Attorney General, Mr. Plunkett, held that the lands must be dealt with as part of the "Waste Lands," and that the Governor had no power to issue a grant, and when again referred to adhered to this opinion. A reference was then made to the Secretary of State on these points, and the opinion of the Law Officers in England was to the effect that the escheated property did not come within the provisions of the Waste Lands Act, but the Governor had no power under his Commission to grant away escheated lands.

A form of grant prepared by them was therefore sent out by the Secretary of State with instructions that this should be properly filled up, and that it should be issued under the Great Seal of the Colony to the trustees in question.

Further references to and fro involving other questions connected with the issue of this deed ensued, but in all cases with a like result; and, in the year 1856, directions were given by the local Government for the preparation of the grant to the trustees.

Here, however, a fresh difficulty was started.

The inquisition which determined the title of the Crown to the landed property of the felon gave but vague descriptions of the boundaries; and, in one instance, included a portion of land which had been sold by Tawell previous to the commission of the offence for which he was executed.

The Surveyor General, who was instructed to prepare fresh descriptions, reported that the boundaries could not now be so clearly made out as to render it advisable to give a fresh description upon the authority of the Government, and recommended that the boundaries stated in the inquisition should be inserted in the deed of grant.

To

To the adoption of this course the attorney for the trustees objected, on the ground that the grant, as he was advised, would be void for uncertainty.

It was then proposed to refer this question of boundaries to the Court of Claims, and in 1857 an instruction to that effect was given; but for some reason, which does not appear, the suggestion was not acted upon, and the matter remained in abeyance until the receipt of the despatch referred to by His Grace the Secretary of State, dated 2nd December, 1858, when the Law Officers were moved to report as to the state of the case.

In May, 1859, the Solicitor General reported, and simply expressed an opinion that the Governor General's Commission confers no authority upon His Excellency to execute the proposed grant of the escheated lands to Tawell's trustees.

His Excellency at the time took exception to this view of the case, and drawing the Solicitor General's attention to the instructions from the Secretary of State, above referred to, for the issue of the deed, asserted the opinion, which he maintains in the minutes now before the Council, viz., that the objection as to the power of the Governor to issue the grant had been got rid of by that instruction, and that the only question to be decided by the Government of this Colony is that of the description of the boundaries of the land to be granted.

In contravention of this view, however, the Law Officers in their joint report upon the first of those minutes, expresses a decided opinion that the Governor General's Commission does not in law, either by itself or supplemented by the instruction contained in the Secretary of State's despatch, give authority to the issue of grants of escheated lands; other questions are raised by them as to the power of the Crown to deal with lands escheated in this Colony, both before and since the passing of the present Constitution Act, and also as to the equity of granting these particular lands to the trustees instead of the purchasers from them, but no allusion is made to the question of boundaries; and when requested to reconsider their opinion, and to advise specifically as to the mode in which Her Majesty's instructions as to the issue of the grant may be carried into effect, they, in their second report, maintain their opinion as to the absence of any power on the part of the Government to cause the issue of the deed; submit that it is rather the province of Her Majesty's Legal Advisers in England to report, at least in the first instance, upon such further steps, if any, as will surmount the legal difficulties pointed out in their former opinion; and finally report that, as the matter now stands, nothing can be done by His Excellency to grant the lands in question to any one.

4. Under these circumstances His Excellency desires the advice of the Council as to the course which it would now be advisable to adopt in the matter.

5. Upon a full and careful consideration of this very complicated case, which is not unfamiliar to them, the greater portion of the papers having been circulated amongst the Members for some time past. The Council experience little hesitation or doubt as to the nature of the advice which they are called upon to offer, in the face of the strongly expressed and reiterated opinion of the present Law Officers, that it is not competent to His Excellency to issue the grant of the escheated lands, they feel that they would not be justified in recommending the adoption of that step; and that it is their duty to advise that His Excellency should now transmit copies of those opinions to the Secretary of State, with a suggestion that the whole question be referred for the further consideration and final decision of the English Crown Law Officers.

No. 94.

GOVERNOR SIR W. DENISON to SECRETARY OF STATE.

Tawell John, respecting escheated property of.

1 March, 1860.

MY LORD DUKE,

I have the honor to acknowledge the receipt of your Grace's despatch, No. 26, dated 30th September, 1859, referring to a previous despatch, No. 45, dated 2nd December, 1858, on the subject of the issue of the deed of grant of the property of the late John Tawell to the trustees of his wife and family, and have to express my regret that the report which I have now to make, with reference to this matter, should be so unsatisfactory.

In a former despatch, No. 49, dated 18th March, 1856, I stated that instructions had been given to the Crown Solicitor to cause the deed of grant to be prepared without delay.

The draft deed was prepared accordingly, but when, as was necessary, it was submitted to the Surveyor General to verify the description of the boundaries of the land to be granted, it was discovered that a portion of the land included in the boundaries given by the inquisition had been sold by Tawell previous to his conviction, and that it was impossible to identify the land by the description given in the inquisition or to survey them afresh.

Upon a further reference, the Surveyor General reported to the same effect, and suggested that the description given in the inquisition should be embodied in the grant. The Crown Solicitor, who was also acting as attorney for the trustees, submitted an opinion from counsel whom he had consulted, that the grant, in such case, would be void from uncertainty. The correspondence between the Crown Solicitor and the Surveyor General was not brought to any satisfactory termination when, a change having been made in the arrangements of the Crown Solicitor's Office, Mr. Billyard, the former Crown Solicitor, resigned, and another gentleman was appointed in his place. This change occasioned, of course,

course, further delay, and when, on the receipt of your Grace's despatches above alluded to, I called for the papers in the case, I found that matters were as I have before described—the attorney for the trustees objecting to the descriptions proposed to be inserted in the grant, and the Surveyor General objecting to the proposal that he should draw up fresh descriptions, as being, in the first place, not in accordance with the inquisition, and in the second, almost impossible on account of the lapse of time, and the incompleteness of the original surveys.

Upon this I went carefully over the whole of the papers, and submitted them to the Executive Council, with a minute explanatory of my views with relation to this property, which were, and are, to the effect that a deed ought to issue to the trustees, and that the description of the property should be that given in the inquisition. The papers and this minute were submitted for the report of the Law Officers; and these gentlemen having, on a document, a copy of which is herewith enclosed, raised several other questions, among which is one as to my competency to cause to be issued a deed of grant of this character, I directed this to be sent back for their reconsideration, especially with reference to one main point, which it appears to me they had omitted to report upon.

In a second report, a copy of which I also forward herewith, these gentlemen alluded to some of the objections taken by me to their former report, but mentioned their opinion as to the absence of any power on my part to cause the issue of the deed in question, and at the same time they expressed a desire that the mode in which the direction of Her Majesty, with regard to the land in question, may be best carried out, should be left for the consideration of the Law Officers in England.

One point is raised by the Law Officers, which it is desirable should be specially noticed, it has reference to the property in the land in question, which, according to the Law Officers, has, under the Constitution Act, passed from the Crown to the Colony; it seems to me, however, notwithstanding the opinion expressed by those gentlemen, that Her Majesty having expressly directed that the property in question should be given to trustees for a special purpose long previous to the passing of the Constitution Act, the property cannot since the date of that gift be considered to belong to the Crown, but to the trustees, and that the *laches* of the Government of the Colony, in not carrying into effect Her Majesty's gracious instructions, ought not to operate so as to deprive the trustees of that to which they have a right, or to enable the Government to act in accordance with its own ideas of equity without having those ideas tested by a competent legal tribunal.

I trust that your Grace will be able to set these various points at rest, and to give me such explicit directions for my guidance as may enable me to settle a question which has been standing over undecided for so many years, and which will become more and more complicated every day by the transfer of liens on the land from the persons who bought it originally from the attorney of the trustees to their heirs or to others.

A specific assurance from the Law Officers in England that a deed of grant, such as that proposed to be issued to the trustees will not act as a bar to the claim in equity, of the persons who purchased the land at a public sale, to have their title to the land made good in accordance with the promise given to them by the attorney of the trustees would, it appears to me, satisfy all parties.

Should, however, the deed in question be a bar to any action in equity as against the trustees, then I think it ought to be so modified or altered as to specially recognize this right on the part of men who, whatever may have been the rascality of the attorney of the trustees, purchased the land at public auction and paid the money for it, which money has been handed over partially or wholly to the trustees.

I have, &c.,
W. DENISON.

No. 95.

SECRETARY OF STATE to GOVERNOR SIR W. DENISON.

Downing-street, 28 March, 1860.

SIR,

I have the honor to enclose, for your information, the accompanying copy of a memorial from Messrs. Oliverson, Lavie, and Peachy, solicitors concerned in the disposal of the property of the late John Tawell, a convict, together with a copy of a letter on the subject from the Treasury to this department, dated the 22nd of March. The Treasury is the proper department for deciding questions of the disposal of property legally forfeited to the Crown. In conformity with their Lordships' wish, I have to request that you will cause a grant of the real property in question to be made to the trustees of Mrs. Tawell, according to the directions of the Law Officers of the Crown.

I have, &c.,
NEWCASTLE.

[Enclosure 1 in No. 95.]

*Frederick's Place, E. C.
2 November, 1859.*

My Lord Duke,

We beg leave to address your Grace on the following subject, and to request the favour of your giving directions for our being furnished with such particulars and information relative thereto, as may be in your power.

In March, 1845, a party named John Tawell was convicted and attainted in this country, and in December, 1847, a grant of his property here was issued by the Crown in favour of Messrs. William Bevan and William Tawell, as trustees for the benefit of his widow and family,

Besides

Besides the property comprised in the before mentioned grant, there was certain real estate in Sydney belonging to the felon, which the Crown also determined to grant to the same trustees, but this latter grant, it appears to have been considered, should be made by the Governor of New South Wales, only a draft thereof, in blank, being prepared in this country.

We collect, however, that up to the present time no such grant, as last mentioned, has in fact been issued by the Governor, it being considered in the Colony that the property should not be granted to Messrs. William Bevan and William Tawell, as the trustees named in the intended grant, but in favour of certain other parties who became the purchasers thereof, in different portions, from such trustees, one of those parties being Mr. Thomas Ware Smart, of Sydney, for whom we are professionally concerned and who is now in this country.

It appears that the Sydney property was sold by auction in the year 1849, under the authority of a Mr. George Cooper Turner, then Civil Crown Solicitor there, in whose favour a power of attorney (approved of by the widow of the felon) had been executed by the before named trustees, and who were, also, trustees of the property under a deed of settlement executed by the felon prior to his conviction. At such sale, Mr. Smart (as already intimated) purchased a portion of the property, and paid the deposit thereon to the auctioneer, and he afterwards paid the balance of the purchase money to the trustees' agent, Mr. Turner, and was let into possession of the property purchased, and subsequently expended a considerable sum in buildings thereon. The trustees also acknowledged the auctioneer's accounts of the sales, and the cash deposits paid by the purchasers.

We are informed, that, at the sale by auction, it was held forth by the auctioneer, with the concurrence of Mr. Turner, the attorney of the trustees, as an inducement to the purchasers, that Her Majesty having been pleased to order grants of the felon's properties to issue to the said trustees, the Colonial Government would, at the request of the attorney, issue the grants of the respective properties to the purchasers, and, accordingly, application was made, on behalf of Mr. Smart, to the Colonial Secretary, with the concurrence of Mr. Turner, for a grant to Mr. Smart direct of the property so purchased by him.

In answer to the application, however, it was ultimately stated, that the Governor's Commission did not enable him to seal letters patent granting the property in question, and, also, that an authority for that purpose would have to be procured from Her Majesty; and, in consequence of the above statement, Mr. Smart took a conveyance of the property from the trustees, by their attorney Mr. Turner, including a covenant to do all necessary acts for procuring the grant direct to Mr. Smart.

Mr. Smart has continued in possession of the property he purchased; but, up to the present time no grant thereof has been issued, and the Trustees have been seeking to repudiate the sale, and re-sell the property, and to obtain such grant in their own favour, instead of to Mr. Smart; their attorney, Mr. Turner, having, as we understand, misappropriated the purchase moneys paid to him on account of the trustees.

We collect that some correspondence has passed between the Governor of New South Wales and the Department over which your Grace presides, respecting the grant of the properties, and that on the materials furnished, instructions have been forwarded to the Governor of New South Wales for the grant to be made out in favour of the trustees.

As, however, before intimated, the grant appears not at present to have been issued, and Mr. Smart cannot but think, that the conclusion arrived at in this country, and in accordance with which the instructions were sent out to the Colony for the grant to be issued in favour of the trustees, must have been formed without all the circumstances of the case having been duly represented.

The object, therefore, of our now troubling your Grace, is to ascertain, if possible, on what ground it was determined the grant was to be issued in favour of the trustees notwithstanding the sales which had been effected by their attorney, and the payment of the purchase money in part to the auctioneer, and the residue to such attorney.

We shall consequently be much obliged by your Grace giving directions for our being furnished with the above information, and we should also be glad if we could be allowed an inspection of the correspondence which has taken place on the subject, as Mr. Smart is desirous, if possible, to get the instructions that were sent out, rescinded, and which he cannot but think, would be the result of his having an opportunity to meet the case as represented on the part of the trustees.

We may mention that a copy of the grant of the felon's property in this country, and also of the draft proposed grant of the property in Sydney, was furnished to us under the authority of the Lords of the Treasury.

We have, &c.,

OLIVERSON, LAVIE, & PEACHEY.

To His Grace

The Duke of Newcastle,
&c., &c., &c.

[Enclosure 2 in No. 95.]

Treasury Chambers,
22 March, 1860.

Sir,

With reference to your letter of the 18th November last, transmitting copy of an application from Messrs. Oliverson and Company, solicitors for Mr. Smart, the purchaser of certain real property, in Sydney, belonging to the late John Tawell, a felon, requesting to be informed of the grounds on which it was determined that a grant of this property should be issued in favour of trustees on behalf of the widow of the convict, and to be allowed to inspect the correspondence which has passed on the subject, I am directed by the Lords Commissioners of Her Majesty's Treasury to acquaint you, that having fully considered the application of Messrs. Oliverson and Co., they must decline to comply with this request. Their Lordships would also suggest, for the consideration of the Duke of Newcastle, that immediate instructions should be given to the authorities at Sydney to complete the grant of the real property in question to the trustees of Mrs. Tawell, according to the directions of the Law Officers of the Crown.

I am, &c.,

GEO. A. HAMILTON.

T. F. Elliot, Esq.,
&c., &c., &c.

[Enclosure 3 in No. 95.]

VICTORIA by the Grace of God of the United Kingdom of Great Britain and Ireland Queen Defender of the Faith To all to whom these presents shall come—Greeting—Whereas by an inquisition taken at
on the day of in the year of our reign by
virtue of

It was found that John Tawell was

And whereas we were graciously pleased on the humble petition of Sarah Tawell the widow of the said John Tawell by our Royal Warrant under our Royal Sign Manual bearing date the thirtieth day of December in the year of our Lord one thousand eight hundred and forty-seven to give and grant certain lands and hereditaments situate in our county of Hertford in that part of our United Kingdom of Great Britain and Ireland called England late of the said John Tawell found to have escheated to us to William Tawell of Earls Colne in our county of Essex in that part of our said United Kingdom called

called England draper and William Bevan of the Old Jewry in our city of London in that part of our said United Kingdom called England upon certain trusts for the benefit of the said Sarah Tawell and the family of the said John Tawell as therein mentioned. And whereas it has been recommended to us by the Commissioners of our Treasury that it will be proper to grant and it is our will and pleasure to grant the said lands and hereditaments in our said Colony of New South Wales so found to have become escheated to us as aforesaid on the like trusts in our said in part recited Royal Warrant of the 30th December 1817. Now know ye that we taking the premises into our royal consideration do hereby give and grant unto the said William Tawell and William Bevan all and singular the hereditaments and premises mentioned in the said inquisition taken in our said Colony of New South Wales and thereby found to have escheated to us with the appurtenances to hold unto and to the use of them the said William Tawell and William Bevan and their heirs upon the like trusts and to and for the like intents and purposes and subject to the same powers and provisos as are mentioned or referred to in our said Royal grant of the 30th day of December 1817 with respect to the lands and hereditaments thereby granted to them the said William Tawell and William Bevan or such of the said trusts of the intents and purposes as are now existing and capable of taking effect. In Witness &c.

Grant of certain lands and hereditaments in New South Wales escheated and devolved to the Crown on the commission of felony by John Tawell to Trustees upon the trusts within mentioned for the benefit of the family of the said John Tawell.

[Enclosure 4 in No. 95.]

VICTORIA by the Grace of God of the United Kingdom of Great Britain and Ireland Queen Defender of the Faith and so forth—To all to whom these presents shall come—Greeting—Whereas by an inquisition taken at Sydney in our territory of New South Wales on the twenty-second day of August in the twelfth year of our reign and in the year of our Lord One thousand eight hundred and forty-eight by virtue of our Commission issued out of and under the seal of our Supreme Court of our said territory bearing date the fifth day of August in the said twelfth year of our reign It was found that John Tawell was on the first day of January One thousand eight hundred and forty-five or at some time afterwards and previous to the day of taking of such inquisition seized or possessed of or otherwise entitled to a good estate of inheritance in fee simple in possession to him and his heirs in socage tenure of in and to amongst other hereditaments All that piece or parcel of land in our county of Cumberland and parish of Alexandria in our said territory bounded on or towards the north by the estate of Mr. Justice Dowling one hundred and eight feet on or towards the east by the same estate thirty-four feet eleven inches on or towards the west by the same estate sixty-six feet ten inches and on or towards the south by William-street one hundred and seventeen feet six inches forming lot two together &c. And also all that allotment or parcel of land in our said territory containing by admeasurement eleven perches situated in the town of Sydney parish of St. James county of Cumberland allotment number eleven of section number forty-one and bounded on the east by the building line of Macquarie-street bearing north three degrees fifteen minutes west thirty-nine links on the north by allotment number twelve bearing west two degrees south one hundred and sixty links on the west by allotment number twenty bearing south one degree east fifty and a quarter links and on the south by allotment number ten bearing east five degrees thirty minutes north one hundred and sixty-two links being part of an allotment leased to Samuel Thornton by His Excellency Sir Thomas Brisbane the then Governor of our said Colony on the thirtieth day of June one thousand eight hundred and twenty-three and afterwards granted to the said John Tawell And also all that piece or parcel of land situate lying and being in the parish of St. Andrew in the town of Sydney aforesaid bounded on the west by Sussex-street twenty-four feet on the north by other part of the land comprised in a certain grant and of which the land now being described forms part sold to John Borne and Matthew Shaw respectively sixty-six feet on the east by a lane reserved for the use of the said John Tawell his heirs and assigns in common with the occupiers of the other parts of the land comprised in the said grant forty-one feet ten inches and on the south by a road leading into George-street also reserved for the use of the said John Tawell his heirs and assigns in common with the occupiers of the other parts of the lands comprised in the said grant And also all that piece or parcel of land or ground containing by admeasurement four acres two roods and thirty-five perches situate and being in the county of Cumberland and parish of Alexandria aforesaid bounded on the east by a private road of twenty feet width by a line south six chains and seven links on the north by land belonging to Mr. James Barker by a fence line east seven chains and eighty-four links on the west by the road leading from the South Head to Sydney seven chains and forty-five links and on the south by land belonging to Mr. Henry Mace by a line west seven chains to the commencing corner Together with the free use and enjoyment of the said private road in common with the owners and occupiers of the adjoining land and also with all houses &c. and which said several hereditaments are hereinafter more particularly described And it was further found that the said lands tenements and hereditaments became and were escheated and forfeited to our use And whereas we were graciously pleased on the humble petition of Sarah Tawell the widow of the said John Tawell by our Royal Warrant under our Royal sign manual bearing date the thirtieth day of December in the year of our Lord eighteen hundred and forty seven to give and grant certain lands and hereditaments situate in the county of Hertford in that part of our United Kingdom of Great Britain and Ireland called England late of the said John Tawell found to have escheated to us to William Tawell of Earls Colne in our county of Essex in that part of our said United Kingdom called England draper and William Bevan of the Old Jewry in our city of London in that part of our said United Kingdom called England upon certain trusts for the benefit of the said Sarah Tawell and the family of the said John Tawell as therein mentioned. And whereas it has been recommended to us by the Commissioners of our Treasury that it will be proper to grant and it is our will and pleasure to grant the said lands and hereditaments in our said Colony of New South Wales so found to have become escheated to us as aforesaid on the like trusts as in our said in part recited Royal Warrant of the thirtieth December one thousand eight hundred and forty seven. Now know ye that we taking the premises into our Royal consideration do hereby with the advice of the Executive Council of the said Colony give and grant unto the said William Tawell and William Bevan and their heirs All and singular the hereditaments and premises mentioned in the said inquisition taken in our said Colony of New South Wales and thereby found to have escheated to us with the appurtenances and which said hereditaments are more particularly described as follows. All that piece or parcel of land in the county of Cumberland and parish of Alexandria and Colony of New South Wales commencing at the north east corner of allotment number fourteen Ambrose Allen's four acres and thirty-four perches and bounded on the north by a line bearing east eighteen degrees south one hundred and eight feet on the east by a line bearing south eighteen degrees west thirty-four feet eleven inches on the south by William-street bearing westerly to Ambrose Allen's eastern boundary line one hundred and seventeen feet six inches and on the west by a line bearing north eighteen degrees east sixty-six feet ten inches which said piece or parcel of land comprises a portion of James Laidley's grant number fifteen of five acres two roods and eight perches as described as number six in the parish of Alexandria in the Government notice dated twenty-ninth September one thousand eight hundred and thirty-one to be called Rosebank. And also all that piece or parcel of land containing by admeasurement eleven perches situated in the

city of Sydney parish of St. James county of Cumberland and Colony of New South Wales commencing at a mark on the building line of Macquarie-street distant three hundred and forty-two links southerly from the building line of Hunter-street which mark is also the north-east corner of allotment number ten of section number four and bounded towards the east by the building line of Macquarie-street being a line bearing north three degrees and fifteen minutes west thirty-nine links towards the north by allotment number twelve being a line bearing west two degrees south one hundred and sixty links towards the west by allotment number twenty being a line bearing south one degree east fifty and a quarter links and towards the south by allotment number ten being a line bearing east five degrees thirty minutes north one hundred and sixty-two links being the land described in the Government notice of twenty-sixth October one thousand eight hundred and thirty-nine as lot eleven of section forty one. And also all that piece or parcel of land situate lying and being in the parish of St. Andrew in the city of Sydney commencing at a mark on the east side of Sussex-street with its intersection with the north side of Walton's-lane which mark is distant sixty-seven feet northerly from the south-west corner of John McLaren's grant of three roods thirteen perches described in the Government charts as number six of section number nine and bounded on the west by Sussex-street being a line bearing north fourteen degrees thirty minutes west twenty-four feet on the north by land of John Byrne and Matthew Shaw being a line bearing easterly sixty-six feet on the east by Victoria-lane bearing southerly forty-one feet ten inches and on the south by Walton's-lane running westerly to Sussex-street. And also all that piece or parcel of land containing by admeasurement four acres two roods and thirty-five perches situate and being in the county of Cumberland parish of Alexandria and Colony of New South Wales commencing at a mark on the South Head New Road being at the distance of five chains ninety links northerly from the southern boundary line of Breakwell's sixty acres grant and bounded on the south by the land of Henry Mace being a line bearing east seven chains on the east by a road twenty feet wide being a line bearing north six chains and seven links on the north by the land of James Barker being a line bearing west seven chains eighty-four links to the South Head New Road and on the west by the South Head New Road seven chains and forty-five links being a portion of the land described in the Government notice of tenth September one thousand eight hundred and thirty number two Alexandria Samuel Breakwell's sixty acres to hold the said several lands and hereditaments unto and to the use of the said William Tawell and William Bevan and their heirs. Upon the like trusts and to and for the like intents and purposes and subject to the same powers and provisos as are mentioned or referred to in our said Royal Warrant of the thirtieth day of December in the year of Our Lord one thousand eight hundred and forty-seven a copy whereof is contained in the schedule hereunder written with respect to the lands and hereditaments thereby granted to them the said William Tawell and William Bevan or such of the said trusts intents and purposes as are now existing and capable of taking effect.

Schedule hereinbefore referred to.

Here follows a copy of the Royal Warrant.

In testimony whereof we have caused this grant to be sealed with the seal of our said territory.

Witness our trusty and well-beloved Sir William Thomas Denison Knight Governor General in and over all Her Majesty's Colonies of New South Wales Tasmania Victoria South Australia and Western Australia and Captain General and Governor-in-Chief of the territory of New South Wales and its Dependencies and Vice-Admiral of the same at Government House Sydney this
day of _____ in the _____ year of our reign and
in the year of Our Lord one thousand eight hundred and sixty

No. 96.

GOVERNOR SIR W. DENISON to SECRETARY OF STATE.

Tawell John, furthe respecting escheated property of.

21 June, 1860.

MY LORD DUKE,

I have the honor to acknowledge the receipt of your Grace's despatch, No. 30, dated 28th March last, with reference to the issue of a grant to the trustees of the late John Tawell, of certain property escheated to the Crown.

In a despatch, No. 27, dated 1st March last, I have given an explanation of the cause of the delay which has taken place in the issue of this grant, and have brought all the circumstances of the case clearly, I hope, under the notice of Her Majesty's Government. Pending the reply to this despatch I do not think that it will be possible for me to take any further action in the matter.

I have, &c.,

W. DENISON.

No. 97.

W. W. BILLYARD, ESQ., to SECRETARY FOR LANDS.

Sydney, 17 July, 1860.

SIR,

Referring to the correspondence that has taken place on the subject of the grant to the trustees of Mrs. Tawell and her child, I do myself the honor to enclose a copy of a letter from the Treasury Chambers, addressed to that lady, which has been forwarded to me by her solicitor in London, and I have to request that the grant referred to may now be completed and handed to me with as little delay as possible, and that the attested copy of the Queen's Warrant referred to in my letter of the 16th April, 1858, may at same time be returned to me.

I have, &c.,

WM. W. BILLYARD.

[Enclosure

[Enclosure in No. 97.]

Treasury Chambers,
22 March, 1860.

Madam,

With reference to your memorial of the 16th January last, I am directed by the Lords Commissioners of Her Majesty's Treasury, to acquaint you that the Secretary of State for the Colonies has been requested to cause instructions to be given to the authorities at Sydney to complete the grant of the real property of your late husband to your trustees.

Mrs. Sarah Tawell,
44, Hatton Garden.

I am, &c.,
W. H. STEPHENSON.

No. 98.

UNDER SECRETARY FOR LANDS to W. W. BILLYARD, ESQ.

Department of Lands,
Sydney, 30 July, 1860.

Sir,

In acknowledging the receipt of your letter of the 17th instant, applying on behalf of Mrs. Tawell and child for the deed of grant for certain lands forming part of the escheated estate of John Tawell, I am directed to inform you, that a reference was some time since made to the Imperial authorities in this matter, and that no action in this respect will be taken here until a reply shall have been received.

I have, &c.,

MICL. FITZPATRICK.

No. 99.

SECRETARY OF STATE to GOVERNOR SIR W. DENISON.

Downing-street,
8 September, 1860.

Sir,

With reference to your despatch, No. 27, of the 1st of March, relating to the grant to trustees, for the benefit of his widow and child, of certain property in New South Wales belonging to the late John Tawell, I am directed by the Secretary of State to transmit to you the copy of a letter from the Treasury, in reply to the communication which was made upon the subject to that Board; and, in accordance with the wish expressed by the Lords Commissioners, I am to instruct you to cause the draft deed of grant which accompanies the letter, after filling up the blanks left for the recital of the proceedings under the inquisition, to be engrossed and perfected under the Public Seal of New South Wales, and to be then delivered to the trustees.

I have, &c.,

C. FORTESCUE.

[Enclosure 1 in No. 99.]

Treasury Chambers,
30 August, 1860.

Sir,

With reference to your letter of 1st June last, I am directed by the Lords Commissioners of Her Majesty's Treasury to transmit to you a copy of a report from their Lordships' solicitor on the subject of the intended grant to trustees of lands in Sydney, New South Wales, the property of the late John Tawell, a felon, for the benefit of his wife and child, together with two drafts which accompanied that report, and their Lordships request that you will move the Duke of Newcastle to cause instructions in conformity therewith to be sent to the Governor of New South Wales.

I am, &c.,

GEORGE HAMILTON,

Sir Frederic Rogers, Bart.,
&c., &c., &c.

[[Enclosure 2 in No. 99.]

Treasury, 22 August, 1860.

Tawell's Escheat of Lands in Sydney.

Sir,

I have considered the despatch of Sir W. Denison, of the 1st March, 1860, transmitted with the letter from the Colonial Office of 1st June instant.

The Governor of New South Wales draws attention to certain difficulties attendant on the perfection of an intended grant to trustees of lands in Australia, the property of the above-named convict, for the benefit of his widow and child, for the immediate completion of which instructions have been sent to the present and former Governors of the Colony.

These relate (1st) to the proper form of the grant, whether it should be made by Her Majesty or the Colonial Governor; and (2ndly) to the proper description of the land to be inserted in the grant.

With regard to the first objection, I have to report that in 1851, the then Law Officers of Her Majesty, Sir John Romilly, the present Master of the Rolls, and Sir Alexander Cockburn, the Lord Chief Justice of England, were expressly consulted as to the objections then mooted by the Law Officers of the Colony, now again raised by their successor, and they wrote an opinion which, with the case, was sent to my Lords in the usual manner.

In pursuance of this opinion a draft warrant from Her Majesty was prepared and approved by the Law Officers of Her Majesty, and a copy thereof was transmitted from the Colonial Office to the then Governor of the Colony, with directions to cause the requisite inquisition to be taken, and the grant thereupon to be perfected and passed under the Great Seal of the Colony, by means of which the Law Officers had advised that Her Majesty's gracious intentions in favour of the widow of the convict and her children would be legally carried into effect.

It

It appears that this inquisition has been duly held, and the title of Her Majesty found to certain lands therein expressly described, but the completion of the grant has been suspended, owing to the claims of certain parties who have purchased the lands under the circumstances alluded to by Sir W. Denison in his last despatch, which claims were considered by the Colonial Law Officers to be preferable to those of the convict's widow and family. These opinions of the Colonial Law Officers, and their reasons for them, were submitted, on two different occasions, to the Attorney and Solicitor General of Her Majesty, who have made elaborate reports upon them, which have been already transmitted to my Lords.

It will be seen that the Law Officers advise that, notwithstanding all that has taken place in regard to the sale of the lands in the Colony, the intended grant should be completed; and "that it will be competent to the purchasers to take steps to enforce their claims, either for a conveyance of the lands, or for repayment of the purchase money, as they may be advised, in a Court of Equity."

Under these circumstances, I would humbly submit that the Colonial Governor (who requests that he may be furnished with *explicit directions* for his guidance, as to the settlement of a question which, as he states, has been standing over undecided for so many years) may be directed forthwith to cause the draft deed of grant sent herewith, after filling up the blanks left for the recital of the proceedings under the inquisition, to be engrossed and perfected under the Great Seal of the Colony, and to be then delivered to the trustees.

The description of the lands intended to be granted should be in the words of the finding of the inquisition, which ought to have described accurately the property of which the felon was owner, from the several deeds of conveyance under which he held it.

It is stated in the Governor's despatch, that it had been discovered that a portion of the land included in the boundaries given by the inquisition had been sold by Tawell previous to his conviction, and this appears to have been one of the reasons why the grant has not been completed.

With regard to this objection, I would observe that the right of the Crown, acquired by the forfeiture and escheat, is absolute on the finding of the inquisition, and that the forfeiture relates back to the period of the commission of the offence, so as to render null and void all grants and conveyances by the felon between the commission of the offence and the conviction. Consequently, if Tawell sold or conveyed the estate in question, after the commission of the murder of which he was convicted, such sale or conveyance would be void as against the Crown and its grantees, and would be no objection to the completion of the grant in the terms of the finding of the inquisition.

I am, &c.,

H. R. REYNOLDS.

P.S.—I transmit herewith, for such information as it may afford, a copy of the proposed deed of grant, which I have received from the solicitor of the trustees, and which is stated to have been prepared by Mr. Billyard in conformity with the Governor's instructions.

No. 100.

COLONIAL SECRETARY to CROWN LAW OFFICERS.

29 December, 1860.

THE Attorney General is familiar with all the circumstances connected with the forfeiture of Tawell's property, the subsequent sale by Mr. Cooper Turner, under power of attorney from Mrs. Tawell's trustees, and the correspondence which has taken place between the Imperial and Colonial Governments, respecting the issue of a deed or deeds, and the parties who purchased at the sale made under the authority of the trustees of Mrs. Tawell.

The Secretary of State has now given an explicit direction to the Governor General to cause a deed to be prepared, granting the property to Mrs. Tawell's trustees, and has ordered that the Great Seal of the Colony of New South Wales shall be affixed to it.

Every Crown Law Officer of the Colony who has advised upon the matter has stated that such deed ought not to issue. The Colonial Secretary therefore hesitates to affix the Great Seal to a deed to be prepared under the directions of the Secretary of State, or to take any steps towards completing a deed which the Colonial law advisers unanimously say should not issue.

The opinion of the Attorney General is now requested upon the point whether, under the instructions to the Governor General, he can claim to have the Great Seal of the Colony affixed to such deed; and generally on the question in whose custody the Seal may be considered constitutionally to be placed. The time would appear to have arrived when a distinct rule should be laid down upon this point. In England the Seal is in the custody of the Lord Chancellor; and history shews that that high officer has refused to put the Great Seal to documents, when requested by the King to do so, unless under the sanction of the Privy Council.

CHARLES COWPER.

Should the Attorney General desire to have the documents in Tawell's case for reference, the Secretary for Lands has them, and will doubtless supply them upon your application.

No. 101.

GOVERNOR SIR W. DENISON to SECRETARY OF STATE.

Tawell Mrs., reporting issue of Deed to Trustees of.

21 January, 1861.

MY LORD DUKE,

I received a despatch, No. 78, dated 8th September, 1860, in reply to mine, No. 27, dated 1st March, relative to the difficulties which had been interposed to the fulfilment of the instructions directing me to execute a deed of grant to certain trustees of land escheated to the Crown, upon the execution of John Tawell.

Upon the receipt of the despatch I directed that a deed should be prepared, in accordance with the instructions therein contained, but objections were raised to my competency to direct the Colonial Secretary to affix the Great Seal of the Colony to such a deed, and

and these were fortified by a written opinion of the Attorney General, a copy of which I 3 January, 1861, enclose.

In reply to this I forwarded to the Colonial Secretary a brief sketch of the state of the case,—explained that the Great Seal having been intrusted to me, I had not the least intention of delegating the trust to others,—and I said that I saw no ground for any further delay in carrying out the Queen's instructions.

In order, however, to avoid unnecessary delay and dispute upon minor points, I caused the attorney of the trustees to prepare a deed in accordance with the form transmitted by the Law Officers, only omitting the expression that I acted, in granting the land, by the advice of the Executive Council.

I caused the descriptions of the property proposed to be granted to be copied precisely from the inquisition, and I then sent the deed, signed by me, to the Colonial Secretary, with directions to affix the Great Seal to it, in the usual manner. To the directions thus given the Colonial Secretary demurred, and gave in a letter (a copy of which I enclose) the reasons which induced him to decline to identify himself, in any way, with the course pointed out by me.

I then wrote to him to the effect, that as the case was one *sui generis*, and which could never be drawn into a precedent, I was not at all desirous of making his refusal to affix the Great Seal to the deed a ground for disturbing the present political arrangements, but that I should come down to his office, and there affix the Great Seal to the deed.

To this he replied, suggesting that the question of title should be referred to the Court of Claims, established under the Act, 5th Wm. IV., No. 21, but I explained to him that, as the land escheated to the Crown formed parts of grants of the title of the owners, of which there was no question, this course could not be followed; and I insisted, notwithstanding the threat of resignation contained in his letter, a copy of which I enclose, in attaching the Great Seal to the deed in question, which I accordingly did, and delivered the same to the attorney of the trustees. Mr. Cowper, in sending me the Great Seal, at the same time tendered his resignation in the accompanying letter, which, as your Grace will see by my reply, I declined to accept.

See printed copies, laid on the Table of the House on the 23rd January, 1861.

I have, &c.,
W. DENISON.

[Papers forwarded to Crown Law Officers.]

No. 102.

OPINION of Crown Law Officer.

In re Tawell's Estate.

HAVING carefully considered this matter as now before me, I can discover no legal or constitutional ground for the Governor General's claim to have the Great Seal of this Colony affixed to the deeds in question, simply on the authority of the instructions for such affixing communicated by the despatch from the Home Government, dated 8th September, 1860.

Referring, in the first place, to the Governor General's instructions, and assuming that this is not a case of "*so urgent and pressing a nature as not to admit of the delay unavoidably incident to the deliberations of the Executive Council*," (the only exception to consulting and advising with the Executive Council suggested in the 12th clause of the Governor General's instructions), I consider that the written Constitutional Law of the Colony affords no ground for (and by implication thus negatives) the existence of any right remaining in the Home Government to direct or control the use of the Great Seal of the Colony.

Assuming also, as the facts appear, that these proposed deeds are wholly unauthorized by (if not in direct opposition to) the advice of the Colonial Responsible Advisers of the Governor General, I am clearly of opinion that compliance with this claim would be, in effect, an abnegation of every principle of English Constitutional Law as applicable to our Colonial Government.

I find also (Chalmer's opinions, p. 546—8, edition 1858) that the Attorney General and Solicitor General of England, in 1736, were of opinion "*that the Great Seal of a Colony must be used for all acts of Government*," unless there be a usage of some private seal of the Governor to the contrary; and it appears to me that the Home Government, by requiring the Great Seal of this Colony to be affixed to these deeds, have thus elected to make such affixing the act of our Colonial Government; and have thereby placed the matter under the control and authority of the Colonial Government (that is) the Governor General by and with the advice of the Executive Council.

With regard to the next question upon which my opinion is asked, viz.:—in whose custody the Great Seal of the Colony may be considered constitutionally to be placed; I apprehend that, in arriving at a satisfactory conclusion on that subject, we have only to apply the principles now firmly established in the constitutional law of the Mother Country.

It will be enough merely to refer to the constitutional history of England under the Plantagenets, Tudors, and Stuarts, to shew the various and great mischiefs arising from the Great Seal of England being used either by the Sovereign himself, or by the Lord Chancellor, or Lord Keeper for the time being, or any other of the then irresponsible advisers of the Sovereign, whether ecclesiastical or lay; because the English nation sufficiently protected itself from these and other constitutional mischiefs by the Revolution of 1688; since

since which date *Responsible Ministers* have been, for all practical purposes, substituted in the place of the *Royal Privy Councillors*.

I apprehend, there can be no doubt, that by the constitutional law of the Mother Country, the Lord Chancellor, since the Revolution of 1688, as a Responsible Minister, has been bound to exercise his own discretion as to the cases in which he will decline, without the authority of the Government in Council, to affix the Great Seal; and I cannot state this constitutional doctrine in better words than Mr. Hallam's, adopted, I believe, from Lord Somer's statement of this doctrine.

"In all such cases the plain rule is that the Lord Chancellor, or Lord Keeper for the time being, should inform the King that he cannot legally set the Great Seal to such matters, as he wishes first to be debated and resolved in Council; which method being observed, the Chancellor is safe and the Council answerable."

Assuming the above to be a fair statement of the English Constitutional Law on this topic, we have now merely to ascertain which of the *Colonial Responsible Ministers* can be most conveniently intrusted with the care, and be responsible for the use, of the Great Seal of the Colony.

On the one hand, it is plain that in the several Departments of *Treasury, Lands, or Public Works*, there is nothing to give to the Ministers controlling those Departments any necessary or *Ministerial* connection with the care or use of the Great Seal of the Colony. I apprehend, therefore, that there can be no ground for committing the Great Seal to these or to any mere Departmental Minister. On the other hand, the Chief Secretary being officially the *Keeper of the Records*, and all his Ministerial duties being of a more extended nature than the duties of any other separate Minister, and the recent Administrative arrangements having, in a great measure, given to the Chief Secretary most of the political duties of the Lord Chancellor, it seems to me there can be no question that the Chief Secretary must be constitutionally considered as the most proper custodian of the Great Seal.

I may remark, in conclusion, that although the Governor General's Commission accompanying the Constitution Act of 1855 directs His Excellency "to keep and use the Great Seal of our said Colony," yet the next words are "for sealing all things whatsoever that shall pass the Great Seal of our said Colony;" and these words, especially when read in connection with the 12th paragraph of His Excellency's instructions, (already referred to in this opinion,) cannot be construed as giving His Excellency any uncontrolled power over the Great Seal of the Colony.

JOHN F. HARGRAVE,
Attorney General.

3 January, 1861.

No. 103.

MINUTE of the Governor General.

THE state of the case with reference to Tawell's property is as follows:—

The present occupiers have no title to the land, neither can they possibly get a title except through Mrs. Tawell, the grantee—no grant can possibly issue to the occupiers from the Crown, as nothing is known of them officially by the Lands Department, or by any other Department of the Government.

It would, therefore, be for the benefit of the occupiers that the grant should issue as soon as possible, for they will then be in a position to compel the trustees to complete their title; or should they prefer coming to some agreement with the trustees, instead of taking legal proceedings, their chance of doing so successfully is the better, should the deed issue at once, for delay adds to the value of the property in question—had this course been adopted some seven or eight years ago it would have been for the benefit of the occupier. The Law Officers of the Colony have, it is true, objected to the issue of a deed of grant to the trustees, but the only alteration suggested by them has been the issue of a grant to the persons who purchased from the attorney of the trustees—a course contrary to all precedent—and one which would be most unjust to the original grantee, who would then be debarred from establishing any claim he might legally or equitably have in the property. It must not be forgotten, that the opinions of the Law Officers do not constitute law, or determine right; this can only be done by the properly constituted Courts of Law—the only mode by which these Courts can have the question of the relative rights of the trustee and occupier of the property brought before them is by the issue of the deed of grant to the trustees.

It appears therefore to me, that all parties are interested in forwarding the issue of the grant deed as directed, and when it is considered that the whole of the facts have been before the Law Officers of the Crown, and that it is in accordance with their advice that the Secretary of State has acted in directing me to issue the grant, I cannot see any ground for further delay in the matter.

I have not said anything as to the opinion of the present Attorney General, with reference to the custody and use of the Great Seal of the Colony, neither is it necessary that I should do so. My commission gives to me authority to keep and use the Great Seal of the Colony, and I am answerable to the Queen for the use I so make of it. Whatever may be Mr. Hargrave's opinion, I have not the most distant intention of delegating the trust to others.

W. D.

No. 104.

*FURTHER Opinion of Crown Law Officer.**In re Tawell's Estate.*

ON referring to my former opinion in this matter, dated 3rd January, I wish to explain that I assumed that the Home and Colonial Governments both wished this matter to proceed in a regular and constitutional manner, and that there was no desire or intention to bring this case within the exceptional powers given to His Excellency.

I had no intention of raising any question as to the undoubted legal right of property in Her Majesty to the Great Seal of the Colony, but if His Excellency resumes such possession in behalf of Her Majesty, such resumption will be on his own responsibility alone, and (as I believe) in opposition to all constitutional principles of government.

I do not see how any of my previous remarks could bear the interpretation that the Colonial Secretary could retain possession of the Great Seal of the Colony, any more than of his office, against the consent of the Governor General.

JOHN F. HARGRAVE,
Attorney General.

18 January, 1861.

1861.

Legislative Assembly.

NEW SOUTH WALES.

ELECTORAL ROLLS.

(NUMBER OF ELECTORS IN THE GOLD FIELDS DISTRICTS FOR 1861.)

Ordered by the Legislative Assembly to be Printed, 27 March, 1861.

RETURN (in continuation of the Return laid before the Legislative Assembly on 18th October, 1860) shewing the estimated number of Electors entitled to vote in the several Gold Fields Electoral Districts, for 1860-1.

ELECTORAL DISTRICT.	ESTIMATED NUMBER OF ELECTORS.
1. Gold Fields South	5,620
2. Gold Fields West	4,000
3. Gold Fields North	1,500

*Colonial Secretary's Office,
Sydney, 27 March, 1861.*

1861.

Legislative Assembly.
NEW SOUTH WALES.

IDENTIFIED STOLEN HORSES.

(RETURN IN REFERENCE TO.)

Ordered by the Legislative Assembly to be Printed, 15 January, 1861.

RETURN to an *Address* of the Honorable the Legislative Assembly of New South Wales, dated 3 October, 1860, praying that His Excellency the Governor General would be pleased to cause to be laid upon the Table of this House,—

“ Copies of all Correspondence between the Colonial Secretary,
“ the Bench of Magistrates at Yass, the Crown Law Officers,
“ and the Chief Commissioner of Police, and of all other letters
“ and papers in the Colonial Secretary’s Office, relative to the
“ Petition of Richard Brett and Richard Heather for Compen-
“ sation for the loss of two Horses.”

(Mr. Macleay.)

SCHEDULE.

NO.	PAGE.
1. Memorandum from the Inspector General of Police, respecting the sale of stolen horses at Yass, with Correspondence from the Yass Bench on the subject. 23 January, 1860 ..	2
2. Secretary to the Crown Law Officers to the Under Secretary, respecting the disposal of the balance upon the sale of the horses and saddles. 10 March, 1860	5
3. Mr. W. Macleay to “The Premier,” requesting that a full inquiry may be made into the matter of the sale of the horses, the property of Richard Brett and Richard Heather, as stated in a Petition presented to the Legislative Assembly. 8 June, 1860	5
4. The Under Secretary to Bench of Magistrates, Yass, requesting a report on the case. 25 June, 1860	5
5. The Under Secretary to Mr. Macleay, informing him of the reference. 25 June, 1860 ..	6
6. Bench, Yass, to the Colonial Secretary, reporting the circumstances under which the horses were disposed of. 5 July, 1860	6
7. Memorandum from the Inspector General of Police on the report of the Yass Bench. 27 July, 1860.. .. .	6
8. Secretary to the Crown Law Officers to the Under Secretary, communicating further remarks of the Attorney General on the case. 7 August, 1860	7
9. Memorandum of the Inspector General of Police, reporting the custom invariably acted upon in cases of stolen horses, &c., taken possession of by the Police. 21 August, 1860	7
10. The Under Secretary to Mr. Macleay, intimating that there do not appear to be any grounds for complying with the application of the Petitioners. 24 August, 1860	7

IDENTIFIED STOLEN HORSES.

No. 1.

MEMORANDUM accompanying Correspondence respecting the Sale of Stolen Horses at Yass.

On the 9th of November last, the letter marked No. 1 was received from the Bench of Magistrates at Yass, representing that a debt of about fifty pounds had accrued for the stabling of five horses in custody of the Police as stolen, three of which had been identified, and requesting the amount in question might be allowed and charged as a quarterly contingency.

2. To this communication I made the reply dated the 10th of November, and received in answer the letter from the Bench, marked No. 2, in acknowledging the receipt of which I pointed out the course to be pursued, namely, that the three horses *claimed* should be handed over to the owners, upon their entering into recognizances to produce the animals at the trial; at the same time distinctly remarking, that they (the owners) were responsible for the livery charge in question.

3. On the 28th of November I received from the Chief Constable of Yass, the letter, with enclosure, marked No. 3. To this, as being a matter entirely resting with the discretion of the Bench, and one arising out of a question upon which my opinion had been distinctly expressed, I directed the Chief Clerk in this office to reply (*vide* copy herewith), as also to the subsequent letter from the Chief Constable of Yass, marked No. 4, wherein he is advised, as regards the disposal of the balance of proceeds of the sale of these three horses, to communicate with the Treasury.

JOHN McLERIE,
Inspector General of Police.

B.C.—Papers herewith returned, 23rd January, 1860.
Crown Law Offices, 1st February, 1860.—B.C.

[Enclosure 1 in No. 1.]

*Police Office, Yass,
3 November, 1859.*

Sir,

The sum of about fifty pounds is claimed by parties in Yass, to whose care certain stolen horses have been entrusted by the Bench, while the charges against the several parties who stole them were under investigation.

2. The sum charged per night per horse is moderate, but the aggregate is, as you may perceive, very considerable, the examination of the prisoners having extended over a long period, on account of the difficulty in procuring the attendance of witnesses, many of whom lived a great distance from Yass.

3. The police here have no means at their disposal for the safe custody of stolen horses or cattle, pending the examination of the suspected persons, and I have now the honor to request your authority for putting these charges in the quarterly contingent account of police expenses.

4. At the same time I have to request your instructions respecting the disposal of the horses in question.

I have, &c.,
(For the Bench),
J. G. DAVIDSON, J.P.

The Inspector General of Police,
Sydney.

[Enclosure 2 in No. 1.]

*Office of Inspector General of Police,
Sydney, 10 November, 1859.*

Gentlemen,

In reply to your letter of the 3rd instant, representing that a sum of about (£50) fifty pounds is claimed by parties in Yass, to whose care certain stolen horses have been entrusted by the Bench, while the charges against the several parties who stole them were under investigation, and also requesting instructions respecting the disposal of the horses in question, I do myself the honor to inform you that, as there is no vote at my disposal out of which this large charge can be defrayed without the authority of the Government, to enable me to apply for this, it will be necessary to furnish some information as to the number of horses for which this expense has been incurred, and how the horses have been disposed of; as, in the event of any of them having been returned to their owners, the cost of their keep, while in charge of the Police, should be defrayed by them.

2. Until these particulars are transmitted I am unable to convey the instructions requested in the last paragraph of your letter.

JNO. McLERIE,
Inspector General of Police.

The Bench of Magistrates,
Yass.

[Enclosure

IDENTIFIED STOLEN HORSES.

[Enclosure 3 in No. 1.]

Court House, Yass,
18 November, 1859.

Sir,

With reference to your letter of the 10th instant, (No. 59-156,) in reply to our communication respecting the repayment of the expenses incurred for the keep of certain horses detained by the Police here, pending the examination of the parties charged with stealing them,—

2. We have now the honor to enclose to you two bills,* one from Mr. Hilly, the innkeeper, shewing the expenses in question on certain four horses, three of which have been identified, and for stealing which parties have been committed; and another from Mr. Davis, shewing the expenses on a certain mare, for stealing which a committal has also taken place.

3. We further beg to say, these first named four horses, unless sold altogether, would not realize their expenses; also, that Mr. Hilly threatens to advertise them for sale for their keep, unless his charges be defrayed.

4. There is yet another point on which I would request your instructions,—How are these horses to be disposed of?

We have, &c.,
J. G. DAVIDSON, J. P.

The Inspector General of Police,
Sydney.

P.S.—We beg further to remark that a black horse, one of the four in Hilly's account, has not yet been claimed. An early reply is requested.—J.G.D.

* 1. Mr. Hilly's bill.....	44	8	0
2. Mr. Davis' do.	7	0	0
	<hr/>		
	£51	8	0

[Enclosure 4 in No. 1.]

Office of Inspector General of Police,
Sydney, 21 November, 1859.

Gentlemen,

In reply to your letter of the 15th instant, forwarding accounts of expenses incurred in the maintenance of certain horses, detained by the Yass Police, pending the examination of the parties charged with stealing them, I do myself the honor to inform you that as regards the three horses which have been identified, their owners are clearly liable for their keep whilst in police custody; and they should be handed over to them, upon their entering (as is the practice in Sydney, in similar cases) into sufficient recognizances to produce these animals at the trial.

2. With respect to the dark bay mare, not identified, the customary notice should be inserted in the *Government Gazette*, apprising the public that she is in the custody of the Yass Police, and if not claimed within a reasonable time, say fourteen days from the date of the notice, will be sold to defray expenses, remitting the balance to the Treasury.

JNO. MLERIE,
Inspector General of Police.

The Bench of Magistrates,
Yass.

[Enclosure 5 in No. 1.]

Yass, 18 November, 1859.

Sir,

I am instructed by Mr. Owen Hilly, of Yass, to inform you that the three horses, now in his possession, and sent to his stables by you for livery, will be advertised and sold to defray expenses (unless the amount due be previously paid) on or after Thursday next, the 24th instant.

I remain, &c.,
JOHN W. DEVEREUX,
Solicitor, Rossi-street, Yass.

Mr. John Enright,
Chief Constable, Yass.

[Enclosure 6 in No. 1.]

Police Office, Yass,
25 November, 1859.

Sir,

I respectfully beg herewith to forward you the enclosed letter of attorney which has been served on me, respecting the three stolen horses, which at present are in livery at Mr. Owen Hilly's, Yass.

2. Two of the three horses—one a bay mare, branded JB near shoulder, and a brown horse, brand RB on near shoulder—have been identified and sworn to by their owners, who reside at the Adclong; the third, a black draught, the particulars I forward for insertion in *Crime Report* on the 19th instant, has not as yet been claimed.

And as I am now placed in rather a peculiar position, "as you will see, sir, by the enclosed,"

I therefore do now what I should have done before (and not to stand the consequence), and that is, to appeal to your honor, trusting that you will relieve me from my present unpleasant position, by sending me instructions how I am to act (both as regards the sale of the horses, and who is to pay the expenses entailed on them) in the matter.

I have, &c.,
JOHN ENRIGHT,
Chief Constable.

The Inspector General of Police,
Sydney.

P.S.—"I feel diffident," knowing how the feeling is.

[Enclosure

IDENTIFIED STOLEN HORSES.

[Enclosure 7 in No. 1.]

Office of Inspector General of Police,
Sydney, 1 December, 1859.

Sir,

In reply to your letter of the 25th ultimo, forwarding a communication from Mr. Devereux, solicitor, of Yass, stating that he had been instructed by Mr. Owen Hilly to inform you that the three horses now in his possession, and sent to his stables by you for livery, will be advertised and sold to defray expenses (unless the amount due be previously paid), on or after Thursday next, the 24th instant, I am directed by the Inspector General of Police to point out to you that this is a matter which you should refer to the local Magistracy.

DE PHILIPSTHAL,
Chief Clerk.

The Chief Constable, Yass.

[Enclosure 8 in No. 1.]

Police Office, Yass,
24 December, 1859.

Sir,

I have the honor to inform you that the amount realized by the sale of the three stolen horses, which were sold for their livery by Mr. Owen Hilly, at Yass, on the 1st and 6th instant, as per bill furnished to me, was

Amount due for livery of the three horses	£59 0 0
Commission and expenses at sale, with advertising	53 8 0
	3 13 6—57 1 6
	<u>£1 18 6</u>

Having laid before the Magistrates the bill of expenses, with the amount realized by the sale, and the balance, £1 18s. 6d., which was paid over to me, they (the Magistrates) directed me to write to you for instructions in this matter, as I require to know who is the person that I am to pay the £1 18s. 6d. over to—the balance of the amount of sale.

Respectfully waiting your commands in the matter,

I have, &c.,
JOHN ENRIGHT,
Chief Constable.

The Inspector General of Police.

[Enclosure 9 in No. 1.]

Office of Inspector General of Police,
Sydney, 29 December, 1859.

Sir,

In reply to the inquiry made in your letter of the 24th instant, I am directed by the Inspector General of Police to inform you that you should communicate with the Secretary to the Treasury, as to the disposal of the sum of £1 18s. 6d., balance of proceeds of sale of three horses (in custody of police, and supposed to be stolen), held at Yass, on the 1st and 6th instant.

DE PHILIPSTHAL,
Chief Clerk.

The Chief Constable, Yass.

[Enclosure 10 in No. 1.]

Police Office, Yass,
9 January, 1860.

Sir,

I respectfully beg to inform you, that on the 3rd of last September, three men (who are now waiting to take their trial at the next Quarter Sessions to be held at Yass) were apprehended, and charged with stealing three horses which were found in their possession.

There being no stables, or any secure accommodation here belonging to the Government, I was obliged to send the horses to livery, for their safe keeping, to Mr. Owen Hilly's, "Squatter's Hotel," Yass.

The retention of the horses at Mr. Hilly's was longer than expected, caused by the great difficulty and delay we had in finding the owners, who reside a distance of 100 to 200 miles from Yass; this, together with procuring the requisite witnesses and in getting them to come forward.

Mr. Hilly finding that the Government would not pay the sum of £53 8s., the amount of his bill, advertised the three horses for sale, consequently they were sold on the 1st and 6th of last month, "December, 1859," and the—

Amount realized by the sale of three stolen horses, as per bill furnished to me, was	£59 0 0
Amount due to Mr. Hilly for livery of the three horses	53 8 0
Commission and expenses at sale, and advertising	3 13 6
	57 1 6
	<u>£1 18 6</u>

Having laid before the Magistrates here the bill of expenses, with the amount realized from the sale, together with the balance, £1 18s. 6d., which had been paid over to me by Mr. Hilly. But in consequence of Mr. Stiles, the Clerk of Petty Sessions, refusing to receive the balance, as it was not a Government sale, and also that the horses were not advertised or sold by order of the Government.

Therefore the Magistrates directed me to write to the Inspector General of Police for his instructions in the matter, requiring to know from him who I was to pay the balance over to, and having done so, the Inspector General in his answer to my letter, has referred me to you, trusting that you will be pleased to direct me, as regards the disposal of this money, and respectfully waiting your commands in this matter,

I have, &c.,
JOHN ENRIGHT,
Chief Constable.

Henry Lane, Esq.

P.S.—I also beg to state that the three saddles, which were found on the horses when the prisoners were apprehended, are still in the possession of the police here; as these are to be sold, you will also please to direct me in this matter too, as to the disposal of the proceeds of sale.—J. E.

Inspector General of Police.—B.C., 21st May, 1860.

IDENTIFIED STOLEN HORSES.

5

No. 2.

SECRETARY TO CROWN LAW OFFICERS to THE UNDER SECRETARY.

*Crown Law Offices,
Sydney, 10 March, 1860.*

SIR,

In returning the enclosed correspondence respecting the sale of stolen horses at Yass, I am directed by Sir W. M. Manning to state, that the only questions seem to be what is to be done with the £1 18s. 6d., balance upon the sale of the three horses, and what is to be done with the saddles? With respect to the £1 18s. 6d., it appears to the Attorney General that the Treasury should not have anything to do with it, nor should the Bench at Yass. It is the balance of a sale not made or authorized by the Government or Police, and which may yet be questioned by the owners of the horses, and would seem either to belong to such owners or to Mr. Hilly, in case he should be made liable for the whole value of the horses sold.

The Attorney General sees no course but to leave it in the hands of the Chief Constable, until the owners substantiate or abandon their claim.

As regards the saddles, the Attorney General is at a loss to know how any question could arise. He presumes they may be wanted as evidence at the trial, and if identified, they should be given up to the owners; if not identified to the satisfaction of the Court trying the case, it may then, the Attorney General thinks, become a question what can be done with them, but at present they should not be sold, but should be safely kept by the Police.

I have, &c.,
W. E. PLUNKETT.

The Inspector General of Police to be informed, and to give directions accordingly.—C.C.
B.C., 13th March.

No. 3.

W. MACLEAY, ESQ., to THE PREMIER.

Sydney, 8 June, 1860.

SIR,

I beg to draw your attention to the enclosed petition of Richard Brett and Richard Heather to the Legislative Assembly, presented by me in the month of February last.

The Petitioners, as you will perceive, appeal to the Assembly for justice in a case in which an officer of the Government is concerned.

As an inquiry by a Committee of the Legislature would necessarily add to the loss of time and money already endured by the petitioners, I have judged it best not to move in this matter in the Assembly, but I hope that the representation which I now make to you will induce the Government, of which you are the head, to take action in the matter.

I have ascertained that the case is not at all overstated in the petition, and though, no doubt, the petitioners might recover the value of the horse from the Chief Constable, by suing him in the District Court at Yass, yet, without the means of procuring legal assistance, the result of an action against an officer of the Court would be at the least doubtful.

I trust, that as the case is one of great hardship and injustice, involving a serious charge against an officer under the control of the Government, that you will cause a full inquiry to be made into the matter.

I have, &c.,
WILLIAM MACLEAY.

No. 4.

THE UNDER SECRETARY to BENCH OF MAGISTRATES, YASS.

*Colonial Secretary's Office,
Sydney, 25 June, 1860.*

GENTLEMEN,

I am directed by the Colonial Secretary to refer to you, for report, the enclosed letters from William Macleay, Esq., M.P., covering a petition from Richard Brett & June, 1860. and Richard Heather respecting the sale by the Police, at Yass, of two horses belonging to them. To be returned.

I have, &c.,
W. ELYARD.

No. 5.

IDENTIFIED STOLEN HORSES.

No. 5.

THE UNDER SECRETARY to WM. MACLEAY, ESQ., M.P.

*Colonial Secretary's Office,
Sydney, 25 June, 1860.*

SIR,

Your letter, under date the 8th instant, on the subject mentioned below, has been duly received and referred for the report of the Bench of Magistrates, Yass.

2. As soon as the necessary information has been obtained, a further communication will be made to you.

I have, &c.,
W. ELYARD,
Under Secretary.

Subject:—Messrs. Brett and Heather's claim for horses sold by the Police at Yass

No. 6.

THE BENCH, YASS, to COLONIAL SECRETARY.

*Police Office, Yass,
5 July, 1860.*

SIR,

In reference to your letter to this Bench of the 25th ultimo No. 60-2506 covering one from William Macleay, Esq., M.P., enclosing a petition from Richard Brett and Richard Heather respecting the sale at Yass of two horses belonging to them.

2. I do myself the honor (being the only Magistrate who sat in the case) to make the following report on the matter, premising my remarks by observing that the Bench have no place at their disposal for the safe custody of stolen horses or cattle, pending examination of the suspected thieves.

3. It appears that prisoners Smart, Doyle, and Baker were in custody here charged with stealing two horses belonging respectively to petitioners Heather and Brett, the horses having been found in the custody of the prisoners. Brett and Heather were subpoenaed to Yass to give evidence, and on their sworn testimony identifying the horses the prisoners were committed for trial at the then ensuing Quarter Sessions.

4. On the committal of the prisoners, petitioners applied for their horses; they were informed by the Court they could have them on paying for their livery and engaging to produce them at the trial; this petitioners declined to do, consequently Mr. Owen Hilly, in whose custody the horses had been placed during the inquiry, advertised the horses in the *Yass Courier*, of November 26th last, to be sold for their livery, unless previously paid for by their owners; they were accordingly sold by Mr. Hilly, and not by the police as petitioners state.

5. Mr. Hilly paid over a small balance (on the sale of these two horses, and a third sold under similar circumstances) to the Chief Constable, who tendered it to the Inspector General of Police; this Officer, however, directed the Chief Constable to retain it in his hands for the present.

I have, &c.,
J. G. DAVIDSON, J.P.

Referred for the Report of the Inspector General of Police, to whom some communication appears to have been made on the subject.—W.E.
B.C., 25th July, 1860.

No. 7.

MEMO.

In returning the letter from the Bench of Magistrates, Yass, dated the 5th instant, reporting upon a petition from Messrs. Brett and Heather for the recovery of two horses, recently sold, without instructions, at Yass, transmitted under B. Cover Minute of yesterday, it will be advisable, for both succinctness and clearness, to forward, for the Chief Secretary's information, the Memorandum on the subject submitted when this matter was last brought under his notice, which embraces and explains the whole question, so far as this department is concerned.

Appended to this is the opinion of Sir Wm. Manning (the then Attorney General), as to the disposal of the balance of proceeds of sale, £1 18s. 6d., which, under the instructions conveyed in your Minute of the 13th of March last, was communicated to the Yass Bench.

1260.
3138.

2. The aspect the question now assumes becomes a matter of legal consideration; I would, therefore, advise that reference be made thereon to the Crown Law Officers.

B. C.—27 July, 1860.

JOHN McLERIE,
Inspector General of Police.

The suggestion of the Inspector General to be acted upon.—C. C. 1st August.

Referred for the opinion of the Crown Law Officers. The Secretary to the Law Officers.
B. C.—2nd August, 1860.

No. 8.

IDENTIFIED STOLEN HORSES.

7

No. 8.

SECRETARY TO THE CROWN LAW OFFICERS to THE UNDER SECRETARY.

Crown Law Offices,
Sydney, 7 August, 1860.

SIR,

In returning the enclosed correspondence respecting sale of stolen horses at Yass, and particularly with reference to the claim made by Messrs. Brett and Heather regarding two of the animals in question, I am directed to state, that the Attorney General does not see what the Government can do in this matter, except by considering the special circumstances of the case. It is true that the petitioners have their legal remedy against the liveryman for the wrongful sale, and that the owners cannot strictly look to the Government for the proceeds of the sale; but it seems to the Attorney General that, as the Government *ought* to provide all proper and necessary means of keeping stolen property during investigations, consequently the cost and expenses of such keep should be borne by the Government, and not by the owner.

Assuming, therefore, that the sale is not disputed by the owners, and that the *bona fide* amount for keep charged by the liveryman would be a just and reasonable charge if the Government had owned the horses, the Attorney General thinks that the charge ought to be repaid to the owners by the Government; but care should be taken in making this payment, that the owners release the Government and the liveryman from the *value* of the horses.

I have, &c.,

W. E. PLUNKETT.

The Inspector General of Police will perhaps report what is customary. I have never had a similar case for my decision. It seems too much that the Government should be called upon to pay such expenses as will find constables and police for looking after the property of private individuals.—C. C.

B. C.—14 August.

No. 9.

MEMO.

The custom invariably acted upon in cases of stolen horses, &c., taken possession of by the police, is to charge against the owners any expense for feed necessarily and unavoidably incurred.

The Government does "provide all proper and necessary means of keeping stolen property during investigations," but this by no means infers that an expense such as that of foraging stolen horses or cattle is to be borne by the public.

Had Messrs. Brett and Heather's horses not been stolen they would, it is presumed, have been at some cost and trouble as regards their keep; and the difference been this amount and the livery charge at the time of the prisoners' committal, when they were offered the animals upon payment of their cost, and engaging to produce them at the time of trial, but which they declined doing, is more than compensated by the benefit they derived from the action of the police, which led to the recovery of their property. The police are maintained by a vote from the General Revenue, to which all contribute alike, and so far have an equal demand for police assistance and protection; but in cases of theft, &c., &c., the sufferer necessarily calls for and receives more than equal aid from the police, and is, therefore, to such extent, benefited by his contribution to the vote alluded to beyond his fellows. This reasoning strictly applies to the question at issue, and, in my opinion, nullifies all claim to recovery or compensation on the part of Messrs. Brett and Heather as against the Government, more especially when it was by their own act, in refusing to release their horses in the first instance (when the livery charge was small), that the very much greater charge was incurred.

It is, therefore, respectfully recommended that Messrs. Brett and Heather's application be not entertained.—B. C.—August 21.

3576—Police. Papers herewith returned.

JNO. M'LERIE,
Inspector General of Police.

No. 10.

THE UNDER SECRETARY to MR. MACLEAY.

Colonial Secretary's Office,
Sydney, 24 August, 1860.

SIR,

Referring to my letter of the 25th June last, respecting the petition submitted by you from Richard Brett and Richard Heather, praying for compensation in respect to two horses that were stolen from them and sold at Yass, I am directed by the Colonial Secretary to inform you, that inquiry having been made into the circumstances of the case, it is regretted that there do not appear to be any grounds for complying with the application of the petitioners.

I have, &c.,

W. ELYARD.

1861.

Legislative Assembly.
NEW SOUTH WALES.

REPRIEVE OF "SWAN."
(RETURN IN REFERENCE TO.)

Ordered by the Legislative Assembly to be Printed, 14 February, 1861.

RETURN to an *Address* of the Honorable the Legislative Assembly of New South Wales, dated 16 January, 1861, praying that His Excellency the Governor General would be pleased to cause to be laid upon the Table of this House,—

“ A Return of all Correspondence that has passed between the
“ Executive Government and their Honors the Judges, relative
“ to the Reprieve of ‘Swan,’ convicted of Murder; together
“ with all Minutes of the Executive thereon.”

(Mr. Buchanan.)

SCHEDULE.

NO.		PAGE.
1.	Police Magistrate, Maitland, to the Colonial Secretary, forwarding a statement made by George Swan, a prisoner in the Maitland Gaol, under sentence of death. 6 October, 1860	2
2.	The Under Secretary to Mr. Justice Milford, for his remarks on Swan's statement. 9 October, 1860	3
3.	Mr. Justice Milford to the Colonial Secretary, in reply. 10 October, 1860	3
4.	Extract of Minute of the Executive Council, advising that the Police Magistrate of Maitland should inquire and report on Swan's statement. 11 October, 1860	4
5.	The Under Secretary to Police Magistrate, Maitland, requesting his report on the statement made by Swan. 11 October, 1860	4
6.	Police Magistrate, Maitland, to The Under Secretary, telegram that he is making inquiry into the statement. 15 October, 1860	5
7.	Police Magistrate, Maitland, to The Under Secretary, in continuation. 15 October, 1860	5
8.	Police Magistrate, Maitland, to the Colonial Secretary, reporting on the statement of Swan. 16 October, 1860	5
9.	Minute of the Executive Council, advising that the capital sentence in the case of George Swan be commuted to imprisonment for life, with hard labor. 17 October, 1860	7
10.	Police Magistrate, Maitland, to The Under Secretary, telegram respecting Swan. 20 October, 1860	8
11.	The Under Secretary to the Sheriff, apprising him of the commutation of Swan's sentence. 22 October, 1860	8
12.	The Under Secretary to Mr. Justice Milford, apprising him of the commutation of Swan's sentence. 22 October, 1860	8
13.	The Sheriff to the Gaoler of East Maitland, telegram that Swan is reprieved. 22 October, 1860	8
14.	The Sheriff to the Gaoler, East Maitland, forwarding copy of The Under Secretary's letter of the 22nd October, 1860 (No. 11). 22 October, 1860	8
15.	The Sheriff to The Under Secretary, acknowledging receipt of letter of the 22nd October (No. 11). 24 October, 1860	9
16.	George Swan, Petition to the Governor General, praying that Mr. Fitzgerald, of Lochinvar, may be referred to for information respecting his case. 10 December, 1860	9
17.	The Under Secretary to Police Magistrate, Maitland, to inquire and report upon Swan's Petition. 5 January, 1861	11
18.	Police Magistrate, Maitland, to The Under Secretary, in reply. 26 January, 1861	11

REPRIEVE OF "SWAN."

No. 1.

VISITING JUSTICE OF MAITLAND GAOL to COLONIAL SECRETARY.

H. M. Gaol, Maitland,
6 October, 1860.

SIR,

I hasten to forward to you the enclosed document which George Swan, a prisoner in this Gaol under sentence of Death, requests to be laid before the Honorable the Executive Council.

I have, &c.,
EDW. D. DAY,
Visiting Justice.

[Enclosure in No. 1.]

To the Honorable Members of the Executive Council.

Gentlemen:—

Having received notice of the decision arrived at by you, I beg to lay before your Honors a short statement of facts that could have been proved as evidence in my favor, had the witnesses whom I requested to be subpoenaed been called in my defence. These facts were submitted in writing to the barrister assigned to me, Mr. Windeyer, but from some cause or other not one of them was brought forward to prove my innocence of the crime of which I have been found guilty. None of those witnesses were called, and, consequently, I think I can give such a statement to your Honors as will place my case in a different light. On the 8th October, 1856, I was brought from Singleton to Maitland Gaol, and whilst on the road in the mail we stopped at Mark Turner's public-house, Lochinvar. I called him to me, and then handed to him five ten-pound notes, and requested him to let me have a sovereign or two half-sovereigns to take with me, and to keep the rest till he saw me again—to give it to no other person. He gave me two half-sovereigns, and said he would comply with my request. I had no witnesses to the fact of giving him the money, as it was not likely I should allow the constable to see me give it to him. After that I was in custody three and a half years. When released I went at once to Lochinvar to see him and ask him for the money, but he was not at home. I went several times afterwards but saw only his wife, who if called on, as she should have been (being subpoenaed), could have proved that I had thus frequently gone to see him. A constable of Lochinvar named Leonard, whom I requested to have subpoenaed, could also prove it. Whilst in Maitland waiting for Turner's return home, I stated to Conn (the person with whom I boarded), and to a great number of other persons, who give evidence of the fact that Turner owed me forty-nine pounds, and that when I received the money from him I should pay all I owed. Mark Turner came into Maitland on the 17th of April to get his license renewed, and Conn told me that evening that he was in the town. I said that I would go and see him at once, but Conn told me that Turner and his brother had left for home. Next morning he told me that I ought to go and see Turner. I said I would go at once, and that morning, the 18th April, I went. I started from Maitland between seven and eight in the morning, and passed through the toll-bar a few minutes after eight. I went direct to Lochinvar and saw Turner. I asked him for the money he had of mine, mentioning the forty-nine pounds. He said, "Do you think I am a fool, or mad? Money is money these days; forty-nine pounds is not to be got every day. If you had asked for half of it, it would have been something like the thing." After a deal of conversation, during which I told him that I was sitting with my feet under another man's table without the means to pay him, and also telling him that I had borrowed money from several persons, telling them that he had forty-nine pounds belonging to me, and that when he came home from the country I should get it and pay them all, he consented to give me twenty pounds. As soon as I had got the money in my hand I thought that by threatening him I could get him to pay me the balance; so I said that if he did not give it me all I would expose him and tell Mr. Day, the Magistrate in Maitland, that he had feloniously received money from a prisoner whilst on his way to gaol, and that if it cost me the whole of what I had already got I would try to get his license taken away. He said I might do as I liked about that, I could not hurt him. He told me he should deny ever having received any money from me, or paying me any. When, therefore, the constable called on him next day and asked him if he gave me any money, or if he knew me, he denied at once all knowledge of me and of any money received or paid, and in this denial he has persisted to the present time; thus, for the paltry purpose of saving his license and trade, giving over a fellow-creature to an unmerited punishment, a punishment that can never be recalled—death! Had Mr. Day, during my first examination, listened to me as I requested him to do, I could have proved I was at Lochinvar; and could have proved, by many witnesses, that I had on that day, the 18th April, twenty one-pound notes, the fact being then so recent as to have been freshly in their memories, which could not have been expected to be the case after a lapse of six months. I could have proved, therefore, that the twenty pounds I had was not in any way identical with the sum of which the murdered man was robbed. I could then have given evidence of changing and paying away nineteen of the notes, as I procured silver for several of them, in order to be prepared with the exact small sums which I wished to repay to those from whom I had borrowed them. But Mr. Day *would not* listen to me, but ordered me to be removed. If, as I wished to do, I had then proved, as I most clearly could, that I was at Lochinvar on that day, and the business on which I went, I should have proved that it could not have been me who committed a murder at Stoney Creek, and I should never have been committed for trial. I subpoenaed Mr. Day to prove that I had requested him to listen to me, saying that I could clearly establish my innocence of the charge; but he was not called on by my barrister, though I particularly requested Mr. Thompson, the solicitor in the case, to have him called. In this same way the whole of the evidence in my favor was kept back. If, when examined before Mr. Day, Mr. Fitzgerald, innkeeper, of Lochinvar, had been called, he could then have proved that I was in his house at Lochinvar on the day of the murder, as I could have mentioned several occurrences that took place in his house at the time; but he was never called as a witness in my favor by Mr. Day, or by my barrister, Mr. Windeyer, at my trial, though he was subpoenaed. With regard to the evidence given by John Perry, that I had stated to him Bayliss was a witness to my giving

giving Turner the money, this is altogether untrue, the words I used when speaking to Perry were, that "Turner was serving me as Bayliss served Pat Mason," meaning that he was trying to defraud me of the money. I would also call your attention to the way in which that money was paid away. Had I committed a murder to obtain it, I should have been most likely to have left Maitland and my creditors behind me; I should not have paid away money so hardly earned in so quick and easy a way. Is it likely that a man who had committed a murder and robbery, within so short a distance of Maitland, would have returned there and immediately commenced paying debts he had contracted—debts for which no sort of security was held, and for payment of which no one pressed me. I knew nothing of any murder or robbery, and therefore acted straightforwardly and honestly with my creditors, as I was paying away money my own lawful property. I was innocent of any crime, and therefore my conduct and proceedings were clear and open. There was no disguise or concealment about me. I solemnly protest that I am innocent of this crime, and if Mr. Day had listened to me when I was first brought before the Bench, I am fully convinced my innocence would have been established. I should wish your Honors to review my case, and take into consideration the statements I have here made, and also the fact that of all the thirty-six witnesses against me, not one could prove that they ever saw me with or near the murdered man; one of them, whose evidence I would particularly press upon your Honors' attention, expressly stated that he saw a person in the cart riding with John Barton that morning, on the direct road, and not far from the spot where deceased was found, and I was not that man. It is a fearful thing to condemn an innocent man to such a dreadful penalty on mere circumstantial evidence, when if, afterwards, the real culprit is discovered, that punishment cannot be recalled! That the real murderer will be found I have every confidence. That my innocence will thus be clearly proved I am certain; for God seldom suffers the guilty to pass from the world with their guilt concealed. If I suffer, conscience will convict that man of a double murder, and enforce confession. Do not then take away an innocent man's life without pausing to consider whether prejudice might not have had more hand in his conviction than evidence! I am innocent! Do not let me perish for the guilty! What I have here stated, I solemnly declare to be the truth! I was not near the deceased nor the place where he was found; and if I die I shall be one more instance of the fact that man often arrives at false conclusions when judging from mere circumstantial evidence.

I now throw myself on your mercy, trusting that you will favorably review my case, and extend that mercy to me, so that if afterwards the real culprit should be discovered, I may be once more a free man.

I am,

Your Honors' most humble servant,

GEORGE SWAN.

No. 2.

THE UNDER SECRETARY to MR. JUSTICE MILFORD.

*Colonial Secretary's Office,
Sydney, 9 October, 1860.*

SIR,

I am directed by the Colonial Secretary to request the favor of your Honor's remarks on the accompanying statement, forwarded by the Visiting Justice of Maitland Gaol from the prisoner named in the margin, who has been convicted of murder, and is George Swan, under orders of execution on the 24th instant.

I have, &c.,

W. ELYARD.

No. 3.

MR. JUSTICE MILFORD to COLONIAL SECRETARY.

*Supreme Court House,
Sydney, 10 October, 1860.*

SIR,

Before the receipt of your letter of the 9th instant, relating to the conviction of G. Swan, for murder, and containing a statement made by him, I was anxious (the case resting only on circumstantial evidence) to obtain the opinions of Sir John Dickinson and Mr. Justice Wise, as to the effect of that evidence on their minds. They have been so good as to read the notes of the trial, and think that though the case "is one of strong suspicion, there remains a possibility, as it appears in the evidence, that the prisoner may not be guilty. We think the circumstances detailed in evidence induce a very strong suspicion that Swan was guilty of the murder; but having reference to the rule of law, that if there is a reasonable doubt, the accused ought to have the benefit of it—they think that the case is not a safe one for an execution. It is considered generally, in cases of circumstantial nature, a matter of great importance that the accused was the person last seen in company with the deceased; here the accused was not that person, and according to the evidence it seems another person was, of whom there is no further account. Again, they think that the half-crown, &c., and the bag which the accused was sworn to have, was not sufficiently identified as being the money and bag of the deceased; they think, moreover, that it was not conclusively proved, that on the 18th of April the prisoner was armed with a pistol. My colleagues think that the guilt of the accused might be fairly presumed, if it was distinctly shewn that the accused was possessed on the 18th of May of the money of the deceased, but the money which was found on the accused can only be presumed to have been that of the deceased; they think it therefore dangerous to presume the guilt of the accused from facts of which there is no direct evidence, and as no witness swore directly as to the identity of the money, or that the accused was armed on the day of the murder with a pistol, or was the man last seen with the deceased, that it would be safe not to execute the accused." The above is the opinion of their Honors. Under these circumstances, though I might not, perhaps, without having obtained the opinions of their Honors, have

have thought it my duty to interfere; yet, having done so, and feeling the force of them as modifying my own, I do not think the prisoner ought to be executed. With regard to the statement of Swan, it is desirable that inquiries should be made as to the facts alleged by him, and into a fact not mentioned by him, but which was stated on the trial, that a young man named M'Dougal gave him the pistol, on the 24th of March, to get balls cast for them. If the Government should think that Swan should not be executed, yet these inquiries are desirable, for fixing the extent of such secondary punishment, if any, as it may be thought proper to inflict. A most important question is as to the character of Mark Turner, whether it is at all likely that he should have acted as represented by Swan, and whether Fitzgerald knows anything of Swan's being at Lochinvar on the day the murder was committed. I heard casually that the prisoner had, after the trial, expressed himself dissatisfied with the manner in which he had been defended. He had hesitated some time before he would accept the assistance of Counsel. He appeared to be a very intelligent man, and able to conduct his own defence. Of course I do not know what passed between him and Mr. Windeyer, or his attorney, Mr. Thompson; but so far as I saw, every thing was done for the prisoner that could be done.

I have, &c.,
SAML. FREDK. MILFORD.

No. 4.

EXTRACT from Minute No. 60-43. 11 October, 1860.

Present—Full Council.

REFERRING to the proceedings at the last meeting with respect to the capital conviction of George Swan for the murder of John Barton, His Excellency the Governor General lays before the Council a Petition from the unfortunate prisoner, urging that the crime was not conclusively established against him on his trial, inasmuch as it was not shewn that he was the person last seen in the company of the murdered man; and alleging that certain witnesses, who could have supported the statements advanced by him in proof of his innocence, were not examined on the trial.

Therewith His Excellency also lays before the Council a further report from Mr. Justice Milford, to whom this petition has been referred, from which it appears that His Honor has thought it necessary to take the opinion of the other Judges in reference to the case, and that upon a perusal of the notes taken by him of the evidence, their Honors, proceeding upon the practice of the Criminal Courts in England in the like cases, have arrived at the conclusion that it would not be safe to carry out the capital sentence; the chain of evidence, which, though strong, is purely circumstantial, being incomplete, not only in the essential particular adverted to by the prisoner, but in two other material links.

Mr. Justice Milford, moreover, considers that it would be desirable to make inquiries as to the correctness of the statements made by Swan, with reference to the evidence in his favor not taken at the trial, and more especially with respect to the evidence which could have been afforded by the publican at Lochinvar, named Fitzgerald, and a constable named Leonard. His Honor further recommends that inquiry should be made into the character of the man Mark Turner referred to by Swan.

Under the circumstances the Council, without hesitation, concur in the propriety of instituting these inquiries, and advise that the several documents be at once referred to the Police Magistrate at Maitland for this purpose, with an instruction to report the result with as little delay as possible.

As the day fixed for the execution of the sentence will not arrive till the 24th instant, and ample time will therefore be allowed for making these inquiries, and receiving the reply, the Council defer their decision with respect to the propriety of acting on the opinion expressed by the Judges until they have obtained Mr. Day's report.

EDWARD C. MEREWETHER,
Clerk of the Council.

No. 5.

THE UNDER SECRETARY to VISITING JUSTICE OF MAITLAND GAOL.

*Colonial Secretary's Office,
Sydney, 11 October, 1860.*

SIR,

George Swan.

In acknowledging the receipt of your letter of the 6th instant, I am directed to return herewith the statement therein submitted, from the prisoner named in the margin, confined in the Maitland Gaol under sentence of death, and to request the favor of your report thereon, especially with reference to the statement respecting Mr. Fitzgerald, the innkeeper of Lochinvar, and Constable Leonard.

2. I am desired also to request that you will report at the same time upon the characters of Mark Turner and Swan, respectively, as far as you have any knowledge of them.

3. The Colonial Secretary instructs me likewise to inclose for your perusal a communication from Mr. Justice Milford reporting on Swan's statement.

I have, &c.,
W. ELYARD.

No. 6.

REPRIEVE OF "SWAN."

5

No. 6.

POLICE MAGISTRATE, MAITLAND, to THE UNDER SECRETARY.

O. H. M. S.

New South Wales Electric Telegraph.—Sydney Station.

Received the following Message from W. Maitland Station, at 10h. 20m., 15th October, 1860:—

I am making inquiries to enable me to make report on the subject of your letter of the Eleventh (11th); I shall send the report by to-morrow afternoon's boat, so as to reach you on Wednesday, if permitted.

No. 7.

POLICE MAGISTRATE, MAITLAND, to THE UNDER SECRETARY.

O. H. M. S.

New South Wales Electric Telegraph.—Sydney Station.

Received the following Message from W. Maitland Station, at 1h. 7m., 15th October, 1860:—

There will be no boat this afternoon; I regret to say, therefore, that my report cannot reach you before Wednesday morning.

No. 8.

POLICE MAGISTRATE, MAITLAND, to COLONIAL SECRETARY.

*Court House, Maitland,
16 October, 1860.*

SIR,

I have the honor to report, as directed in your letter of the 11th of this month, on the statement of the prisoner named in the margin, that Mr. Fitzgerald tells me he was summoned as a witness for Swan at his trial, but not examined. He had then an opportunity of observing Swan carefully, and he did so. The result of his observation was then, and is now, that, to his knowledge, he had never in his life seen Swan in his house, nor had he ever spoken to him.

2. Constable Leonard says:—"I did not see Swan at Lochinvar on the day Barton was murdered. Of this I am sure. I saw him (Swan) at Lochinvar on the day he was discharged from the Maitland Circuit Court, in March last (the 16th by the Gaoler's Memorandum), on his own recognizance, to appear when called upon. I was in the Court when he was discharged. I saw Swan on the day named, about 10 o'clock at night, going towards Fitzgerald's public-house. I cannot say whether he entered the house or not. This matter is impressed upon my memory by Swan's telling me he came to Lochinvar to get a number of signatures to a petition to save the life of Jones, convicted of the murder of Mrs. Bailey, and that he would spend one hundred pounds to effect that object." Swan shewed a desire not to be recognised by Leonard, but he knew him at once, and warned him to leave Lochinvar. Swan, in his statement, says, "I requested to have Leonard subpoenaed." In reference to this, I beg to enclose the names of the witnesses Swan wished to have subpoenaed, in his own handwriting. Leonard's name is not in this list. I am quite positive Swan never named Leonard to me before his trial, and I only knew of Fitzgerald's name from its being inserted in the list when I issued the subpoenas.

3. I have no knowledge of Swan's character personally, except while he was confined in the Gaol, from 4th August, 1859, until discharged, on his own recognizance, on the 16th March, 1860; and, afterwards, from the time of his apprehension on the charge of murder up to the present time. Of his conduct in the Gaol, I have no unfavorable report to make.

4. I have known Mark Turner for years—upwards of twenty. For the first half of that period he was a respectable tradesman in this district; and, for the last ten years, as a licensed publican, his character has, I may say, passed year after year in review before the Bench at the Annual Licensing Meeting. I never had occasion to oppose the renewal of his license, nor has any one else done so—nor have I ever heard his character for honesty in any way impeached—and I believe him to be incapable of acting as Swan has represented. I think it is proved that he has not so acted by Swan himself, who, so far from complaining, says, on the very day on which he now says he (Turner) acted in the manner represented, to Perry, that "Turner is an honorable man;" and, to Conn, "that he had not got all his money from Turner, but only a part, and that he was to go out for the rest some day."

5. Swan says, in his statement, that he requested me to allow him to call Fitzgerald as a witness on the first day of his examination, but that I would not listen to him; and, in a conversation with him (since I forwarded his statement), commenced by himself, he, in one of my visits of inspection to the Gaol, repeated the same assertion, and said that Constable

Harris,

Harris, who was standing beside him at the time, could prove that he made this request. Having no recollection of such a request, I questioned Constable Harris on the subject, and he (Harris) says, "I cannot say whether Swan asked to be allowed to call witnesses on the first day, but I recollect him saying so on the day he was committed." I would not assert positively that no such request was made—I cannot recollect it if it was—but I must necessarily have refused to comply with it, until the evidence for the prosecution was closed; and I find it reported in the *Maitland Mercury*, of the 24th April last, on leaving the bar Swan said he "could prove his innocence."

6. I beg to refer to the statement of the accused, also reported in the same paper, of the 12th May, in the very words of the prisoner. It is to this effect:—"All I have to say is simply this—If you had listened to me the first day, when I asked you so to do, I would then have given you proof positive as to my innocence, but, as it is, I defer it to a future time, fearing that I should be obstructed from so doing by the manner in which I have already been led through the town."

7. His Honor Mr. Justice Milford observes that there is proof that Swan was not the last man seen in company with the deceased—and Swan, in his statement, makes the same assertion. I beg, with great respect, to state I can see no proof of this in the printed evidence. Cook is the witness who last saw deceased in company with any one. He does not say Swan was not the man; and, although it is of course now useless to notice it, you will perceive by Cook's evidence on the preliminary examination, as reported by the local paper, that the man who was on the cart with Barton was, in one respect at least, like Swan. "He had black whiskers. Could not swear he had mustaches. The whiskers were very much like those worn by the prisoner."

8. In his Honor's letter it is said (although not mentioned in Swan's statement), "it was stated at the trial that a young man named M'Dougall gave Swan the pistols on the 24th March." This, in the *Mercury* report, I find was mentioned by Mr. Windeyer, in his address to the jury, who then spoke of two young men of that name. This must be incorrect. Swan was discharged, on his own recognizances, on the 16th March, at, I presume, the close of the Criminal Sittings. William M'Dougall, who was to be tried at the same Assizes, had previously absconded, having been on bail, and has not since been heard of. He, consequently, could not have given Swan the pistols on the 24th, nor could the two brothers have done so either. Did His Honor take down the Christian name, if one M'Dougall only was mentioned? Mr. Ward, the reporter of the *Mercury*, has mentioned to me that the name of Mr. M'Dougall was introduced in the cross-examination of the lad Gunter. He was asked, "Do you know that a man named M'Dougall had pistols?" He answered, "I don't know the man."

9. It is very certain that Swan did not know Barton previous to his discharge from Gaol on the 16th March. But it is not very improbable that Barton's custom of travelling with money on his person was made known to him before that day by a man named Joyce, who had been for some time in the service of the brothers Barton, and was in the habit of travelling with them on their journeys. Joyce was committed, on the 15th November, 1859, for trial, for embezzling money belonging to the Bartons, and was heard at the time to say he would be revenged. He was tried on the 13th February, 1860, and was then discharged—the jury not agreeing. Between these dates Swan and Joyce were fellow-prisoners. Mrs. Barton says she thinks she saw Swan about the wharves at Morpeth, where the Bartons lived, Joyce being still about there; and Barton being constantly shipping poultry, farm produce, &c., his person may have been pointed out to Swan, who was living at Conn's, at Maitland, and who was not known to have any business at Morpeth. I think it not unlikely that both the murder and robbery were planned in the Gaol. This portion of my report renders it necessary for me to say, that after I heard of the murder I caused Joyce to be apprehended; but having satisfied myself clearly that on the day of the murder, and the night before, he was at the head of the Williams River, he was discharged.

10. I forward with this report a memorandum from Mr. Wallace, the gaoler, shewing what he knows of Swan. All the information respecting Swan's previous history I was able to procure, was contained in a memorandum given to me by the Chief Constable of Armidale, which I handed to Judge Milford's Associate for His Honor's information.

11. Although not likely to be required, I forward under separate cover the several copies of the *Maitland Mercury* to which I have referred in this report.

I have, &c.,

EDW. D. DAY,
Police Magistrate.

P.S.—I beg to add, in reference to the statement of Swan that he had in his possession on 8th October, 1856, the five ten-pound notes he says he gave to Mark Turner, it seems to me very improbable, considering the strict search all prisoners received in the lock-up houses of the Colony are subjected to, under the Police Regulations, that he could have had these notes so concealed on his person as to give such easy access to them, as to enable him to hand them to Turner without being perceived by the escorting constable, or that they should have remained concealed at all the stations he had been received at on his long journey down.

E. D. D.

[Enclosure

REPRIEVE OF "SWAN."

7

[Enclosure in No. 8.]

H. M. Gaol, Maitland,
14 December, 1860.

George Swan, tried at the Circuit Court, held in Maitland, 9th March, 1857.

Received in gaol, November 8th, 1856.

First charge, horse stealing; acquitted. Second charge, assaulting the police with intent to escape; sentenced to three years' hard labor in Darlinghurst Gaol.

Swan's second reception in gaol, August 4th, 1859.

Charged with horse stealing; arraigned at the Circuit Court held in Maitland, 19th September, 1859; trial postponed.

At the Circuit Court, held in March, 1860, was again arraigned, and discharged on his own recognizances on the 16th same month.

List of Witnesses summoned in Swan's case.

1. Mr. Fitzgerald, publican, Lochinvar.
2. Mrs. Turner, Lochinvar.
3. W. Smith, Sportsman's Arms, West Maitland.
4. E. D. Day, Esq., Police Magistrate, Maitland.
5. Anne Powers, West Maitland.
6. Mrs. Bruce, West Maitland.
7. Robert Cooper, prisoner at Cockatoo Island.
8. Thomas Ashton, Bird in Hand, West Maitland.
9. Mr. Mitchell, J.P., West Maitland.
10. Mrs. Conn, Currency Lass, West Maitland.
11. P. A. Mason, dealer, Black Creek.
12. Richard Lewis, West Maitland.
13. George Trayburn, Royal Arch, West Maitland.

JOHN WALLACE,
Gaoler.

No. 9.

EXTRACT from Minute No. 60-44. 17 October, 1860.

Present—Full Council.

His Excellency the Governor General again invites the attention of the Council to the case of George Swan, now lying under sentence of death for the murder of John Barton, and lays before them the further Report from Mr. Justice Milford, forwarding the Petition from the prisoner, which was before them at their last meeting, together with a letter from the Police Magistrate at Maitland, reporting the result of the inquiries which he has instituted into the statements contained in that Petition.

2. This letter has only this morning been received, but has been submitted to Mr. Justice Milford, with a request that he would again attend the Council in reference to the case, and His Honor being in attendance is introduced, and affords such further explanation as the Council deem necessary, and then withdraws.

3. The result of Mr. Day's inquiries does not bear out the statements in the Petition, to which his attention was particularly directed; on the contrary, the Report of that gentleman leaves little doubt on the minds of the Members of the Council that the statements are altogether unfounded. It only now remains for them, therefore, to consider the question raised by the Judges as to the propriety of carrying out the capital sentence.

In the words of Mr. Justice Milford, "their Honors think the circumstances detailed in the evidence adduce a very strong suspicion that Swan was guilty of the murder; but, having reference to the rule of law, that if there be a reasonable doubt the accused ought to have the benefit of it, they think that the case is not a safe one for an execution." The points on which they consider the chain of evidence to be defective being, that no witness swore directly as to the identity of the money found on the accused with that taken from the murdered man,—or that the accused was armed on the day of the murder with a pistol,—or was the man last seen with the deceased.

Mr. Justice Milford further remarks, that under these circumstances, although he might not, perhaps, without having obtained the opinion of their Honors, have thought it necessary to interfere, yet having done so, and feeling the force of their opinion as modifying his own, he does not think the prisoner ought to be executed,—a view of the case which he verbally repeats to the Council.

Having long and earnestly deliberated upon the question, the Council arrive at the conclusion, that in the face of this recommendation they would scarcely be justified in advising that the extreme sentence of the law should be allowed to take its course; but entertaining themselves little doubt of the guilt of the prisoner, they are constrained to think that it should only be commuted for the most severe secondary punishment that can be inflicted; and they accordingly advise that the capital sentence in the case of George Swan be commuted to imprisonment for life with hard labor, in such of Her Majesty's gaols or penal establishments of the Colony as His Excellency the Governor General may from time to time direct—the first three years to be passed in irons.

EDWARD C. MEREWETHER,
Clerk of the Council.

No. 10.

REPRIEVE OF "SWAN."

No. 10.

POLICE MAGISTRATE, MAITLAND, to THE UNDER SECRETARY.

O. H. M. S.

New South Wales Electric Telegraph.—Sydney Station.

Received the following Message from Maitland Station, at 11h. 40m., 20th October, 1860:—

I have just learned that Mr. Dawson, Colonial Architect, knows a great deal of the prisoner Swan's former history.

No. 11.

THE UNDER SECRETARY to SHERIFF.

*Colonial Secretary's Office,
Sydney, 22 October, 1860.*

SIR,

Referring to my letter of the 2nd instant, I am desired to inform you that His Excellency the Governor General, with the advice of the Executive Council, has been pleased to direct that the sentence of death passed upon George Swan for the murder of John Barton be remitted, on condition that he be imprisoned for life, with hard labor, in such of Her Majesty's gaols or penal establishments of the Colony as His Excellency may from time to time direct—the first three years to be passed in irons.

2. The prisoner is to be worked on Cockatoo Island until further orders, and Mr. Justice Milford has been requested to allow him the benefit of a conditional pardon accordingly.

3. You will be pleased to apprise Swan immediately, and acknowledge the receipt of this letter.

I have, &c.,
W. ELYARD.

No. 12.

THE UNDER SECRETARY to MR. JUSTICE MILFORD.

*Colonial Secretary's Office,
Sydney, 22 October, 1860.*

SIR,

George Swan.

Referring to your Honor's report of the 10th instant, on a statement made by the prisoner named in the margin, who has been sentenced to death for the murder of John Barton, I am directed to inform you that His Excellency the Governor General, with the advice of the Executive Council, has been pleased to direct that the capital sentence be remitted, on condition that Swan be imprisoned for life, with hard labor, in such of Her Majesty's gaols or penal establishments of the Colony as His Excellency may from time to time direct—the first three years to be passed in irons.

2. I am directed therefore to request that your Honor will be good enough to allow Swan the benefit of a conditional pardon accordingly, and to state that he is to be worked on Cockatoo Island until further orders.

I have, &c.,
W. ELYARD.

No. 13.

SHERIFF to GAOLER, EAST MAITLAND.

New South Wales Electric Telegraph.—West Maitland Station.

Received the following Message from Sydney Station, at 11h. 35m., October 22, 1860:—

George Swan is reprieved, sentence commuted to imprisonment for life, with hard labour—first three years in irons.

No. 14.

SHERIFF to GAOLER, EAST MAITLAND.

*Sheriff's Office,
Sydney, 23 October, 1860.*

SIR,

George Swan.

I am directed by the Sheriff to draw your attention to the enclosed copy of a letter received this day, respecting the remission of the sentence of death passed upon the prisoner named in the margin, and to request that you will communicate the contents of the letter to the prisoner Swan.

I remain, &c.,
JOHN PHELAN.
Chief Clerk.

A verified copy of the letter of the Principal Under Secretary, No. 258, dated 22nd October, 1860, was enclosed with this letter.

No. 15.

No. 15.

SHERIFF to THE UNDER SECRETARY.

*Sheriff's Office,
Sydney, 24 October, 1860.*

SIR,

I have the honor to acknowledge the receipt of your letter of the 22nd instant, informing me that His Excellency the Governor General, with the advice of the Executive Council, has been pleased to direct that the sentence of death passed upon George Swan for the murder of John Barton be remitted, on condition that he be imprisoned for life, with hard labour, in such gaols or penal establishments of the Colony as His Excellency may from time to time direct—the first three years to be passed in irons; and that the prisoner is to be worked on Cockatoo Island until further orders; and that Mr. Justice Milford has been requested to allow him the benefit of a conditional pardon accordingly.

I beg further to state, that a communication to this effect was forwarded by yesterday's mail to the Gaoler at East Maitland.

I have, &c.,

JOHN O'NIELL BRENNAN,
Sheriff.

No. 16.

*PETITION of George Swan to Governor General.**Cockatoo Penal Establishment,
10 December, 1860.*To His Excellency the Governor General of New South Wales and its Dependencies,
&c., &c. &c.

The Humble Petition of George Swan,—

SHEWETH:—

That Petitioner was tried at Maitland Assizes on the 12th of September, 1860, for murder, and was sentenced to death. While under that sentence, your Excellency, with the advice of the Executive Council, extended your clemency towards me, and the result was that I received a sentence of imprisonment for life, and to be worked for the first three years in chains. To most men such a change would have been a happy one,—not so with me. The ties which bind me to earth are few; to exist in the most abject state of poverty—imprisonment—or decrepitude, merely for the sake of living, is not my weakness, nor could I find the least happiness in any one of these. On the contrary, my life would soon become insupportable—all hope being cut off—and I might soon be driven to the worst of alternatives, but one from which the bravest and most virtuous men have not shrunk; aye, and even before all was lost. And yet I am not entirely bereft of hope; something tells me that the guilty wretch will yet be found or give himself up to justice, so true is it that that All-wise Being who formed us seldom permits such huge crimes to remain unavenged. Still, instead of being a month or a year, it might be a period of years; but until then am I to drag out a miserable existence, the worst that can fall to the lot of man, simply because through some dubious circumstantial evidence, of the most flimsy description, I am brought in guilty by some of my countrymen, the majority of whom had pronounced me guilty before they saw the juror's box, and they too opposed to me in the most essential point—religion. This may seem a puerile and mistaken idea, but when the recent riots and religious feuds are taken into consideration, and that all the inhabitants of Maitland were involved more or less in the affair, I with the rest, it may not appear so absurd, and particularly when I call to mind the language of my solicitor, "I shall not allow one Irishman on the jury." He kept his word, and I am the victim. I know that it is hard to credit such an assertion, that men are predisposed before entering the box; yet, when it is borne in mind that human nature is prone to believe in the guilt rather than the innocence of every person impeached, and that in nine cases out of ten they are carried away by rumours bruited about in public, and not unfrequently as ill-founded as fallacious and unstable, the thing is more easily digested. It is also certain that an atom of doubtful evidence in the hands of such people is hammered and forged through lapse of time into a chain that would gird and hold up the world. How many instances are there on record of men suffering death on circumstantial evidence, the public crying out with one voice, away with him, he is guilty. Some time elapses, and the actual culprit makes a clean breast of the affair—perhaps he is dying, or feels, as murderers always feel, a stinging remorse and compunction of conscience—then the public sympathises with the unfortunate one, and wonder how they could be so blind and stupid—not prejudiced. Sympathy may be good for the living, though it cannot restore a dead parent, husband, or son. Several instances of the above nature have taken place in the Colonies within the last ten years, some of which I am sure have reached your Excellency's knowledge. Now, might it not have been precisely the case with myself, only that your Excellency and others had strong doubts about it—perhaps owing to the gossamer texture of the fabric upon which the construction was raised.

There was not one fact, nor the remotest approach to a fact, adduced on my trial, and though there was a host of witnesses examined on the part of the prosecution, not one of

these ever saw me in company with the deceased—never saw me on the same road or in that locality; nay, it was even proved—not by my witnesses, for none was examined—that I was in Maitland for several hours previously to deceased being found. Judges invariably make it a rule in such cases, when summing up the evidence, to impress the jury upon this particular head—"And if there should be the shadow of a doubt resting upon your minds, let the prisoner have the full benefit of it." Was it done in my case? Not so. No, I consider that I was dealt with most unjustly, most unmercifully from first to last. I am brought face to face for the seventh time with one of the prosecutors; he is asked,—Is that the man who was riding in the cart with deceased on the morning of the murder? His answer each time was a positive negative. Again, touching this man not the least inquiry is made, and why? Because they have one, and think it unnecessary to hunt after the real perpetrator of this cold-blooded and daylight murder, and may he not have been one of those in evidence against me, as in the case of a poor old man who was hanged in '53, in Melbourne, when the principal prosecutor, a few months after the execution, turns out to be the actual murderer. On his dying bed in Melbourne Gaol he acknowledges it. Had the old man been allowed time, he could have proved his innocence. I believe his case to have been exactly similar to my own; for, had I have had time and fair play when arrested, I could indubitably have proved my entire innocence. Why, I ask, did Mr. Day not allow me to send for my witnesses at the examination, men whose testimony would have convinced both him and the world of the cleanness of my hands; verily, they hold the life of an individual without wealth in small esteem. He would not take any trouble in the matter, alleging as his reason that the prisoner would have ample facility afforded for subpoenaing his witnesses at the next assizes. And be it remembered that every circumstance at the time was fresh upon the memory of these men—strangers to me—trifling transactions of every-day business, trifles apparently, but clear and positive facts of my whereabouts the whole of that to me unlucky day; and also facts as to my having on that day twenty (20) one-pound notes in my possession, and changing some of them at different times and places, so that I might have a sufficient amount of silver to cancel a number of small debts—debts for which no security was held and the payment of which could have been postponed to an indefinite period of time. I say, when this is borne in mind, and that not one of these men were called, either on my examination or at the trial, though I particularly requested Mr. Day to send for them, and subpoenaed them to attend at the trial, not one of whom, though in attendance, was called by my barrister, I think the inference must be obvious to every person of sense, that is, that I was offered up as a sacrifice. Mr. Windeyer's plea now is, that if those witnesses had been examined, their allegations must have hanged me. Oh! most sapient barrister, and was I not found guilty and sentenced, with all your acumen and connivance? By what right did Mr. W. hold back witnesses? He had not my permission to do so. I strongly desired it from the commencement of the proceedings. I had nothing to conceal. No; I strongly desired and wished all to be exposed and held up to the light of day, so that the gloom which enveloped me might be dispelled by the sun and force of truth. Is it at all possible that any sane man who had committed a murder and robbery, within a short distance from Maitland, would return again, in so short a space of time, and begin immediately to pay away the money of deceased. Surely such a glaring act of foolery is too preposterous and absurd to be believed. About me there was not the slightest attempt at secrecy or concealment—my actions were open and aboveboard—there was no occasion for disguise—all guilty men seek one—the money was my own. This fact itself speaks volumes in my behalf.

There is one man in particular, your Excellency, who could clear me from this foul suspicion—this atrocious deed—and that is Mr. Fitzgerald, publican, of Lochinvar, and him I humbly entreat your Excellency to send for as soon as convenient; that is, if your Excellency credits my unvarnished statement, or consider the life and liberty of an injured man like myself worth troubling about; not that his evidence directly will exonerate me, or that he knows anything about me personally, save and except one single circumstance of the greatest importance to me, and that is the name and residence of the carrier who gave me a lift from his, Mr. Fitzgerald's, house and bar (where I was partaking of some refreshments on the morning of the murder) into Maitland.

And I pray your Excellency not to delay the inquiry, for, of a certainty, should you leave the colony, I shall have but small chance of establishing my innocence with your successor, as the reply, in all probability, will be,—I know not anything concerning it—have nothing to do with it.

And Oh! will it not be a source of extreme satisfaction to you to know that you have not only been the means of saving a fellow-being's life, but also in restoring him to that liberty from which he has been most unjustly and shamefully deprived.

In conclusion, I feel convinced, that should your Excellency take any interest in the affair, I shall of a verity receive my unconditional freedom; for if I be guilty of *murder*, under the circumstance, I justly merit *death*; if not, and not one solitary fact adduced against me, I am entitled to the full privileges of a free man.

And now, may that Omniscent and Omnipotent Power, who knows the secrets of all men, so move you to commiseration with my wrongs, that you may thereby be the instrument of my temporal and eternal redemption; and may *He*, in his infinite goodness, take you and yours under his especial protection, for ever and ever, which is the prayer of your most humble Petitioner.

GEORGE SWAN.

P.S.—I should have forwarded this statement sooner had I been permitted.

REPRIEVE OF "SWAN."

11

MEMO.

26 December, 1860,
Central Police Office.

I am induced to permit George Swan to memorialize His Excellency the Governor General, solely with a view of application being made to Mr. Fitzgerald, publican of Lochinvar, to ascertain from him the fact of Swan's having been driven from his house to Maitland in the cart of a carrier, on the day of the murder, as I have no means of proving if such is the truth, or not, by any other mode.

D. F. SCOTT, P.M.,
V. M.

No. 17.

THE UNDER SECRETARY to POLICE MAGISTRATE, MAITLAND.

Colonial Secretary's Office,
Sydney, 5 January, 1861.

SIR,

I am directed to refer to you, for inquiry and report, the accompanying Petition from the prisoner named in the margin, praying that Mr. Fitzgerald, of Lochinvar, may be referred to for certain information respecting his case. George Swan.

I have, &c,
W. ELYARD.

No. 18.

POLICE MAGISTRATE, MAITLAND, to THE UNDER SECRETARY.

Police Office, Maitland,
26 January, 1861.

SIR,

In reference to the accompanying Petition from the prisoner named in the margin, I beg to observe that previous to making my report on his first Petition, I had a personal interview with Mr. Fitzgerald, of Lochinvar, who informed me that he had never to his knowledge seen Swan until he saw him in the dock on his trial for the murder. George Swan.

The present Petition seems to me to be a copy of the first, with the exception that this contains an absurd statement, that the jury were prejudiced against Swan on religious grounds. I really believe that not one of the jurors knew or cared to what denomination the prisoner belonged.

As to all other matters mentioned in this Petition I beg to refer you to my first report which was forwarded to you I think a day or two before Swan was reprieved.

I have, &c.,
EDWD. D. DAY,
Police Magistrate.

1861.

Legislative Assembly.
NEW SOUTH WALES.

REPRIEVE OF "SWAN."

(ADDITIONAL PAPERS.)

Ordered by the Legislative Assembly to be Printed, 27 February, 1861.

MR. JUSTICE MILFORD to CLERK OF THE EXECUTIVE COUNCIL.

*Supreme Court House,
Sydney, 25 September, 1860.*

SIR,

I have the honor to request that the underwritten report of the trial and conviction of George Swan for murder may be laid before His Excellency the Governor General and the Executive Council.

George Swan was tried and convicted before me, at the Maitland Assizes, on the 12th day of September instant, for the murder of John Barton, under the following circumstances:—

Barton was a purchaser and vender of agricultural produce, living at Morpeth, and was accustomed to proceed round the neighbourhood with a cart for the purpose of making purchases. He used to carry ready money with him. On the 18th of April last, about 7 o'clock in the morning, he left Morpeth with a cart and two horses, and £20 in a small bag, composed of £10 in notes, £5 in half-crowns, and £5 in shillings; amongst them there might have been a few sixpenny pieces.

He must have passed through Maitland between 8 and 9 o'clock, as he was seen leaving that town by the Lochinvar and Wollombi Road about that time. Again he was seen twice on the road before reaching the junction of the Lochinvar and Wollombi Roads. On the latter occasion a man (not answering to the description of Swan) was riding with him in the cart. He passed the junction of the two roads, and a mile or more on the Wollombi Road, at a place called Stoney Creek, he was seen for the last time alive; no person was then with him. About 4 o'clock that afternoon he was found shot through the head some two miles beyond where he was last seen, and about 300 yards off the road.

His cart and horses were there, but his bag of money was gone; a small jagged pistol bullet was extracted from the skin of the skull.

Now, as to the connection of Swan with this transaction, it appears that he had been discharged from the Maitland Gaol, on the 16th of March last, without any money; he then went to a man named Conn, who keeps a public-house at Maitland, and asked to board and lodge there, stating that he would pay for it when a man named Mark Turner, who owed him £40 odd, came down from up the country. He took up his residence there, apparently in distress, for he had no work, and he was borrowing small sums of money from many people.

On the morning of the 18th of April, Conn told him that Mark Turner had come down from the country, and recommended his looking after the money. Mark Turner lived at Lochinvar, about 7 miles from Maitland. Swan said he would go and get the money. He left Conn's house (before which Barton must have passed) about eight or half-past eight o'clock, and passed through the turnpike gate through which Barton had passed shortly; he was seen again further on, a short distance on the main road.

About 11 or 12 o'clock he returned to the turnpike gate and paid the keeper five shillings which he owed him, in half-crowns, wanting him to take three instead of two. He saw Conn just entering Maitland, and both the turnpike-keeper and Conn remarked to him that he could not have gone to Lochinvar in so short a time; he said he had had a lift. He went into the town, paid the small debts he owed, and made purchases and treated persons in a lavish manner. Most of the payments he made were in silver, especially in half-crowns. He told Conn that he had got only £20 from Mark Turner, and that he was to have the rest when a man named Bailiss could be present, as he was present when he (Swan) gave the £49 into Turner's possession.

Swan remained in Maitland two days, and then left early in the morning for Sydney, without having intimated his intention of doing so. He was arrested by means of the telegraphic wire, on the 21st, as he reached Sydney; there was only a very trifling sum of money in his possession.

Mark Turner denied having ever received any money from Swan, or having ever paid him any, and even knowing him, and Bailiss said he was not present when any money was deposited with Turner.

Swan gave no other account of how he got the money, or where he had been on the morning of the 18th of April, than that above stated.

This alone would have constituted a very strong case of circumstantial evidence; but the following additional circumstances were discovered by the active exertions of the Police Magistrate, and given in evidence.

On the 24th of March (he left the Gaol on the 16th) Swan took a small pair of pistols to a gunmaker in Maitland, and had 12 balls cast for them; he also bought a flask of powder; the balls fitted the barrel of the pistol very tightly. The flask and balls were wrapped up in a newspaper under the mattress of Swan's bed at Conn's public-house; was seen shortly before the 18th April a small parcel similar to the powder flask, wrapped in a newspaper; and some copper caps and a ball were found in the room. The evidence as to the size of the ball found was not very clear. A witness testified that on the morning of the 18th of April, before Swan started, he saw him doing something with what appeared to be the butt end of a pistol, but he could not see distinctly what it was, and he heard a sound as of the shutting of a spring knife.

On the 14th of May, a little boy found a powder flask and four bullets wrapped up in a newspaper (published on the 16th of March), apparently hidden under the carcase of an old omnibus just outside of Conn's yard, about 150 yards from the house. This flask and these bullets are like those sold to Swan on the 24th of March. I am disposed to think, however, that the bullet found in the murdered man's head was not quite so large as these bullets so found, but it was difficult to judge of its original size, as it was of a very irregular shape, probably from having passed through the bone of the skull.

It will be remembered that Barton left his home with the money in a small bag; one of the witnesses stated that Swan in paying for a pair of boots on the day of the murder took the money from a dirty bag, and another bag of the same stuff having been made, similar to the one the man took with him to hold his money in, the witness stated that it was like the one from which she had seen Swan take the money.

The case rests altogether upon circumstantial evidence, but it is seldom that a case of this nature is so clearly established.

I have, &c.,
SAML. FRED. MILFORD.

PROCEEDINGS of the Executive Council, in the matter of the Capital Conviction of George Swan.

EXTRACT FROM MINUTE, No. 60-42.—1 October, 1860.

Present:—

- HIS EXCELLENCY THE GOVERNOR GENERAL.
- THE HONORABLE THE VICE-PRESIDENT OF THE COUNCIL.
- THE HONORABLE THE SECRETARY FOR LANDS.
- THE HONORABLE THE COLONIAL TREASURER.
- THE HONORABLE THE SECRETARY FOR PUBLIC WORKS.

HIS Excellency the Governor General lays before the Council a Report from Mr. Justice Milford of the case of George Swan, who was capitally convicted before His Honor, at the Circuit Court recently held at Maitland, of the murder of John Barton, and sentenced to suffer death.

2 Mr. Justice Milford being in attendance is introduced, and the Report having been read in his presence, His Honor affords such further information in the case as the Council deem necessary, and then withdraws.

3. Having deliberated, the Council advise that the sentence of death passed upon George Swan, for the murder of John Barton, be allowed to take its course.

EDWARD C. MEREWETHER,
Clerk of the Council.

THE UNDER SECRETARY to SHERIFF.

*Colonial Secretary's Office,
Sydney, 2 October, 1860.*

SIR,

I am directed to inform you that in the case of George Swan, capitally convicted before His Honor Mr. Justice Milford, at the Circuit Court at Maitland, on the 12th ultimo, of the murder of John Barton, and sentenced to suffer death, the sentence of the law is to be carried into effect, at Maitland, on Wednesday, the 24th instant, in the manner prescribed by the Act of Council, 17 Victoria, No. 40, and to request that you will apprise the unhappy man accordingly, and acknowledge the receipt of this letter.

I have, &c.,
W. ELYARD.

THE UNDER SECRETARY to MR. JUSTICE MILFORD.

*Colonial Secretary's Office,
Sydney, 2 October, 1860.*

SIR,

I am directed to inform you that in the case of George Swan, capitally convicted before your Honor, at the Circuit Court at Maitland, on the 12th ultimo, of the murder of John Barton, and sentenced to suffer death, the sentence of the law is to be carried into effect, at Maitland, on Wednesday, the 24th instant, in the manner prescribed by the Act of Council, 17 Victoria, No. 40; and that the Sheriff has been instructed to apprise the unhappy man accordingly.

I have, &c.,
W. ELYARD.

SHERIFF to GAOLER, EAST MAITLAND.

No. 60-638.

MEMO.

You are informed that in the case of George Swan, capitally convicted before His Honor Mr. Justice Milford, at the Circuit Court at Maitland, on the 12th ultimo, of the murder of John Barton, and sentenced to suffer death, the sentence of the law is to be carried into effect, at Maitland, on Wednesday, the 24th instant, in the manner prescribed by the Act of Council, 17 Victoria, No. 40, of which you are requested to apprise the unhappy man; and acknowledge receipt of this letter.

*Sheriff's Office,
Sydney, 2 October, 1860.*

JOHN O'NEILL BRENNAN,
Sheriff.

SHERIFF to THE UNDER SECRETARY.

*Sheriff's Office,
Sydney, 2 October, 1860.*

SIR,

I have the honor to acknowledge the receipt of your letter of this date, informing me that in the case of George Swan, capitally convicted before His Honor Mr. Justice Milford, at the Circuit Court at Maitland, on the 12th ultimo, of the murder of John Barton, and sentenced to suffer death, the sentence of the law is to be carried into effect, at Maitland, on Wednesday, the 24th instant, in the manner prescribed by the Act of Council, 17 Victoria, No. 40, of which I have caused the unhappy man to be apprised by this day's Mail.

I have, &c.,
JOHN O'NEILL BRENNAN,
Sheriff.

1861.

Legislative Assembly.

NEW SOUTH WALES.

BARQUE "NORNA."

(CORRESPONDENCE RELATIVE TO.)

Ordered by the Legislative Assembly to be Printed, 1 March, 1861.

No. 1.

WATER POLICE MAGISTRATE to THE UNDER SECRETARY.

(No. 61-30.)

Water Police Office,
Sydney, 26 February, 1861.

SIR,

Referring to a leading article in the *Empire* newspaper, of the 23rd instant, and a letter signed "W. James" in the same paper, as well as to some remarks of anonymous writers subsequently published, in which blame is attached to this Department, relative to matters connected with the Captain and crew of the barque "Norna," I think it proper to submit to the Honorable the Chief Secretary, as head of my Department, a detailed statement of all the occurrences which came within my knowledge.

2. The "Norna" arrived on Sunday, the 23rd December last, and the first complaint of any kind relative to the ship was made by Captain Crawford, against twelve of his crew, for disobedience of orders. They were apprehended on the evening of the 28th December, and, on bringing them to the watch-house, one of them named Budeen complained of being ill, and he was, by order of the Police Surgeon, sent to the Infirmary, and no report made to me about him afterwards. I was informed by the coxswain, who apprehended them, that Budeen had a bad leg, and, as that is a very common complaint amongst Lascars, I took no more notice of it. The remaining eleven men were brought before the Court on the 29th December, and, their refusal to work being fully proved, three of them, who consented to return to their duty, were sent back to their ship—the remaining eight, who still refused to go to their duty, were then sent to gaol for fourteen days.

3. On the same day (the 29th) Cathur, the serang, who was one of the three discharged, was given in charge, on board the ship, for disorderly conduct on board. He was brought before the Bench on the 31st, and fined 10s., or 48 hours' imprisonment. There was no complaint made on this occasion against the Captain or second mate.

4. On the 2nd January, Captain Crawford laid an information against Cathur, the serang, for disobedience, and he was apprehended on board the ship, on a warrant, and brought before the Bench, on the 3rd January, and found guilty, and sentenced to be imprisoned for 14 days. On this occasion, James Hill, the chief officer, was examined, and never made the least allusion to any ill treatment of the men.

5. The next complaint relative to the ship was laid on the 9th January, by James Hill, chief officer, against Antonio Charles, the second officer, who was apprehended on the 9th January, and brought before the Bench on the 10th, and sentenced to two days' imprisonment, for disobeying the orders of the chief officer. The Captain and the chief officer had some disagreement, relative to the chief officer's right to complain against the second officer, and commenced an argument in Court which I had to put a stop to, and Hill, the chief officer, then said that he could tell a good deal more if he liked; and soon afterwards, on my leaving the Bench, Hill attended in my room, and then, for the first time, mentioned the death of Caleel. I had Hill's statement at once taken down, and issued a warrant for Captain Crawford's apprehension, and admitted him to bail for his appearance on the following Monday. In the statement of Hill, he never mentioned that Caleel had been thrown overboard by the second officer.

6. On the 14th January, I wrote to the Crown Solicitor, telling him that I should wish that he, or some person from his office, would attend to conduct the case on behalf of the Crown; but the Crown Solicitor did not think that, in that stage of the proceedings, the Crown Law Officers could interfere.

7. There were eight of the Lascars at this time in custody for disobedience, and I would not punish them, pending the decision in the Captain's case.

8. On the 16th January, during the investigation in Captain Crawford's case, evidence came out, shewing Antonio Charles' culpability, and I at once issued a warrant for his apprehension, and he and Crawford were that day committed for trial, Crawford being admitted to bail.

9. On the next day—17th January—while I was on the Bench, Mr. Moffat appeared on behalf of the crew, and I told the Captain that I would not punish them in consequence of the evidence which had come out in the charge against him. The eight men then in custody were discharged, and Mr. Moffat at once exhibited three informations against the Captain, claiming the men's wages, on the ground of ill usage, and was about to exhibit others, when Captain Crawford said he would pay and discharge the men; this offer was accepted, the informations were withdrawn, and the parties retired into one of the offices for the purpose of making out their accounts.

10. I may here remark that in all Courts, from the Supreme Court to Courts of Petty Sessions, money recovered in actions for debt or damage is invariably handed over to the attorney in the cause. Mr. Bunbury was, therefore, right in paying it into Mr. Moffat's hands, and it is a popular error to suppose that seamen's wages should be paid through the Shipping Master, there being no Colonial law or regulation to that effect. Wages of seamen deceased, or left in the Infirmary, and none other, are paid into the Shipping Office.

11. Mr. James has not fairly stated what occurred when he applied to me on behalf of Messrs. Griffiths and Fanning, for a warrant or summons against Mr. Moffat, for obtaining money under *false pretences*. When Mr. James came to my office it was after hours, and I was the only person remaining. After making his statement, I said I could not see any false pretences in the case, nor would I undertake to draw an information, and Mr. Moffat being himself a lawyer, I advised that Messrs. Griffiths and Fanning should get their own solicitors, Messrs. Holden and M'Carthy, to prepare an information; intimating, at the same time, that as the complainants as well as the defendant all resided within the jurisdiction of the Central Police Office, and not in mine, that the information should be presented there; adding that if Captain Scott objected to take it, I would grant a summons if the information disclosed any offence. You are aware that my City jurisdiction is bounded on the south by a line drawn from the entrance gate at Government House, along the centre of Bridge-street, Church Hill, and Gas-lane, to Darling Harbour; and it is not usual for Captain Scott or me to take cases of parties residing out of our districts. It was therefore in accordance with usual courtesy that application should, in the first instance, be made to the Magistrate at the Central Office.

12. From the foregoing statement you will perceive, that the moment I was made acquainted with the treatment of Caleel I took every necessary step to investigate the matter, and that I even applied to the Crown Solicitor (see copy of note annexed) to prosecute on behalf of the Crown;—that I was not made acquainted with the complicity of the second mate (Antonio Charles), until it was accidentally disclosed in the evidence given by one of the witnesses when examined against Crawford;—Charles was immediately apprehended and committed at the same time as his commander;—the principal witness, Hill (the chief mate), had never accused Charles of throwing Caleel overboard.

13. I was never informed that Budeen's illness was caused by ill treatment, but I knew he had been sent to Hospital, having a bad leg. Had he expressed any desire to make a complaint, I would (as on similar occasions) have proceeded to the Infirmary to take his information.

I have, &c.,
S. NORTH,
W. P. M.

[Enclosure in No. 1.]

Water Police Office,
14 January, 1861.

My dear Mr. Williams,

Captain Crawford, of the British ship "Norna," now in this port, has been apprehended on a warrant granted by me on the information of his chief officer, in which he charges him with causing the death of a Lascar seaman, whilst on the voyage from Hong Kong to Sydney, by excessive floggings and a series of cruelties. The case is so important that I should feel gratified if the Crown Law Officers prosecuted in the case, as it will require a thorough sifting. Can you come down about half-past ten, or send some competent person from your office to conduct the case?

Yours, &c.,
S. NORTH.

A true copy—S. NORTH.

BARQUE "NORNA."

No. 2.

WATER POLICE MAGISTRATE to THE UNDER SECRETARY.

(No. 61-31.)

Water Police Office,
Sydney, 1 March, 1861.

SIR,

Referring to my letter of the 26th instant, No. 61-30, respecting the case of the crew of the Barque "Norna," I think it proper to make some remarks on a declaration made at Newcastle by Allee and Carder, two of the crew, respecting the man Budeen.

1. The Water Police boat never boarded the "Norna"; the vessel was alongside the wharf, and the Water Police went on board by land to apprehend the men.
2. The coxswain and constables most positively deny the Lascars having said any thing about wanting twenty-four hours' liberty, to go on shore to complain before a Magistrate of the murder of Caleel, and the ill usage of Budeen.
3. The Lascars never repeated the statement before me at the Police Office.
4. I never saw Budeen's back, and therefore could not have made any remark about it; so that the declaration of Allee and Carder, published in the *Empire* of yesterday, is a tissue of falsehoods from beginning to end, at which I am not surprised, as these men, being Mahommedans, do not, I believe, care what they say unless they are sworn on the Koran.

See Declarations enclosed.

I enclose a letter from Doctor Rutter, by whose orders Budeen was sent to Hospital on the evening of his arrest, in which he states the man was suffering apparently from fever and congestion of the lungs.

Mr. Houston, House Surgeon at the Infirmary, informed me yesterday that he saw no wounds or laceration on Budeen, and that his disease was dysentery. Dr. Macfarlane, who attended to Budeen's case, confirms Dr. Houston's statement.

I annex declarations made by the individuals named in the margin.

Juan Basilio,
(Interpreter),
William Martin,
Wm. Hampton,
Ben Johnson,
and
James Shearer,
of the Water
Police Force.

I have, &c.,
S. NORTH,
W. P. M.

[Enclosure 1 in No. 2.]

February 27, 1861.

Sir,

I have the honor to report that I was sent for to visit the watch-house of the Water Police Station, on December 29,* 1860, my attention was called to a sick Lascar, who I found in a weak and prostrate state, and advised his removal to the Infirmary. I was not informed that the man had received any injuries. He was in a very low state (apparently from his difficult breathing), suffering from fever and congestion of the lungs.

S. North, Esq., J.P.,
Police Magistrate.

I have, &c.,
JOHN Y. RUTTER,
Police Surgeon.

* Dr. Rutter has mistaken the date, it was the 28th December, not the 29th, that Budeen was sent to Hospital.—S. N.

[Enclosure 2 in No. 2.]

New South Wales, City of Sydney, }
to wit.

I, Juan Basilio, of the City of Sydney, in the Colony of New South Wales, boarding-house keeper, do solemnly and sincerely declare, that I am a Christian; I recollect the first day that the crew of the "Norna" were brought to the Water Police Office; I interpreted in the case; they did not complain of being flogged, but said they wanted their wages and discharge; the Captain said he would not give it to them; they did not say that one man had been murdered and one severely beaten; the first I heard of the murder of that man was when the crew were brought up a second time, about fourteen days after the first time; after the men came out of gaol, they came to the Water Police Office, and would not go on board; and I believe the Captain took a warrant out for them; and they then told me that one man had been killed on board, and the next day I heard there was a warrant for the Captain; and I make this solemn declaration, conscientiously believing the same to be true, and in virtue of the provisions of an Act made and passed in the ninth year of the Reign of Her present Majesty, intituled, "An Act for the more effectual abolition of Oaths and Affirmations taken and made in various Departments of the Government of New South Wales, and to substitute Declarations in lieu thereof, and for the suppression of voluntary and extra-judicial Oaths and Affidavits."

his
JUAN M. BASILIO.
mark.

Taken and declared at the City of Sydney, }
in said Colony, this 1st day of March, }
A.D. 1861 (declarant having heard the }
contents read, and appearing to me to }
understand the same), before me,— }

BN. BUNBURY,
A Commissioner for Affidavits.

[Enclosure

[Enclosure 3 in No. 2.]

New South Wales, City of Sydney, }
to wit.

I, William Martin, of the City of Sydney, in the Colony of New South Wales, coxswain in the Water Police, Sydney, do solemnly and sincerely declare, that on the 28th December last, I went on board the barque "Norna," to apprehend twelve of the crew on a charge of disobedience; I took Constables Hampton, Johnson, and Shearer with me; the "Norna" was alongside Botts' Wharf, and we walked down to her; on going on board, I saw the mate and second mate, and told them to muster the crew; and I then called over the names of the men in the warrant, and when I came to Budeen's name, one of the mates said he is sick, and I said, as his name is on the warrant I must take him; Budeen was scarcely able to walk, I had to get two of his comrades to assist him; when he was brought to the watch-house, Mr. North came in, and I pointed Budeen out to him, and said he was sick; Mr. North told me to send for the Police Surgeon, which I did, and Budeen was that evening sent to the Infirmary; Mr. North never looked at Budeen's back in the watch-house; none of the men complained to me of being flogged; some of them said something about Budeen not being treated well, and I thought they referred to his bad feet; none of them said a word about a man being killed on board; nothing was said about a sore back; and I make this solemn declaration, conscientiously believing the same to be true, and in virtue of the provisions of an Act made and passed in the ninth year of the reign of Her present Majesty, intituled, "*An Act for the more effectual abolition of Oaths and Affirmations taken and made in various Departments of the Government of New South Wales, and to substitute Declarations in lieu thereof, and for the suppression of voluntary and extra-judicial Oaths and Affidavits.*"

WILLIAM MARTIN.

Taken and declared at the City of Sydney, }
in said Colony, this 1st day of March, }
A.D. 1861, before me,—

Bn. BUNBURY,
A Commissioner for Affidavits.

[Enclosure 4 in No. 2.]

New South Wales, City of Sydney, }
to wit.

I, William Hampton, of the City of Sydney, in the Colony of New South Wales, a constable in the Sydney Water Police, do solemnly and sincerely declare, that the first time the Water Police went on board the "Norna" I was one of the party, and none of us went into the cabin; there was no complaint whatever made about the death of Coleel, or of Budeen being ill used; it appears that Captain Crawford made a mistake in charging Budeen with disobedience, as when we were bringing them away from the ship we met the Captain, who said he did not mean to have included him in the warrant; Budeen had bad feet, and could not walk, and I never heard there was anything else the matter with him; this was about five or six days after the "Norna" arrived in port; Budeen was sent to the Infirmary that evening; none of the Lascars told me they had any complaint to make; and I make this solemn declaration, conscientiously believing the same to be true, and in virtue of the provisions of an Act made and passed in the ninth year of the Reign of Her present Majesty, intituled, "*An Act for the more effectual abolition of Oaths and Affirmations taken and made in various Departments of the Government of New South Wales, and to substitute Declarations in lieu thereof, and for the suppression of voluntary and extra-judicial Oaths and Affidavits.*"

WILLIAM HAMPTON.

Taken and declared at the City of Sydney, }
in said Colony, this 27th day of Feb- }
ruary, A.D. 1861, before me,—

Bn. BUNBURY,
A Commissioner for Affidavits.

[Enclosure 5 in No. 2.]

New South Wales, City of Sydney, }
to wit.

I, Ben Johnson, of the City of Sydney, in the Colony of New South Wales, a constable in the Sydney Water Police, do solemnly and sincerely declare, that the first time the Water Police went on board the "Norna," I was ordered to accompany them, and arrived on board about five minutes after Coxswain Martin and Constables Hampton and Shearer, whom I found standing on the after hatch with the chief and second officers; I heard the coxswain calling out their names; Budeen answered as well as the rest, and the chief officer, Mr. Hill, made a remark that he did not think that Captain Crawford meant to have included him (Budeen) in the warrant, as he was sick, and had not been able to work—also that the Captain said he was going to send him to the hospital; Coxswain Martin asked him if there was another man on board of the same name; the chief officer said "No;" the coxswain then said as his name was on the warrant he was bound to take him into custody; Budeen appeared to have bad feet, as he could hardly walk; after bringing them to the lock-up, and as the lock-up-keeper was entering their names in the book, Mr. North called in on his way home and saw Budeen sitting on a form; he asked what was the matter with him, and Coxswain Martin said he was sick, and Mr. North ordered the Police Surgeon to be sent for; I heard no complaints of the men having been ill treated; and I make this solemn declaration, conscientiously believing the same to be true, and in virtue of the provisions of an Act made and passed in the ninth year of the Reign of Her present Majesty, intituled, "*An Act for the more effectual abolition of Oaths and Affirmations taken and made in various Departments of the Government of New South Wales, and to substitute Declarations in lieu thereof, and for the suppression of voluntary and extra-judicial Oaths and Affidavits.*"

BEN JOHNSON.

Taken and declared at the City of Sydney, }
in said Colony, this 1st day of March, }
A.D. 1861, before me,—

Bn. BUNBURY,
A Commissioner for Affidavits.

[Enclosure

BARQUE "NORNA."

[Enclosure 6 in No. 2.]

New South Wales, City of Sydney, }
to wit.

I, James Shearer, of the City of Sydney, in the Colony of New South Wales, a constable in the Water Police, Sydney, do solemnly and sincerely declare, that on the 28th of December last I went with Coxswain Martin and Constables Hampton and Johnson on board the barque "Norna;" none of us went into the cabin, but saw the chief and second officers on deck; Coxswain Martin then acquainted the chief officer with his business, and he ordered the serang to call the men aft; Coxswain Martin then called out their names, and they all answered to them; when Budeen came up, Mr. Hill, the chief officer, said he did not think he was to go, and Captain Crawford must have made a mistake, as he (the Captain) was going to send him to the hospital along with two others; the chief officer did not say what was the matter with him, only that he was sick; I escorted him up from the ship to the watch-house along with two of his shipmates, who assisted him along the road, as he walked with difficulty on account of his feet being bad; when we arrived at the watch-house Mr. North asked what was the matter with him; Coxswain Martin said he was sick; Mr. North then said, "If he is sick, the Police Surgeon had better be sent for," and I then went up to Dr. Rutter, who came down and ordered him to be sent to the Infirmary; I did not hear any of them complain of ill usage; and I make this solemn declaration, conscientiously believing the same to be true, and in virtue of the provisions of an Act made and passed in the ninth year of the Reign of Her present Majesty, intituled, "An Act for the more effectual abolition of Oaths and Affirmations taken and made in various Departments of the Government of New South Wales, and to substitute Declarations in lieu thereof, and for the suppression of voluntary and extra-judicial Oaths and Affidavits."

JAMES SHEARER.

Taken and declared at the City of Sydney, }
in said Colony, this 1st day of March, }
A.D. 1861, before me,—BN. BUNBURY,
A Commissioner for Affidavits.

No. 3.

CROWN SOLICITOR to RESIDENT SURGEON, SYDNEY INFIRMARY.

Crown Solicitor's Office,
Sydney, 27 February, 1861.

SIR,

I do myself the honor to inform you that it is contemplated taking proceedings against the late master and second officer of the vessel "Norna," in respect of alleged ill usage by them of a man named "Budeen," who was recently in the Sydney Infirmary—will you have the goodness to let me know:—

- 1st. As to the condition of this man when received into the Infirmary?
- 2nd. Whether there were marks upon his body appearing to be the result of flogging or ill treatment?
- 3rd. Whether, supposing the man to be in a dying state, such a condition is in your opinion caused by ill usage, and also at the same time give me any information which may be useful in this case?

I have, &c.,

JOHN WILLIAMS,
Crown Solicitor.

[Enclosure in No. 3.]

Sydney Infirmary,
27 February, 1861.

Sir,

In answer to your inquiries in respect of alleged ill usage of a man named "Budeen," who was recently in the Infirmary, I have the honor to inform you that,—

(1st.) On admission, on the 28th December last, late in the evening, the man was in such a low depressed state that it was necessary to administer stimulants. This low state was probably the result of an attack of dysentery from which he seemed to have been suffering for some time previously.

(2nd.) That, on examination, no marks of any kind were found on his body.

(3rd.) That Dr. Macfarlane, under whose care the man was placed, is of opinion (in which I agree) that, supposing "Budeen" to be in a dying state, there are no reasons known to him for believing that state to be the result of ill treatment.

I beg to add that "Budeen" was convalescent, and able to leave the ward some time before his removal to the ship on the 22nd instant.

I have, &c.,

W. HOUSTON,
Resident Surgeon.John Williams, Esq.,
Crown Solicitor.

No. 4.

POLICE MAGISTRATE, NEWCASTLE, to COLONIAL SECRETARY.

O. H. M. S.

New South Wales Electric Telegraph.

Received the following Message from Newcastle Station, at 5h. 24m., 26th February, 1861:—

Hearing late yesterday afternoon that Budeen was dying, I went on board the "Norna" and took his affidavit of his ill usage by the late captain and late second mate, both now under sentence for the death of Caleel. Dr. Morgan thinks Budeen will die. The "Norna" sails for China to-morrow morning, perhaps you would wish to detain her.

No. 5.

POLICE MAGISTRATE, NEWCASTLE, to COLONIAL SECRETARY.

O. H. M. S.

New South Wales Electric Telegraph.

Received the following Message from Newcastle Station, at 9h. 40m., 27th February, 1861 :—

I have ordered the "Norna" to be stopped. The affidavit of Budeen, and the declaration of three Lascars, namely, Allee, quartermaster; Carder, scrag; Jahid, second tindal, will be sent you by this morning's post; those three were examined as witnesses in Sydney.

No. 6.

POLICE MAGISTRATE, NEWCASTLE, to CROWN SOLICITOR, SYDNEY.

O. H. M. S.

New South Wales Electric Telegraph.

Received the following Message from Newcastle Station, at 5h. 34m., 27th February, 1861 :—

Dr. Morgan was called in on Monday night, and reports Budeen much better to-day, but not out of danger. I have requested Captain Wilson to detain the vessel for two (2) days, when Budeen may be well enough to sail. There is a strong impression on Budcen's mind that he will die if left behind; his only safety is to be with his countrymen.

No. 7.

POLICE MAGISTRATE, NEWCASTLE, to CROWN SOLICITOR, SYDNEY.

O. H. M. S.

New South Wales Electric Telegraph.

Received the following Message from Newcastle Station, at 5h. 46m., 28th February, 1861 :—

I was on board the "Norna" 5 p.m., with Dr. Morgan, who states that the Lascar Budeen is so much better that a sea voyage is likely to re-establish his health. "Norna" sails to-night, or in the morning.

1861.

Legislative Assembly.

NEW SOUTH WALES.

BARQUE "NORNA."
(FURTHER CORRESPONDENCE.)

Ordered by the Legislative Assembly to be Printed, 5 March, 1861.

POLICE MAGISTRATE, NEWCASTLE, to COLONIAL SECRETARY.

*Police Office, Newcastle,
28 February, 1861.*

Sir,

I have the honor to inform you that I was, at 5 p. m., this afternoon, on board the "Norna" with Dr. Morgan, who states that he considers the Lascar "Budeen" so far recovered as to be able to proceed to sea, and that a sea voyage is most likely to re-establish his health.

I have, therefore, taken off all restrictions from the "Norna" sailing.

I enclose Dr. Morgan's Certificate in the case.

I have, &c.,
HELENUS SCOTT, P.M.

[Enclosure.]

Newcastle, 28 February, 1861.

I certify that I have this day seen the Lascar "Budeen," and consider him so far recovered as to be able to proceed to sea. I think a sea voyage is most likely to re-establish his health.

C. W. MORGAN,
M.B.O.S.L.

M. S. V. C. 1911

1911

1911

1911

1861.

Legislative Assembly.

NEW SOUTH WALES.

ADMINISTRATION OF JUSTICE—INSOLVENT LAW.

(PETITION FROM MESSRS. ANDERSON AND CAMPBELL.)

Ordered by the Legislative Assembly to be Printed, 12 March, 1861.

To the Honorable the Legislative Assembly of New South Wales, in Parliament assembled.

The humble Petition of Samuel Anderson and John Campbell, of King-street, in the City of Sydney, in the Colony of New South Wales, Flour and Corn Factors,—

SHEWETH :—

That your Petitioners, trading under the firm of Anderson, Campbell, and Co., sold, in the usual course of trade, for cash, to one Patrick Barron, on or about the 21st day of February, 1860, a quantity of goods.

That, from the evidence adduced at the trial for the plaintiff hereinafter mentioned, it appears that the said Patrick Barron had the cash in his house ready to pay for a portion of the said goods at the time of the purchase. That the defendants called upon the said Patrick Barron for payment, on or about the 22nd day of February, 1860, when the said Patrick Barron paid for a portion of the said goods; but, being unable to pay for the remainder, offered to return to your Petitioners the goods not paid for, which were accordingly accepted by them.

That, in about five weeks after such payment and return as aforesaid, the said Patrick Barron became insolvent.

That, in a short time after the declared insolvency of the said Patrick Barron, the Official Assignee of his estate applied to your Petitioners for the re-delivery of the said goods so returned, and also for the return of the money paid, with which demand your Petitioners refused to comply.

That, shortly after the refusal of your Petitioners to comply with such demand of the Official Assignee, that gentleman instituted an action at law against your Petitioners in the Supreme Court of this Colony, for the recovery of the said cash paid and the value of the goods returned.

That your Petitioners defended the said action, and the trial came on for hearing on the 1st day of March, 1861, before Mr. Justice Wise, and a jury of four, when, under the substantial direction of the Judge, a verdict was returned against your Petitioners, whereby your Petitioners have not only to repay the value of their own goods, but actually to return the cash received for goods sold for cash, together with the costs of suit.

That your Petitioners disavow all knowledge of the insolvent state of the said Patrick Barron at the time of these transactions, in February, 1860, they not having had any former transactions with him, and he being quite a stranger to your Petitioners.

That your Petitioners very respectfully submit to your Honorable House that this judgment is fraught with manifest injustice and great danger to the Mercantile Community, and your Petitioners therefore humbly pray that your Honorable House will take the case into your consideration, and act in such manner in the premises as to your Honorable House may seem meet. And your Petitioners, as in duty bound, will ever pray, &c.

SAMUEL ANDERSON,
JOHN CAMPBELL.

1861.

Legislative Assembly.
NEW SOUTH WALES.

ADMINISTRATION OF JUSTICE—INSOLVENT LAW.
(TRADE PROTECTION SOCIETY.)

Ordered by the Legislative Assembly to be Printed, 15 March, 1861.

To the Honorable the Legislative Assembly of New South Wales.

The Petition of the undersigned, on behalf of the Members of the Sydney Trade Protection Society,—

HUMBLY SHEWETH:—

That, in the opinion of your Petitioners, the Insolvent Law at present in force in this Colony is unsuited to the requirements of its trade, and to the social advancement of its people.

That the original Insolvent Act was passed at a time of commercial depression and distress, when some such measure was imperatively necessary to protect the interests of the Colony and to save it from ruin; and that, in all subsequent legislation, the principles of that Act have been adhered to.

That the circumstances of the Colony having since undergone a great change, the law in question is found to afford an undue protection to fraudulent debtors, and to work most unsatisfactorily so far as it affects the interests of all other parties concerned.

Your Petitioners therefore humbly pray, that your Honorable House will take this subject into your consideration, and will pass an Insolvency Act suited to the present requirements of the Colony.

SAML. THOMPSON,
Chairman.

1861.

Legislative Assembly.

NEW SOUTH WALES.

WORKING OF THE INSOLVENT LAW.

PROGRESS REPORT

FROM THE

SELECT COMMITTEE

ON THE

WORKING OF THE INSOLVENT LAW;

TOGETHER WITH

THE PROCEEDINGS OF THE COMMITTEE,

AND

MINUTES OF EVIDENCE.

* ORDERED BY THE LEGISLATIVE ASSEMBLY TO BE PRINTED,
8 May, 1861.

SYDNEY:

THOMAS RICHARDS, GOVERNMENT PRINTER,
PHILLIP-STREET.

1861.

[Price, 1s. 7d.]

221-A

1861.

EXTRACTS FROM THE VOTES AND PROCEEDINGS OF THE
LEGISLATIVE ASSEMBLY.

VOTES No. 19. TUESDAY, 12 FEBRUARY, 1861.

17. Working of the Insolvent Law :—Mr. Hart moved, pursuant to *amended* notice,—
- (1.) That a Select Committee, with power to send for persons and papers, be appointed to inquire into and report upon the working of the present Insolvent Law in New South Wales.
 - (2.) That such Committee consist of Mr. Smart, Mr. Rotton, Mr. Love, Mr. Dick, Mr. Windeyer, Mr. McArthur, Mr. Piddington, Mr. Dickson, Mr. Walsh, and the Mover.
- Debate ensued.
Question put and passed.

VOTES No. 50. TUESDAY, 9 APRIL, 1861.

17. Working of the Insolvent Law :—Mr. Hart moved, pursuant to notice, That Copies of the following Documents be referred to the Select Committee now sitting in reference to the Working of the Insolvent Law, viz. :—
- (1.) Return relating to Insolvencies, ordered by the Legislative Assembly on the 8th August, 1856, and laid upon the Table on the 17th December following.
 - (2.) Part Return and further Returns relating to Insolvencies, ordered by the Legislative Assembly on the 30th March, 1858, and severally laid upon the Table on the 13th July, 17th and 25th November in that year.
 - (3.) Petition from Mr. J. N. Beit, respecting proceedings in the Insolvency Jurisdiction of the Supreme Court—received by the Legislative Assembly on the 23rd December, 1858.
 - (4.) Petition from Messrs. Samuel Anderson and John Campbell, alleging that they had sustained certain injuries arising out of a Judgment delivered in the Supreme Court in the matter of Sempill (Official Assignee) v. Anderson and Campbell, and praying a consideration of their case—received by the Legislative Assembly on the 5th March last.
 - (5.) Petition from certain Members of the Trade Protection Society, praying for the passing of an Insolvency Act suited to the present requirements of the Colony—received by the House on the 12th March last.
- Question put and passed.

VOTES No. 67. WEDNESDAY, 8 MAY, 1861.

11. Working of the Insolvent Law :—Mr. Hart as Chairman brought up a Progress Report from, and laid upon the Table the Minutes of the Proceedings of, and Evidence taken before the Select Committee for whose consideration and report the working of the Insolvent Law was referred, on the 12th February last.
Ordered to be printed.

CONTENTS.

	PAGE.
Extracts from the Votes and Proceedings	2
Progress Report	3
Proceedings of the Committee	4
List of Witnesses	7
List of Appendix	7
Minutes of Evidence	1

1861.

WORKING OF THE INSOLVENT LAW.

PROGRESS REPORT.

THE SELECT COMMITTEE of the Legislative Assembly, appointed on the 12th February last, "*to inquire into and report upon the working of the present Insolvent Law in New South Wales,*" "*with power to send for persons and papers,*" and to whom were referred, on the 9th ultimo, various Returns relating to Insolvencies, together with the several Petitions of Mr. J. N. Beit, Messrs. Anderson and Campbell, and certain Members of the Trade Protection Society, have agreed to the following Progress Report:—

Your Committee have examined eleven Witnesses, whose evidence is appended hereto, and will be found deserving of great attention, upon the important question submitted to them.

The approaching Prorogation of the Parliament will prevent your Committee from pursuing their investigation, and they recommend the resumption of the inquiry during the next Session. By that time, the Committee have reason to believe that the measure lately introduced into the Imperial Parliament by Sir Richard Bethell will have passed into law, and will form a guide to the local Legislature in its deliberations.

*Legislative Assembly Chamber,
Sydney, 8 May, 1861.*

JAMES HART,
Chairman.

PROCEEDINGS OF THE COMMITTEE.

FRIDAY, 15 FEBRUARY, 1861.

MEMBERS PRESENT:—

Mr. Dick, | Mr. Piddington.

In the absence of a Quorum of the Committee the meeting, convened this day lapsed.

THURSDAY, 21 FEBRUARY, 1861.

MEMBERS PRESENT:—

Mr. Hart, | Mr. Love,
Mr. McArthur.

On motion of Mr. McArthur, J. Hart, Esq., called to the Chair.
Votes No. 19, 12th instant, Entry 17, ordering inquiry into the working of the present Insolvent Law,—before the Committee.

Committee deliberated in respect to the conduct of the matter referred.

It was Resolved:—

That the Chief Commissioner of Insolvent Estates be summoned to give evidence at the following sitting.

Deliberation further, touching the expediency of obtaining the reference of all Papers and Petitions relative to the Jurisdiction in Insolvency.

Motion made and *Question agreed to.*

[Adjourned till Wednesday, 27th instant, at *Eleven o'clock.*]

WEDNESDAY, 27 FEBRUARY, 1861.

MEMBERS PRESENT:—

J. Hart, Esq., in the Chair.

* Mr. McArthur, | Mr. Walsh,
Mr. Windeyer.

Letter from the Chief Commissioner of Insolvent Estates, under date 25th instant, addressed to the Clerk of the House, in reply to summons, stating that it will be impossible for him "(without a neglect of public duty)" to attend before the Committee until next week,—laid before Committee.

Committee deliberated, proposing further witness and present adjournment.

[Adjourned till Tuesday, 5th March, at *Eleven o'clock.*]

TUESDAY, 5 MARCH, 1861.

MEMBERS PRESENT:—

J. Hart, Esq., in the Chair.

Mr. Dick, | Mr. Piddington,
Mr. Love, | Mr. Smart,
Mr. Walsh.

W. A. Purefoy, Esq., *Chief Commissioner of Insolvent Estates*, called in and examined.

F. J. Garrick, Esq., also summoned this day, in attendance, but examination postponed until to-morrow.

[Adjourned till to-morrow, 6th instant, at *half-past Ten o'clock.*]

WEDNESDAY, 6 MARCH, 1861.

MEMBERS PRESENT:—

Mr. Hart, | Mr. Piddington.

In the absence of a Quorum of the Committee, the meeting called this day lapsed.
Mr. F. J. Garrick, a witness, in attendance.

[To be convened to-morrow, 7th instant, at *Eleven o'clock.*]

THURSDAY.

THURSDAY, 7 MARCH, 1861.

MEMBERS PRESENT:—

J. Hart, Esq., in the Chair.

Mr. Dickson,	|	Mr. McArthur,
Mr. Love,		Mr. Piddington,
	Mr. Walsh.	

Committee met pursuant to summons.

F. J. Garrick, Esq., *Solicitor*, called in and examined.

Witness withdrew.

W. A. Purefoy, Esq., *Chief Commissioner of Insolvent Estates*, called in and further examined.

Messrs. Dean, Thurlow, and Harper, to be summoned.

[Adjourned till Wednesday, 13th instant, at *Eleven o'clock*.]

WEDNESDAY, 13 MARCH, 1861.

MEMBERS PRESENT:—

J. Hart, Esq., in the Chair.

Mr. Dick,	|	Mr. McArthur,
Mr. Love,		Mr. Piddington,
	Mr. Smart.	

W. Thurlow, Esq., *Solicitor*, called in and examined.

Witness withdrew.

Mr. J. Harper called in and examined.

Witness withdrew.

Attendance of Mr. W. Dean, by request excused this day.

Mr. Webb, *Secretary, Trade Protection Society*, and Mr. Dean to be summoned.

[Adjourned till Tuesday, 19th instant, at *Eleven o'clock*.]

TUESDAY, 19 MARCH, 1861.

MEMBERS PRESENT:—

None.

In the absence of a Quorum (no Member proceeding to the Committee Room), the meeting called this day lapsed.

Mr. W. H. Webb, a witness, in attendance.

WEDNESDAY, 27 MARCH, 1861.

MEMBERS PRESENT:—

J. Hart, Esq., in the Chair.

Mr. McArthur,	|	Mr. Windeyer.
---------------	--	---------------

Committee met pursuant to summons.

D. Smith, Esq., *Chairman, Chamber of Commerce*, called in and examined.

Witness withdrew.

B. Knox, Esq., called in and examined.

Witness withdrew.

J. L. Montefiore, Esq., called in and examined.

Messrs. T. C. Breillat and G. King to be summoned.

[Adjourned till Thursday, 4th April, at *Eleven o'clock*.]

THURSDAY, 4 APRIL, 1861.

MEMBERS PRESENT:—

Mr. Hart,	|	Mr. Smart.
-----------	--	------------

In the absence of a Quorum of the Committee, the meeting convened this day lapsed.

Further witnesses for summons, Messrs. A. Macfarlane, T. W. Bowden, and W. Dean.

FRIDAY, 12 APRIL, 1861.

MEMBERS PRESENT:—

J. Hart, Esq., in the Chair.

Mr. Love,	|	Mr. McArthur.
-----------	--	---------------

Committee met pursuant to summons.

G. King, Esq., called in and examined.

Witness withdrew.

T. C. Breillat, Esq., called in and examined.

Messrs. A. Macfarlane and T. W. Bowden in attendance—examinations postponed.

Mr. W. Dean's request to be excused attending to-day, complied with.

[Adjourned till Wednesday, 17th instant, at *Eleven o'clock*.]

WEDNESDAY,

WEDNESDAY, 17 APRIL, 1861.

MEMBERS PRESENT:—

J. Hart, Esq., in the Chair.

Mr. McArthur, | Mr. Piddington,
Mr. Smart.

A. Macfarlane, Esq., *Barrister-at-Law*, called in and examined.

Witness withdrew.

T. W. Bowden, Esq., called in and examined.

Mr. W. Dean, also summoned this day, not in attendance.

Committee deliberated upon supplementing the evidence already taken by that of the Assignees in Insolvency.

Messrs. Perry and Morris, *Official Assignees*, and Mr. Dean, to be called at the next meeting.

[Adjourned till Friday, 19th instant, at *Eleven o'clock*.]

FRIDAY, 19 APRIL, 1861.

MEMBERS PRESENT:—

None.

In the absence of a Quorum (no Member proceeding to the Committee Room), the meeting convened this day lapsed.

Messrs. F. W. Perry, and J. P. Mackenzie (summoned in mistake for Mr. Morris), *Official Assignees*, in attendance.

[To be called on Wednesday, 24th instant, at *Eleven o'clock*.]

WEDNESDAY, 24 APRIL, 1861.

MEMBER PRESENT:—

Mr. Hart.

In the absence of a Quorum of the Committee, the meeting called to-day lapsed.

Messrs. F. W. Perry and J. Morris, *Official Assignees*, in attendance.

(Mr. W. Dean communicated the circumstance of a serious accident as having prevented him from attending on the previous day, and as not permitting him to come before the Committee.)

Mr. Purefoy, the Chief Commissioner, to be also further summoned.

[To be convened on Friday, 26th instant, at *Eleven o'clock*.]

FRIDAY, 26 APRIL, 1861.

MEMBERS PRESENT:—

Mr. Hart, | Mr. Piddington.

In the absence of a Quorum of the Committee, the meeting called this day lapsed.

W. A. Purefoy, Esq., in attendance; also, J. Morris, Esq.

Note received from F. W. Perry, Esq., requesting his absence may be excused, as arising from indisposition.

(Messrs. Perry, Morris, and Beit, to be summoned.)

[To be convened, Wednesday, 1 May, at *Eleven o'clock*.]

WEDNESDAY, 1 MAY, 1861.

MEMBERS PRESENT:—

None.

In the absence of a Quorum (no Member proceeding to the Committee Room), the meeting called to-day lapsed.

Messrs. Perry, Morris, and Beit, respectively attending.

[To be convened to-morrow, 2nd instant, at *Eleven o'clock*.]

THURSDAY, 2 MAY, 1861.

MEMBERS PRESENT:—

J. Hart, Esq., in the Chair.

Mr. Piddington, | Mr. Windeyer.

Committee met pursuant to summons.

And the witness named for 11 o'clock not being in attendance,—

Committee deliberated, whether at the present period of the Session to take further evidence or to proceed at once to a final or progress report.

It was Resolved:—

Tat the Committee do not wait to take further evidence during the current Session.

Committee further deliberated.

Messrs. Morris and Beit having respectively attended at the hours named in their summonses, informed of the above Resolution.

[Adjourned.]

WEDNESDAY, 8 MAY, 1861.

MEMBERS PRESENT:—

J. Hart, Esq., in the Chair.

Mr. Love,

Mr. Windeyer.

Committee met pursuant to summons.

The Chairman submitted a Draft of Progress Report.

The same being read,—

Committee deliberated.

Draft amended, and

On motion of Mr. Windeyer, Progress Report agreed to.

Chairman requested to report accordingly.

LIST OF WITNESSES.

	PAGE.
<i>Tuesday, 5 March, 1861.</i>	
W. A. Purefoy, Esq., <i>Chief Commissioner of Insolvent Estates</i>	1
<i>Thursday, 7 March, 1861.</i>	
F. J. Garrick, Esq., <i>Solicitor</i>	12
W. A. Purefoy, Esq., <i>Chief Commissioner of Insolvent Estates</i> (further).. .. .	19
<i>Wednesday, 13 March, 1861.</i>	
W. Thurlow, Esq., <i>Solicitor</i>	22
Mr. J. Harper	27
<i>Wednesday, 27 March, 1861.</i>	
D. Smith, Esq., <i>Chairman, Chamber of Commerce</i>	31
E. Knox, Esq.	37
J. L. Montefiore, Esq.	43
<i>Friday, 12 April, 1861.</i>	
G. King, Esq.	45
T. C. Breillat, Esq.	52
<i>Wednesday, 17 April, 1861.</i>	
A. Macfarlane, Esq., <i>Barrister-at-Law</i>	55
T. W. Bowden, Esq.	61

LIST OF APPENDIX.

(*To Evidence given by W. Thurlow, Esq., 13 March, 1861.*)

A.

Account Sales (Dodds and Co.), of horses and cattle sold at auction, by order of H. C. Sempill, Esq., Official Assignee, 17 September, 1860 26

B.

Abstract of Mr. Sempill's account 27

(*To Evidence given by D. Smith, Esq., 27 March, 1861.*)

A.

Report of a Select Committee of the Sydney Chamber of Commerce, appointed 19th July, 1855, "to take into consideration the present Insolvent Laws of the Colony, "and to report such alterations as they may deem it advisable for the Chamber "to petition the Legislature to make in the existing Law." (Certified Copy, as altered and added to by the Chamber.) 34

(*To Evidence given by T. C. Breillat, Esq., 12 April, 1861.*)

A.

Insolvency Law—Items referred to by Mr. Breillat as requiring revision in the present Insolvent Law 55

1861.

Legislative Assembly.

NEW SOUTH WALES.

MINUTES OF EVIDENCE

TAKEN BEFORE

THE SELECT COMMITTEE

ON THE

WORKING OF THE INSOLVENT LAW.

TUESDAY, 5 MARCH, 1861.

Present:—

MR. DICK,	|	MR. PIDDINGTON,
MR. HART,	|	MR. SMART,
MR. LOVE,	|	MR. WALSH.

JAMES HART, Esq., IN THE CHAIR.

William Alexander Purefoy, Esq., Chief Commissioner of Insolvent Estates, called in and examined:—

1. *By the Chairman:* You are Commissioner of Insolvent Estates? Chief Commissioner; W.A. Purefoy, Esq. there are two Commissioners and one Chief Commissioner.
2. How long have you held that office? I have held the office of Chief Commissioner from January, 1856, to the present time, continuously—I say continuously because I had it temporarily in 1848. 5 Mar., 1861.
3. Are there any other Commissioners of Insolvent Estates? Yes, two; one at Maitland, and one at Bathurst. The Commissioner at Maitland is Mr. Edward Denny Day, and the Commissioner at Bathurst is Mr. William Hall Palmer—both Police Magistrates.
4. These are the only persons besides yourself who have any authority to administer the Insolvent Law? Yes. Of course I do not include Commissioners who take affidavits in insolvency matters.
5. But these are the only persons authorized, under the Insolvent Act, to make inquiries and administer the Insolvent Law? The only persons.
6. Are you aware whether any applications have been made from other parts of the Colony to have Commissioners of Insolvent Estates appointed? Yes, I am. I think it is more than three years ago that application was made to me in writing. I cannot now say whether it was in the nature of a petition or not, but it was a written application—requesting that a Commissioner might be appointed at Goulburn, where there was a Commissioner at one time. But that Commissioner has not been appointed, nor is there any Commissioner of Insolvency that I am aware of in the Colony except the two I have mentioned.
7. Has any application been made from Albury? There is an application, I think, from Wagga Wagga, which has been acceded to, but whether the appointment is made I do not know.
8. Are you aware whether any inconvenience is experienced by the public by reason of the administration of the Insolvent Law being confined chiefly to Sydney? I can only judge of public inconvenience from hearsay, inasmuch as my duties confine me exclusively to Sydney; but if you ask me to express my own opinion, I may say that I entertain no doubt whatever that a few properly qualified intelligent gentlemen, appointed as Commissioners of Insolvency, and scattered, so to speak, through the remote districts, would not only be a great public boon as far as the administration of Insolvent Estates is concerned, but would materially lighten the very heavy labour now cast on the Chief Commissioner.

W.A. Pursefoy, Esq.
5 Mar., 1861.

9. What is your opinion as to the propriety of casting the duty upon the District Judges? I can only say it would be a great convenience to the public if certain duties of a limited nature, connected with the administration of insolvency matters, were remitted to the District Judges.

10. Would it not be a great convenience to insolvents and also to their creditors, who chiefly reside in the localities where the insolvents permanently reside? I am decidedly of that opinion. I have no doubt that parties living in the remote districts, at such places as Armidale, Grafton, Tamworth, Murrurundi, and other places to the south and west, would find it a great convenience; and possibly there would be a much better opportunity of investigating the conduct, and trade dealings, and estate (to use the technical words) of an insolvent, than if they were compelled as they now are to have the affairs of an insolvent living in a remote district administered in Sydney.

11. Have the County Court Judges in England jurisdiction in cases of insolvency or bankruptcy? I am not in a position to answer that question; the Act has been passed since I was in England, and I have never seen it.

12. Are there District Commissioners? I know nothing at all about the English District Courts Act.

13. What are the Acts of Council under which you administer the Insolvent Law? The first Act is the 5th Victoria, No. 17, passed on the 29th December, 1841. Then there is what is called the amended Act, which is 7 Victoria, No. 19. That is the principal amended Act; but there are several others which I pass by because I cannot give you the numbers just now. Then there is a late Act passed in 1857—I think it is 20 Victoria, No. 24, but I am not quite positive as to the number—which is a very short Act conferring upon the Chief Commissioner magisterial powers—in fact, he is created a Justice of the Peace for the purposes of the Act, chiefly for hearing all charges of fraudulent insolvency preferred against any insolvent, and other offences of a like nature. Under that Act the Chief Commissioner can hear such charges the same as a magistrate, and commit the accused party for trial.

14. Was not the object of that Act to enable you to exercise that jurisdiction summarily as Chief Commissioner? I can exercise no power summarily, nor any power except as given me by the statute; and I often have great cause to complain, that I have not some power to deal summarily with cases. When the Act first came into operation a case occurred in which I entertained some doubt whether, on the evidence then before me, I could direct the insolvent to be committed, or held to bail. I took the Act to the Chief Justice, Sir Alfred Stephen, and the words of the Act being, "to hear all charges of insolvency preferred," he said there must first be a charge preferred.

15. Then it is necessary under that Act to prefer an information and proceed as at the Police Office? Yes, precisely so. There is another Act—I think the 21st Victoria, No. 23—the object of which is to enable the Chief Commissioner to control the directions of the creditors given at the third meeting respecting the management of the estate, and the allowance of furniture or tools of trade to the insolvent.

16. You have had considerable experience in the working of these Acts? I think I may safely say I have had very great experience, having had before me some 1,500 or 1,600 insolvencies.

17. Can you state the number of insolvencies that have taken place since the passing of the Act? The number of insolvencies since the passing of the Act have exceeded 5,200—I think the number is 5,243.

18. Have you any other statistics relative to the estates that have passed under sequestration? Yes, I have the statistics for the three last years. From the 1st January, 1858, to 1st January, 1859, there were 387 insolvencies; from 1st January, 1859, to 1st January, 1860, there were 347; and from 1st January, 1860, to 1st January, 1861, there were 510, shewing an increase upon the year 1860 of 164 over 1859;—making a total in the three years of 1,244 insolvencies.

19. Have you the amount of assets and liabilities? I have not; but returns, which will give every information, will be placed before the House very shortly. The returns from two of the Official Assignees went yesterday from my office to the Attorney General, but the others are not yet prepared, being very voluminous.

20. What is your opinion as to the adaptability of the Insolvent Acts towards the present state of the Colony—do you consider that they are efficient or inefficient; and if they are inefficient will you state in what points they ought to be amended? The experience acquired during five years enables me to say that the existing Insolvent Laws are wholly inefficient to meet the present state of the Colony.

21. Are debtors enabled to defraud their creditors as the law stands at present? Under the existing law very great facilities are afforded for dishonesty.

22. Will you point out some instances? A person desirous to pass through the Court has only to make out an official document called a schedule, and that document frequently shews a large surplus over the liabilities. The schedules are accepted by the Judges as a matter of course, or rather as a duty cast upon them by the Act, and can only be so under the existing law. The meetings are then appointed by the Chief Commissioner. Under the 77th section he is directed "to appoint the first and second meetings at such time or place as shall be most expedient for all parties concerned." The insolvent himself is not bound by law to attend any meeting except the second, at which he is bound to account for his insolvency.

23. Is that without an order of a Judge? Without an order of a Judge. He is bound to attend the second meeting, or at least I have always insisted upon his attendance, because the Act says "he shall account for his insolvency," which I do not think he can do except

by

by personal attendance. As a general rule, insolvents attend second meetings, and if they do not I frequently postpone the meeting until they do. Under the 34th section, which refers to what are called single estates—that is where the assets available for distribution are under £100—there is but one meeting, and then the insolvent is bound to attend and account for his insolvency. But a decision of the Supreme Court, given in July, 1859, has completely altered the previous practice with respect to the examination of insolvents. That decision is, that an insolvent cannot be examined generally as to his transactions without a Judge's order first obtained. The obtaining of this order is always attended with some expense, but sometimes there is not a shilling to be had in the estate, though the schedule may show a surplus. If the insolvent is absent from Sydney, you cannot compel his attendance, even by a Judge's order, without paying his expenses, the same as in the case of any other witness, under the 103rd clause. The consequence is, that in several estates the necessary witnesses cannot be obtained from a distance for want of funds; and great facilities are thus afforded in passing through the Court. The great object of every insolvent is to obtain his certificate, which is a discharge in full of all debts due at the time of sequestration. After the time which the law requires, 30 days, is expired, he posts his notice in the Court that he intends to apply for a certificate on a particular day; he appears, or his agent for him, whether a legal gentleman or a civilian, with an affidavit that the requirements of the Act have been complied with, and the name is called aloud at the door of the Court. My practice has been to say something to this effect:—"This is an application made by A. B. for a certificate, in terms of the Act, does any person appear to offer any objection;" and should no objections be offered, it is my duty to grant the certificate.

W. A. Pinfrey,
Esq.
5 Mar., 1861.

24. Then in many cases an insolvent may sequester his estate, and obtain his certificate, without affording any information as to the causes of his insolvency? Certainly he can.

25. Is there any distinction made by the law at present between persons in trade and those who are not? There is not.

26. Is that the case in England or Ireland? Under the 20th and 21st Victoria, No. 76, which is called the Irish Bankruptcy and Insolvency Consolidation Act, a distinction is made between bankruptcy and insolvency. The term "bankrupt" is held strictly to apply only to those persons who are in trade; the word "insolvent" applies to those who are not traders. I think such a distinction between bankruptcy and insolvency highly desirable, and that it would be productive of much benefit to the Colony.

27. Under the Irish Act have insolvents the same facilities for obtaining a discharge of their debts as bankrupts have? I regret to say that I am again unable to answer the question. The Act was only passed in 1857, and contains 410 clauses; and though I have referred to a good many of them, I am unable to say what facilities that Act affords.

28. Have you a copy of the Act? I have.

29. Do you consider that it would be applicable to this Colony? A considerable portion of it; not all, of course.

30. Do you think it desirable to amend the present Insolvent Law, until a permanent Act should be passed? I think it is highly desirable, and indeed necessary, that the present law should be amended very extensively.

31. For instance, there should be a means of compelling insolvents to attend each meeting, and afford information to their creditors? Every insolvent ought, in my opinion, to be bound to attend the meetings, unless on sufficient cause shown to the satisfaction of the Chief Commissioner, and account for his insolvency, and give all the information in his power to his creditors.

32. By whom are estates administered at present? By officers called Official Assignees.

33. By whom are they appointed? By His Honor the Chief Justice, under 7th Victoria, No. 19.

34. Is it in the power of a creditor to examine an insolvent, as a matter of course, at present, or has he to take any steps to enable him to do so—to obtain the consent of any person? A creditor cannot examine an insolvent even if he is in Court, unless he consents, without having first obtained a Judge's order; and in order to obtain the Judge's order an application must be made, in the first instance, to the Official Assignee. I may be permitted to observe, that I was present in Court, in the estate of Tutting & Co., when an application was made by counsel, the present Mr. Justice Wise, for an order or subpoena, on the Common Law side of the Court, for the examination of a witness, the Assignee having declined to sign the necessary order, and the decision of the Court, under the 65th section was, that they could not grant any such order, as the statute had appointed the mode of obtaining the order, and, therefore, that it could not be done in any other way.

35. Have you known any instance where the Assignee refused to give his consent to the examination of a witness? Yes, the case I have just mentioned was one—Tutting & Co. I suggested to Sir William Burton a very simple remedy for that, namely, that there should be printed forms in the Chief Commissioner's Office, and that any creditor might walk into Court, or send his agent, to apply to the Chief Commissioner for an order to examine A. B. or C. The Chief Commissioner would then probably ask, what do you expect to prove, and, upon being satisfied that there were sufficient grounds for the examination, would direct the order to be issued, for which a fee of 2s. 6d. or 5s. might be charged, which would increase the revenue a trifle, whilst the expense which now attends the application for a Judge's order would be done away, and much greater facilities would be afforded for inquiry into the real position of estates.

36. Would it be desirable to have a preliminary examination of any person wishing to sequester, before the sequestration of his estate should be accepted—at present I understand you to say that a Judge has no alternative but to accept the estate? The practice has been, for instance, where a party is under arrest, under a writ of *ca. re.*, and he petitions for

W.A. Purefoy, Esq. for the sequestration of his estate, an order always issues that he should be first examined before the Chief Commissioner; but I know of no instance where, after he has been examined, he has been refused his sequestration.

5 Mar., 1861.

37. Has any instance come under your notice lately of a person having been arrested on a *ca. re.* for fraudulent concealment of his property, and notwithstanding that the evidence before you pretty plainly shewed that he had so concealed his property, his estate was accepted by the Judge, and the insolvent discharged from prison? Yes, such a case has occurred [but I do not know that it would involve anything in the shape of censure on the Judge who discharged him.]*

38. Not at all—I am alluding to the defective state of the law? A very striking case has lately come under my notice where the evidence, to my mind, appeared most conclusive, and I believe also to the Judge's, that it was a case of fraud, and yet the insolvent was discharged, although a clear case of fraud appeared upon the depositions.

39. Would you consider it desirable to have a preliminary examination before an estate should be absolutely sequestered? I think it would be highly desirable, if it could be carried out in practice; but I am afraid it would be impracticable at present for two reasons. The first is, that many large estates are not sequestered until an execution is either in the house of the party, or about to be issued from the Sheriff's Office. When that is the case, the party hurries up to the Court and sequesters at once. In many cases they merely file their petition, and ask for a reasonable time to make out their schedule. If a preliminary examination were required before the parties were permitted to place their estates under the protection of the Insolvent Court, the object would be defeated in the meantime, because the execution would take effect.

40. Could there not be an order *nisi*? That would get rid of one objection certainly—an order to stay the execution for such a time, as the Court might think proper under the circumstances.

41. Do you consider that the abolition of imprisonment for debt has had the effect either of deterring debtors from obtaining credit, or of acting as a caution to persons against allowing them to get into debt? I have no doubt that the abolition of imprisonment for debt has rather encouraged the going in debt.

42. Particularly, I presume, on the part of professional people and persons not in trade? Well I do not know as to any particular class; I scarcely think there is any difference in that way.

43. Would it not be desirable that periodical returns should be sent in to your office by the Official Assignees, shewing all particulars of the estates under their charge? I think it would be very desirable and very beneficial to creditors.

44. Are there no such returns at present? There are no returns at present except those affecting the pecuniary matters of the estate, which the Official Assignees are required to furnish quarterly and file in the Prothonotary's Office, not in the Chief Commissioner's.

45. Within what time are Official Assignees bound to file a plan of distribution at present? The time is not definitely fixed by the Act; the 87th section says the plans shall be filed within as short a time as may be, not later than six months. But the returns that were furnished on motion of the present Colonial Treasurer, Mr. Weekes, shew that in very few instances are plans of distribution filed within less than six months after sequestration. In practice that appears to be the time that is usually allowed to elapse.

46. Are you aware that estates are actually realized in a very short period after sequestration? That is so in several cases. For instance, the estates of persons in the drapery, ironmongery, or grocery business, are usually realized very early; in some cases that are in my mind at the present moment I think the assets were nearly all realized at the date of the third meeting.

47. And yet no plan of distribution is sent in until the expiration of six months? I am talking of the general practice in such cases as I have alluded to, then the Assignee will probably file his plan earlier.

48. Can an Assignee be compelled, within six months, to file a plan of distribution? I know of no means that the law affords of compelling him to file his plan of distribution in less than six months, unless on application to the Court to shew cause why he shall not do so.

49. Are you aware what is done with the assets that are realized by the Assignees in the meantime? You mean between the date of sequestration and the filing of the plan of distribution?

50. Yes? No, I am not. They are required by law to pay in the money to the credit of the estate, and there is a heavy penalty if they do not do so, under the 81st section.

51. In point of fact, are the provisions of that section complied with? It is impossible for me to tell. I could only do so by having the power to inspect the Assignees' accounts with the Bank, but there is nothing in that section that I am aware of which gives me that power.

52. Have complaints been made to you, as Chief Commissioner, of the dilatory manner in which affairs are conducted by the Assignees in working the Act? Yes; such complaints have been made from time to time.

53. Do you consider that there is much collusion between insolvent debtors and alleged creditors? I have no means of saying that any evidence has come before me of collusion between insolvents and their creditors.

54. For instance—an insolvent debtor allowing judgment to be recorded against him, either by default or under warrant of attorney, and the creditor proving for the purpose of having a voice in the management of the estate? I have no recollection of any such case coming before

* NOTE (*By witness on revision*):—The words within brackets, being merely matters of opinion, may be struck out; it is not evidence.

before me. I would be almost inclined to think that if I saw any case of that kind it would be a proper case for a prosecution for conspiracy. W.A. Purefoy, Esq.

55. Where insolvent debtors have been actually guilty of fraud, is there any mode of evading the provisions of the Insolvent Act by co-operating with their creditors? Yes, certainly. There is one case prominently before me, and a recent one, where an insolvent sequestrated, and his schedule shewed very limited assets indeed. Shortly after the sequestration the Assignee ascertained that a large quantity of goods had been removed by the insolvent two or three days before he sequestrated, and taken to other premises from his own. Acting upon the information he received, the Official Assignee went with an officer of the Court—an officer of the police being also near at hand—and he found the goods concealed, and took possession of them. There was a show of resistance, as I was informed by the officer. However, the goods, being taken possession of by the Assignee, were disposed of, and an information, as I am informed, which I did not see, though I saw the summonses to the witnesses, was laid against the insolvent, and he was brought to the Police Office charged with fraudulent insolvency. The insolvent, being out on bail, then agreed to pay his creditors 20s. in the pound, which the creditors accepted. An account is filed in the office shewing that they got 20s. in the pound, and I think there was a surplus—indeed, I am sure there was. Nothing further was done, and the estate was released. 5 Mar., 1861.

56. Then, after an estate is sequestrated, an insolvent has it in his power, by making a composition with his creditors, to have the estate released, thereby avoiding any criminal charge against himself? He has the power under the old Act—the 86th section—to release his estate from sequestration by composition, but he cannot do that till the third meeting, and the offer cannot be accepted finally until it has been confirmed at a subsequent meeting, to be called forty-two days afterwards. But there is another class of releases, where the insolvent pays, or agrees to pay, 20s. in the pound, and the creditors accept the offer. There is no provision for that: and the Court exercises its jurisdiction, I suppose, not under the 86th section, but because the creditors are satisfied, being paid in full. A case of this kind occurred, in 1856, to a large drapery firm. An execution was put in, and the traders came into the Insolvent Court, and filed their petition; the goods were taken possession of, but within ten days the estate was taken out of Court, all the creditors consenting to an arrangement to pay 20s. in the pound. For that mode of taking an estate out, by full payment, there is no provision in the Insolvent Act.

57. Are you aware of any case in which that has been done, where an information has actually been filed before yourself, as Chief Commissioner, charging the insolvent with fraudulent insolvency? No such case has ever occurred before me.

58. Do you recollect the case of a New Zealand firm, two years ago? Yes.

59. Was an information filed in that case? Yes.

60. And the estate was afterwards released? I have no recollection of the release of the estate. It is quite possible it was. I recollect, on the day appointed for the hearing of the charge, having held the insolvent to good and sufficient bail, he appeared with the professional gentleman acting on his behalf, and the gentleman conducting the prosecution for the creditors appeared also; but when I called upon the prosecuting counsel, he said he had no instructions, and when I asked if he had any witnesses to call, he replied that he had not.

61. And you, as Chief Commissioner, had no power to compel him to proceed? I had no power to compel him. There was an information filed, but I could not compel any one to call witnesses in support of it. Of course the defendant walked out with his bail discharged. But I am not aware at this moment, that the estate was released; though it is quite possible.

62. Is much of your time taken up in investigations as to proof of debts? Yes; a considerable portion of time.

63. Is it absolutely necessary that the time of the Chief Commissioner should be taken up with that kind of business? I think certainly not. In my humble opinion, the duties of the Chief Commissioner should be more important than the investigating into such matters as those. I think he might be more profitably employed in inquiring into the conduct of the insolvent in his transactions—such as buying and selling, disposing of property, giving of bills, making purchases, and so on—than in the mere technical matter of taking affidavits in proof of debts, which could be sworn before any Commissioner for Affidavits.

64. The clerical duties you have to perform in connection with that are considerable?

Yes; I remember taking ninety-two proofs in one estate, in one day; sixty-four in another, fifty-three in another.

65. In consequence of your time being thus occupied, you are not able to pursue the investigations you deem necessary towards the elucidation of the estates of insolvents? Not sufficiently. Sometimes debts are disputed, and that takes up a good deal of time. The question as to the rejection or reception of a debt, in the largest estate that ever was in the Court, took up nearly an entire day and a portion of another. Therefore, sometimes it happens that a very large portion of the Chief Commissioner's time is taken up. But that kind of inquiry I think would properly belong to the Chief Commissioner.

66. There should be a power of appeal to you? There is to a Judge.

67. I am aware; but would it not be desirable to allow an appeal to the Chief Commissioner, if the duties were performed by a Deputy Commissioner? Yes; either to the Chief Commissioner or the full Court.

68. What is the staff of your department? Two gentlemen, one of whom performs almost the whole of the clerical duty of the department of the Insolvent Court, and the other is chiefly a deposition clerk—attends the meetings, receives the fees on proofs of debt, and answers official letters, &c. Mr. Austen, who has been in the department some 17 years, receives schedules when accepted, marks the time when received by the clerk, and enters them in a book; receives the fees prescribed by law, and enters them in a book; makes up the

W.A. Purcof, the weekly accounts of fees received on affidavits, and meetings, and for special meetings, and those things; and sometimes he has to copy letters.

Esq.
5 Mar., 1861. 69. His time is fully occupied? His duties are multifarious, and I sometimes wonder how he can get through them.

70. Is there any business in arrear at present? A very considerable amount.

71. In consequence of the insufficiency —? In consequence of the insufficiency of the staff of the department.

72. Have you made any representations to the Government upon the subject? Yes, I have; I asked for an additional clerk to bring up arrears, even for six months.

73. What became of that application? I am informed, but not officially, that the application has been granted, but no additional assistance has yet been rendered. It would be very desirable that it should be. I might even observe that I, myself, have frequently to perform the duties of deposition clerk, when examinations in insolvency are going on in the Supreme Court, and the deposition clerk is employed there.

74. He is in waiting on the Judges? Yes, taking down the evidence of the witnesses.

75. Would not the duties of your department in Sydney be materially lessened if district officers were appointed throughout the Colony? Most certainly they would—district officers to take proofs of debts, and the examination of witnesses.

76. And also the administration of estates? Yes, if you appointed local Commissioners.

77. Have there not been very great complaints as to the vast expenses estates are put to in their collection, where the insolvents reside in the interior? Yes, I am aware there is a great deal of dissatisfaction as to the amount of the charges.

78. Are the charges of the Official Assignees taxed by you before they are admitted in the account that is filed in Court? All bills of costs incurred by Official Assignees in the management of estates are taxed by me, and they are not allowed in the plans of distribution until they are so taxed.

79. Are the charges of the Official Assignees subject to your revision, as taxing officer, before being put into the plans of distribution? They are; the Official Assignee comes to me, and says he is about to file a plan and wishes me to tax the costs incurred.

80. You are speaking of solicitors' costs? Yes.

81. I am alluding to the charges of the Official Assignee himself? No, I have nothing whatever to do with the Assignee's personal charges, except his commission; and so the Court decided in the case I before mentioned—Tuting's. In that case, struck with the enormous amount of expenses, I intimated that I felt it my duty to draw the attention of the Court to it, when counsel interposed that I had nothing to do with the Assignee's personal charges, but only with his commission; and the Court sustained the objection.

82. Is it the case, or not, that, independent of the commission which the law allows, the Assignees can make what charges they like? I do not know that they can make what charges they like, but there are a great many incidental charges, such as these:—paid so much to agent in the country—bringing down goods, from Kiandra, perhaps, to Sydney—paid so and so for collecting a quantity of cattle—and so on. These charges will appear on the plan filed by the Official Assignee, as the expenses necessarily incurred in the management of the estate, and I always ask for vouchers of these expenses.

83. Are these charges subject to your revision? Certainly they are. All charges made by Official Assignees are subject to the revision of the Chief Commissioner. When the plans of distribution are laid before the Chief Commissioner he is supposed, at all events in every instance that I recollect, to look over all these charges.

84. Are you aware that in some estates it is the practice of the Official Assignees to charge a stated sum for their trouble, independent of any commission—for instance, where no assets are realized, and the insolvent wishes to obtain his certificate,—is it the practice of the Assignee to make professional charges in these cases? It is the practice.

85. Has that always been the case since you have been connected with the department? Yes, as far as I recollect. I may here observe, that under the 17th section of the amended Act, 7 Vict., No. 19, the Commissioner is empowered to grant, refuse, or suspend a certificate, and to annex such condition as shall appear to him fair and reasonable. If therefore a petty estate comes into the Court, in which the Assignee has perhaps attended three or four meetings and written a number of letters—and perhaps witnesses have been examined—and after all there are no assets, then I say to the insolvent, "Your certificate will be granted, but you will have to pay the Assignee for his trouble in this estate, because otherwise he will receive no remuneration at all." I generally fix the payment at £2 2s.

86. Is not the effect of that course this, that a poor man, who is unable to pay £2 2s., cannot get his certificate? No, because if it were satisfactorily shewn to me that a man was unable to do so I would grant the certificate without any payment at all.

87. But, as a general rule, you allow £2 2s. in these cases? Yes.

88. And in large estates the Assignee gets five per cent.? Yes.

89. Therefore it is a continued profit to him, without any loss at all? In every estate where he gets £2 2s., of course it is a profit to him of £2 2s.

90. Is it not the duty of the Official Assignee to attend the Court at every meeting? I always considered so.

91. Do they invariably attend themselves? No, they do not. I intimated to the Official Assignees that I considered it their duty to attend every meeting; and finding that was not successful I wrote, some six or eight months ago, officially, to each of the Assignees, but still they do not attend the meetings.

92. Notwithstanding your direction they do not attend personally? They do not attend, as a general rule; in many cases they do attend. I have recently declined, where I saw an estate was an important one, to proceed, till the Assignee was present.

93. Have you made any representation to the Government on the subject of the Insolvent Law, and the amendment of it in any respect? To a former Attorney General, Mr. Bayley, I did. W.A. Purefoy.
Esq.
94. What was the purport of your communication? I called on Mr. Bayley shortly after his accession to office, and pointed out to him the defective state of the law. He seemed obliged, and requested me to furnish suggestions, and I did furnish him with a great many. 5 Mar., 1861.
95. In writing? Yes. I explained as well as I was able, the insufficiency and defective state of the old law, and I proposed many amendments. Indeed I may say I did the same in another quarter also.
96. Will you state to whom you allude? The gentleman who framed the Insolvent Law, Judge Burton.
97. Have the Government either lately or at any previous time placed themselves in official communication with you respecting the Insolvent Law? No, except so far as calling for returns ordered by the House.
98. Has the present Attorney General been in communication with you? Not in writing, but personally we have talked the matter over.
99. Has he officially communicated with you, requesting information as to the working of the Insolvent Laws, or as to any amendments that are required? No, he has not.
100. *By Mr. Piddington*: I think you stated that the effect of the abolition of the imprisonment for debt has been to encourage debtors, and to increase their number? Yes, as far as I can observe; it is a conclusion or inference that I draw myself, that when a man knows he cannot be sent to prison for debt, or that he can walk out through the doors of the Insolvent Court, it is an encouragement to him to get into debt.
101. Would you recommend any recurrence to the practice of imprisonment? That is a difficult question to answer; the English laws hold the liberty of the subject very dear. Perhaps if it were satisfactorily shewn to a competent tribunal that a debt had been fraudulently contracted, it might be a question whether the debtor should not be subject to imprisonment.
102. I mean apart from any proof of fraudulent conduct—I speak of the general principle—imprisonment for debt has been abolished for some years, and you have stated that it has tended to increase the number of debtors, and the facilities for obtaining credit? What I wish to say is, that the conclusion or inference in my own mind is that the abolition of imprisonment for debt is rather an encouragement to the contracting of debts; but on the broad principle that a man should not be incarcerated and kept in confinement till his debt was paid, I would be decidedly adverse to a return to the system of imprisonment.
103. Then you would not recommend a return to the practice of imprisonment for debt, with a view to check the practice of indebtedness? I would not, save in excepted cases. As a general principle I would not.
104. Do you not think the most certain mode of discouraging debtors would be for the trading community to exhibit more caution in giving credit? Certainly.
105. From your experience of the Insolvent Court, are you of opinion that insolvents, in many cases, have obtained credit with undue facility? In very many cases I have been surprised at the facility with which the insolvents have obtained credit.
106. Then no change in the law would cure an evil resulting from want of caution on the part of the creditors themselves? No change in the law can alter men's dispositions. It is the object of the trader to sell his goods, and no law that can be framed will make him more cautious.
107. Would you recommend, as any improvement in the Insolvent Law, any increase of the severity against debtors, speaking generally, with a view to discourage the practice of obtaining credit? I am not prepared to say that I would recommend any increased amount of severity, but I would strongly recommend increased facilities in the law for punishing parties who recklessly contract debts. Debts are shewn, daily I might say, before me, to have been recklessly contracted, both for small and large amounts, and yet the law is, comparatively speaking, powerless.
108. What is the Committee to understand by the term "recklessly"? A man who is fully aware of his own inability to discharge a debt goes and contracts one. If a man has no reasonable prospect, whether from previous indebtedness or absolute destitution of means, of discharging an obligation, and yet goes and contracts one—then we must conclude that he never intended to pay that debt. That I call recklessly contracting a debt. A debtor who contracts debts in that way, I think, ought to be dealt with with proportionate severity.
109. From your experience of insolvent estates, are you of opinion that the great mass of indebtedness has been contracted by recklessness on the part of debtors? No; but I think a very large proportion of the indebtedness that exists, as shewn by the Insolvency Returns, is owing to the great facilities afforded for obtaining credit.
110. Then if creditors, as a class, are in the habit of giving credit, without caution or consideration, is it desirable to invest any Court with the power of punishment against the debtor—I am not speaking of fraudulent cases? I can only answer that question as I have done, I think, before—that if parties contract debts, without having reasonable and probable means of payment—which is provided for by the existing law—they ought to be dealt with with some amount of imprisonment.
111. How would you apply that principle in the case of debtors here, many of whom in your experience you must have ascertained do contract debts at a time when they are actually in a state of insolvency? By careful investigation of the circumstances under which the debt has been contracted. A man may be largely in debt, and yet it may be he could shew he had a fair and *bonâ fide* expectation of being able to discharge all his debts; even though it might be a vain hope, still a man might entertain it fairly and honestly; and

W.A. Purefoy, and if that appeared from the surrounding circumstances, then I think he ought not to be punished.

Esq.

5 Mar., 1861.

112. Then cases of that kind would be of such a character as to demand great caution on the part of the Judge of the Insolvent Court in the application of the principle? No doubt. I may observe that perhaps no two minds are constituted alike. A man might owe £10,000, but, if he were pressed, not be able to pay £500, and yet he might go and contract another £1,000 of debt, with a *bonâ fide* hope that he would be able to discharge the whole.

113. In reference to the facility that I think you stated dishonest persons possessed under the present Insolvent Law to obtain certificates, what further security would you recommend in order to secure the interests of creditors—I am speaking now of dishonest persons who you said easily comply with the provisions of the law. Would you propose giving any specific authority to the Commissioner to deal with cases that appeared to him to be dishonest, or that disclose dishonesty? I think it would very probably act as a salutary caution over the minds of a great many insolvents if they were aware that although no creditor should file a *caveat*, or object to the granting of a certificate, yet that the Chief Commissioner had the power of himself, without any objection at all being made by creditors, to refuse a certificate, if upon the facts before him he thought it should be refused. Under the 17th section of Amended Act, 7 Vic., No. 19, no person can now oppose the granting of a certificate, except the Assignee or a creditor; but I think the Chief Commissioner should be enabled to say that, although no creditors opposed, there was quite sufficient before him to induce him to refuse it.

114. Might not such a power vested in the Commissioner, though a novelty, be expected to work with a good effect on the cases of many insolvents? The Chief Commissioner ought to be a person of sound and good judgment and discretion, and perfect impartiality; and he might say to the insolvent that although none of his creditors appeared to oppose his certificate, still he did not think him a proper person to obtain, and that he should not only refuse it but give him six months' imprisonment. Then the insolvent might appeal to the Judge.

115. Are you of opinion that insolvents obtain certificates with too great facility under the present law? I am.

116. And that such a power as you have now alluded to, in the Chief Commissioner, would tend to check that? Yes.

117. Do you think certificates should be all of one class, or do you think it would be an improvement to provide for primary and secondary certificates? That is at present a moot question, and one I never gave consideration to. I am not at all prepared to say whether such a distinction of certificates would be beneficial or otherwise. In England, I am told, the press complain very much of its operation. One Commissioner will grant a first-class certificate, while another under similar circumstances would only grant a third-class.

118. In reference to the recommendations that you have mentioned with regard to the improvement of the Insolvent Law, are you prepared to specify them now? Yes; I can enumerate a good number. First, with regard to landlords, the present law presses hard upon them. Except the rent is actually due, under the 41st section the landlord cannot prove. Now rent is payable generally by the quarter, or it may be by the week—sometimes by the half-year—and except the rent is due the landlord loses the whole quarter. Frequent instances have occurred where the insolvent has come into Court three or four days before the quarter has terminated, and then the landlord loses the whole quarter's rent. There was one remarkable case where a house was let for £800 a year, the rent being due on 1st July, and the insolvent sequestrated in the end of June.

119. *By the Chairman*: Do you see any reason why the landlord should have a preference? That is another question. The amendment I proposed was that the landlord should be allowed to prove *pro rata*.

120. *By Mr. Piddington*: What other improvement would you suggest? It appears to me that it would be an improvement to oblige by law parties holding securities in insolvent estates to come in at some meeting, and prove their debt and value their security. Under the existing law there is no such power. A man may hold security valued at £1,000, while his debt is £400, and after the estate has passed through the various phases of the Insolvent Court, the mortgagee, or person holding a bill of sale, applies to the Assignee to pay him his debt and interest or else give him a conveyance; and the Assignee having no assets gives him a conveyance. Thus, in several cases the mortgagee gets property worth twice his debt.

121. *By the Chairman*: Have you known any instances where the property has again reverted to the insolvent after he has obtained his certificate? I know of no instances. There is another particular in which the law might be amended, namely, with respect to the preference given to servants. It has been decided that domestic servants are not entitled to preference except they are hired by the year, and that is in accordance with decisions in England. In this Colony, as far as my experience has gone, domestic servants—and indeed those who are not domestic servants, gardeners and agricultural servants—are hired by the month or week, and if they allow their wages to accumulate in the hands of their employers, as I believe they are in the habit of doing, in case the latter should become insolvent the servants are not allowed to prove. It is also a question undetermined, who are meant by the word "servants." I suggested an amendment to define who are the persons who should be considered entitled to preference. The practice of bringing trust estates into the Insolvent Court has latterly been more frequent, although the cases are still not numerous. Parties in pecuniary difficulty, or for their own purposes, make an assignment of their property to trustees; the trustees act under the assignment for a time, and when they choose to get rid of it they bring the estate into the Insolvent Court. I have looked into the Act I before referred

referred to, the Irish Bankruptcy and Insolvency Consolidation Act, and I can find no provision for the sequestration of trust estates. But if it be desirable that trust estates should be sequestrated, then I should suggest that before the trustees should be allowed to sequestrate, they should pass their accounts before the proper officer and show the position of the estate.

W.A. Purefoy,
Esq.

5 Mar., 1861.

122. Perhaps instead of proceeding orally through the list of amendments that you think desirable in the Insolvent Law, it might be more convenient if you would oblige the Committee by furnishing them with a written statement of them? I shall be most happy to do so. I would, however, like to mention one other suggestion relating to the length of time that generally elapses from the date of sequestration till the plan of distribution is filed. I think in those cases where the assets are realized before the third meeting, or at the third meeting, the Chief Commissioner should have the power to order and direct the Official Assignee to file his plan within a certain number of days, seven or fourteen days, except he could shew any good and sufficient reason to the contrary. To my mind it appears, that when the assets are realized, the sooner they are distributed the better.

123. *By Mr. Dick*: Is not the object of the delay to allow time for everybody to come in and prove—it does not follow that every creditor will have proved at the third meeting? If the Assignee is to keep funds in hand, awaiting every creditor to come in, great injustice is done to the other creditors who have proved. I may mention another case to the Committee that may suggest a remedy. A party arrested on a *ca. re.* gets out of gaol by sequestrating his estate, the Assignee gets possession of some effects, and the insolvent, who is a seafaring man, passes through the Court, no creditor having appeared. There was but a single meeting, and the insolvent, in due course, applied for his certificate and obtains it. The Assignee has £60 or £70 in his hands, and the insolvent applies for it, and says, "There are no creditors in my estate, that money belongs to me;" the Assignee replies, "That there may be creditors." Application was made to me by the party to know what he was to do, and I suggested, that the proper course would be, to apply to the Court for an order to the Assignee, to shew cause why he should not hand over the money. But that is a peculiar case.

124. *By Mr. Piddington*: May I ask whether you are of opinion that the practice of executing deeds of assignment by debtors, with a view to defraud their creditors, is on the increase, or not? I have no means of knowing anything about deeds of assignment unless they come before me in the Court; and I do not think, at present, I know of above half-a-dozen cases of sequestration by trustees.

125. I do not allude to deeds of that nature; but I ask, whether, in the course of your experience, you have been impressed with the conviction, that evasions on the part of debtors, of their obligations to their creditors, have been contrived by means of fraudulent deeds? The only instruments that may be regarded as fraudulent, as against the general body of creditors that have come before me, are those known as bills of sale; and I do not hesitate to say that bills of sale (in every case that has come under my notice) have been instruments either of fraud or collusion. A trader executes a bill of sale, and yet, as far as the commercial world is concerned, nobody knows anything about it; he gets credit on the assumption that he is the owner of a large place of business filled with goods; something occurs—perhaps an execution is put in—and somebody walks in and says, "everything is mine." A case of that kind occurred in George-street a few days ago. The parties, to the world, appeared to be in a good business, an execution was put in to a small amount, and somebody comes in and takes everything under a bill of sale; and, while the forms of sequestration are being gone through, the parties in possession under the bill of sale are selling. As far as my experience would direct me I would be inclined to abolish bills of sale altogether.

126. *By Mr. Walsh*: Does not the Secret Bills of Sale Act meet that case? No, these are registered, but their existence is not therefore generally known.

127. *By Mr. Piddington*: Do you not think the Court should be invested with a higher degree of authority in order to examine into the validity of such instruments? I am decidedly of that opinion, and for a reason which I think will satisfy the Committee. A party becomes insolvent, and the whole of his property is absorbed and taken possession of by a person to whom a bill of sale was given. Evidence is given to shew that when that bill of sale was executed the maker of it was insolvent, in fact, and that he knew he was utterly unable to pay his liabilities. Yet, although the evidence may be conclusive to the Commissioner's mind that the bill of sale was a fraud in its legal effect and sense—not criminally—on the general body of the creditors, and although the Commissioner may express an opinion to that effect, it is of no avail; the creditors must go to the Supreme Court to set it aside, to effect which there is an additional amount of expense; counsel must be instructed, briefs made out, solicitors must attend, and the motion must be made. If it should be thought that it would be intrusting the Chief Commissioner with two extensive powers, to enable him to declare a bill of sale void, let there be an appeal to the full Court, as to whether his decision was right or wrong.

128. Taking into consideration the probability that all appointments to the office of Chief Commissioner of Insolvent Estates would be appointments of learned gentlemen of some years standing at the bar, are you not of opinion that such an authority might be safely delegated to such a functionary? Yes, certainly.

129. *By Mr. Dick*: Is it not generally a case for a jury? Yes, perhaps it is. I recollect one particular case where the Court, on evidence taken before the Commissioner, under the 7th and 8th sections, declared a conveyance fraudulent and void. The party, in order to defraud his creditors, had executed a deed of trust in favour of his daughter, an infant; but the Court ordered it to set aside, and the property was handed over to the Official Assignee, and the proceeds distributed.

W.A. Pinfrey,
Esq.
5 Mar., 1861.

130. *By Mr. Love:* I think you said you inspected the charges of the Official Assignees before the distribution was confirmed? Yes; that is to say, all the plans of distribution made out by the Official Assignee are placed before the Chief Commissioner for his inspection; but, as I said before, the Court has decided that the Commissioner has nothing to do with the charges of the Assignee, except as regards the commission.

131. Do the Official Assignees charge their five per cent. on the estimated assets, or on the amount realized? On the amount realized. If an estate were to show estimated assets to the value of £10,000, and the amount realized were only £1,000, the Assignee's commission would be upon the £1,000.

132. If a sum of money is realized by an Official Assignee, and placed in the bank to the credit of an estate, and the bank allow five per cent. interest on the deposit for six months, would the Official Assignee think that interest fairly his own, or would it be placed to the credit of the estate? Your question would call upon me to tell what the Official Assignee would think of his transaction at the bank.

133. Are you aware of the practice in such cases—whether the interest goes into the Assignee's pocket or into the estate? I know no more than yourself what becomes of assets which Official Assignees collect until the plan of distribution is filed.

134. *By Mr. Walsh:* Are you not aware that there is a statute requiring them to pay those sums into the Colonial Treasury? I have already said that the returns required by the statute are not filed with me, but in the Prothonotary's Office. I believe the Assignees are obliged to pay in all moneys in their hands at the end of every three months.

135. *By the Chairman:* Are you aware whether moneys in their hands are actually paid into the Colonial Treasury or not? I know nothing about it, except that I saw a great number of the accounts with the usual butts of the Treasury receipts pinned to them. They verify the accounts on affidavit.

136. *By Mr. Love:* There are certain fees paid into your Court—to whom do the proceeds go? To the Treasury every week; I pay them in myself every week. They are all entered in a large book in the office to the particular estate to which they belong, and are then paid in to the Bank of New South Wales, and once a week a cheque is drawn by myself in favour of the Colonial Treasurer, and once a month the whole amount of money received is made out on a large sheet of paper and vouched for by myself.

137. Would you think it an improvement that the Official Assignees should be paid by the Government a fixed salary, and be under the direction of the Chief Commissioner? I am in favour of the Official Assignees becoming paid officers, and being more under the control and direction of the Chief Commissioner than they are at present.

138. Would you think it right that in cases of manifest wrongdoing the Government should prosecute at its own expense, in the same manner as they prosecute other offences. It is rather a hard matter that creditors losing the whole of their debts should be bound to prosecute at their own expense? I think it highly desirable that the Chief Commissioner should have the power of directing the Official Assignee to prosecute a fraudulent insolvent, and also to direct the application of a certain amount—say £10, £15, or £20—for the purpose of such prosecution.

139. *By the Chairman:* The question just asked you is this—Would it not be desirable that the burden of prosecution should be cast on the Government, and that the assets of the estate should not thereby be lessened? The Government at present do prosecute. In three or four cases that I have myself committed in, the Government prosecuted.

140. But the cost of the initiatory proceedings is thrown upon the creditors? Yes, precisely. If it is thought necessary to have counsel or witnesses from a distance, all these charges fall on the estate. Yes, I think it would be desirable that the Government should bear the burden of prosecuting, and not the creditors. Sometimes those prosecutions are very expensive.

141. *By Mr. Love:* If debtors, in order to obtain property, should make a false statement of their affairs, and yet, within a few months, go into the Court, and it should be found that they were not solvent at the time, would you consider that a sufficient reason for refusing a certificate? Quite so. It is provided for by the 18th section, that if any person, knowing himself to be insolvent, and having no reasonable expectation of being able to pay, contracts debts, that is a good ground for refusing a certificate.

142. In the case of a man concealing property that had been seized by the Court, would that be a sufficient reason for refusing a certificate? Yes, certainly.

143. Do you recollect the case of a man named Hawley, a confectioner, who was proved on evidence before you to have concealed some of his property, and yet he received his certificate? I have not the slightest recollection of it. You will bear in mind the answer I gave a short time ago, that no one has the power of objecting to the granting of a certificate but the creditors or the Official Assignee. If they do not choose to oppose him when he applies, the Commissioner cannot help himself, he must grant it as a matter of course, there being nothing before him to the contrary. I certainly have the power, now, to direct an information to be filed before myself; but if there should be a very gross case, and I should think it my duty to direct the Official Assignee to file an information against the insolvent, and the Assignee chooses to say he cannot comply with my directions, I have no remedy—I am perfectly powerless.

144. Do you really believe that the refusal of a certificate is a punishment at all in many cases—do the insolvents consider it so? That is a question depending very much on the circumstances of the insolvent. Some look on it as a punishment, others do not care whether they get a certificate or not.

145. Do you know any cases in which parties, having been refused a certificate, have immediately commenced business, and put their son's name, or wife's name over the door, and

continued

continued business as formerly? I know one remarkable case where I refused a certificate, and the refusal was confirmed, but the party was very shortly in business again, and some people say he is doing a very flourishing business now.

W.A. Purcfoy,
Esq.
5 Mar., 1861.

146. *By the Chairman*: In his own name? In his son's name, I believe.
147. *By Mr. Dick*: Do you not think it would be very desirable that the offices of the Official Assignees and of the Insolvent Court, should be under one roof? I do not know that it matters very much; but it would be a great convenience, no doubt, if they were either under the same roof as the Court, or immediately connected with it.
148. Are not the Assignees invariably attended by their solicitors in your Court? I am not prepared to say they are invariably, but frequently they are—I speak of cases where large interests are involved, and perhaps questions of disputed property.
149. In many such cases are not such attendances wholly unnecessary? I do not know that I am prepared to say they are wholly unnecessary. A case may arise where a party chooses to come in and prove, under a deed, a lease or a mortgage, and legal questions may arise which the Assignee is hardly expected to be competent to deal with, and then, for the interests of creditors it may be necessary that the Official Assignees may have legal advice.
150. Are there not many cases in which the attendance of solicitors is wholly unnecessary? It is hard to say many. I have seen cases where I think solicitors could be very well dispensed with.
151. *By the Chairman*: Might not legal questions be safely left to your decision in the cases you have referred to? It is hard for me to say that. The debt must be proved to my satisfaction, no doubt.
152. *By Mr. Dick*: Do not the solicitors employed by the Assignees impede the business? I do not know how to answer that question. Sometimes their assistance is desirable. I remember one very remarkable case, when two solicitors, on opposite sides of course, occupied the Court nearly the whole day, on a very important question.
153. I ask whether at times they do not impede the business? I am not prepared to say they impede the business.
154. Before the costs of such solicitors are allowed in the plans of distribution, it is your duty to tax the costs? Yes.
155. Do you ever, in the exercise of your discretion, inquire whether the employment of a solicitor was at all necessary? In some cases perhaps I strike out the attendance altogether.
156. Do you ever, in the exercise of your discretion, deem it necessary to strike out the whole of the solicitor's costs? Whenever I consider that a solicitor has been retained unnecessarily, I strike out the charge.
157. You have never seen a case where you have struck out the whole of the costs? No.
158. Do you feel that you are at liberty to interfere with the discretion of the Official Assignee in the employment of a solicitor at all? I do not know that it is any part of my duty. I do not know an instance in which I was ever asked or consulted as to whether it was necessary to have a solicitor or not. The solicitors are employed by the Assignees, or, I would rather say, the Official Assignee employs professional assistance without the intervention of the Chief Commissioner, sometimes at the request of the creditors and sometimes of his own motion.
159. Each Official Assignee, I believe, is generally assisted by a particular solicitor? I have seen an Official Assignee employ two different solicitors on different occasions. I do not know that the same solicitor invariably attends to the business of the same Official Assignee.
160. But as a general rule the same solicitor attends the cases in which each Assignee is concerned? Yes, as a general rule.
161. Do you not think it would be more desirable that the creditors should give directions for the employment of a solicitor? I do not know exactly how to answer that question. The Official Assignee himself may see the necessity of employing a solicitor; it may be a case of urgency, and if he has to wait for the directions of creditors he must call a meeting.
162. I am speaking generally of the practice—do you not think it would be more desirable as the ordinary practice, to take the directions of creditors in the matter? I think it would be desirable that the creditors should have a voice.
163. Do I understand you to state that it has never come under your knowledge that a solicitor has been employed when it was necessary? It is merely a matter of private opinion. I have already said I have seen solicitors employed in cases where I think they might be dispensed with.
164. But you have never thought it necessary to strike the costs off? I do not know whether I have or have not. In some hundreds of bills of costs I know I have struck off many items.

THURSDAY, 7 MARCH, 1861.

Present :—

MR. DICKSON,	|	MR. McARTHUR,
MR. LOVE,	|	MR. PIDDINGTON,
	MR. WALSH.	

JAMES HART, Esq., IN THE CHAIR.

Francis James Garrick, Esq., called in and examined :—

- F. J. Garrick, Esq.
7 Mar., 1861.
165. *By the Chairman* : You are a Solicitor of the Supreme Court? Yes.
166. The Committee understand that you have had some experience concerning the working of the Insolvent Law—will you favour us with your opinion as to any amendments you consider desirable? I would observe in the first place, that there is no power in the Act whereby the Commissioner can compel the insolvent to file his accounts.
167. Is there not a clause in the Act enabling the Commissioner to require from the insolvent accounts of his transactions and dealings for six months prior to his insolvency? To direct him to file, but there is no power to compel. I have in several instances attempted to enforce this, and in one instance, lately, got an order, and after several efforts, of course had to abandon it.
168. Therefore you were not able to arrive at the insolvent's state of affairs? No.
169. Have you heard any complaints respecting the management of estates by Official Assignees, and of the heavy expenses incurred by them? Continuously. I have had individual experience of the expense incurred by them.
170. Will you favour the Committee with any particular instances? I have had particular estates coming under my notice, in which the expenses of management by the Assignees have been so large, especially the legal expenses, that the assets have been dwindled away to nothing.
171. Is it the custom of Official Assignees to employ particular solicitors? There are one or two Assignees who never seem to move even in the most trifling matter without the solicitor at their elbow.
172. Have you any objection to name those Assignees? I hardly like to particularize them.
173. Do they perform duties that ought to be performed by the Assignees? Duties that could be performed by the boys in the office seem to be done through their attorney.
174. Is it the custom of these Assignees to require the legal assistance of these gentlemen at every meeting in an estate? I have seen them at the first meeting frequently.
175. Is there any necessity for that? None that I should conceive to exist. I have noticed that an Assignee who has been appointed lately seems to get on admirably without them, except where their attendance is really requisite.
176. What is the object of attorneys attending meetings before the Chief Commissioner—is it to resist claims preferred by creditors, or to elucidate the affairs of the insolvent? I have often been at a loss to ascertain what the attorney has been there for.
177. Have any bills of costs of these attorneys come under your notice? I saw one advertised the other day.
178. What one do you refer to that was advertised? That one of Andrews.
179. What were the peculiar features of that case? That was such a case as I have referred to, where the whole of the business which ought to have been performed by the Assignee or his clerks was performed by his attorney. For instance, take the notice to call a meeting; you would suppose that one of the clerks would write the notice, and send it by a boy to the *Government Gazette*, but I find upon running up the various items in the solicitor's bill, that the costs of getting a notice into the *Gazette* amounted to a pound and upwards.
180. Then you consider that the Assignees you refer to have abused the power placed in them to manage the estate? I do not like to use the word "abused," although I must admit it is an appropriate term.
181. *By Mr. Walsh* : They have availed themselves of a system which does abuse it? Yes, that is the expression I would use.
182. *By the Chairman* : Was the bill of costs you refer to in Andrews' estate taxed? It purported to have been taxed.
183. What is your opinion of the system pursued of taxing attorneys' bills? The Chief Commissioner knows nothing about it, he does not understand the principles of taxation.
184. You are acquainted with the Chief Commissioner? I am well acquainted with him.
185. Before he was appointed to his present office, had he any experience of taxing attorneys' bills? None whatever to my knowledge.
186. As a rule do you think barristers are fit persons to discharge that duty? I am sure they are not. Of course there are exceptions, and no doubt a barrister might acquaint himself with the principles of taxation as well as an attorney.
187. Do you consider, looking to the multiplicity of duties the Commissioner has to discharge, that he has not sufficient time to attend to this? I am certain he does not understand the principles of taxation; he does not know how to tax a bill. I have been before him myself, and have known him to allow items which ought not to have been passed, and to strike off others which ought to have been allowed.
188. Do you attribute to that the fact of items having been allowed in Andrews' estate? Not only that, but the Court should first have decided whether an attorney was necessary or not to perform the duties charged for; if not, to have disallowed them altogether.
189. Are there any complaints as to Assignees shewing favour to certain solicitors? Continuous.

190. Does that apply to all? No; to two only, as far as I have heard.
191. Does any relationship exist between those professional men and the Official Assignees? In one instance.
192. A family relation? Yes.
193. Do you think that tends to destroy public confidence in the management of insolvent estates by Official Assignees? Yes, I am of opinion so.
194. Is the mode of conducting business before the Chief Commissioner, in his Court, the proof of debts and examination of parties, generally satisfactory, or does there appear to be a laxity? I have often been struck with the laxity in proving debts; for instance, I have seen a printed form of affidavit filled up for goods sold without any date or particulars, and the Commissioner has allowed it. Of course, it is all right in the majority of instances, but it has always struck me as a very loose way of conducting the business. I believe the practice in the Insolvent Court is for a clerk in the office to fill up the affidavits for persons requiring them, and he receives the fees privately.
195. *By Mr. Walsh*: Has not that system been put a stop to of late? I cannot say. I have not had an opportunity of judging for the last two or three months.
196. *By the Chairman*: Then the system of clerks in the Insolvent Court receiving fees for their private emolument did exist? Yes.
197. Are you aware whether clerks in that office prepare insolvents' certificates? I know well that was the case when Mr. Shea was there, and I know that the clerks of the Official Assignees do it; and if the Assignee's clerk is in favour of the insolvent, you cannot work against him. I have wanted to upset a bill of sale which I was certain was morally as well as legally fraudulent, and the clerk of the Assignee has, in my opinion, attempted to baffle me.
198. Are the Official Assignees in the habit of attending Court personally? One or two of them are. I have noticed that Mr. Sempill is always there, as far as my opportunity of observing him goes.
199. He has been recently appointed? Yes.
200. *By Mr. McArthur*: That is when he has business himself there? Yes; when I have been there I have generally noticed him there, and Mr. Mackenzie.
201. *By the Chairman*: Does Mr. Perry personally attend? Very seldom; his attendance is the exception.
202. Have you had any occasion to transact business with him? Frequently.
203. Have you usually found him at his office? I have seldom seen him. My business with him has always been done through his managing clerk.
204. What is his name? Curtis.
205. Do you think the system of paying Assignees by commission a good one? I have hardly considered the thing so far as to have formed a judgment. It has struck me that it would be better to have Assignees at a stated salary, but I do not know that my judgment is sound upon the subject, for I never maturely weighed the matter; the Assignees, however, get some remuneration, whether there are any assets or not.
206. Before the insolvent can get his certificate? Yes.
207. Has it struck you that that has acted oppressively in certain cases? I do not know that it ever struck me, but I think it has struck me rather the other way, as far as I have noticed it.
208. In what way has it struck you? I think if Assignees have trouble in the management of an estate they should be remunerated.
209. Would not the simple remedy for that be the not signing of the certificate? No; because the Court have decided in a case, the name of which I now forget, that where the Commissioner moves the confirmation of the certificate, the act is considered performed, and that the issue of the certificate is merely evidence of the act.
210. Is there any distinction in our law between persons who are engaged in trade, and those who are not? No.
211. Have you observed that a certain class, such as clerks, professional men, and other persons not in trade, frequently sequester for small amounts owing to their butchers, bakers, and tradesmen? It has often struck me that the provisions of the English Act would be useful here, with reference to the distinction between traders and professional persons. I have thought the process of the Court has been abused by persons such as you refer to.
212. Are you inclined to suggest any alteration in the practice of examining insolvents in Sydney? One difficulty I have experienced in the examination of insolvents is that you are at the mercy of the Assignee whether he chooses to give you consent to an order to examine. In a case the other day of Nathaniel Payten of Parramatta, a question arose as to certain forgeries by Hayes, in consequence of which he, Payten, sequestered his estate. I wished to examine him, but the Official Assignee would not consent to an order to examine him. Mr. Johnson would not give the order.
213. Mr. Johnson is solicitor for Mr. Morris? Yes. I have since issued subpoenas to witnesses out of the jurisdiction of the Insolvent Court, but it is not clear whether there is a provision to issue in such cases.
214. You do not find it in the Insolvent Act? No.
215. I believe Judge Burton, who was the author of that Act, placed certain forms in his book, but gave no authority in the Act to carry them out? I believe not. It is done in practice now; but, I believe, were the point to be taken, that I could not compel attendance.
216. Have any instances come under your notice of persons executing deeds in favour of members of their family for the purpose of preventing their property passing to their creditors? I have known one or two cases, but they are exceptional cases. Bills of sale constantly

F. J. Garrick,
Esq.

7 Mar., 1861.

F. J. Garrick, Esq., constantly occur. There is a bill of sale in almost every estate which threatens to sweep away all the assets.

7 Mar., 1861. 217. Do you consider that the operation of the Bill of Sale Act clashes with the working of the Insolvent Act by giving undue preference to certain creditors? I cannot say it does; if it be a fraudulent preference it can be easily set aside by application to a Judge in his Insolvency jurisdiction, or to the Court, generally.

218. Is it not the fact that persons comparatively without means, but well versed in business, obtain large credit; and bills of sale are given to the persons who establish them, not only for the goods purchased from them, but over the whole floating stock purchased from other creditors? That is a constant occurrence.

219. Do you consider that just? No doubt it is very prejudicial to the other creditors. I have not thought of the matter, but I do not see how it can be remedied; for if a man gives goods to another, *bonâ fide*, he has a right to take security for payment.

220. *By Mr. McArthur*: That being registered, is known to other persons? It can be known if persons examine.

221. *By the Chairman*: Do you consider that the business of the Insolvent Court can be satisfactorily discharged by one person now? No.

222. What would you suggest? I think there ought to be a Deputy Commissioner—an officer to take proof of debts, tax costs, and all minor matters.

223. And that the duty of the Chief Commissioner—? Should he merely to inquire into the trade and dealings of the insolvent. For instance, now, the press of business is so great, that it is impossible, in point of fact, to carry on an examination if you have several witnesses, without three or four meetings in other estates clashing with it. There is also much time lost from want of punctuality.

224. Is there sufficient accommodation in the Court? There is no accommodation at all.

225. Are you aware of any instances in which the Chief Commissioner, in addition to refusing a certificate has, under the provisions of the Act, committed a party to gaol? I never knew an instance.

226. What is the operation of that rider to one of the late Acts, which is commonly known as the Chief Justice's rider? That it is compulsory on the Court, after two years, to grant the certificate, though they may formally suspend the granting of it for one or two weeks.

227. Then, in point of fact, under the present state of the law, an insolvent is not deprived of his certificate for ever? No.

228. After the lapse of two years it is in his power, by getting the assent of his creditors, to compel the Judges to grant his certificate? Yes.

229. The section provides, I believe, that the Judges shall grant it after further suspension? Yes.

230. Have they looked upon that as nominal? Yes.

231. Suspension of the certificate for a week or a fortnight? Yes; I never knew it to be suspended beyond a fortnight.

232. Have you heard that that Act was passed to meet any individual case? No.

233. That is the operation of it? Yes.

234. Would it be advisable, before a person's estate was absolutely sequestrated, to cause an examination to be held as to the causes of his insolvency—should the responsibility be thrown upon him of shewing he is insolvent before his estate is absolutely sequestrated? I think some measure should be taken, but I am not prepared to suggest any. It has struck me that the facility with which a man may sequestrate his estate is injurious to creditors; he may sequestrate his estate at any moment.

235. After putting his creditor to considerable expense in attempting to recover money due to him? Yes. I may mention the case of a man named O'Reilly, a publican, who, in an action recently, threatened that if the jury gave a verdict against him, he would file his schedule. The Chief Justice said he would look to the thing; but I see by yesterday's paper that his estate is sequestrated.

236. *By Mr. Love*: Do you know whether he had ever filed his schedule before? Yes.

237. *By the Chairman*: Can any punishment be awarded to him for making that statement? No.

238. Then the observation of the Chief Justice was not of very great force? No, it was quite superfluous. I will mention a thing which it has struck me works very injuriously to creditors—that is, the allowance to the insolvents.

239. What is the course at present? It is within the discretion of the Chief Commissioner to make an allowance to the insolvent; and it has generally struck me that the greater the vagabond the more certain is he to get a good allowance.

240. *By Mr. Piddington*: Is the allowance limited? No, it is discretionary.

241. As to time? Up to the second meeting.

242. *By the Chairman*: There is another point I would draw your attention to. Suppose an insolvent to be in possession of real estate—for instance, a house which he holds as a freehold after he sequestrates his estate, is there any summary mode of getting possession of the house? No; you have to bring an action of ejectment. I will mention a case which occurred lately, where the insolvent had certain household furniture, silver plate, plated ware, and other goods, in his possession. It appears that when he was about to become insolvent, he took a quantity of goods, such as dress pieces, calico, and other things, for domestic use. A marriage settlement was put in evidence, to shew that the property belonged to his wife. I took an objection, and endeavoured to shew that the property should have gone to the Assignee. This party moved for his certificate, and I, on the part of the Assignee, opposed it on that ground. That party still has the property in his possession, and has obtained his certificate, notwithstanding that it appeared

appeared upon the report of the Assignee, and the statements made by himself in Court, ^{F. J. Garrick, Esq.} that the insolvent had in every way frustrated the Assignee in his attempt to get possession of the property of the estate.

243. By reason of the working of the Act as at present, do creditors become careless of proving in estates? Yes. ^{Mar., 1861.}

244. On the other hand, have debtors become reckless? That is the presumption.

245. Do you believe that is the case? I believe debtors generally are reckless. Where there are assets they are so frittered away with expenses of various descriptions that, although a creditor may shew ten or twelve shillings in the pound, if a debtor gets half-a-crown out of the estate he is fortunate.

246. Under those circumstances are compositions frequent? Yes; that leads me to another observation. I think in reference to these composition deeds there should be power on the part of a majority of creditors to sequester an estate. I may refer to a recent case where the liabilities amounted to £90,000, and the assets £3,000. Two out of three trustees, under the deed of assignment, were anxious to sequester the estate for the purpose of getting at the party making the assignment, but their efforts were rendered useless by the refusal of the third trustee to acquiesce in the sequestration of the estate.

247. What is your opinion as to affording greater facilities for these deeds of assignment than at present exist? I think there should be greater facilities—they should not be open to technical impeachment in the way they are.

248. Is it difficult to frame a deed that would be good in case it were contested? It is difficult. To frame a deed that would hold good is the exception.

249. Is there any difficulty at present experienced by a resident partner who is willing to sequester his estate if his co-partner dissent? I know in several cases where one partner has sequestered the joint estate; but there is a decision of the Court with reference to a compulsory sequestration, that it cannot be done unless both partners are in the Colony.

250. Under the present law is it requisite that both partners should petition? I believe it is legally so, but I know several cases in practice where estates have been sequestered by one partner and the order has never been impeached. I think I did it in one estate myself.

251. *By Mr. McArthur:* Do you think the present Insolvent Law is imperfect, or that the evils complained of are attributable to the bad manner in which it is worked? I do not believe that the Insolvent Law is anything like as imperfect as the public suppose. I think it could be worked if there were a proper man to work it.

252. I have heard it stated by legal gentlemen that we do not so much require an alteration of the law, as that the present law should be more perfectly worked out? I do not believe we do.

253. Do you believe that there is sufficient power given by the present law to the Assignee to enable him, if he has reason to suppose an insolvent is acting fraudulently, to take action as he ought to do? I think there is ample power for the Official Assignee to do that now.

254. What I mean is this—I refer to a case which has come under my own observation—a man became insolvent in the Western District, his estate was sequestered, and information was sent here that he was conveying away his goods fraudulently —? The Assignee could file an information against the insolvent.

255. But he might object that he had not funds in hand to go on with the case—ought there not to be some provision to indemnify the Assignee in such a case? I think now an Assignee could act in such a case, provided an individual creditor chose to indemnify him. I do not know that in any case an Official Assignee could be compelled to take proceedings against an insolvent without funds, either from the Government or other source, to pay the expenses.

256. Do you not think there should be some way by which the Assignee should be indemnified, for, in many cases, a fraudulent insolvent escapes because the Assignee has not the means of carrying on an action? No doubt it would be very desirable that the Official Assignee should be indemnified from some source; but the law is not defective, if he gets funds from any source the law is open to him. Of course there would be the same difficulty in bringing a charge of fraudulent insolvency against a person as any other charge; there must be all the legal evidence necessary to substantiate, and the production of this would, in many cases, be difficult and expensive, if you had to bring the party to Sydney.

257. In such a case as I refer to, if the insolvent is not opposed when he applies for his certificate, is it granted? I think so.

258. In the case of this man to whom I refer, I believe there was the most satisfactory proof, that he had illegally made away with a large portion of his goods—I believe it was known to the Court—to the Chief Commissioner—and yet that man got his certificate without any difficulty? I know that where evidence has been given before the Commissioner of the transactions and dealings of an insolvent, when the party has applied for his certificate and his application has been unopposed, I have heard the Commissioner say, "There has been evidence taken in this case which I must peruse," and I have known him to refuse the certificate, even where there has been no opposition. It appears fair and reasonable, if the Commissioner has evidence before him which indicates improper conduct on the part of the insolvent, that he should have the discretion, and I have seen him exercise it.

259. Are you under the impression that too much leniency is shewn to insolvents? I am sure of it; at least that is my opinion. Great facilities have been given for getting certificates. For instance, suppose any doubt to exist in the mind of the Commissioner as to the propriety of granting a certificate to a certain insolvent, one of the clerks of the Assignee will perhaps say, the insolvent has conducted himself well—he has afforded every facility to the Assignee in the winding up of the estate—there is no objection to the granting of the certificate on the part of the creditors; and probably that very clerk has been engaged

F. J. Garrick, Esq., in preparing the certificate, and has it at the time in his pocket; thus, the prospect of remuneration for the preparation of the certificate will prompt him to speak in the insolvent's behalf.

7 Mar., 1861.

260. Have you seen any instances of what I may term incivility to creditors, and apparently a disposition to deal too leniently with the insolvent, in the Insolvent Court? Do you mean generally, or on the part of the Commissioner?

261. Both? It always struck me that the clerks in the office had too much to do with the insolvent, and would rather serve him than otherwise.

262. *By the Chairman*: I suppose they construe the Act literally as an Act for the relief of insolvents? Indeed they do.

263. *By Mr. Walsh*: Do you think it desirable that the entire business of the Insolvent Courts should be transacted in Sydney? By no means—part of it is now transacted in the country—I do not see any objection to the examination of insolvents, proof of debts being carried on in the country.

264. Do you not think the District Court might be used for the examination of insolvents? I think it could be, but not on its present basis, for the Judges are now travelling from time to time.

265. Have you looked to the recent English or Irish Act? I have looked at the English but not at the Irish.

266. You are aware that since the passing of the existing Insolvent Law of this Colony, that the Insolvency and Bankruptcy Law has been a matter of Legislative discussion in England? Yes, and that professional and private persons are enabled to avail themselves of the protection.

267. Those are the Bankruptcy Acts. At any time professional or non-trading persons might avail themselves of the Insolvency Law. With reference to the collection of insolvent estates, I believe the expenses incurred by the Official Assignees are principally connected with the collection of estates, the realization of the assets? To a very great extent.

268. You have a country practice in connection with the District Courts? Yes.

269. And also a general country practice in connection with the Supreme Court? Yes.

270. Have you not found difficulty at times in the execution of writs from the want of a Sheriff's officer? Yes, I have in the country.

271. With the exception of Bathurst, Maitland, and Goulburn? Yes, I have had to appoint a special bailiff, to pay him at an excessive rate, and run any risk.

272. Besides giving a bond to indemnify the Sheriff? Yes.

273. The Colony has outgrown the efficiency of the Sheriff's Office? Yes, for a long time.

274. You are aware that there is an officer in the District Court who is the District Court Bailiff? Yes.

275. In each of the District Court districts? Yes.

276. In each of the District Court districts there is also a Collector of Intestate Estates? Yes.

277. Would you think the appointment of one officer in each District Court, who would discharge the duties of Sheriff, and District Courts Bailiff, Collector of Insolvent Estates, and Curator of Intestate Estates would be desirable? I think one officer could perform those several duties.

278. You think one officer could easily collect these different matters? Yes.

279. The usual per centage that is allowed to the Sheriff, say five per cent. for the first £100, with the salaries paid to the Sheriff's officer and the District Courts bailiff, do you not think that would be ample remuneration? I think five per cent. would be, provided the party received the remuneration attached to the other offices.

280. Would the united incomes sufficiently remunerate a respectable person? Amply.

281. You think the services of a competent and respectable party could be secured without any increased expenditure? I think so.

282. Do you think the presence of such an officer in the district would be calculated to promote efficiency in the collection of these moneys? I think so. A good deal depends upon the character of the person.

283. Assuming you get a proper man? Yes. We have now to pay pretty handsomely, and to remunerate the bailiff above his fees.

284. I would call your attention to the schedule under the Irish Insolvency Act—would you approve of that? As far as I have read, or have run my eye over it, it strikes me as admirable.

285. With a schedule such as that, properly filled up, the Assignee could have but little difficulty in collecting the estate? Very little; that contains the information for which we are very often fighting for months.

286. The adoption of such a schedule as that would get rid of the first difficulty you complain of, namely, that there is no mode of compelling an insolvent to file accounts? I may make an observation as to a case which has recently come under my notice with reference to keeping accounts, where a large exporter of fruit, who had sold fruit in one year to the amount of £17,000. The senior partner of the firm could do nothing but write his name, and no books were kept. The estate was wound up, and there was not a penny in the pound for the creditors. I got instructions, at a considerable expense, to oppose the granting of the certificate. I had these parties before the Court and examined them. I would ask one, "Is that your entry?" His reply was, "I cannot read." "Whose writing is that?" "I do not know." He went through the Court without any difficulty; baffled every effort to get at his estate; got his certificate, and again started in business. At the same time I knew that he had spent some eight or nine thousand pounds in the erection of houses in Sydney; that

that he had shipped a large quantity of fruit, and the evidence went to shew that on the whole he had made a tolerably good profit, and yet there was not a shilling for anybody. F. J. Garrick,
Esq.

287. With respect to bills of sale, you were asked in reference to their operation as affecting insolvent estates, have you not found, very frequently, that bills of sale are relied upon by some particular creditors, in an insolvent estate, where they are not given on condition of the first advance? Frequently. 7 Mar., 1861.

288. If given for an existing debt, of course, in point of law, they would be void? They very often recite that fact, so that any one can see they are void on the face of them.

289. Is there not a provision for making forbearance a good consideration? My attention has not been drawn to that.

290. Forbearance is a good consideration? I doubt that—I know it would be in some cases—do you mean to support a deed as against a creditor?

291. Yes? I do not think so.

292. I would ask you whether if it be a consideration, such as would support a deed, it would be desirable to get rid of it? Of course it would; there could not be two opinions about that.

293. Then if the estates in the country districts were collected by these officers there would be no necessity for these Official Assignees in Sydney? No.

294. Except for the purpose of Sydney estates? Yes.

295. Have you observed, that in estates where the assets are of small amount, the Official Assignees take very little trouble? Very little.

296. Unless there is a probability of something handsome being realized, in the shape of commission, they take very little trouble about an estate? Yes.

297. Have you known any instance in which the petition and schedule have shewn an approximation to twenty shillings in the pound, where the estate did not pay twenty pence? Yes.

298. And the reason of its not paying twenty pence was, that whatever assets there were, were absolved in expenses? I have not looked particularly to the cause, but I have noticed the fact.

299. Has there not also been an undue interval between the sequestration of an estate, and the ultimate distribution of the assets? Yes; you cannot get a plan of distribution filed. I had to move for a rule *nisi* to shew cause why a plan of distribution should not be filed, and the estate had to bear the expense of the application. That, I think, was after nearly twelve months. They never file within six months, sometimes not within a year, and sometimes even more than that.

300. *By the Chairman*: What is the reason of the delay? I cannot tell; I have no idea, except general dilatoriness on the part of the Official Assignees.

301. *By Mr. Walsh*: They have the funds in their hands, and have no necessity for activity? Yes.

302. In a large majority of cases would not a gentleman of ordinary intelligence be able to do the business of an Official Assignee without the intervention of a solicitor? That has always been my opinion; it has always struck me that one or two Assignees have a solicitor dancing after them very unnecessarily; they cannot open their mouths without having an attorney to speak for them. It has struck me as a very good provision in the Insolvent Act that the creditor should choose both the Assignee and the attorney.

303. *By the Chairman*: Was that not formerly the case? It was formerly the case with regard to the Assignee; in England it is so as to the attorney.

304. Did it not lead to very great abuses? I am not competent to offer an opinion. I am not a very old practitioner; I do not recollect.

305. *By Mr. Walsh*: In reference to creditors' deeds you have stated that you thought there ought to be greater facility for executing and giving effect to them? Yes.

306. Do not you think it would be desirable to give the majority of creditors the power to bind the minority? Yes, I do; provided regard be had to the amount, and not to the majority in number only.

307. Under the Irish Act I see it is three-fifths in number and amount, and under the English nine-tenths? It has always struck me that deeds of composition were a much more easy way of settling an estate, and much more remunerative to the creditor, and I have no doubt of it.

308. Is it not in consequence of the difficulty of carrying out the Insolvent Law, that you think these deeds preferable? Yes. I think estates could be disposed of as inexpensively as by the preparation of these deeds.

309. Under the Irish Insolvent Act the practice is this:—The party files his schedule, and prays that he may have the benefit of the Insolvent Law. A day, not later than twenty, is fixed for hearing the petition, and the party must give twenty days' notice of that to each creditor. He then appears before the Court to support his petition, and whether his creditors appear or not, it is the duty of the Judge to see that he is a person fairly entitled to the benefit of the Act. If the Judge is satisfied upon that point, an order for the discharge is given. If the creditors choose they may attend and oppose, but from the presentation of the petition the estate vests, and the realization of the estate is going on for the benefit of the creditors independently of whether the petitioner is entitled to the relief sought or not? I think it would be an admirable thing, provided the presentation of the petition had the same effect as an order to prevent the creditors outside going on.

310. The estate vests from the presentation of the petition—do you think that would be an improvement on the present practice? Clearly.

311. Do you not think, upon filing the schedule in the office in Sydney, an order might be made for hearing the petition in any District Court in the Colony? It might and would save expense, as far as country insolvencies were concerned; it would also be a very excellent way

F. J. Garrick, Esq., way of carrying out the Chairman's idea of having a hearing before the sequestration of an estate.

7 Mar., 1861. 312. *By Mr. Love*: Do you think where a debtor has been found to act fraudulently, by not giving a full return of his property, withholding his certificate is a sufficient punishment? I doubt whether it is a punishment at all; he can carry on trade all the same. In fact a certain class of people are better off without their certificates than with them. I know one person now, he has been twice insolvent within three years, and he is carrying on business with his mother's name over the door.

313. You know instances where certificates have been refused by the Chief Commissioner, and the parties who have been refused have carried on business with the name of a son, or some other person, over the door? Yes.

314. In any new law which might be enacted on this subject, would you recommend that the Commissioner should have the power of awarding imprisonment? I think it would be better if the Commissioner had more jurisdiction in that respect than he now has. Of course imprisonment must be the result of some proceedings, some information preferred against the insolvent. I think we should be careful not to make the Insolvent Act oppressive, instead of an Act for the relief of the insolvent.

315. But if the withholding the certificate be no punishment there is no punishment for the fraudulent insolvent? In many cases it is a serious punishment, but in the majority of cases I do not think it is.

316. *By the Chairman*: After all it is only for two years? It is only for two years.

317. *By Mr. Love*: Have you ever had cases in which parties had obtained property within three or four months of their insolvency, and refused to give accounts of their proceeds—persons who did not keep books? I have often met with such cases, where, as I have before stated, they alleged either that they did not keep accounts, could not read or write, or some such excuse. Under the present Act there is a difficulty with reference to examination. I saw the point taken the other day—that, although the Commissioner has the power of commitment for not answering a question, yet, so long as a person does answer, he has no power of commitment.

318. Would you not think it a power which might be wisely lodged in the Chief Commissioner, of compelling a creditor to be examined? Yes, I have spoken of that. You are now at the mercy of the Assignee. I think the jurisdiction should be with the Chief Commissioner, and that you should not be at the trouble of going to the Assignee, and from the Assignee to the Judge.

319. Would you recommend that the Assignee should be under the Chief Commissioner rather than under the Judge? I cannot see any good that would result.

320. In order that he might require their attendance? I think they ought to attend on every occasion.

321. If they were more under the control of the Chief Commissioner would they not be more likely to attend? I think if they were more under the control of the creditors they would be more likely to attend.

322. *By the Chairman*: Have you any bills of cost in your possession relating to insolvent estates, which have been furnished by Official Assignees' solicitors? Not that I am aware of. I have seen some.

323. Are you aware of any circumstances relating to the estate of a person of the name of Johnson, residing at Wollongong? No.

324. Have you any other suggestions you wish to make to the Committee? On reference to the 8th and 12th—the ruling of Mr. Justice Wise, in the case of Sempill and Anderson, is worthy the attention of the ———

325. What were the circumstances of that case? The Assignee brought an action to recover money, paid under the 12th section, and goods delivered to a creditor under the 8th. It was a cash transaction, and the goods were paid for to the extent of £25; and the party being unable to pay the balance gave the goods back to his creditor. Under the ruling of Judge Wise the jury gave a verdict, and I am inclined to think he was right in point of law.

326. You consider that the question of fraud ought to have been introduced, that it should have been not simply as to the taking back the goods, but whether it was done with a view of defrauding the creditors? Some such provision. I am hardly able to suggest what—but it struck me that a provision in the English Act would be worthy of consideration, as to the *bonâ fides* of the intention of the insolvent—as to whether it was voluntary on his part.

327. *By Mr. Love*: With respect to this case to which you have referred, were part of the goods sold for cash? They were all sold for cash.

328. Part of them were paid for immediately on delivery? £25.

329. £25 was paid immediately on delivery of the goods? I believe on the following day.

330. I believe it was on delivery? No, it was my own case, and I believe it was almost immediately on delivery, but not immediately on delivery.

331. Do you think the ruling of the Judge, that that £25 should be returned, was right? I am afraid so. I do not think it was ever within the spirit of the Act, but I am inclined to think his ruling was correct.

332. You are aware that many country houses are in the habit of paying their acceptances at the bank up to within a day of going to Court? Yes, I know the case of a firm whose name is in the paper to-day, and whose acceptances were paid to the day.

333. If Judge Wise were right in the case of Sempill and Anderson, are you not of opinion that the banks should return all the money they have received in such cases? I think it will work a frightful evil never contemplated by the Act, but that it is within the letter of the law, I am afraid is too true.

William Alexander Purefoy, Esq., Chief Commissioner of Insolvent Estates, called in and further examined:—

334. *By Mr. Walsh*: I believe you have had your attention directed to the Irish Bankruptcy and Insolvency Consolidation Act? Yes, I have looked over the Act, but I have not read it through. W.A. Purefoy,
Esq.

335. So far as you have examined it, do you think it could be applied to the circumstances of this Colony? A very considerable portion of its provisions could, I think, be applied to this Colony, and with great benefit and advantage. 7 Mar., 1861.

336. Supposing the Irish Act were adopted here, do you think our District Court Judges would be able to discharge the duties imposed by it on the Assistant Barristers? It is impossible for me to answer that question, in consequence of my being wholly unacquainted with the machinery of the District Courts, or the means there would be at the command of the District Court Judge to carry out the provisions of the Act.

337. I think I understood you to say here, the other day, that the Insolvency Laws in force in this Colony now are imperfect? They are imperfect, and inadequate to meet the requirements of the commercial community.

338. And I think I also understood you to say, that the Judge of the Insolvent Court ought to be independent of the Judges of the Supreme Court, and have a peculiar jurisdiction of his own, with an appeal from him, in cases of difficulty, to the Supreme Court? I think the Judge, or Chief Commissioner, whichever you please to call him, of the Insolvent Court, ought to have much greater power and jurisdiction than he at present possesses, and that that jurisdiction should be much less subject to appeal to the Supreme Court than it is at present.

339. At present the Chief Commissioner of the Insolvent Court is an officer of the Supreme Court? So he is called—a ministerial and judicial officer; and appeals, I may observe, from the decisions of the Chief Commissioner, in every matter within his jurisdiction, are appeals to a single Judge, who, by an Act of the Legislature, is constituted the Court in Insolvency—appeals from the granting or refusing of certificates alone excepted.

340. *By the Chairman*: Is there any appeal from that Judge to the three Judges? I never heard of any.

341. You are aware that that Judge having sole jurisdiction in appeals under the Act, there can be none? As regards the admission or rejection of appeals from the Commissioner to the Judge, the words are “the decision of such Judge shall be final.”

342. Do you consider that Act ought to be repealed? I certainly think that particular clause should be altered so as to give an appeal to the full Court instead of to a single Judge. That would be a great improvement.

343. *By Mr. Walsh*: Are you aware that, in England, the appeal is to a single Judge, with an appeal from that one Judge to the Lords Justices? No, I am not aware of that.

344. Have you observed any instances in which the schedule filed showed assets approximating to 20s. in the pound, and there has been no dividend in the estate ultimately? Yes, I have observed that in several instances.*

345. Have you observed any cause why there should have been no dividend? I had better answer the question more fully by saying, I have observed, and there are now in the office several schedules, shewing on the face of the schedule a large surplus, say £10,000, and yet £5 has not been realized in the estate.

346. *By the Chairman*: Is not that a gross abuse of the Insolvent Act? I am not at all prepared to say it is a gross abuse of the Insolvent Act, because the schedule is framed in accordance with the provisions of the Act, and the reason of such a strange anomaly appearing on the face of the schedule as a man appearing on sworn documents to have £10,000 over his liabilities, is, because he puts a value of his own on his property, which is mortgaged. For instance,—the estate of a country gentleman it now in the Court, and, if my memory is correct, the surplus shewn on the schedule is something like £18,000. The insolvent values his property at a certain amount which exceeds his liabilities by that sum.

347. *By Mr. Walsh*: Have you known any instances in which assets, approximating to 20s. in the pound were shewn on the schedule, and where they were eaten up by expenses, or very nearly? Yes, I have. There is one estate that came under my notice as Chief Commissioner, where the assets realized a sum above 20s. in the pound, and were brought to Sydney from a place called Deniliquin, and the dividend paid was either 12s. or 12s. 6d., I am not now prepared to say which.

348. That was the case of Edwards? Yes, a very remarkable case.

349. Do you happen to know the particular circumstances under which the sequestration was obtained in that case? Not with sufficient distinctness to give a detailed account of them, but if I may speak from recollection, a charge was preferred against the insolvent—a charge of felony, I think—in his absence; a warrant was issued, and he was taken and incarcerated, and while he was under *duress* an application was made for a rule *nisi*, and his estate was sequestrated while he had no opportunity of showing cause.

350. Do you happen to remember within what time that rule was returnable? No, I have no recollection of the time; it is an occurrence now of more than two years' standing.

351. Is it not usual to make the rule returnable within fourteen days? The time within which a rule *nisi* is returnable, depends on the particular circumstances of each case.

352. Have you known any other case where there have been apparently similar facts? Not exactly similar as regards the realization of assets exceeding 20s. in the pound; but I have known another estate, which is present to my mind, where I think the assets realized would have paid 15s. or 16s., and the dividend was less.

353.

* NOTE (*By witness on revision*):—I desire to alter and amend *this answer*. I cannot mention any particular case, but I have no doubt there are such.

W.A. Purefoy, Esq.
7 Mar., 1861. 353. Returning to Edwards' estate, can you call to mind what was the principal item of expense in the realization of that estate? I can only state from memory that the principal item was the commission charged by the agent of the Assignee, who, I distinctly recollect, when the matter came before me, stated that he was sent specially from Sydney to Deniliquin, while it was contended by the Assignee, who is now no more, that he was not sent specially, but that the agent was going there on other business, and that he therefore employed him as his agent.

354. The agent was a resident in Sydney? Yes, who had been a publican.

355. Do you happen to know the distance from Sydney to Deniliquin? Only by reference to the Post Office tables—700 miles, I think.

356. In the event of the death of an Assignee, what becomes of the papers in the estates in which he was concerned—are they handed over to his successor? Yes; all papers and documents are transferred to his successor in office.

357. Then the papers in this estate would be in the hands of the successor of the Assignee who had charge of it? Yes, or ought to be.

358. Do you know of your own knowledge, how Assignees procure estates to be collected in the country districts? No, I do not.

359. Have you ever observed that they charge allowances to agents for collecting estates in the country districts? I am aware that they charge for employing agents in the country, because such charges are put down in the plans of distribution.

360. Is there any uniform rate of payment for these agents? Not that I am aware of.

361. It is matter of arrangement between the Assignee and the agent? I should think so; I have no means of knowing to the contrary.

362. Is the Assignee allowed a commission upon the amounts realized by these agents? The Assignee charges his commission of five per cent. on all the assets realized.

363. Then if the Assignee, say, employed an auctioneer to realize he would have to pay the auctioneer his commission on the transaction? He would have to remunerate him for his time and trouble.

364. And that remuneration is usually a commission? Yes.

365. So that in estates realized through the intervention of auctioneers the estate has to pay commission to the auctioneer and commission to the Assignee for the same thing? I am not prepared to say without referring to plans of distribution.

366. *By Mr. McArthur:* Do you think the present mode of paying the Official Assignees by commission is a good one, or that it would be more desirable that they should have a fixed salary? I am of opinion that a fixed salary would be a better mode of remunerating the Official Assignees than the present mode by commission.

367. Do you think that, in some cases, it might not induce Official Assignees to be less energetic in winding up estates? It is quite impossible for me to say what effect a payment by a certain fixed amount would have on the minds of Assignees.

368. Would you approve of classifying estates—estates where the assets are small and where they are large—do you think it would be an improvement to pay the Assignees, not a uniform commission of 5 per cent. on all estates, but a larger commission where the estate was very small and a smaller commission where the assets were very large? I have already made that suggestion to Sir William Burton. On estates under £100 the commission is 10 per cent., but on all that are over £100—whether £150 or £50,000—it is 5 per cent.; and it has struck me, in some few instances, that that is by no means a just or equitable mode of remuneration as regards the body of creditors, because it has come under my immediate notice that estates have come into the Court where there has been a cash balance to the credit of the insolvent exceeding £3,000, and there no trouble whatever has been incurred by the Assignee beyond perhaps applying to the manager of the bank to transfer the amount to the credit of the estate; and yet on that sum the Assignee receives the same commission as he would upon a like sum realized perhaps by a troublesome and expensive action at law.

369. Then you are in favour of paying a smaller commission on large estates and a larger commission on small estates, according to a proper scale? Yes, I am in favour of that arrangement, which is in accordance with the provision of the Irish Bankruptcy and Insolvency Consolidation Act. That Act provides that the commission payable to Assignees shall be regulated according to the trouble incurred.

370. Do you not think, from your experience in the Insolvent Court here, that a great many insolvencies arise from the fact that parties do not keep proper accounts and do not know their position at all? I entertain no doubt upon that point.

371. Do you not think that in the event of any new Insolvent Law being brought into operation it would have a salutary effect to oblige every person in business to take stock at least once a year; or, in the event of his becoming insolvent, and his books shewing he had not done so, to refuse his certificate on that ground alone? It is at present one of the provisions of the amended Insolvent Act, 7 Victoria No. 19, that not keeping reasonable books is a ground for refusing a certificate.

372. But a man may keep books in what may be regarded as a tolerably correct method, and yet never take stock—he may fancy himself in solvent circumstances, and yet, when he gets into difficulties and is compelled by his creditors to take stock, may find himself not worth ten shillings in the pound? My answer is, that I fear it would be a dangerous and perhaps difficult thing to prescribe by law the mode in which a trader or merchant shall carry on his business, or to say that he shall be obliged by law to balance his books at certain intervals. I am afraid it would be a very difficult thing to legislate on such a subject.

373. Have you met with any cases in which you had reason to believe that insolvents had acted fraudulently, but yet there has not been sufficient evidence to justify action being taken for a committal? Yes, there have been several cases of that kind.

374. Do you think that Official Assignees at present have sufficient inducement and facilities to act in such cases—I will illustrate what I mean by a case which was referred to in Mr. Garrick's evidence:—I and several other Sydney houses were interested in an insolvency which took place at Orange. The man filed his schedule, and after the estate was in the Court, one of his creditors in Sydney, with whom I am acquainted, received a letter from Orange stating that this man had been seen taking away several dray-loads of goods at night; he called upon me and I went with him to the Official Assignee, who said he had no means of acting as he had no funds in hand, and that if he acted at all he must do it on his own responsibility, and at his own risk, which he did not feel inclined to do, because on the last occasion when he had done so he had lost fifty pounds and gained nothing. Now for want of some means of remunerating the Assignee for the expenses he might be put to, the examination was not gone into, and I believe firmly that the insolvent acted fraudulently, but he has since got his certificate and the matter is ended? I know the case to which you refer. Several cases have come under my notice in which I have entertained no doubt from the facts before me that the insolvent had acted dishonestly and fraudulently, yet it was not such evidence as I could feel myself justified in committing the insolvent upon for fraudulent insolvency.

W.A. Purcfoy,
Esq.
7 Mar., 1861.

375. *By the Chairman*: Who has actual charge of the records in your department? The Chief Commissioner by law; they are kept in the office of the Chief Commissioner, and under the Act he has custody of them.

376. It is likely that the Committee will wish to see some of the plans of distribution and bills of costs sent in to your office—to whom should they apply? I am not aware whether there is a single bill of costs filed in my office, because the practice is that the solicitor gives a copy to the Assignee, and the Assignee keeps the bills as his voucher for the payment.

377. Then they are not filed in the estate? I think not.

378. Is it not the rule in the Master in Equity's Department, which is reckoned somewhat similar to your own, that all bills of costs before they are taxed must be filed? I do not know anything at all of the practice in the Master's Office.

379. Have you in the exercise of your duty found it necessary to suspend the certificates of many insolvents for not keeping proper books of account? Whenever I am satisfied that an insolvent has not done so I refuse him his certificate.

380. Then it rests with yourself to say what are proper books and what are not—not whether the books shall give a specific amount of information, but whether you are of opinion that they are sufficient or not? Yes, it is left to the discretion of the Commissioner to determine whether the insolvent has kept proper and reasonable books of account.

381. Have you on refusing any certificate also committed the insolvent to gaol, under the provisions of the 19th section, I think it is, of the 7th Victoria? Yes, I have.

382. In how many instances, and what were the circumstances under which those commitments took place? I am not prepared to say how many, but only in a few instances. The first appeared to me to be a very proper case for a greater amount of punishment than the mere refusal of a certificate, and I accordingly committed the party, but admitted him to bail. It was a case of gross assault upon the officer who went to insolvent's premises to do his duty. I sent the case to the Supreme Court.

383. I am not alluding to cases of that kind! I am alluding to one of the sections of the Amended Insolvent Act, which gives the Commissioner, in addition to refusing the certificate, the power of committing the party to gaol for a certain period? I am not aware that the Commissioner has any such power, and I think, on reference to the 19th section, you will find that the provisions are, that if the Commissioner sees fit, he shall hold the insolvent to bail to appear before the Supreme Court, and the Court may, if they think fit, commit him for twelve months only.

384. Then you have no power to exercise summary jurisdiction by sending a party to gaol? I have not.

385. Your power is merely ministerial? Merely ministerial.

386. Have you any other observations or suggestions to make to the Committee? I would like to make one other suggestion to-day, with regard to offers of composition made by insolvents. I think there should be a provision of the law to prevent any offer being made unless it was accompanied with security for carrying it out to the satisfaction of the majority of the creditors in number and value. The present law requires that an offer shall remain in abeyance for 42 days, before it can be accepted or carried out, and in many estates in which there are considerable assets, offers of composition are made by the insolvents, but in several instances after the 42 days have expired, the insolvent comes in and says he is not able to carry out his offer. In the meantime, considerable expenses are incurred by the Assignee in looking after the property, and sometimes considerable loss is sustained, as in the case of crops, agricultural produce, and other things. Sometimes it has appeared to me that the offer of composition was nothing but a mere ruse to mislead and deceive the creditors. Therefore, I think there should be a provision that no such offers should be made without security being taken for their fulfilment.

387. *By Mr. McArthur*: According to the present law such offers must remain under consideration for 42 days, are you aware of any good object to be served by such a restriction? I can only suppose that the Legislature considered it wise and prudent to give the creditors ample opportunity of inquiring further into the circumstances of the insolvent, so as to ascertain if possible whether he was able to offer a larger amount of composition or not. I can conceive no other reason.

388. In cases where offers of composition are accepted, or where the assets are all bought up by any one person, and the Official Assignee has no further trouble in the estate, is it not usual for him to claim his entire commission? I know cases in which the Assignee has claimed

W.A. Purefoy, Esq. claimed a commission upon the whole of the assets, although the estate has been taken out of the Court, but I know of no case in which the whole commission has been allowed. Some remuneration has been allowed by the Supreme Court to the Assignee—perhaps for his trouble—perhaps for his disappointment.

7 Mar., 1861

389. *By the Chairman*: Is it not in the power of the Assignee to prevent an estate being released unless his demands are complied with? The practice of the Court has been to require the assent of the Assignee before the estate is released.

390. Is it not in his power to refuse that assent unless his full commission is paid? I dare say it is.

391. *By Mr. McArthur*: Are you aware that in one estate in which the Assignee claimed full commission he was allowed £105? Yes, I remember that case; it was allowed by the full Court. I would make one other suggestion with regard to compulsory sequestrations. I think it is highly desirable that there should be some less expensive mode of proceeding to make a party an insolvent debtor. At present there are only two modes that I know of; one is by obtaining a judgment, the other is upon affidavit that the party is about to leave the Colony.

392. *By the Chairman*: With the intention of defrauding his creditors? Yes. Of course, in that case an order could be granted very easily; but with regard to the necessity of the creditor obtaining a judgment of the Supreme Court on an overdue note or acceptance, or for goods sold and delivered, I think a much speedier mode could be adopted.

WEDNESDAY, 13 MARCH, 1861.

Present:—

MR. DICK,
MR. LOVE,

MR. MCARTHUR,
MR. PIDDINGTON,

MR. SMART.

JAMES HART, ESQ., IN THE CHAIR.

William Thurlow, Esq., called in and examined:—

W. Thurlow, Esq.

13 Mar., 1861

393. *By the Chairman*: You are a Solicitor of the Supreme Court? I am.

394. Have you paid any attention to the working of the present Insolvent Law? Prior to 1855—for some years after its commencement I had a good deal of practice in the Insolvent Court.

395. And latterly has the working of it also been brought under your observation? It is very little I have had to do with it since re-entering upon my business. I mean to say that my practice at present has been but small.

396. Are there any radical defects, that occur to you, in the present Insolvent Law? I cannot say that I have applied my mind to consider the Act as a whole.

397. Has any case latterly been in your hands in which you consider that injustice has been done to any of your clients? I should regard this Act as entirely worn out. It was passed at a time for which it was suited, but it is not suited for the present time. From what I have observed during my attendance at the Court I should say that it does not, and that it is impossible that it can, work satisfactorily under the present system.

398. What do you attribute that to—is the machinery of the Court insufficient? I think it is, and I think it wants revision.

399. Do you think the present Commissioner has more than he can properly attend to? I would say so decidedly; and I say this from my notice of the business on the paper, and the way in which it seems to be disposed of. Assuming that he does all he can, there is too much for one man to get through satisfactorily to the insolvent, to the creditors, or to any one else.

400. Is that from having too much clerical duties to perform? Many duties that he might be relieved from.

401. What are they? I think the estates ought to be classified. It is now an Insolvent Law for all classes of the community—traders and unfortunate people who are not engaged in business. In England some of these would be regarded as bankrupts and others as insolvents.

402. Would you extend the provisions of the Bankruptcy Act to persons not in trade? No.

403. You think such persons should remain liable for the payment of their debts? I do.

404. Persons in the receipt of salaries for instance? I do. Of course in saying that I mean to except some unfortunate cases, it being also understood that these parties might obtain a certificate upon going through the Court in a regular way as insolvents.

405. Does it occur to you that the provisions of the present Act are availed of by persons such as clerks, musicians, and others of a similar class? Yes.

406. To a large extent? Yes, it is a refuge for all.

407. Are you aware whether the creditors of these persons take any trouble to prove debts in the estates, or do they consider it hopeless to do so? In regard to such cases I should say the creditors scarcely trouble themselves to go up to prove their debts, as being useless. It arises in this way, these people have nothing but their furniture, wearing apparel, and a few articles of personal property, and a majority of the creditors, from a friendly feeling, vote that the furniture shall be allowed, so that perhaps there is not enough realized to pay the expenses of Court.

408. In cases where creditors have directed the furniture of an insolvent to be sold, are you aware whether the Chief Commissioner has refused to ratify that decision? I could not point to a case where the furniture has not been allowed.

409. Are you aware that in the present state of the law it is in the power of the Commissioner to prevent creditors carrying out a resolution of that nature? By refusing to assent.

410. So that in that case the furniture, which would be the only available assets, would be left in the hands of the insolvent? Yes.

411. Has any means occurred to you by which the expense of the administration of estates might be lessened? It appears to me that that is a matter which is entirely in the hands of the Official Assignee.

412. Under the present law are all estates collected by Official Assignees in Sydney? Yes.

413. Insolvents who reside in the interior, no matter how remote, have to come to this Court to obtain their certificates—does it occur to you that if these duties were performed by persons in the interior having the power of Deputy Commissioners, it would lessen the expenses and make the Act more workable? Obviously it would.

414. Do you think any of the duty could be discharged by the District Court Judges? Possibly it might; but then you would want extra machinery, as it would throw extra labour upon them.

415. Is that the only objection you have to it? Yes, because I believe there would be but few cases of that kind. They travel monthly, I believe.

416. Is there any complaint as to the management of estates by Assignees, at present? There is a general growl throughout the city. I think the feeling is universal.

417. Are there any grounds for that? I am not prepared to say so of my own knowledge, except in one case, for, as I told you before, my experience since 1855 has been limited. I will instance a case where I think the estate was grossly mismanaged, the case of Joseph Andrews, an insolvent.

418. Were you engaged for the creditors in that case? I was engaged for the creditors and the insolvent. When I say I was engaged for the creditors, I may explain that they were supporting the insolvent, and therefore I was acting in accordance with their wishes.

419. Where did Mr. Andrews reside? On the Manning River.

420. What assets did he return in his schedule? His assets were £1,035.

421. What was the number of creditors, and the amount of their claims? They proved against the estate to the amount of £2,947 4s. 9d.; but that included an amount which was secured by mortgage.

422. Where was the property situated that formed the assets? At or very close to the Manning River.

423. What did it consist of? Cattle, horses, furniture, and a few things about the man's house.

424. Will you state, as briefly as possible, what was done by the Assignee in that estate, how the expenses were incurred, and any other facts connected with it? Yes, I will do so, because I have the authority of the insolvent to give any information, provided he is not prejudiced in any way by what I say. An action for a libel had been brought against the insolvent, and damages obtained, some £320 11s. 11d., including costs. In consequence of that action he was obliged to sequester his estate. I may state that he had been a resident on the Manning for nine years, and was in the Commission of the Peace. He filed his schedule on the 20th July, 1860. On the 28th of the same month he wrote to his Assignee, Mr. Sempill, that he thought he should be able to arrange his affairs and obtain the release of his estate; asked him not to sacrifice any of the property, and in the meantime said he would take care and account to the Assignee. At this time, save and except this person who had obtained a verdict against him, all his creditors were favourable to him, and were willing to have afforded him time for the payment of his debts; nevertheless the Assignee, without any instructions from the creditors, seized everything, and employed the plaintiff in the action, who was inimical to the insolvent, and another person named Skerritt, with whom he had been at law, but who was no creditor, and two or three other persons who were opposed to the insolvent, and sent them down to take possession of the stock. The insolvent had interviews with the Assignee, but nevertheless the cattle and horses were taken to the market from the station in two lots. The evidence before the Commissioner shews that the property had been valuable, that it was good stock, and that the distance of the station from which the first lot was taken to Maitland, where the stock was sold by auction, is about one hundred and twenty miles. It was also stated, that it takes about a week to drive cattle such a distance without doing them any injury.

425. *By Mr. McArthur:* A week to drive cattle one hundred and twenty miles? It depends upon the weather, and I believe it was rather wet at this time; a week or ten days would be the outside; they travel from fifteen to twenty miles a day. The first lot of these cattle, of which I will hand you in the account, realized in the gross £526 5s. 6d. (*The witness handed in the same. Vide Appendix A.*) You will also perceive, from the abstract of Mr. Sempill's account, that these three persons did as they liked; there seemed to be no control over them whatever. (*The witness handed in the abstract referred to. Vide Appendix B.*) For driving this first lot, which realized £526 5s. 6d., the Assignee submitted to the payment, independently of the auctioneer's commission for the sale of them at Maitland, of £277. As to the reasonableness of the charge, I refer the Committee to the depositions of the several witnesses, who state that it was a grossly reckless expenditure, and as yet, although this is the account furnished by the Assignee (*producing the same*), and has been before the Commissioner a long time; up to this time there has been no proof of the actual payments of these amounts.

426. *By the Chairman:* Has the Assignee taken any step to resist the claim made by these persons

W. Thurlow,
Esq.
13 Mar., 1861.

- W. Thurlow, Esq.
13 Mar., 1861.
- persons for the collection of the cattle? I am not aware; I do not think he took any, but paid what they asked.
427. Have you any reason to suppose any collusion between the Assignee and these persons? I am not prepared to say. There was a second lot subsequently brought from the home station, some twenty miles further, and it appears from the evidence, that these cattle were also good. These were sold by auction, and realized £164 17s. gross. The expenses charged for that sale amounted to £167 13s. 6d.
428. Does that include the cost of driving them? Yes, everything.
429. For the first lot you furnished the Committee with the cost of driving them only? No, for telegram, expenses, wages, and rations—altogether £277 0s. 1d. The amount for wages is £197 0s. 2d.
430. The expenses of selling the first lot of cattle, or rather of driving them to market, appears to be £277 0s. 1d.? Yes.
431. The expenses relating to the second lot, £167 13s. 6d.? Yes, and on the two lots in addition I find a charge of £29 10s. 9d., something to be paid, which had not been paid when this account was made out.
432. These charges are independent of the Assignee's commission, and also of the auctioneer's charges? Yes. The auctioneer's charges are merely nominal.
433. The auctioneer's charges appear in the first account handed in for the first lot, and the account shows the net proceeds to be £497 2s. 4d.? Yes.
434. What was the actual sum coming to the estate after the charges of driving the stock to market, the Assignee's commission, and the charges of the auctioneer were paid? Nothing.
435. Was the estate brought into debt? Yes.
436. How much? The Assignee's commission has to be added to the amounts I have before stated—that is, £181 18s. 4d. The total expenses amounted to £717 11s. 7d.,* and the assets to £691 2s. 6d.
437. Could not these expenses have been avoided if there had been an officer in the country charged with the execution of the Commissioner's warrant? In this case a Commissioner's warrant was obtained and handed to these people, who were all made official bailiffs, and sent down by Mr. Sempill to bear away the stock.
438. Were these persons sent from Sydney? Yes, although Richards lives on the Manning, and Skerritt is known to be of no very good repute.
439. Are there particular persons whom Mr. Sempill usually employs in such cases? I am not aware, but I may tell you that most of the creditors of Andrews live in or near his place, and gave evidence in his behalf with reference to the charges which would be considered reasonable.
440. What is their estimate? I should say, according to their accounts, that the parties would have been liberally paid if they had received £100 for everything. They spoke of it as reckless, scandalous, and outrageous. The evidence also discloses the want of judgment and management in this estate altogether, the taking of the stock to be sold at a place where they must necessarily be sold as at a sheriff's sale, and not selling them upon the estate.
441. Has Mr. Sempill been an Official Assignee for any long period? I think he was appointed about twelve months ago, upon Sir John Dickinson succeeding Sir Alfred Stephen as Chief Justice.
442. What was he before? I think he was clerk to Judge Dickinson, an Associate, I believe, he was called.
443. With whom does the power of appointing the Official Assignee rest? I am not prepared to say; I did not look to the Act.
444. I believe it is with the Chief Justice for the time being? I think it is.
445. Has any other gentleman been appointed to the office of Assignee who previously held a similar position? Mr. Perry, I think, was once a Judge's clerk.
446. Has the Chief Commissioner, or any other person, the power of investigating the correctness of these charges? It is doubted what is his authority, so much so, that I have had to apply to the Supreme Court, on the insolvency side, for an order to the Commissioner, directing him to investigate this matter. It was contested by counsel for the Official Assignee, who alone opposed the release of this estate, although he had obtained consent from all his creditors but one, who could not be found. The Assignee insisted that we must get his consent, and that without it he could keep the estate under sequestration.
447. Then it is only by an indirect way that you have been able to dispute the correctness of these charges? Yes, with a great deal of delay, expense, and trouble to the insolvent and his friends.
448. Are you likely to be successful after all? I hope so.
449. You believe the injustice of these charges will be shewn? I am justified in saying so upon the evidence given. The Assignee in this case has opposed the discharge of the insolvent's estate from sequestration, he having all this money in his hands, and having given nothing to the creditors, although the insolvent, with the assistance of his relatives and friends, is willing to pay twenty shillings in the pound.
450. In the proceedings taken both before the Chief Commissioner and before the Court, in this estate, has the Official Assignee availed himself of legal assistance? Yes.
451. Even before the Chief Commissioner? Yes. The counsel for Mr. Sempill rather suggested that there was a desire to have the account investigated, and therefore gave up the point that he took, that there was no authority in the Court to order this investigation at all.
452. Are there any other matters relating to this case that you wish to bring before the Committee?

* NOTE (Correction by witness on revision):—£716 14s. 10d.

Committee? No. I only wish to state this, that the estate is still held in sequestration; the Assignee holds all the money, the estate being, as he contends, still in debt some few pounds, and the insolvent was obliged to give security to him in two sureties for £700, to meet any supposed contingent claims yet to be brought, all the creditors, excepting one, who cannot be found—he is a surveyor in the Government employment, and is moving about from place to place—having been satisfied.

W. Thurlow,
Esq.
13 Mar., 1861.

453. When did the insolvent make an arrangement with his creditors, by which they agreed to release his estate? I think on the 10th December last; and the application was made to the Court on 14th December to release it.

454. And the estate is still under sequestration by reason of the opposition of the Official Assignee? Yes. In the first instance I obtained an order from the Commissioner to take the evidence; in consequence of that, notice was given that such an order was issued, and a time was appointed by the Commissioner to hear the evidence. The witness came up to Sydney, and some considerable time after notice was given on the part of the Assignee to set aside the order; the motion was made, and the order issued, signed by the Commissioner, was quashed by the Judge, making the insolvent to pay the costs of the application to set aside the order. A new order was then issued on the 4th January last, to take evidence, when the Commissioner not having time, a Judge's order was made that Mr. Uhr, the Under Sheriff, should take the evidence of insolvent's witnesses, involving further expense to the insolvent, and detention at great cost in Sydney.

455. Have you given your attention to the working of the Irish Bankruptcy Act? I never read it. No doubt many changes are necessary in our Act; for instance, there should be a classification of cases; a distinction should be made between traders and others. Then again there are too many meetings, and a vast deal of the Commissioner's time is taken up in hearing evidence, when a registrar might take it, and the Commissioner might then read it and determine upon its effect in twenty minutes what now occupies him for hours most unnecessarily. He has now to hear a long rambling examination, conducted sometimes by trustee creditor or his agent, amounting in the end to nothing, and we rarely see a case of prosecution, or even any property recovered, or indeed the creditors advantaged at all by such proceedings.

456. *By Mr. McArthur*: Do you see any way in which the expenses could be lessened in the collection of insolvent estates? I think that is only to be done by the appointment of energetic and competent persons, and by extending their powers if necessary.

457. When you speak of energetic men do you refer to the Assignees or to the Commissioner? I think possibly the Assignees may not consider themselves authorized to use their own judgment in all cases. There is frequently a difficulty in getting creditors together to attend to their own business and interests.

458. Do you not think it would lessen the expenses if some legal gentlemen were appointed by the Government to act ———? As an Assignee.

459. Not exactly as an Assignee, as a solicitor? One for all. I should not at this moment be inclined to think that would answer.

460. Why not? It would clash with so many interests. What competent professional man, unless he were allowed to carry on his own business, would accept such an office without a large salary.

461. Suppose you give him a small per centage on the assets of each estate? I do not think that would be professional. I am not quite sure, but I think he could not make such an arrangement.

462. That would not preclude any individual creditor from employing any legal adviser he wished? I think in all these estates the solicitor should be chosen by the voices of the creditors themselves, and that it should not be left to the Official Assignee.

463. There is a general impression, and I think very justly so, that the expenses incurred for legal advice are far more than they ought to be, or than it is necessary they should be? I have heard that and have seen it stated in the papers, but the insolvent rarely comes to the Court till the last minute, and there are but few estates where all the matters connected with them are plain and straightforward. In large estates especially the fact is often disclosed that the party has been insolvent for years, so that the Assignee and solicitor has to go a long period back to get at the root and foundation of the insolvency. When the inquiries are extended they become intricate, it is found that there are trust deeds, property encumbered, preferent claims, settlements upon wives, and various matters of this sort.

464. I understood you to say that you did not consider the Insolvent Law suitable to the present state of the Colony? Not in many respects.

465. Do you not think the present Insolvent Law could be worked out satisfactorily? No. I think it is necessary that it should undergo a thorough revision. I think it would be better to introduce a new Act than to attempt to amend this. I shall not name the party, but a solicitor told me that he would advise every one to take advantage of this Act; for that another Act must be framed which would necessarily be of a much more stringent character.

466. Have you known many cases where insolvents have been proved to have acted fraudulently, and where they have been allowed their certificates without any opposition? No, I could not point out any case; as I have already stated, my practice has been very limited latterly—since 1855.

467. *By Mr. Dick*: Do you think it would be better to pay the Assignees by salaries? I do; and you might then get competent men and secure their services at all times.

468. Do you think it would be a good plan to have all Official Assignees officers of the Insolvent Court, and in one building? I think it would be a very good thing, and the creditors, or persons representing them, would then know where to find them at all times.

- W. Thurlow, Esq.
13 Mar., 1861.
469. I understood you to say that you would appoint a registrar to take evidence? Yes; it is often referred to them to take important evidence in common law actions, in the Equity Court before the Master, and before Commissioners for taking affidavits. In this case of Andrews I was driven to the necessity, because the Commissioner had not time to apply for the special appointment of a registrar to take the evidence.
470. Do you think the registrar ought to be a solicitor? I think so, if he could be obtained.
471. Do you think it necessary that the Commissioner should be a barrister? I do not think so. I think you want a competent person—a person who has a perfect knowledge of the law. You have the instance of a Judge in the District Court, who is not a barrister, and that is a higher appointment, as in that Court cases both civil and criminal are tried—cases affecting everything short of a sentence of death.
472. Do you think a mercantile man, having a good knowledge of accounts, would be a proper person to appoint to the office of Chief Commissioner? I would not say that. I think the person appointed should be conversant with the law of evidence. I have known evidence to be taken before the Commissioner, occupying a considerable time of the Court, and which, after all, proved utterly unproductive to the estate, and attended with expense and inconvenience, such an examination causing much delay and interruption to other legitimate and important business of the Court. I think it would be better that such cases, where prosecutions are contemplated, should be taken in the usual way to the Police Court, and that the result would be much more likely to be successful than to try them before a Judge who has heard too little or too much of the case.
473. Your opinion is that the Chief Commissioner should be either a barrister or an attorney? Yes.
474. Can you suggest to the Committee any alteration in the present law? I am not prepared to give any suggestions of that kind. No doubt many reforms are wanted. For instance, if a man is refused his certificate, under the present law, the law does not enable him at any after time to apply, so that he may be without a certificate all his life.
475. It appears from the Act that he may apply to the Court, with the consent of his creditors? But he may not be able to obtain their consent. They may be in the Insolvent Court themselves, or at the end of two years he may not know where to find them.
476. You say the matter of Andrews is now under investigation? Yes.
477. *By the Chairman:* Are you aware that the Chief Commissioner only holds concurrent jurisdiction with the Magistrate—that the Act lately passed merely gives him the additional power of hearing a charge upon information preferred before him? That is to say that he has the same power as a Police Magistrate would have. I am aware of that, but having heard the evidence before, he does not come so clearly to the case as he otherwise would.
478. You think it not desirable that the Chief Commissioner should have that jurisdiction? I think not. He has the same jurisdiction of course as a Judge, and if a man obviously prevaricates, or commits himself in any way, as a Judge in *Nisi Prius* he could commit him to gaol. I believe there is one clause which gives him the specific power, at an adjourned third meeting, to commit.

ADDENDUM.

The evidence in regard to Mr. Andrews' estate, relative to the Assignee's realization of the insolvent's estate, and his charges and payments, therefore, are still pending before the Chief Commissioner.

APPENDIX.

A.

Maitland, 17 September, 1860.

ACCOUNT Sales of Horses and Cattle sold at Auction, by order of R. Sempill, Esq., Official Assignee.

1. Bay horse, AD	£4 0 0
2. Chestnut horse, AD	2 0 0
3. Brown mare, AD, and foal	4 0 0
4. Brown horse, AD	4 7 6
5. 220 head of mixed cattle, at 38s.	418 0 0
6. 14 cows and bullocks, at 77s.	53 18 0
7. 4 pairs working bullocks	40 0 0
	<u>£526 5 6</u>

LESS—

To Commissioner	£13 3 0
„ Advertisements and bell	3 0 0
„ Yard charges, at 1d. each	1 0 2
„ Cash to Mr. Kingsmill	12 0 0
„ Cheque to Mr. Sempill	497 2 4
	<u>526 5 6</u>

E. E.

DODDS & CO.,
Auctioneers.

Dear Sir,—The above is a true copy of the account sales delivered to Mr. Sempill.

Yours obediently,
DODDS & CO.

B.

B.

ABSTRACT of Mr. Sempill's Account.

W. Thurlow,
Esq.
13 Mar., 1861.

A. J. Kingsmill—								
Telegram	..	..	..	..	..	£0	14	9
Expenses	..	..	..	..	..	66	12	8
Wages	..	..	..	..	..	197	0	2
Rations	..	..	..	..	..	12	12	6
								277 0 1
R. Searle—								
Wages	..	..	..	..	..	117	4	0
Expenses	..	..	..	..	..	34	3	3
Telegram	..	..	..	..	..	0	9	6
Rations	..	..	..	..	..	15	19	9
Cab-hire	..	..	..	..	..	0	17	0
								167 13 6
Ruben Richards—								
Wages	..	..	..	..	..	29	2	6
Expenses	..	..	..	..	..	0	9	0
Telegram	..	..	..	..	..	0	5	3
								29 16 9
Criminal prosecution	..	..	..	..	..		48	18 10
Official Assignee, for cab-hire, telegram, and postage	..	..	..	..	..		5	11 7
Court fees	..	..	..	..	..		6	12 6
Commission	..	..	..	..	..		181	18 4
								£717 11 7
18 Sept. Dodds	.....	£526	5	6				
22 Mar. D. Cadell	..	164	17	0				

Mr. Josiah Harper called in and examined :—

479. *By the Chairman* : I believe you are carrying on business largely in Sydney? Yes. Mr. J. Harper.
480. What as? As a grocer, and wine and spirit merchant.
481. I suppose you are obliged to give a good deal of credit? Yes. Mr. J. Harper.
482. Have you, in the course of your trade found it necessary to prove against the estates of people who have become insolvent? Yes, many. 13 Mar., 1861.
483. Have you had reason to complain either of the way in which the law has been administered, or of the administration of estates by Official Assignees? Yes, on account of the delay and difficulty in getting dividends paid.
484. At present, I believe, in no instance is a plan of distribution filed before the expiration of six months from the time of the estate being placed in the Court? I do not remember any instance under six months.
485. What is the longest period you have had to wait after an estate has been placed in Court before you have obtained a dividend? Twelve and thirteen months.
486. Have you found it necessary to take any legal proceedings against the Official Assignees to compel them to distribute the dividend? No.
487. You did not feel it to be worth your while, I suppose? No.
488. Have you been desirous of examining insolvents respecting their dealings and transactions? In a few instances.
489. Have you found any difficulty in obtaining the information you have required from the insolvent? Yes.
490. For instance, have you been obliged to avail yourself of legal assistance? Yes.
491. Have you been put to any expense in doing so? To considerable expense.
492. Are there any particular instances of mal-administration you would wish to inform the Committee of? I do not know that I can name any particular case. There have been several cases where I have had difficulty in examinations. There have been postponements from one time to another.
493. Was that because the Chief Commissioner was too busy to proceed with the investigation, he having other estates to dispose of; or was it that you had the meeting postponed in order that you might have further time to obtain the information you required? In many cases it has arisen from the pressure of business in the Court. In five or six instances I have known meetings to be called for say eleven o'clock, they have not come on until half-past two or three, and then if the proceedings have been lengthy the meeting has been adjourned.
494. Do you think the present Official Assignees are men of business habits, able to manage and dispose of the estates committed to their care or not? With regard to their business habits, I think it is a peculiar business, a business of itself, and they have a peculiar way of transacting it. I think when a person becomes insolvent, any property he is possessed of ought to be placed, for immediate realization, in the hands of the creditors. The Official Assignees now do not take the trouble to ascertain whether debts are good or bad, or recoverable, and so much time is lost, that debts which were good when the estate was sequestrated, become bad before the Assignee attempts to collect them.
495. Can you make the Committee acquainted with any particular case? I remember the case of Clayton and Hopkins, who were living in the Twofold Bay district, where the debts appeared to be pretty good, and I have little doubt but that they could have been collected if they had been looked after, but there was so much delay that the greater part were lost. Parties in the country seem to think that they have no right to pay an insolvent estate unless the debts are looked after—that is the case in nine out of ten. I think the objection is to the Official Assignees.

- Mr. J. Harper. 496. Do you think the Official Assignees, as a body, possess those business acquirements and qualifications that the men with whom you come into daily contact in business possess?
 13 Mar., 1861. Not at all. I think if they were in another business, where they were left to their own resources, they would many of them scarcely obtain a living.
497. Are you aware whether any portion of the mercantile community was consulted before these appointments were made? I am not aware.
498. Are you aware that that was the course pursued when Official Assignees were first appointed under this Act? I am not aware.
499. Were you in the Colony then? Yes; I have been in the Colony about twenty years. I think the creditors ought to have the appointment of the Official Assignee, or person to look after the interests of the estate—that it ought not to be left to a lottery as at present.
500. Is it not in the power of the creditors to appoint a Trade Assignee, who may act jointly with the Official Assignee? Yes.
501. Still up to the second meeting, when that can be done, the Assignee has the sole management? Yes. Then most of the Assignees have their own lawyers, and I think they are too fond of law.
502. That appears to be a general complaint among the mercantile community? Yes.
503. Is it, in your opinion, well founded? Yes.
504. Do you know whether the solicitors of these particular Assignees are frequently employed in the most trumpety matters, and that the assets of estates are thereby diminished? Yes, I have no hesitation in saying so. I know one case, where an attorney, on the eve of a person's insolvency, got the deeds of a house and land, and claimed £200 expenses—these expenses having been incurred afterwards.
505. Was that the attorney of one of the Official Assignees? He is the attorney for the insolvent, and acts for the Official Assignee also.
506. Do you think it is desirable that the attorney of an insolvent should be permitted to act as the attorney of an Official Assignee? I do not think so.
507. Do not their interests appear to be antagonistic? Their interests clash.
508. Are there many estates of persons indebted to you, in which you have not proved? Yes; about fifty.
509. Involving any considerable amount? No; various sums from £8 or £10 to £20. Where I have thought the dividend would not be more than one or two shillings in the pound, I have not proved.
510. In proving, in ordinary claims, have you found it necessary to employ a solicitor, or have you had the necessary documents supplied to you from the Insolvent Court for the purpose? You can get the forms, but I generally pay half-a-crown and get it filled up by a clerk in the office. It is not compulsory to do so, but instead of preparing it myself, I have done so.
511. Fees are received by clerks in the office for preparing affidavits? Yes.
512. Is that lately? The last time, I think, was about two, or perhaps three, months ago; but it is not required from you. I merely did so instead of filling up the affidavit myself.
513. *By Mr. McArthur*: Is that the regular charge, or did you give half-a-crown as a matter of grace? I simply gave half-a-crown; there is no scale of charges. When you prove according to the scale of charges, you pay 3s. 6d. for the proof.
514. *By Mr. Love*: Some years ago, what was the charge for filling up an affidavit in the Court? I never paid more than half-a-crown.
515. Do you remember some years ago when the charge for proof was half-a-guinea? I do not remember it.
516. *By the Chairman*: In proving a claim for £5, or for £1, would you have to pay 3s. 6d.? Yes; and sixpence for every promissory note.
517. In the way these estates are administered, would not that sum be more than the dividend you would receive? In some estates you receive no dividend.
518. In many estates? No; in some.
519. *By Mr. McArthur*: Do you think the present law sufficiently stringent, or is it too much so in regard to debtors? My opinion is, that if the law were properly carried out, it is pretty strict; but I think it is very often not followed up, on account of the expenses.
520. You were referring to the fact that the Official Assignees delay a good deal in declaring the dividends, and disposing of the assets? Yes.
521. Do you not think that delay is frequently caused by the carelessness of the creditors themselves? In many instances.
522. You are aware that creditors have the power, at the second meeting, to instruct the Official Assignee as to the way in which the assets are to be realized, and the estate dealt with? They have the power; but you seldom get a number of the creditors to give instructions.
523. In such cases it is the fault of the creditors themselves? Yes; still I think the Official Assignee ought to pay more attention to the speedy realization of the assets; for want of that the property often depreciates in value, and debts that were good when the party sequestrated his estate become bad. If the creditors were, as the Honorable Chairman said, to appoint a Trade Assignee, no doubt estates might be wound up more satisfactorily; but there are few who like to give the necessary time to this duty where an estate of two or three thousand pounds is concerned, because they have not a sufficient individual interest in it.
524. In cases where you have had occasion to sue persons in the country—to issue writs—have you been able to get these writs executed in a reasonable time? Frequently not, after judgment has been obtained; it has been a length of time before I have got the proceeds.
525. To what do you attribute that? I do not know; it must be with the bailiffs, I suppose.

526. *By the Chairman*: The want of bailiffs? Yes.
527. *By Mr. McArthur*: Is not that a serious injury to the business community? It is. I know several instances, of my own knowledge, where parties have been kept out of their money, which has been actually received.
528. Do you not think it desirable that an extra number of Sheriff's bailiffs should be appointed in different parts of the country? Yes; the chief constables, in some places, act as bailiffs.
529. The chief constable is not obliged to act as bailiff? It is so at Twofold Bay.
530. *By the Chairman*: Are you aware that, in some cases, the Bench of Magistrates has forbidden the chief constable to act as bailiff? I am not aware.
531. *By Mr. Piddington*: Are you of opinion that the provisions of the present Insolvent Law are sufficiently severe to secure the protection of creditors, or the contrary? I am inclined to think that, with one or two alterations, the law is strict enough; but it is the expense attending the carrying out the law which is so objectionable.
532. Are you in the habit of giving very much credit? I am, and have given much more than I do at present.
533. Do you not think that every trader possesses a cure for the system of extended credit in his own will if he chooses to exercise it? Certainly.
534. You say you would not increase the severity of the present Insolvent Law as against the debtor? I should like to see property in an estate realized with less delay, and the fault lies, I believe, with the Official Assignee.
535. You would not favour any resort to the old system of imprisonment for debt? No, except in cases where a person had a salary, and could really afford to pay a portion in liquidation of his debts; on failing to do so he might be sent to gaol.
536. *By the Chairman*: In cases where persons have property, and will not apply it to the payment of their debts, you think imprisonment for debt should be resorted to? If they did not shew a willingness to pay, and to act up to their ability. If an honest man had £500 or £600 a year he could reduce his expenses to £200, and devote the rest to the payment of his debts. There was a case which came under my notice the other day in the Insolvent Court where a person had £5 a week coming in as a salary, and a creditor applied to the Court to order that a part of the salary should be applied to the payment of his debts, but the Commissioner said he did not consider £5 a week too much for a man to support a *wife and two children.
537. That shews that the Commissioner had the power? Yes, there is the power.
538. Suppose a person to possess property or cash to the amount of £400 or £500, and to hand that over to some other member of his family, and that to be proved to the satisfaction of a Judge—do you think imprisonment should be resorted to in that case? Yes, certainly.
539. *By Mr. Love*: Suppose a person at Newcastle buys goods from you on a bill at four months for £500, when the bill becomes due it is dishonoured, he having sold the goods, and put the proceeds in his pocket, has the Insolvent Law at present any power to compel him to refund that money? I am not aware of it.
540. If he said, "I will not give any account of it, I have kept no books," what would be your remedy—would the Insolvent Court give you any remedy? If I was aware the man had not sufficient assets to get back my money again I would not trouble it.
541. *By the Chairman*: Under the present law traders must keep books to the satisfaction of the Commissioner—do you think it desirable to pass a legislative enactment compelling all traders to keep books which would afford sufficient information of the amount of capital they started with, the amount of their profit or losses during a certain period, and so on? I should require him to keep sufficient books to shew the nature of his transactions.
542. Have you been present at any examination before the Chief Commissioner in which the question arose as to whether the insolvent kept proper books of account of any kind? I have not been there any length of time—I was there for half-an-hour or so.
543. Are you prepared to state to the Committee whether the information usually given to the Commissioner is such as would satisfy a man of business—I speak of course with reference to the insolvent's books? I think the Commissioner is rather lenient from what I have seen—most decidedly so.
544. *By Mr. Love*: What is the general feeling of the mercantile people of Sydney with reference to the leniency of the Chief Commissioner towards creditors — ? Not towards creditors, towards the insolvent he certainly is.
545. *By Mr. McArthur*: Do you not suppose that a great many of the insolvencies have arisen from persons not looking into their affairs and taking stock? No doubt the easy manner in which people go through the Court has induced others not to use the exertion they otherwise might have done to overcome difficulties.
546. Does not the unsatisfactory result to creditors, when persons go into the Insolvent Court, induce creditors in many instances to take a small composition when they have reason to believe the debtor might pay twenty shillings in the pound, or nearly so? Yes.
547. In any new law which might be passed do you not think it desirable to make it compulsory on persons to take stock at least once every twelve months? Not longer than twelve months.
548. Do you think it desirable that in the event of their not doing so their certificate should be refused on that ground alone? Yes, unless under some peculiar circumstances where a man might think he was worth £20,000, and did not therefore consider it necessary. In general cases I think it would be a sufficient reason for refusing the certificate.
549. *By Mr. Smart*: Is it the practice of persons engaged in trade to take stock once or twice a year? Some persons do.

* NOTE (Correction by witness on revision):—Himself and two children. There was no wife.

- Mr. J. Harper. 550. In retail trade is it the practice to take stock at all? I do not think it is.
- 13 Mar., 1861. 551. The practice of taking stock once or twice a year is chiefly confined to persons engaged in wholesale business, what are called warehousemen? Yes.
552. Has not the Commissioner power at present to punish persons who have not kept sufficient books? Yes, if application is made to him.
553. You think he has not exercised that power with sufficient strictness with regard to debtors? I think so.
554. *By Mr. Love*: When you say he has power to punish, what do you mean? That he can refuse the certificate. I do not know that he has done so in any instance, unless he has done so upon the application of the creditors.
555. If a complaint be made to the Chief Commissioner that an insolvent has not kept sufficient books, has he power to do so by refusing a certificate? Yes.
556. Has he done so in some instances? Yes; but in filing an objection to a certificate, a particular form has to be observed, and the precise grounds of objection have to be stated, which renders a prosecution difficult.
557. The process is so cumbrous and expensive as to prevent many persons from prosecuting, even where they believed grounds of objection to exist? Yes; you must go to the particular objection at once.
558. In filing an objection against an insolvent you must state the particular grounds, and substantiate each ground as you proceed with the case? Yes; if you have passed one ground of objection, and afterwards obtain further information, you are not allowed to re-open the case.
559. In the case of fraudulent insolvency do you think the refusal of a certificate is a sufficient punishment? No.
560. Is it not looked upon by many persons as no punishment? It is a punishment, because if a man intends to go into business again he is deprived of the means of doing so.
561. Have you not known persons, in such cases, to put up over their door the name of a son, or some other relative, and carry on business as usual? Yes, I have known that done.
562. *By Mr. Piddington*: Do you think the omission to keep proper books is an offence of sufficient magnitude to warrant the Legislature to give the Commissioner authority to imprison? Yes, with a certain discretion; for, in some cases, the parties might not intend any fraud at all, and it would be very hard, in such instances, to imprison the parties.
563. I think you stated that it was desirable the Insolvent Law should make it compulsory on traders to keep books of account? Yes.
564. And that an account should be kept of the capital with which business was commenced? Yes.
565. Are you of opinion that traders always commence with capital of their own? A great many do not.
566. *By Mr. Smart*: Many commence with borrowed money? Yes.
567. *By Mr. Piddington*: How would the books of account shew that—if you speak of capital you refer to capital belonging to the party, I presume? Yes.
568. *By Mr. Smart*: Do you think, in the event of a new law being passed, that the certificates granted should be divided into three classes? Yes, I have always thought so.
569. Is it not the practice at present to grant the same kind of certificate to all insolvents, whether their proceedings have been strictly honorable, or whether they have been fraudulent and dishonest? Yes.
570. You think there should be three classes of certificates? Yes.
571. *By Mr. Piddington*: From what source do traders derive their capital, where they have not capital of their own? In many instances persons who are engaged largely in business, and who desire to forward others, supply them with stock.
572. In such instances the parties have received capital in the shape of stock in trade from some other trader? Yes.
573. Have you known other cases where parties have obtained money? Yes.
574. From what source, generally, have they obtained that money, from individuals or from banks? From individuals.
575. Have you known any instances where parties have obtained cash credits, and commenced business? I have not known any.
576. *By Mr. Smart*: Where persons have commenced business in that way, with borrowed capital, what means have they had of repaying the capital? It must be only from the profits of the business they can hope to repay the borrowed capital.
577. If successful they are enabled to pay, but if unsuccessful, they have to go through the Insolvent Court—has not the latter been the general result? Yes, in many instances.
578. *By Mr. Piddington*: Has it been a very general practice for persons in Sydney to enter into business with borrowed capital? Not latterly; it was a few years ago.
579. Has it been a very common case? Not very common. I should say during the past eighteen months persons would require to have great confidence before they would give credit.
580. Extending your experience back for the last five or six years, have you known any cases where persons have commenced business on borrowed capital? Yes, several.
581. *By Mr. Smart*: Have you known any of the large houses of the city to set up shopmen in different parts of the Colony, and to supply them with goods? Yes, in one or two instances.
582. The practice has been, has it not, to send a shopman to a store in the country, to supply him with goods, to receive bills as payment for the goods so supplied? Yes.
583. He is treated as another customer? Yes.
584. And the stock received from his patron you consider borrowed capital? Yes.
585. *By the Chairman*: Are you aware that many of these traders obtain credit from other persons,

persons, having given a bill of sale to their first creditor, not only over their original stock, but also over the stock subsequently obtained from other persons? I have known only one instance. Mr. J. Harper.
13 Mar., 1861.

586. *By Mr. McArthur*: In a case of that kind if loss is sustained, is it not through the negligence of the parties who give the credit, as if a bill of sale has been given, and that has been registered, any one giving credit does so at his own risk? I think it should at once be named.

587. *By the Chairman*: Do you think the operation of the Bills of Sales Act has been beneficial to the community generally or not? I do not think it has; I think it has tended greatly to bring parties into the Insolvent Court, for immediately it is known that a party has given a bill of sale, his credit is gone.

588. *By Mr. McArthur*: In the majority of cases where a bill of sale is given by a trader to a mercantile house, does not that house supply him almost exclusively? Yes.

589. Is it usual for persons who have given bills of sale to get general credit afterwards? No.

590. *By Mr. Smart*: The credit of the party is limited to the house to which the bill of sale is given, he is unable to purchase in any other market at a cheaper rate, is prevented successful competition—and is not the result generally the Insolvent Court? Yes.

591. *By Mr. Piddington*: Is not the setting up men of straw in business in that way a great injury to the fair trader? I have known many instances where parties who have been started in business in that way have succeeded very well, and who are now well off.

592. Is it not your opinion that the practice of setting up men of straw in business, either by lending them money, or by supplying them with goods, if carried to an extreme, is prejudicial to the fair trader who trades upon his own capital? Yes, especially if he commences "cutting" as it is called.

593. Does not that practice produce a system of extreme competition with regard to profits? It does, decidedly.

594. *By the Chairman*: Do you consider that the books of a trader ought to be open at all times to the inspection of his creditors? No, unless there is some occasion for it; if he has dishonoured a check or bill, then it might be desirable.

595. In that case you think it should be allowed? Yes.

596. *By Mr. Smart*: Would you have the books of the trader open to his creditors before he goes into the Insolvent Court? Yes. A person intending to go into the Insolvent Court ought not to be allowed to do so before calling his creditors together.

597. Do you think any creditor should have the right of going to a man's office and inspecting his books? No.

598. *By the Chairman*: I ask you whether, as a general rule, or whether in certain cases, the creditor ought to have the right of inspecting a debtor's books? No one creditor should have the power of going into his office and of inspecting his books, as such a course might injure the credit of a debtor.

599. Should any number of creditors have such a power? Not unless he were in difficulties and had to apply to his creditors for assistance. In such cases the creditors should have the power of inspecting his books.

WEDNESDAY, 27 MARCH, 1861.

Present:—

MR. MCARTHUR, | MR. WINDEYER.

JAMES HART, ESQ., IN THE CHAIR.

David Smith, Esq., called in and examined:—

600. *By the Chairman*: You are Chairman of the Chamber of Commerce? I am for the present year. David Smith,
Esq.
27 Mar., 1861.

601. And a merchant residing in this city? Yes.

602. You have carried on business for some time? Twenty years.

603. The Committee are desirous of having your opinion, and that of some other members of the Chamber of Commerce, as to the operation of the present Insolvent Act, and if you will be good enough to state in what particulars the Act is defective, and make any suggestions of which we can avail ourselves in any future measure, we shall be much obliged? Putting it generally in that way, I can scarcely say I am prepared to offer suggestions. I should require to look through the Act.

604. You are acquainted with the provisions of our own Insolvent Act practically? Yes.

605. And I presume you have had to deal with persons who have taken the benefit of that Act? I have, occasionally.

606. Do you consider that the management of the estates of those persons with whom you have been so connected, and who have taken the benefit of the Act, has been beneficial under the present working of the Act? I do not, as a general rule. I have had more experience of it in Melbourne, where the Insolvent Act is the same as it is here, than I have had here, and I have found that the Official Assignees cannot possibly attend properly to the number of insolvent estates that are placed in their hands. In the offices of some of the Assignees you see the books of ten or twelve estates piled up like bricks; they get confused and mixed up together, and for want of proper accommodation the estate is materially neglected.

607.

- David Smith, G07. Is there any register kept by Official Assignees of the books that come into their possession? There ought to be, but I am not aware whether there is. I have frequently inquired for a sight of the books in different estates, and have found the greatest difficulty in getting at them. The messenger of the Court ought to make a list of the books of an estate and take a receipt for them; but, of course, from the large number of insolvencies in Melbourne, and the want of proper accommodation in the Assignees' offices, they soon get confused. An Assignee's office is perhaps not twice the size of this room, and he has the management of thirty or forty estates at the same time. They ought to employ more persons as accountants.
608. *By Mr. McArthur*: More clerical assistance? Yes. In any estate of importance one man's attention ought to be devoted to it to work it out.
609. *By the Chairman*: Do you consider that the Official Assignees should be persons who have been either merchants or accountants? They ought to be accountants certainly.
610. Have you come in contact with the present Official Assignees at all? Very little; I have not been much here lately. I have been for only twelve months in Sydney this last time, and I am happy to say I have had nothing to do with the Insolvent Court in that time. I was for five years before that in Melbourne, and I had plenty of it there; and I was also three years in England and India.
611. Have any suggestions been made by the Chamber of Commerce as to points in which the Insolvent Law ought to be amended? They considered the subject some years ago, and a select committee of the Chamber brought up a report, which was printed, and subsequently revised by another committee, of which the late Mr. Thomas Whistler Smith was chairman. The original report was made on the 10th January, 1856, and I think it was two or three years afterwards that it was revised. The alterations that appear here in red ink are those made by the later committee.
612. Have you any objection to hand in a copy of that report, as revised? No. (*The witness handed in the same. Vide Appendix A.*)
613. *By Mr. McArthur*: Did not the Chamber consider the subject some six months ago? They were asked to consider the matter, on an application, I think, from the Government, and they said they would reaffirm the former report as amended. The last time the matter came before the Chamber was in reference to the recent decision in the case of Sempill v. Anderson, Campbell, and Co.; but no action was taken on that, except to pass a resolution to the effect that the law ought to be made clear.
614. *By the Chairman*: It is the opinion of the gentlemen forming the Chamber of Commerce that that decision is unfavourable to the operations of trade? Yes.
615. *By Mr. Windeyer*: I understand you that the recommendations which the Chamber of Commerce made to the Government are embodied in this report which you have handed in? I believe they are. The matter has not been re-opened since Mr. Whistler Smith made these corrections. It was brought before the Chamber at a subsequent period, on some application I believe by the Government, and the Chamber stated that they could not improve on that report as revised. The only other occasion on which the subject has been brought up was in reference to the case of Anderson, Campbell, and Co., and the Chamber then unanimously considered that no man in trade was safe under that decision. I see that in another case in the District Court Mr. Checke has decided the other way, against the Assignee.
616. *By the Chairman*: What was the name of that case? I do not recollect, except that it was somebody against Sempill. This is one of the principal things in which the members of the Chamber, as mercantile men, are interested, because they want the law to be so clear that it can be perfectly understood; but the wording of these two clauses, on which the decision in question was based, appears in some parts to be contradictory.
617. Personally, I understand, you have not had much experience of the working of our Insolvent Act? Not in Sydney, but I have in Melbourne, where the Act is the same; they adopted the New South Wales Act.
618. In Melbourne there is one Commissioner only? Yes. I may tell you that the former Commissioner of Insolvency, Mr. Wilkinson, has for the last two years been employed by the Government to revise the Insolvent Act, and he has been getting together all the information he can. He is at present Master in Equity, but the Government are paying him to compile a new Insolvency Act. He was many years Commissioner, and has consequently had a good deal of experience, and he is understood to be a very good lawyer. The present Commissioner is Mr. Baptist Noel, who gets through his work a great deal quicker than used to be the case.
619. Have you ever paid a visit to our Insolvent Court in Sydney? I have proved one debt since I have been here.
620. Do you consider that the business there is conducted in a business-like manner? I had no opportunity of judging, because mine was the first proof taken, and I just proved the debt and came away. There were only about four people in the Court—Mr. Purefoy, his clerk, and the Official Assignee.
621. As Chairman of the Chamber of Commerce have you any suggestions to make to this Committee, other than those embodied in this report? These are the principal ones. It occurred to me, as I came up here, that in Scotland that have what is called *cessio bonorum*: a man gives up his goods, when the claims against him amount to less than £100, and he is protected against arrest, but not released from his liability to pay these small debts at some future time if he should be able to do so.
622. Do you think the abolition of imprisonment for debt has acted unfavourably to creditors, by inducing persons to rush into debt without any prospect of paying? I dare say it may have induced dishonest persons to do so, but I do not know whether it has had that effect on the general body of debtors.

623. *By Mr. McArthur*: Have you met many cases of fraudulent insolvency, as you have had reason to believe? Yes, I have met with several; but it is very difficult to prove it in Court. There was a case I was concerned in for a long time, in Melbourne, a very heavy estate, Bateman's of Warnambool, in which the Bank of Victoria was creditor for £60,000, and the Bank of Australasia for £30,000. We had reason to believe there were a good many fraudulent dealings there; but it had to be taken out of the Court at last; and it ended by the Bank of Victoria buying up the estate and paying a composition. There was no doubt of fraud there, but we could not carry it to an issue.
624. Do you think the present law, as it stands is sufficiently stringent, or too much so? I do not think it stringent enough in cases where there is any dishonesty. I do not think the feeling of mercantile men would be to press any man when his failure occurred purely through misfortune, but when it goes beyond that the law is not sufficiently stringent.
625. Could you suggest any improvement of the law with the view of affording greater facilities for getting at fraudulent insolvents, which at present seems to be a very difficult matter? I do not see how you are to do so, except by their books, or by getting external evidence of fraud.
626. Do you think the present difficulty of reaching fraudulent insolvents is altogether owing to the way in which the present law is worked? There is a great deal of ambiguity in some of the clauses, which give rise to a good many discussions among the legal profession. It would be better, so far as the mercantile community are concerned, that they should have something they could understand more easily and more clearly. The clauses brought up in the case of Anderson, Campbell, & Co., may be clear enough to a legal mind, but the merchants of the Chamber of Commerce did not profess to understand them.
627. Have you found, in many cases in which you have been interested yourself, that the legal charges have been extravagantly high? I have not.
628. Do you approve of the principle of the Official Assignee appointing his own solicitor, or do you think it would be better for the creditors in each estate to nominate a solicitor? I think it would be better that the Creditors' Assignee should do it, or the creditors themselves. I think there ought, in all important estates at least, to be a Creditors' Assignee, to act with the Official Assignee. I think, too, that the money realized in each estate should be kept separate—that it should not go into the Official Assignee's general account in the bank, and that it ought to be drawn by cheques, signed by the two Assignees. I know, in Melbourne, the Assignees keep one general account. They generally put the name of the estate on the cheque when they sign it, but you do not know what is in the bank to any individual account, even by examining the bank book. I think that very objectionable; it would be just as simple to keep a separate account for each estate, and the bank books could be produced as a check against the Assignees, both Official and Creditor's.
629. You think, in every case, there should be a Trade Assignee? Yes, in any important, estate where there were assets to be distributed.
630. *By Mr. Windeyer*: Have you ever considered the propriety of doing away with the present system of paying the Assignees? No; I have never taken that matter into consideration. In England they are paid by the Court.
631. Do you not think that, instead of paying them by a commission, it would be better to make them officers of the Court, directly under the supervision of the Court? I do, certainly, because they may have a great deal of trouble with a very small estate, where there is nothing in the way of commission to pay them, and they may have very little trouble with a very large one. I think the English system of leaving it to the Commissioner to award the amount of their remuneration would be preferable.
632. Do you know anything of the present Insolvent Law in Ireland? No; I never saw the Act.
633. Have you at all considered the advisability of giving the Judges of the District Courts any powers in insolvency to facilitate the getting in of estates? As branch Commissioners?
634. Yes? Yes, I think it very desirable. Estates in the country can generally be worked out much better on the spot than by bringing the insolvent and his creditors to Sydney. In England there are two or three branch Commissioners of Bankruptcy. I was once Assignee in an estate here, and I had to employ another person beyond Yass, and the expenses were so great that everything was eaten up in collecting the estate; whereas if there had been a Commissioner in Yass, or any other place in the neighbourhood, the estate might have been easily collected.
635. Do you not think the present Act gives great facilities to parties for compromising fraudulent transactions by condoning with their principal creditors, if they are so disposed? Yes, I am quite of that opinion, and I believe it is very frequently done. People are almost afraid to go into the Insolvent Court; they rather compromise and take what they can get.
636. Could you suggest any reform that would tend to put an end to this state of things—what is your opinion with reference to the present system of assignments? So far as my experience of assignments extend, we generally get better dividends than in the Court.
637. *By Mr. McArthur*: Estates get more speedily worked out? Yes, and more carefully. As I said before, the Official Assignees have too much to do to work up an estate properly. Many an Assignee at Melbourne has thirty or forty estates to work out at the same time, and no proper accommodation in the way of office room.
638. *By Mr. Windeyer*: I presume you are in favour of having different classes of certificates? Yes.
639. What is your opinion as to the powers with which any single creditor ought to be armed for opposing an insolvent getting his certificate? Do you mean as to extent of money vote?
640. Supposing the bulk of a man's creditors, in number and value, were in favour of no opposition being offered to him, what is your opinion with regard to the powers that any single

- David Smith, Esq.
 27 Mar., 1861.
- single creditor should have? The present law is that when there are four-fifths in his favour there is no opposition carried out.
641. Cannot any one creditor oppose him, even if all the rest are in his favour? Not if you agree to an assignment.
642. I mean in insolvent estates? At present I think the Commissioner has the power of determining whether a man shall pass; it is not the creditors at all.
643. I am aware of that; but supposing that nearly all a man's creditors should be in favour of his getting his certificate, and wish to make no opposition, one creditor can nevertheless oppose him? I should not think he ought to do so.
644. Then your opinion is that if the great bulk of a man's creditors are in favour of his getting his certificate, and being put in a position to go into trade again, one man ought not to be allowed, possibly from vindictive feeling, to oppose him? If he gets the consent of four-fifths, which is a large proportion, I do not think any one man should be allowed to follow the matter further.
645. *By Mr. McArthur*: Do you not know that a great many of the insolvencies that have occurred, and do occur, arise from the fact that persons do not take stock, or keep proper books to shew their position? There should be a penal clause to make them keep their books in such a regular way as would clearly shew the state of their affairs—with consecutive folios, no spaces between entries, and so on. If they were to keep their books closely in that way, there would be a perfect check.
646. Have you not found that some persons have not taken stock for years, fancying themselves very well off, and, when they have been compelled by the pressure of creditors to do so, have found a deficiency—do you not think that in any new law there should be a clause introduced, compelling persons in trade to take stock, and examine their affairs once a year? Yes, I think there ought.
647. *By Mr. Windeyer*: Have you considered the propriety of rendering all debts under a certain amount irrecoverable—doing away, in fact, with credit on a small scale, and putting small debts on the same footing as publicans now deal with the public? I have never had that question put before me before.
648. You have not considered the question at all? No; I never heard the point mooted before.
649. *By the Chairman*: You have stated that you are in favour of the classification of certificates; now, supposing we concede to the District Judges the power of dealing with insolvent estates, is it not possible there might be conflicting decisions between these Judges, as to whether persons similarly circumstanced, were entitled to first, second, or third class certificates? I would have an appeal to the Chief Commissioner.
650. Are you aware that complaints are made at Home on that subject, as to the conflicting decisions of the different Commissioners? No, I was not; but there is an appeal to the Chief Commissioner at Home, under the English law. So far as I remember of the English Act, there are one Chief Commissioner and two Sub-Commissioners.
651. Have you any other suggestions to make to the Committee? Not that I am aware of.

APPENDIX.

A.

REPORT

Of a Select Committee of the Sydney Chamber of Commerce, appointed 19th July, 1855, "to take into consideration the present Insolvent Laws of the Colony, and to report such alterations as they may deem it advisable for the Chamber to petition the Legislature to make in the existing Laws."

Your Committee have carefully considered in detail the important subject referred to them, and have now the honor of submitting to the Chamber the following Report:—

Your Committee, upon their appointment, did not delay immediate attention to their duties; but they have hitherto deferred bringing up a report, finding, after careful perusal, and frequent discussions, that the Insolvency Acts at present in existence need a thorough reform and consolidation. Conceiving, therefore, that it would have been impossible to induce the due attention of the present Legislative Council to such an Act as would be requisite to accomplish these objects, your Committee deemed it advisable not to introduce the subject to the Chamber until a short time prior to the assembling of the new Legislature, under an impression that public attention could then be directed to the question with a hope of practically beneficial results.

Your Committee, however, find that not only is the urgent necessity of a reform and consolidation of the existing Insolvency Laws very generally admitted, but that the highest legal functionary in the Colony is now engaged in the preparation of a consolidated Act, to be introduced during the first Session of the new Legislature.

Under these circumstances your Committee have considered it expedient to depart in some degree from the nature of their original instructions, which are conveyed in the following terms,—“to report such alterations as they may deem it advisable for the Chamber to petition the Legislature to make in the existing laws,”—and without further delay to bring up their report, in order that, if approved by the Chamber, it may be submitted to the gentleman referred to before the conclusion of his labours.

Taking into consideration the present tendency towards the simplification of legislative enactments, and reposing great confidence in the ability and lengthened experience of the learned Judge who has undertaken this onerous task, your Committee deem it almost superfluous to express their hope that the new Insolvent Act will be, as far as may be practicable, distinguished by conciseness, perspicuity, and simplicity.

To these prefatory remarks your Committee only desire to add that they have carefully abstained from touching upon legal points requiring alteration or reform, with which they understand that the present Acts abound, and that they have addressed themselves only to those matters upon which their experience and observation as mercantile men may be presumed to qualify them to form an opinion.

Before proceeding, however, your Committee feel themselves compelled to allude to one point which, although it partakes of a legal character, they consider that they should not altogether pass unnoticed, viz.,—the difficulty of obtaining compulsory sequestration, either when a person, although

known

known to be really insolvent, has no judgment debt against him, or has absconded from the Colony in debt to residents therein, but leaving no assets within the jurisdiction of the Court. David Smith, Esq.

1. It is the opinion of your Committee that, if a person convene a meeting of his creditors, to obtain time for the payment of his debts, he should be regarded as having committed an act of insolvency: and that his estate should thereupon become liable to compulsory sequestration, upon the petition of the majority of the creditors present at such meeting. Your Committee would urge in support of this view, the well-known fact, that persons have, after convening such meetings, set their creditors at defiance, wasting or misapplying their estate, whilst their creditors, should none possess a judgment debt, are for a time powerless. 27 Mar., 1861.

2. Your Committee further desire to express their decided opinion that the evil which they are anxious to prevent, viz.—that of persons being able to avoid a compulsory sequestration until they have squandered, wasted, or misapplied their estates, would be in a great measure remedied by enacting that defendants to suits upon promissory notes or bills of exchange, should not be allowed to plead, unless the plea be supported by an affidavit, so that if, upon trial, the falsity of the plea be proved, they may become liable to an indictment for perjury. The Committee feel that they cannot insist too strongly upon the urgent necessity of checking, and, if possible, preventing the too prevalent practice of filing false pleas.

3. With regard to the second class alluded to, viz.—that of persons who may abscond from the Colony in debt to residents therein, but leaving no assets within the jurisdiction of the Court, your Committee conceive it most desirable that the impediments which now exist to prevent the granting of an order for the compulsory sequestration of such estates should be surmounted, seeing that it is frequently of extreme importance that creditors should have the power conferred by the Insolvent Law of examining upon oath persons who have been in connection with, or who are supposed to hold property belonging to the absconder, and of acting through the agency and power of an Official Assignee.

4. Your Committee now address their attention to the passing of an estate through the Insolvent Court; they suggest that there should be three classes of estates:—The 1st possessing assets of the value of £500 and upwards; the 2nd possessing assets of the value from £100 up to £500; the 3rd possessing assets under the value of £100.

5. That in third class estates there should only be one meeting for the proof of debts, and in the second and first three meetings for the same purpose; but that in the second class they should be at shorter intervals than in the first class, *the Commissioner having power to adjourn single, special, adjourned, and indeed all meetings.*

6. Your Committee are of opinion that the time for giving directions to the Official Assignee, which is now usually done at the third meeting, should be shortened, so that the expense of continuing rent and other incidental charges may be avoided.

7. Your Committee consider that the question of the allowance of furniture should not be entertained until the third meeting in first and second class estates, by which time nearly all the creditors have proved, and are conversant with the general nature of the insolvent's transactions and character; further, that it should not be competent for the creditors to grant the insolvent his furniture unless there are other assets sufficient to pay rent and wages.

8. That an allowance to the insolvent may be continued after the third meeting for such time as the creditors may think proper.

9. That offers of composition might be entertained at a third meeting, but that the subsequent meeting to confirm the acceptance of such offers should be held a fortnight afterwards, not at an interval of six weeks as at present. Such offers should not be entertained unless security be given for the carrying out of the same, if accepted. The Chief Commissioner, in conjunction with the Official Assignee and Elected Assignee (if there be one), to determine the sufficiency of the security.

10. Plans of distribution should be filed within one month from the third meeting. If the Assignee is not prepared on the appointed day it should be incumbent on him to explain the reason, and to ask for an extension of time.

11. In estates in which there are creditors residing beyond the Australian Colonies, the Official Assignee should send them notice of sequestration, requesting them to transmit powers for proof of debts, so that they may arrive here within twelve months from the date of sequestration, the Assignees retaining sufficient funds to pay the dividend on such claims; in the event of such debts not being proved within fifteen months from the date of such sequestration, the amount so reserved to be divided among the creditors who have proved.

12. It should be incumbent on an insolvent to send (in addition to the usual notification in the *Government Gazette* and an abbreviated announcement in a daily paper) written notice to all his creditors of his intention to make an offer of composition, ten days before the day of the meeting convened to consider the offer, and to adopt a similar course when applying for his certificate.

13. The Official Assignee should also be compelled to send similar notices of his intention to move the confirmation of plans of distribution, and of special meetings to give directions.

14. Any creditor intending to oppose the granting of a certificate should be compelled to lodge notice of his intended opposition, stating his reasons, three days before the day appointed for the meeting.

15. Your Committee would suggest that, to facilitate the issue of such notices, there should be regular printed forms. Although this suggestion would involve some trouble, they conceive it to be important, knowing how frequently estates are passed through the Court without due investigation, and important matters determined by a small body of creditors.

16. Your Committee consider that, in the proof of debts, the affidavits should be accompanied by detailed accounts stating all the items distinctly, and that in all proofs upon promissory notes the consideration should be clearly defined.

17. It is most essential to have these particulars, more especially in estates where the accounts have been loosely kept, but your Committee conceive that the rule should be general, and that it should be stringently enforced by the Commissioner.

18. The Chief Commissioner should have the power, upon sufficient cause being shown to him, to set aside or correct any proof of debt, so as to obviate the necessity of appealing to the full Court sitting in its Insolvency Jurisdiction, with liberty, nevertheless, to appeal from the Commissioner's decision to that of the full Court.

19. Your Committee consider that, in voting, a majority of two-thirds of the creditors in number and value, who have proved on the estate, should have power to bind the minority.

20. Further, that no creditor should be allowed to vote, either personally or by proxy, in any matter in which he, has an individual, has a beneficial or direct interest, such as the prosecution of a suit against him, or the acceptance of an offer made by him for any or all of the assets of the estate. Also, that no person holding a proxy for a creditor should be allowed to vote on behalf of that creditor in a matter in which he, the party holding such proxy, has a direct or beneficial interest.

21. Your Committee consider that the insolvent should attend all meetings, and that until the third meeting his services should remain at the disposal of the Assignees.

22. In reference to the question of rent and wages your Committee consider that wages and rent should be preferent, but that rent should not be preferent for more than one quarter, one month, or one week, with the addition of the odd time from the date of the termination of the next quarter, month, or week, as the case may be, prior to the insolvency, up to the time of sequestration. They consider that wages should be made preferent for a period not exceeding three months, or to an amount of £30, and that in the event of there not being sufficient assets to pay all these preferent claims, the assets to be divided ratably between them. They consider that wages should be made preferent for a week, month, or quarter,

David Smith, quarter, according to the terms of the respective engagements, adding the odd time as in the case of
Esq. rent.

23. Your Committee are induced to suggest this alteration, as in this community the largest rents and salaries are, they believe, contracted to be paid at the outside quarterly, and they consider it most desirable that landlords and employees should not be in the habit of allowing their rents, salaries, or wages to fall into arrear,—a system which is encouraged by making them preferable claims for six months, as under the present Act.

27 Mar., 1861.

24. Your Committee think the insolvent should have no discretion as a leaseholder, but that he should at once be compelled to hand over his lease to the Official Assignee, to be treated as an asset of the estate.

25. Your Committee conceive it to be extremely desirable that the power vested in the creditors, under the present Act, of electing a Creditor's Assignee to act in conjunction with the Official Assignee should be retained, and that it should be competent to the creditors to elect such Assignee (who may be a creditor, or any other person), either at the first, second, or third meeting, at any adjournment thereof, or at any meeting specially called for the purpose; it being very desirable that there should be no limitation as to the time of appointment, since it not unfrequently happens that an emergency or occurrence calling for such an appointment arises unexpectedly.

26. In connection with this matter your Committee think that the Elected Assignee should receive a remuneration equal to the half of that allowed to the Official Assignee.

27. It may also be deemed desirable that provision should be made to empower Assignees to reimburse creditors any reasonable expense which they may jointly or individually incur in bringing to light any unjust dealings or improper conduct on the part of an insolvent, or in successfully striking off any unjust proof.

28. The Official Assignees being officers of the Supreme Court, and consequently under the control and supervision of their Honors the Judges, it would not become your Committee to offer any suggestions upon the rules and restrictions which it may be deemed advisable to adopt to insure the faithfulness of their trust, and the due performance of their duties. As a matter of business, your Committee think it would be highly desirable if they were compelled to file, every month, a return of all the moneys in their hands, specifying the amounts appertaining to each estate, and the banks in which they are deposited, such returns to be open to public inspection in the office of the Insolvency Department of the Supreme Court.

29. Your Committee would here suggest that section 10 of 7 Victoria, No. 12, should be made more stringent by the substitution of one week for one month, as the time within which money must be paid by the Assignee or Assignees into the bank account of the estate.

30. Your Committee imagine that, under no circumstances, should Elected Assignees have any separate control over funds, but that, when such are appointed, all money shall be lodged at banks in the joint names, and all payments made under the authority of the joint signatures of the Official and Elected Assignees.

31. Relating to the desirability of establishing two classes of certificates for insolvents. (Amended in accordance with the English Bankruptcy Act.)

Your Committee having thus enumerated some alterations which they conceive will be found to create an improvement in the management of insolvent estates, and in their passage through the Court, now approach a very important object.

It is incumbent upon them to state what acts they consider should be deemed to constitute the crime of fraudulent insolvency.

32. Your Committee are decidedly of opinion that all the acts enumerated in the 73rd clause of 5 Vict., No. 17, should continue to be deemed acts of fraudulent insolvency, but that the words "with intent to defraud," should be erased, in reference to the following offences,—1st, the embezzlement or concealment of effects; 2nd, the wilfully lodging a false statement of effects or of debts due to the insolvent; 3rd, the production of any false or pretended account book or paper, or the wilfully making false answers when under examination. (It has been suggested to your Committee, by a legal gentleman, "That wherever a crime depends upon the *intention* of the criminal, the proof is difficult, and that, generally, it is better to render proof only of a fact to be necessary to constitute a crime, and to "let the intention be necessarily implied from the fact.") In addition thereto, that the misapplication of trust funds by an insolvent to his own purposes; the having given a creditor undue preference, and making away with property without valuable consideration, which, under the 18th section of 7 Vict., No. 19, are only now punishable by refusal of certificate, should be constituted acts of fraudulent insolvency. Moreover, that in the new and consolidated Act, the principle of the Bill recently introduced by Mr. Donaldson should be carried out.

33. Your Committee consider it very important that the Act should render it *obligatory* upon the Chief Commissioner, in all cases where he refuses a certificate on the ground of an insolvent having committed an act of fraudulent insolvency, to commit him to prison to take his trial for the offence; and that the Commissioner should have power to refuse or suspend a certificate whether moved thereto by the creditors or not.

34. Your Committee are further of opinion that the assisting an insolvent to remove or conceal any property or effects appertaining to his estate should continue an indictable offence, and should be subject to a severe punishment.

35. Your Committee consider it incumbent that every insolvent should have kept such book or books of account and documents as may clearly shew his daily receipts, payments, purchases, sales, and stock-in-trade, so as to enable him to produce a progressive balance-sheet of his affairs—all books of account to have the folios correctly consecutively numbered, and no blank spaces to be left between the entries.

36. That the failure to keep such books or accounts should be visited by a more severe punishment than the refusal of a certificate.

37. That in the event of an insolvent neglecting or refusing to make up his books, or to assist in doing so, when so directed by the Commissioner, the Commissioner shall be empowered to commit him to prison for so refusing or neglecting.

38. Your Committee feel it to be most important that the new Insolvent Act should be so framed as to deter traders from the dangerous habit of allowing books of account to fall into great arrear, and still more to bid them beware that if they rashly or dishonestly engage in traffic without keeping such books as are essential to the safe and proper conduct of business, thus hazarding their own and their creditors' interests, they incur the risk of punishment, should misfortune befall them.

39. Your Committee suggest that the Insolvent Laws of New South Wales and Victoria should, if possible, be assimilated, considering the intimate nature of the commercial relations subsisting between the cities of Sydney and Melbourne, and the similarity of the pursuits in which the inhabitants of the two Colonies are engaged.

40. Your Committee find that considerable difference of opinion exists as to the propriety of continuing the present system of assignments under clauses 33 to 37 of 5 Vict., No. 9, intitled "An Act for the further amendment of the Law and for the better advancement of Justice."

41. They refrain from expressing their views upon the subject, considering the question to be of so much importance that it should be referred to the members generally for full and deliberate discussion, before a decided expression of opinion emanates from the Chamber.

Your Committee have only, in conclusion, to express their hope that the preceding observations may prove in some degree useful. Should the expectations which they entertain of a thorough reform of the present Insolvent Laws be realized, they will esteem it an honor to have participated in a work which

which the increase of our commerce renders most urgently necessary, and which will confer incalculable benefit upon the trading and general interest of the Colony.

THOS. WHISTLER SMITH,
Chairman.

David Smith,
Esq.
27 Mar., 1861.

? Branch Insolvent Courts.

Getting in debts due to insolvents?—A cheap process would be to give the Chief Commissioner power of issuing writs for the recovery of same. Debts under £50 same as Court of Requests suit tried before Commissioner, make him Judge with power of appeal.

Should persons whose debts do not amount to £100 be allowed a release when their estates are sequestrated? In Scotland a process termed *cessio bonorum* only is allowed to such parties, which protects them from annoyance, but does not afford them a release.

Unclaimed dividends, after a certain date, how should they be disposed of?

Edward Knox, Esq., called in and examined:—

652. *By the Chairman*: You are a merchant, residing in Sydney? I am.
653. And have been carrying on business for some time? Twenty years.
654. If I mistake not you had something to do with the working of the Insolvent Act, after it was passed? I was one of the first Official Assignees appointed under the new Act—when it was first passed—7 Victoria, No. 19.
655. Who had the appointment of the Official Assignees then? Chief Justice Dowling.
656. Can you state what course he adopted when he first appointed the Official Assignees? Yes; he sent letters round, inviting a number of gentlemen connected with the mercantile interest, to meet him, and he submitted to them the names of applicants; they, in fact, made choice of the Assignees. I believe that to have been the course he took, but it is a long time ago.
657. The choice fell amongst accountants and merchants? Yes, men of considerable experience as accountants.
658. Are any of the present Official Assignees gentlemen who were appointed at that period? Mr. Morris, I think, was appointed originally.
659. Can you state whether the same course has been adopted by the learned Judge who has subsequently had the appointment of the Official Assignees? I think not.
660. There are four Official Assignees at present? Yes.
661. Two of them, I think, have been Judges' clerks? Yes.
662. I presume the commercial community was not consulted in their appointment? No, not further than as to the necessity for the last appointment being made. I, among others, had a letter from Sir John Dickinson, requesting to know whether I thought such an appointment necessary, but not asking any opinion as to the fitness of the party.
663. At the time of the passing of the Insolvent Act I believe there was great commercial depression? There was, or rather there had been, great commercial depression, but things had almost recovered themselves by the time the Act was passed.
664. The operation of the different Bankrupt and Insolvency Acts was not very well understood at that time? It was not.
665. Since that period has there been any considerable change in the number of the mercantile community, and the amount of trade carried on? Trade has increased enormously, of course, since that time; but I think insolvencies have kept pace with the increasing trade.
666. Is the machinery of the Act you have alluded to sufficient now for the protection of creditors? I think, generally speaking, the machinery of the Act would be sufficient if it were vigorously administered, and differently administered.
667. You are aware there are some glaring defects in the Act? Yes, I am aware there are.
668. For instance, an insolvent is not necessarily obliged to submit himself for examination? No. These are defects which I think ought to be rectified; but I think the Act could be so remodelled as to work very satisfactorily.
669. What is the radical defect in the present Act, so far as regards the discovery of an insolvent's transactions and dealings—I am speaking with reference to the acts of the insolvent himself? The radical defect, as regards the insolvent himself, is that there is nothing in the Act that compels him to shew accurately the state of his affairs for a long period back. I take it every insolvent should be bound to fix some period when he was solvent; to shew the state of his affairs at that time, and to account for all losses which had contributed to render him insolvent, up to the time of his misfortune.
670. Then you think any future Act should provide that an insolvent should have kept books which would disclose certain information, instead of leaving it to the discretion of the Commissioner to say whether he had kept sufficient books or not? I think the Commissioner should have no discretion of the kind. The insolvent should be bound to shew that he had kept reasonable books of account, and the proof of his doing so would be that they would disclose the state of his affairs at any period for a reasonable time back. It is not to be expected that every man in a small way of trade can keep perfect accounts, but he ought to keep sufficient to enable him to account for his losses.
671. Would it not be reasonable to require every person in trade to enter every transaction and dealing of his in a day-book, no matter how trifling? Yes; all receipts and payments.
672. Every transaction whatever? No; that might involve much more than I would be disposed to say. He ought to be bound to keep such accounts as would enable him to shew satisfactorily how his misfortunes had arisen.
673. That would leave it open to the discretion of the Judge to say whether the books were sufficient or not? That might be an evil, but I think that a different course might lead to great hardship on the other side.

E. Knox,
Esq.
27 Mar., 1861.

- E. Knox,
Esq.
27 Mar., 1861.
674. Are you aware that in Prussia there is a law which compels every trader, under pain of felony, to enter every transaction in a book? Yes; and not alone that, but the pages of all his books are numbered and sealed. A trader in Denmark cannot extract a page from his ledger or journal without its being known. I am aware of these laws, but I think something may be left to the common prudence of people in trade: they must expect to take some risk in their business. I think the end in view would be gained if you obliged the insolvent to account satisfactorily for his losses.
675. And that he should be required also to shew what capital he started with? He should be required at all events to go back to a time when he was perfectly solvent.
676. Is it not another defect in the Act that you are at a loss to tell when a man has become bankrupt—when he has committed an act of bankruptcy or insolvency? The Act provides for certain cases which shall be considered as acts of bankruptcy.
677. Would it not be desirable to introduce some further provisions on that subject? The only provision I can think of is one which has been suggested by the Committee of the Chamber of Commerce—that if a man calls a meeting of his creditors for the purpose of obtaining time, he should be considered to have committed an act of insolvency.
678. Suppose a person suffers judgment or execution to pass against him, should not that be looked upon as an act of bankruptcy? I imagine a petition could be filed for the surrender of his estates under that debt.
679. I am speaking now of his relations towards the general body of his creditors? You mean, if he is unable to satisfy the debt, whether that should be —
680. Whether that should not be looked upon as an act of bankruptcy on account of which it should be open to any creditor to file a petition, not the judgment creditor only? I doubt whether that would be desirable.
681. You are aware, I presume, that it is open to a debtor, under the present state of the law, to collude with a judgment creditor, to procure himself to be sold off, or even, through negligence, to allow judgment and execution to pass against him, whereby his assets may be disposed of, and possibly sacrificed; but by a proviso, such as I suggest, any creditor would be able to step in and declare the debtor insolvent? Yes; and still I can understand cases where a trader would prefer that execution should issue against him for certain debts that he considered he was not liable for. He might wish execution to go against him merely in order to take further proceedings against the party upon that very execution.
682. The debtor himself? The debtor himself might. A man might be worth a hundred thousand pounds, and still be determined that a certain execution should be levied against him, merely with a view of taking ulterior proceedings.
683. *By Mr. Windeyer*: There might be cases where he would think himself morally bound to resist? Either out of feeling, or with a view to take ulterior proceedings. I think that would be scarcely safe.
684. *By the Chairman*: Are you aware that that is one of the provisions of the Bill lately introduced in England by Sir Richard Bethell and Lord John Russell, but not yet passed? No; I have not seen it or the Irish Act either. It would be well to provide for the case by enacting that a person should be deprived of his certificate, or otherwise punishable, if he allowed one creditor to sell off his estate to the detriment of others.
685. Do you consider that the non-payment of a bill of exchange or promissory note should be, as a general rule, an act of bankruptcy, giving the debtor, however, the power of shewing that it was in point of fact not an act of bankruptcy? I think the non-payment of a bill of exchange or promissory note should be an act of bankruptcy, but I do not know that it is necessary to enact it now, because a man cannot plead to a promissory note unless he has some defence.
686. The holder of the bill of exchange or promissory note may not sue him, and yet the person who dishonoured it may still go on contracting debts—would any evil arise if the option were given to the maker of the note to deposit the amount of it pending the inquiry? I think there might be a great many equities which would make it a hardship upon him to deposit the amount of the note; he might have had no valuable consideration, or might have a valid defence on many other points.
687. Is it not desirable to put a stop to these bills of accommodation as far as possible? Yes, it is desirable to put a stop to accommodation bills as far as it can be done, no doubt.
688. Suppose it was permitted to the acceptor or maker of the note to make an affidavit that he had a good defence? In that case I should see no objection to it.
689. Respecting the mode of realizing estates that are now placed in the hands of Official Assignees, can you suggest any improvement in the state of the law? Yes. I consider, first of all, that it is impossible for any Assignee to do justice to the number of estates he has to deal with.
690. Have you considered the propriety of appointing—say two Assignees, who shall be officers of the Court and be looked upon in the light of accountants; power being given to the creditors to appoint Creditors' Assignees who should actually administer the estate in conjunction with the Official Assignees? I was going to recommend the employment of licensed accountants under the Court, either of whom it should be the *right* of the Creditors' Trustees to employ in the winding up of any estate that might come into Court; but, in order to do that, it would be necessary that the present mode of appointing Creditors' Trustees should be entirely altered.
691. What would you suggest in the place of the present mode? It is well known that most of the large insolvent estates for some time past have been administered under the Assignment Act, and have yielded better dividends than they would have done if they had gone into the Insolvent Court. I take the principal reasons that tend to produce this result are these, that the trustees enter on their duties *the moment* the estate is surrendered; that they

they are most probably largely interested in the result of the winding up of the estate ; and that they receive much more assistance from the insolvent, when administering the estate in that way, than ever has been the case in the Insolvent Court. It would be desirable, therefore, that the trustees should be appointed at the very earliest moment, and in order to enable that to be done, and to have them at the same time appointed by a majority of the creditors, I would make it incumbent on the insolvent, when he applies for leave to sequester his estate, to file a list of his creditors, if he is not in a position at once to file his entire schedule. He should also be bound to give notice to every one of these creditors of the fact of his having sequestered his estate ; and that a meeting would be held, say within a week of that time, for the election of trustees.

E. Knox,
Esq.
27 Mar., 1861.

692. Or rather Creditors' Assignees? Creditors' Assignees;—they would all be Creditors' Assignees in that case. At that meeting, every creditor should be entitled to vote, whether he had proved his debt or not, so long as his name appeared on the list filed by the insolvent.

693. And you would give the Assignees power afterwards to investigate? I would give an appeal to the Court, in case it was found there had been any malpractice, or that any election had taken place through fraud ; and I would, at the same time, inflict a punishment on any party who should vote without being a creditor, although his name might be on the insolvent's list. But, I think, the appeal should only lie where it could be clearly shown that the vote of a party who had no right to be present, had actually affected the result of the election. In that way the Creditors' Assignees would enter on their duties immediately after the insolvency.

694. Would you give power to the Court to reject an Assignee so chosen, on sufficient cause being shewn? Only in case of a defective election, not on other grounds.

695. Would you require security from Creditors' Assignees so appointed for the due performance of their duties? I would not ; but I would make them liable to all the penalties under the Act as regards Assignees generally.

696. Can you state whether, under the operation of the old Act, when creditors appointed their own Assignees, there was a great deal of collusion? I know there was, and I believe also there was a great deal of malpractice among trustees generally under the old Act.

697. To prevent that would it not be desirable to require security? No, I do not think that would prevent it. The Act provides a sufficient remedy ; it declares that if the trustees do not keep their accounts properly, and make use of any funds belonging to an insolvent estate, they shall be liable to pay double the amount, or to be imprisoned one year ; and I take it that if the Act were properly administered that would be such a punishment as would deter any trustee from any improper procedure. In order to oblige trustees to keep the accounts more clearly than used to be the case under the former Act, I would adopt the audit and dividend clauses of the English Bankruptcy Act. The trustees there have to bring in their accounts on oath, and when they are thus brought in they have to give reasons why the assets which have not been realized remain outstanding. After the accounts are passed at the meeting to which they are presented, there is another meeting called at which the dividend is declared by the Commissioner and the creditors present. There is, in fact, a formal passing of the accounts, which we have never had here ; you may say, because, though the plan of distribution is confirmed, this can scarcely be looked upon as passing the accounts. It is true the plan lies in the office of the Chief Commissioner, for the inspection of any one who will take the trouble, but that is practically of no effect.

698. Do you think it desirable to give to any future meeting the power of removing an Assignee originally appointed, and also directing that the licensed accountant you speak of should administer the estate? I think it might be desirable that the creditors should have the power of removing an Official Assignee at a meeting called for the purpose, and with the consent of the Court ; but generally speaking I am averse to giving power to make these alterations, because it might tend to make creditors careless about attending the first meeting, thinking that if afterwards they did not like the trustees appointed they would have the opportunity of removing them and appointing others.

699. Would you cast altogether upon the Creditors' Assignee the duty of realizing the estate? No, I would give him the assistance of a licensed accountant ; he should be entitled to employ a licensed accountant about the affairs of the estate ; but the whole of the directions should be given by the Creditors' Trustee or Trustees, of whom I think it desirable there should be two, or even three in large estates.

700. How would you suggest that the licensed accountants or assignees should be paid? The licensed accountants should be paid according to the work they have done. Their accounts should be passed by the trustees and then by the Court.

701. What would you say to a provision of this kind—that out of the funds received in insolvent estates they should receive not exceeding £500 a year, and further a commission, so that the whole amount of their remuneration should not exceed £1,000? They could not well receive a commission as licensed accountants. If any commission is taken it should be received by the trustees. It would be necessary to give the trustees some remuneration to get them to act. I think it would be scarcely necessary to fix the amount of remuneration to the licensed accountant, because it would be the interest of the trustees, first of all, not to agree to any excessive amount ; and as there would necessarily be an appeal to the Court to confirm the plan of distribution, if any such amount appeared too large it could be then objected to.

702. Do you think there should be a graduated scale according to the amount of the estates? I think so ; but such a scale would not answer at the present time, because it is only by getting a very large amount by his commission out of one or two estates, where he has perhaps little or no trouble, that an Assignee can make a livelihood. In the great mass of estates he gets nothing, or next to nothing. Out of thirty estates, he may receive nothing
from

E. Knox,
Esq.
27 Mar., 1861.

from twenty-six, and the remaining four may yield him a very handsome income for the year.

703. Would it not be desirable, at the meeting held for the appointment of Assignees, to direct the amount of commission they should receive out of the estate? I think it might, only that would be liable to abuse. I think it would be better to leave it for the final confirmation of the accounts, for the creditors then to say what remuneration the trustees should have. I conceive that the remuneration of elective trustees should be much smaller than that hitherto charged (five per cent.), if they have an accountant to assist them in the management of the estate. At the same time, it must be sufficient to remunerate a man for the time and trouble he takes.

704. Is it not a complaint, on the part of the mercantile community, that the funds in insolvent estates are not distributed as early as they ought to be? I have been very little interested of late years in insolvent estates administered in the Court. Nearly all the insolvencies I have suffered from have been wound up under deeds of assignment. But I have heard parties complain that the funds have not been divided as quickly as they should be.

705. Is there any reason why six months should elapse before a distribution takes place? None whatever. The English Bankruptcy Act provides, that within two months they are bound to file an account.

706. Supposing the Creditors' Assignees are satisfied that the debts in the schedule are genuine, ought not the funds to be distributed at once, even without proof of the claims by the creditors? No, I would not distribute anything without proof of claim; but a distribution might be made, reserving for those who had not proved such an amount as would pay an equal dividend to them. I think the time that elapses between the different meetings should be very much shortened. I consider that, supposing a week were given for the election of the Creditors' Assignees, the next meeting should take place within a fortnight of that time, and the final meeting within another fortnight; and that the insolvent should have leave to make an offer of composition at any time by giving ten days notice to every creditor, of his intention to offer such composition.

707. Would you give him that privilege where it was quite clear that he had been guilty of fraudulent conduct? No; I would provide that no composition whatever should be taken in any estate in which fraudulent conduct could be proved. To allow it would be to release the insolvent from the punishment he deserved.

708. Under the present law it is quite common, is it not, for persons who have committed acts of fraudulent insolvency to obtain releases by paying, perhaps 20s. in the pound, or by making some arrangement with their creditors, thus saving themselves from prosecution? I think that ought to be guarded against, and also, that every acceptance of a compromise should be liable to be set aside by the Court, if any one creditor could shew that he would have received more by the estate being wound up in the Court. There have been cases, of late, in which the composition has been much smaller than the assets in the estate warranted.

709. Is there any complaint as to the amount of legal charges that estates are subject to? There is a very general complaint on the subject. There is great complaint of Official Assignees declining to do anything without consulting their solicitors. If Official Assignees are to be continued, I would guard against that by adopting the English law in that respect, that the Official Assignee shall have no vote whatever as regards the appointment of a solicitor, vesting it entirely in the Creditors' Assignee. I think it undesirable that a great number of estates should be all administered in the same way where interests differ so materially.

710. *By Mr. Windeyer*: There naturally arises, as a consequence of the present system, a danger of the Official Assignee and the attorney playing into each other's hands? Without attributing any motive of that kind, I think there is danger that if the Official Assignee once gets into the habit of consulting his solicitor he will go to him on every occasion; whereas the appointment of a different solicitor, more under the control of the Creditors' Assignee, would prevent him doing so.

711. *By the Chairman*: Do you think it the duty of the insolvent to attend each meeting in his estate? Most decidedly, as well as to be examined at any time, and to give every assistance in winding-up his affairs.

712. What is your opinion with respect to the classification of certificates? I think there ought to be three classes of certificates—first, second, and third; and that the Commissioner in Bankruptcy should be entirely guided by the dealings of the insolvent, the aspect of his transactions, his private expenditure during the time he has been in difficulties, and similar circumstances, as to what class of certificate he would grant.

713. Are you aware that in England it is a complaint that the different Commissioners regard the conduct of bankrupts differently, and one will grant a first-class certificate where another will only grant a third-class? I am aware of that; but I take it it is a matter that can scarcely be provided against; people will have different opinions on these subjects. At the same time I may state that I do not consider it in the power of any one Commissioner here to manage the whole of the business.

714. You think the staff is insufficient? Yes, quite insufficient. I think there ought to be, at the very least, a Deputy Commissioner, or Registrar, who should have the right to preside at meetings for proof of debts, or any minor matters. That would give the Commissioner time to devote himself to those difficult points which must come before him at other meetings.

715. It should be the duty of the Registrar also to furnish periodical accounts? Periodical returns to Parliament.

716. I believe up to the present moment there are no complete returns? We have no return whatever

whatever that I am aware of. Returns, I believe, have been called for. The task would be a hopeless one now, as far as the past is concerned.

717. Would you afford any further facilities than at present exist for arrangements under deeds of trust for the benefit of creditors? I do not think it necessary to afford any further facilities. E. Knox,
Esq.
27 Mar., 1861.

718. You are aware that there are so many technical difficulties at present, under the state of the law, that it is almost impossible to carry out deeds of trust? Yes; but if my suggestions were adopted with regard to the appointment of Creditors' Trustees, and other points, I do not think the Assignment Act would be availed of much.

719. Except that on the part of honest traders there is an indisposition to avail themselves of the Bankrupt Act, and the creditors might desire to assist them under deeds of trust? To meet such cases it might be desirable to alter the Act to some extent, so as to make it more difficult to dispute the validity of these deeds. The great difficulty in deeds of assignment is in giving an exact and accurate statement of the affairs of the insolvent, because however small the inaccuracy it is likely to lead to the deed being upset.

720. There are some very simple provisions in the English Bankruptcy Act, respecting compositions by deeds of trust. The principal of them are these, that where a deed is executed by three-fourths in number and value of the creditors whose debts amount to £100 and upwards, and who shall sign within seven days from the execution of the deed by the insolvent, it shall be valid — ? Ours goes much further, because a mere majority makes a deed valid.

721. *By Mr. McArthur*: Without a release? Without a release;—four-fifths with a release. I think it would be very desirable to stipulate that, though a deed may contain a release, it shall not be inoperative because it is not signed by four-fifths of the creditors, but it shall be inoperative only so far as the release itself is concerned.

722. *By the Chairman*: Should these deeds be under the cognizance of the Registrar of the Insolvent Court? Yes, I think it very desirable, and that a power should be given to the trustees to examine anybody, if necessary, in the same way as under the Insolvent Act.

723. In addition to refusing a certificate to a person, would you be desirous of inflicting further punishment for breaches of the Insolvent Act? No, I do not think so, in the larger estates; but in minor estates, very trifling estates, I think a man should not be released from his debts—butcher's and baker's bills, and things of that kind; he should be bound to pay them within a certain period, or if he afterwards had any property it should be liable for his past as well as present debts.

724. At present it is quite a common thing to victimize butchers and bakers? Yes. The number of small estates is one of the great evils that they have to deal with in the Insolvent Court. They take up an immense deal of time, and seldom yield any assets whatever.

725. *By Mr. Windeyer*: With reference to this point, have you ever considered the advisability of doing away with credit for small amounts, by making them irrecoverable at law? I do not agree with that suggestion. It might lead to a great deal of hardship amongst labouring men, and others, who might be in difficulties for a few weeks for want of employment. They might be deprived of the means of existence.

726. Do you not think it might be done in the case of luxuries—a great many people get into debt by getting credit for luxuries that they do not require? Yes, no doubt; but I scarcely think it is a case for the interference of the law.

727. You are aware that several of the most eminent English Judges are in favour of it? No, I was not. No doubt it would tend to simplify matters much.

728. Do you not think it would tend to induce habits of frugality, care, and self denial? I never heard of the matter before the suggestion was thrown out in the course of Mr. Smith's examination, and therefore I have given it little consideration.

729. *By the Chairman*: Under the provisions of the Licensed Victuallers' Act publicans cannot recover for small debts, and yet it does not prevent them giving credit? Yes, I am aware of that.

730. Have you any other suggestion to make to the Committee? In the 7th clause of the Insolvent Act, any transfer without valuable consideration is rendered void if made within twelve months, and if it had the effect of preventing any creditor from receiving the full amount of his debt. Now I take it any transfer made without valuable consideration within the period named should be void without that stipulation. It is utterly impossible to say what may have been the effect of a transfer made twelve months back. A man may say, six months ago I could have paid a large amount over and above my liabilities; and therefore the transfer may not be void, although perhaps it was actually made to evade payment of a debt falling due shortly afterwards.

731. *By Mr. Windeyer*: You are aware of the provision respecting any transfer made within sixty days of insolvency, and having the effect of preferring any existing creditor to another? It is a similar clause; but this has reference to all transfers without valuable consideration.

732. In a case where one person is paid in full within sixty days of the insolvency of the debtor, and there are other creditors at the time, should you not consider that the right interpretation of such a transaction is that it must necessarily have the effect of preferring one creditor to another? I should not consider that, if a man buys goods within sixty days of his insolvency, and pays for them within the sixty days, it prefers one creditor to another.

733. Suppose a man has been owing a person money for some time, and then, within sixty days of insolvency, hands over to him a quantity of property—there being other creditors, of course, at the time? That would be giving him a preference, no doubt.

734. It ought to be deemed such without going into the consideration of what his assets were?

E. Knox,
Esq.

27 Mar., 1861.

were? Yes. But I take it the case there has been so much talk about is not a similar case to that at all.

735. *By the Chairman*: In the case put by Mr. Windeyer, you would look upon it as a fraudulent preference? It would, no doubt, be a fraudulent preference.

736. But the mere fact of retiring a bill, or paying for goods which the trader requires to carry on his business, you would not regard in the same light? No; the estate gets the value. I do not see that there can be any reason for regarding that as a fraudulent preference. There is no fraud upon the estate at all, if the estate receives value for the amount.

737. Under the present Insolvent Law, I believe a certificate is not in any case absolutely refused to a man for the term of his life? It is competent to him to apply again after two years.

638. So that no matter how fraudulent his conduct may have been, he can enter into business again at the end of two years? In case it is then granted.

739. Are you aware of any case where it has been refused after the lapse of that period? No; but I am aware that it has been granted where it ought to have been refused.

740. Do you consider that undue leniency has been shown to insolvents? I consider that every leniency has been shown to insolvents, and no consideration whatever to creditors; whereas I take it that, in the spirit of the Act, the very contrary ought to be the case. The insolvent gets the greatest boon that can be conferred upon him; in a few months he may get fifty or sixty thousand pounds of debt wiped off, and the least that can be expected from him is that he should satisfactorily account for his being placed in such a position—and that ought to be done before he should be entitled to the benefits of the Act.

741. Are there any other points to which you wish to allude? I think that where any creditor shall be proved to have received a preference, he should forfeit his whole debt, besides being obliged to pay back the amount he has preferentially received. That is one of the clauses of the English Bankruptcy Act, and I think it a very salutary one. I consider, also, that the amount of rent and wages made preferent is unduly large under the present Act. I think a preferent claim for rent should be confined to any broken period, from the last quarterly or half-yearly payment, or as the case may be, up to the time of the insolvency.

742. Is there any reason why there should be any preference for rent at all? Yes, because you deprive a landlord of his remedy of distress which he has by law.

743. Is there any equitable reason why the landlord should have that privilege, any more than any other creditor? I do not see why he should; but as long as that is the law, I think it would be unfair under insolvency to deprive him of rights which he has in every other way. I think no private meetings in insolvent estates should be allowed at all. Under the present Act it is evidently contemplated that many of the meetings shall be private meetings, presided over by any creditor. They should, I think, all be called and held in the Court, and the proceedings should form part of the records of the Court.

744. Either before the Chief Commissioner or the Registrar? Principally before the Registrar. I would suggest whether it might not be desirable to have a small *Insolvency Gazette*, which could be more easily circulated than the present *Government Gazette*; because sometimes it may take a man a very long time, under the present practice, to find out what meetings are to be held, and so on. If there could be such a publication, it would materially assist the trading community.

745. There appears to me to be an unnecessary amount of printing in the various notices at present? Quite so. There is also, in the present Act, some difficulty about taking the directions of creditors. It appears that, immediately upon being appointed, the Official Assignee can go on with the realization of the estate, and still the Act says that at the third meeting he shall make a report and take the directions of the creditors. Now, I take it, if Creditors' Assignees were appointed, that they ought, immediately they enter on their duties, to be at liberty to realize estates without directions, and to call meetings at any time they might think fit, if they should require specific directions.

746. *By Mr. McArthur*: The same as under the Assignment Act? Yes.

747. *By the Chairman*: Would you give the Creditors' Assignees the power of carrying on the business of the estate, for a time, instead of realizing at once? I would not prevent them from doing it; but I would make it necessary to take the directions of creditors, if they were going to carry on the business for any length of time.

748. I think you have some other suggestions to make? No; I think my examination generally embodies nearly all the suggestions I have to make on the subject.

749. *By Mr. McArthur*: Did I understand you to say you thought the simple dishonouring of a bill should be regarded as an act of insolvency? No; I rather differed with the Chairman, thinking that it should not be looked upon as an act of insolvency.

750. *By the Chairman*: I think you were of opinion that no hardship would result if the party were allowed to deposit the amount of the bill, or make an affidavit that he had a defence? Yes, that is putting him in the position he is in now.

751. Except that it would be in the power of any creditor to file a petition against him, on the mere fact of his having dishonoured a bill? I do not at present see any objection to that.

752. *By Mr. McArthur*: Do you not think that if a creditor were disposed to act harshly, it would be a dangerous power to place in his hands. Supposing the bill of a man in business up the country is dishonoured, either from the state of the roads delaying communication, or even from his own negligence, do you think it would be right that any creditor should have the power to make him insolvent? In such a case it might lead to hardship. It is a point I have never given any consideration to. To give it to other than the creditor actually holding the bill might be possibly a hardship.

753. To give it even to the creditor himself? The creditor has it.

754. To take legal proceedings? He would most likely take the shorter course of the two.

755. *By the Chairman*: Is there any reason why a creditor should be put to the expense of bringing an action against the person making the bill, when the only result of that will be to shew that he is insolvent, whereas by a declaration under the Act, the same result might be arrived at in the mode I suggest, by making it an act of bankruptcy? The only reason for making it an act of bankruptcy would be, that the Act, which has lately been passed, obliges the party to allow judgment to go by default, or make the affidavit you have spoken of.

E. Knox,
Esq.
27 Mar., 1861.

756. Yet in that case, where the affidavit is made, the cause has to go to issue, and may not be tried for several months, and in the meantime the bankrupt carries on his operations, whereas it might be provided in any new Insolvent Act to be brought in, that the Chief Commissioner should have the power of inquiring into the merits of the defence on this bill of exchange? I do not think it would be safe to give that power to the Chief Commissioner, to inquire into the merits of cases belonging properly to a judge and jury. It might lead to great hardships. There seems to me to be scarcely any necessity for providing such machinery, because the Act is so prompt in the remedy afforded on promissory notes or bills of exchange.

757. *By Mr. McArthur*: Have you had any cases in the interior of the Colony, in which you have found it very difficult to get the law carried out, referring to the remedy people have in issuing writs? No, I have not sued anybody, I am happy to say; I have not had a single action. Generally speaking, I have found it more advantageous to lose the debt than to take legal proceedings.

758. *By the Chairman*: At what amount would you fix a petitioning creditor's debt—the amount at present is £50? I think that is quite small enough.

Jacob Levi Montefiore, Esq., called in and examined:—

759. *By the Chairman*: You are a member of the Chamber of Commerce? I am.

760. And, at the request of that body, you have attended to give evidence before this Committee? I have.

761. Have you had many dealings with insolvents during the time you have been in business? I have not.

762. Have you made yourself acquainted with the provisions of the Insolvent Act? To a certain extent I have.

763. Are there any particular points that strike you as defective? I find less fault with the law itself than with the general administration of it, although there are some points in respect to which the law might be, in my opinion, improved upon.

764. Can you suggest any alterations that would be beneficial? I cannot better premise any suggestions than by recommending to the attention of the Committee the report from the Chamber of Commerce on the Insolvent Laws, for I fully concur in the views therein expressed, but would offer, in addition, the following further observations. In clause 21 of that Report I would absolutely limit any preferential claim to £50, because I conceive that the clause was introduced not so much to save the recipients of large salaries as to keep from ruin those of limited means, who were almost earning their daily bread. I would venture to recommend that clause 12 of the existing Insolvent Law be so modified as to exempt from its influence all transactions known as cash transactions, according to the usages of trade; that is to say, when the estate, by such transactions, shall not have been placed in a worse position in the event of a failure within sixty days. I would further suggest, and to this suggestion I attach great importance, that some cheap and simple form be introduced to enable a creditor to place an estate in the Insolvent Court. It very often occurs, under the existing law, that a debtor escapes merited punishment in consequence of the expense and delay necessary to declare him a bankrupt. The power I speak of exists in the English law—(see Urse's Bankrupt Law Consolidation Act, pp. 76 to 90, where, upon affidavit of creditor, the Court may summon insolvent debtor)—And I conceive that all the provisions referred to in above quoted pages should be embodied in any Colonial Insolvent Law. The next point to which I would draw the attention of the Committee is the absolute necessity of placing in the hands of the Chief Commissioner a larger amount of power than he now possesses, so as to enable him to enforce those decisions which his judgment may deem necessary. I would further recommend, in the compilation of any new law, an entire change in the present system of Official Assignees. These gentlemen, though highly respectable as individuals, are perfectly unfitted for the situations they hold, and it is an every day occurrence, through the want of information, or incapacity of the Official Assignee, to see an entire estate frittered away in law expenses—the Assignee, afraid of his own judgment, wishing to consult his lawyer upon every occasion, even the most trivial. I am strongly of opinion that there should be but one Official Assignee, who should be a gentleman thoroughly qualified as a first-rate accountant. This gentleman should receive a fixed salary of £1,000 a year; should give security to the extent of £5,000; should inspect all estates, and be subject, generally, to all the regulations of the English Bankrupt Law. Each estate should, from the body of creditors, elect one Trade Assignee, who should, as in England, have the sole power of taking legal advice. All moneys should be paid to the Official Assignee, who should be compelled to open a separate account in a bank for each estate. The remuneration to the Trade Assignee should be a ratable commission according to the dividend declared, so as to give the Trade Assignee an interest in economizing as much as possible the assets of an estate; when it paid 15s. or over he should have a commission of 5 per cent.: from 10s. to 15s., 4 per cent.; from 7s. 6d. to 10s., 3 per cent.; from

J. L.
Montefiore,
Esq.
27 Mar., 1861.

J. L.
Montefiore,
Esq.
27 Mar., 1861.

from 5s. to 7s. 6d., $2\frac{1}{2}$ per cent. ; from 2s. 6d. to 5s., 2 per cent. ; and up to 2s. 6d., only 1 per cent.

765. The provisions you propose are mostly similar to those under the Irish Bankruptcy Act—have you read that Act? I have not read it.

766. With respect to preferential payments, supposing a proviso were inserted that it should not be declared fraudulent where it was for a reasonable and sufficient consideration given or agreed to be given at the time to any creditor of the bankrupt—would not that meet the objection to clause 12 that you have alluded to? In a great measure; because, as I have remarked, it is where the estate shall not have been placed in a worse position in the event of a failure within sixty days; so that if a man sold a certain quantity or bought a certain quantity, and had the goods or the money, the estate would be in no worse position.

767. Supposing, at the time of making the purchase, he agreed to make the payment, and, in pursuance of that agreement, made the payment, you would not then declare it a fraudulent preference? Certainly not.

768. Have you considered the propriety of making every person in trade keep a day-book in which all his transactions should be entered, under a severe penalty? There should be a severe penalty for not keeping books, whether a day-book, waste-book, or any other book.

769. Would you leave it in the power of the Judge or Commissioner to decide what were sufficient books of account, or would you provide that certain books of account should be kept, which should afford certain information? I apprehend it would only be necessary to provide that they should furnish certain information, because I suppose there are hardly two men who, if left to themselves, would keep similar books of account.

770. If you provide that a trader should enter all his transactions in a day-book, the task would then be very easy to make up his accounts? Any rough book, that would afford such information to the accountant as would enable the accountant to make out his accounts, would, to my mind, be satisfactory.

771. Would you suggest that any official book should be furnished to traders on entering into business? Do you mean an official book that they should be bound to enter all their transactions in?

772. Yes; properly stamped and paged? No, I should not.

773. Do you think the books of a trader should be open to his creditors for perusal at any time? I do not.

774. You state that it is desirable that there should be a cheap mode of adjudging a person bankrupt; would it not be desirable to make it upon a simple affidavit that a person has committed a certain act, such as leaving his home with the intention of defrauding his creditors, or to defeat or delay his creditors—suffering himself to be taken in execution for any debt not due—procuring his goods to be taken in execution—or making any fraudulent grant or conveyance of any of his lands or other property? I have already stated to the Committee that I refer to the English bankruptcy law, where a simple affidavit is made, a summons is issued, it is left at his place of residence with fourteen days notice. I think I am speaking correctly. The party summoned has to appear, and failing appearance he is declared bankrupt; on appearing he has to give reasons why he should not be declared bankrupt, and the Commissioner judges on those reasons.

775. Would you make it an act of bankruptcy for any person to allow a judgment to pass and execution to be issued against him for any debt? If the plan I have suggested, which exists under the English law, were followed out, I do not consider that would be necessary.

776. Suppose the person continues trading, and yet no such proceeding is adopted towards him? If he owes money a simple summons will cause him to appear before the Commissioner to shew why he should not be declared insolvent.

777. What should be the grounds on which such a summons should issue? The owing money that he is unable to pay.

778. Simply his inability to discharge a debt? Yes; in fact that is all a man is made insolvent or bankrupt for.

779. Do you think any distinction should be made between traders and non-traders—that persons who are not in trade should have the benefit of the Insolvent or Bankrupt Act? There should be a difference; but not having considered the question, I should not be prepared to give an answer.

780. I observe that in the latest measure brought into the English Parliament, having reference to this subject, the distinction is abolished, and yet I do not see the reason for it. If a clerk, for instance, who has £100 a year chooses to live at the rate of £300, and obtains credit, I think it is most unjust that he should be allowed to take the benefit of the Insolvent Act, and absolve himself finally from his debt? It is a question that ought to be considered; I should not be prepared to give an off-hand answer.

781. Should there be any classification of certificates? That is recommended in the Report of the Chamber of Commerce on the Insolvent Law.

782. Some of the witnesses who have been before this Committee have suggested that the duties of Commissioners in Insolvency might be discharged in the country by the District Judges—might not that lead to conflicting decisions by the several Judges as to the merits of insolvents, a first-class certificate being granted by one which would be refused by another? There would not be any greater difference than is continually occurring in various towns in England.

783. *By Mr. Windeyer*: Where you have a number of Judges you are always liable to that? Yes.

784. *By the Chairman*: Would the fact of a person having a second or third-class certificate affect his position in the community? Until it is tried we cannot form an opinion; we have had no experience of it yet. I would make one remark as to a question you put.

Whether

Whether a creditor should have power to examine the books of his debtor. Do you mean when the debtor was owing him money he was unable to pay, or at any time during the currency of a person's trading?

785. My question referred generally to the right of a creditor to inspect the books? Then you mean that, supposing a party were to sell to another goods to the value of £100, he might, during the currency of the promissory note by which they would probably be paid for, have power to go in and look at the other's books?

786. No, because there would then be no debt due. I mean, that if there were a debt owing which the debtor was unable to pay, then the creditor should have power to examine the books? I think it would be open to objection, because a man might, from reasons of spite, sell goods to another party merely for the sake of examining his books.

787. Have you considered the operation of the present Bills of Sale Act? I have not.

788. *By Mr. Windeyer*: Have you ever considered a suggestion, thrown out by some of the English Judges, to abolish the right to recover under a certain amount, say £5, where credit is given—in fact, making the provisions which now exist with regard to publicans general in trade? I have not considered it, but at first sight it appears to me that it would be a wise provision.

789. Do you not think it would tend to promote habits of self-denial, prudence, and economy in private expenditure, and thus be the means of preventing many of those small insolvencies which proceed from extravagant habits? Yes.

790. *By the Chairman*: How would it operate on persons who have small incomes, paid quarterly? Even with those, I apprehend, it would not act prejudicially.

791. *By Mr. Windeyer*: Do you not think that persons known to be persons of honour would be trusted just the same? Decidedly.

792. Would it not also be the means of preventing traders giving an improper amount of credit, and thus inducing people to spend money where they have no means? I think it would be a wise provision.

793. *By the Chairman*: If the principle is good as to small amounts, is there any reason why it should not be pushed to its legitimate issue? There is a very great difference. Trade and commerce are based upon credit, and without credit they cannot exist. But that is a very different thing to getting credit for small articles which ought to be paid for in cash, and which should not be purchased unless the party had the cash for them. To buy goods on credit, in such a way as to facilitate the action of the exchanges, is a different thing from buying bread or a gold watch.

794. Are not the frauds the trader is subject to in nearly all cases occasioned by persons who obtain credit largely? Certainly, always.

795. *By Mr. Windeyer*: Do you think a distinction might be made in the case of articles of necessity and articles of luxury? If you limit the amount to £5, which would be very low, I do not think it would be worth while to make any exception.

796. *By the Chairman*: You could not make it universal, I presume? How do you mean?

797. Suppose the case of a master who owes his servant several weeks wages? It could not be made to apply in that way certainly. It could only refer to purchases.

J. L.
Montefiore,
Esq.

27 Mar., 1861.

FRIDAY, 12 APRIL, 1861.

Present:—

MR. LOVE,

MR. MCARTHUR.

JAMES HART, ESQ., IN THE CHAIR.

George King, Esq., called in and examined:—

798. *By the Chairman*: You are a merchant residing in Sydney? I am.

799. I think you are one of the members of the Chamber of Commerce, chosen by that body to give evidence before the Committee now sitting on the working of the Insolvent Law? Yes.

800. Have you any experience at all in working the present Insolvent Acts? I have.

801. At one time, I think, you held the office of Official Assignee? I did, about eight years ago, for a period of three or four years.

802. Were you one of the Assignees appointed in the first instance, on the passing of the Act? No; upon the occurrence of a vacancy.

803. There is a very general complaint on the part of the mercantile community here, as to the amount of expenses incurred in working out estates in the Court, and also as to the facility with which debtors pass through the Insolvent Court—can you favour the Committee with any suggestions which would have the effect of remedying these evils? With respect to curtailing the expenses, I would make the Official Assignee do a great deal of, or nearly all the work which at present seems to be performed by the Official Assignee's solicitor.

804. Do you think there is too great latitude given to the Official Assignees at present, as to their powers of working out estates and incurring expenses; for instance, in the employment of solicitors and agents? Yes; I think there should be greater supervision exercised; at present there is no check.

805. You are aware, I suppose, that at present, if an Assignee is desirous of realizing an estate, he may incur any expenses he chooses for the purpose of collecting the assets, and that

George King,
Esq.

12 April, 1861.

George King, that his charges are not subject to the revision of the Court—do you consider that an evil? I was not aware that an Assignee could do that; but if he can, that power should be taken from him. I consider that an Assignee's charges should be subject to strict revision in every instance, by the Court.*

12 April, 1861.

806. Do you think there is any proper provision made at the present time for Assignees investigating the affairs of insolvents irrespective of any examination that may take place before the Court? I do not think the affairs of insolvents are sufficiently investigated.

807. Can you suggest anything by which Assignees, or other persons charged with the administration of estates, could investigate an insolvent's affairs independently of any examination in Court? I think there should be appointed, under the Chief Commissioner, a thorough accountant as registrar—or call him whatever you like—who ought to investigate the books of the insolvent, and audit the plans of distribution of the Official Assignees; he should also be able to report on the past transactions of the insolvent to the Chief Commissioner, that the latter may know whether the insolvent has kept proper books of account or not. I believe there is no audit at present of the plans of distribution filed in the Court.

808. Do you not think that when a person becomes insolvent the first thing he should do should be to deliver up his books and papers to the Official Assignee, and then that the Official Assignee should cause a proper schedule to be made of these books, properly numbered and entered, for the purpose of reference hereafter? Yes.

809. At present, I believe, the system is to bundle the books into the Official Assignee's Office and there they remain? I do not know what the system at present is, for I am happy to say I have not had occasion to call on any Official Assignee for a long time past.

810. When you were an Official Assignee, were not the books delivered to you in bundles, which remained so, I suppose, until some of the creditors would choose to investigate them? No, when I was an Official Assignee the first thing I did was to get my clerk to make out an inventory of all books in the estates under my charge, and have them alphabetically arranged, with the names of the estates placed on them.

811. What became of those books? When I was released from my Official Assigneeship, I handed them over to the Supreme Court; I think I sent five dray loads there.

812. Do these books still remain in the Supreme Court, do you know? I fancy so.

813. Do you think the present machinery of the Insolvent Court is sufficient for working a proper Insolvent Law? It ought to be, if you have competent persons.

814. Do you think any system might be adopted, by which the Chief Commissioner would be relieved from investigating every debt that was down in an insolvent's schedule? I very much doubt whether the Chief Commissioner ever can investigate all the proofs tendered.

815. At all events he goes through the form of investigating? Yes.

816. You are aware that that takes up a great deal of his time, and that as a means of ascertaining whether a debt is a just one or not it is really valueless. Supposing the insolvent, on sequestrating his estate, was bound to deliver in a list of his creditors, and that afterwards, when the books were delivered over to the Official Assignee, the Official Assignee should himself investigate and report whether the debt was a just one or not, leaving it to any dissatisfied creditor to appeal to the Court against the rejection of a claim—do you think that would facilitate the administration of estates? I would sooner that the debt were proved before the Chief Commissioner.

817. I am speaking now of an amended Insolvent Act—supposing there were proper officers employed, proper accountants, as Assignees, do you think it would be a good system then? I think debts should always be proved in open Court. It might be done before a deputy—call him Sub-Commissioner, Registrar, Accountant, or what you will.

818. Would you subject the proof of debts to the revision of the Official Assignee or Accountant? Yes; they should be subject to revision.

819. I believe it is not unusual for a creditor or assumed creditor to bring in a claim, and if there is no opposition it is admitted, although the claim may be fictitious? It may be so.

820. And thereby the dividends in the estate, of course, are lessened. Do you think any distinction should be made between persons in trade and those who are not;—would you give the same power to sequester their estates, to persons who are not in trade, as you would to those who are? If a person is engaged in any pursuit involving risk of loss, such as grazing or farming, I would consider him just in the same light as a merchant or trader; but I consider that a person out of business should be put on a different footing. I think a person who by extravagance runs through his private means, and becomes unable to pay his debts, should not be allowed to seek the benefit of the Insolvent Act, on the same terms as a trader who has been unfortunate in business.

821. A great many of the frauds that have arisen in this Colony have, I believe, been perpetrated through the parties not keeping proper books of account. Under our present Insolvent Law it is in the power of the Chief Commissioner to refuse a certificate to any insolvent who has not kept proper books of account, but the question, what are proper books of account, is left to the discretion of the Chief Commissioner, and is not provided by law,—do you think that is right? I do not.

822. Do you think any Act to be hereafter passed should provide that persons should keep proper books, affording a certain amount of information? Yes.

823. For instance, what capital the insolvent commenced with at the time he entered into business, the amount of debts he had contracted, the profits of his business in each year, what he had paid for household expenses and for personal expenses, and also his losses? Yes.

824.

* NOTE (By witness on revision):—I mean by the Chief Commissioner, subject to appeal to the Court if necessary.

824. Then you would not leave it in the discretion of the Judge, or Chief Commissioner of ^{George King,} the Insolvent Court to say what are proper books of account? I would not. ^{Esq.}
825. In your experience, has the Court in this Colony been lax or over-lenient to insolvents in the matter of keeping accounts? I think, generally speaking, they do not know what proper books of account are, and that is the reason why an insolvent can get off so easily. 12 April, 1861.
826. Suppose a person in trade was bound to enter into his day-book every transaction whatsoever under pain of being refused his certificate, or some other punishment, would you think that a judicious measure? Yes, but still it could be evaded. You can make no law as to keeping books that cannot be evaded.
827. Supposing a person was bound to enter every transaction—receipts, payments, invoices, exports, and everything whatsoever that occurred to him in business,—would not the Official Assignee then be able to make up proper books from the information so afforded? Yes, no doubt if you furnish the materials proper books can be made out. It is the absence of materials nowadays that we have to complain of.
828. Would not that supply the defect? No doubt if you can oblige a man to furnish all the materials for making up his books, there can be no difficulty. Nine-tenths of the books in the Insolvent Court that have come under my observation contain no information at all as to a man's position. But the power of making up books, even from materials so furnished, depends greatly on the nature of a man's transactions; it might in some instances involve an amount of labour for which the whole assets of the estate would not be a sufficient remuneration.
829. Would you suggest that certain books should be kept by traders—cash-book, day-book, ledger, and so on? All these books may be kept, and yet you may not be able to arrive at a correct conclusion after all; I have found that in very many cases.
830. Still you think that all books kept by a trader should afford information upon the matters I have mentioned? Yes, they should.
831. And that where the books did not afford that information, it should be a case for refusing a certificate? It should be refused in such a case.
832. Do you think any further punishment should be awarded, such as imprisonment—irrespective of any fraud? I am not prepared to answer this question, it requires much consideration.
833. Is it not another complaint on the part of the mercantile community, that persons who are in trade continue to carry on business long after they find themselves to be in embarrassed circumstances? Yes.
834. Can you suggest any mode by which that could be obviated—any mode by which creditors could be compelled to make debtors surrender their estates as soon as it was known that they could not meet their liabilities? A man may be worth 25s. in the pound, and yet, owing to a temporary pressure, in embarrassed circumstances, it would be hard to compel such a person to sequester his estate; but if his books (assuming them to be correctly kept) shew that he is not worth 20s. in the pound, he should be compelled to call his creditors together, and there should be a power to sequester his estate.
835. How can any creditor become aware from a person's books that he is not able to pay 20s. in the pound? I would make it compulsory on the individual himself to call his creditors together.
836. Do you think that the circumstance of a person not being able to meet a promissory note or acceptance given by him should, *primâ facie*, be an act of bankruptcy—dishonouring his bill? You would make half the people in the interior bankrupts at that rate. I hardly think it should be so.
837. Why not? Because delays in the transmission of bills and funds from the interior are of such frequent occurrence, that acceptances are often dishonoured from no other cause.
838. I only say *primâ facie*. We might give a man the privilege, after summons, to shew cause why his estate should not be adjudged bankrupt, either to pay the money into Court, or to shew that he had a *bonâ fide* defence to the bill of exchange or acceptance. Would not that meet the objection—why should a man who cannot meet his acceptance or promissory note, justly due, be allowed to carry on business? Any great innovation of this sort should be of very gradual introduction here, because people have become accustomed to a certain state of things, which, if suddenly changed, might ruin half the country.
839. Is it not the fact that persons have continued trading here who have not been able to meet their liabilities in this way? That is the fault of the people who give them credit.
840. In some cases it may be, but in others is it not the fact that they are misled by the misrepresentation of their debtors? If the debtor has misled them he should be liable to punishment on satisfactory proof; but, however desirable, you cannot arbitrarily interfere by law with credit, the abuse of which must work its own cure.
841. What would you deem acts of bankruptcy? Failing to pay debts, when called upon to do so.
842. If a person is called on to pay a promissory note, and does not do so, is not that a failure to pay a debt? If he does not satisfy you, you should be able to proceed against him to sequester his estate.
843. You are aware that under the present state of the law you cannot proceed to sequester his estate, unless you have an execution against him, and the debtor in the meantime may put you to the expense of bringing an action, occasioning very great delay, and, at the same time, running deeply in debt with others—and after all you can only sequester his estate? I would provide by law greater facilities for the sequestration of estates than now exist.
844. How could you do that? I really do not know the legal mode of doing it; but anything which would shorten the process would be desirable.
845. You must either proceed to make a person a bankrupt under a judgment, or without a judgment;

George King, judgment; if without a judgment, it must be on allegation of a debt existing. Where it is a book debt that would be very difficult; but where a promissory note or bill of exchange is given, there is no doubt, or ought to be no doubt, in law, that debt does exist. Then, if you are not to be put to the present cumbrous mode of making a person insolvent, why should you not have the power of calling upon him to sequestrate, where he is not able to meet the debt? I would call upon him to sequestrate if he did not pay his bill.

Esq.
12 April, 1861.

846. Have you given any consideration to the operation of the present Bills of Sale Act? I have not.

847. You have not considered whether it has facilitated persons obtaining credit or not? The power of being able to grant a bill of sale?

848. Yes? No, I have not given it consideration.

849. Have you had occasion to contest any of these bills of sale yourself? I have not.

850. Do you think the present mode of administering estates wholly through the Court in Sydney might be amended so as to lessen the expenses of administering estates the assets of which are in the country? I do not think the expense of realizing assets in the country should be very great. You find auctioneers and agents in almost every considerable country town.

851. But most of them are men of no substance, and without education, I think, in many cases. Under the present law any one can become an auctioneer—there is no provision made for his giving security, or for his ability to conduct his business? It is not compulsory on the Assignee to sell by auction; he may sell by appraisement.

852. Have you heard of any cases where the expenses of collecting have been more than the assets have realized? I have read such cases in the newspapers.

853. Is not that a very serious complaint? It is a very serious complaint indeed.

854. Do you think any power should be given to the District Judges to exercise the powers of the Chief Commissioner in the country? Yes, I think it would be desirable.

855. Might it not also be so arranged that the bailiffs of the different District Courts in the Colony should act as agents of the Official Assignees? Yes.

856. We have in them a staff of men who are responsible, and whose services could be obtained at any moment? I do not know what class of men the bailiffs are exactly—whether they are men to whom the realization of assets could be intrusted.

857. If they are not a proper class, would it not be worth while to procure a proper class of men, so that the collection of estates could be committed to them? Yes, it would be very desirable to get a good class of men.

858. Do you think an insolvent who surrenders his estate should be compelled to attend at every meeting, and to afford information to the Judge and to his creditors? Yes.

859. When you are an Official Assignee, I presume you saw the great difficulties that exist on the part of creditors obtaining information from insolvents. They are compelled to resort to cumbrous legal proceedings, even to obtain the attendance of insolvents? Yes.

860. In the management of estates, do you think that Trade Assignees should be also appointed, to act jointly with the Official Assignees? I do.

861. And what duties do you think should be performed by them? I would leave the realization of the assets, in a great measure, with them.

862. The general management of the estate? Yes.

863. If it became necessary to appoint a solicitor to an estate, do you think he should be appointed by the Official Assignee, or by the Trade Assignee, or jointly? I think he should be appointed by the Trade Assignee.

864. I presume you would have the Trade Assignee appointed at as early a moment as possible? At the first meeting, if possible.

865. Should he be appointed by the creditors, with or without the sanction of the Court? I think it should be with the sanction of the Court.

866. Would you give power to remove him upon cause being afterwards shewn at any meeting duly convened? Yes.

867. With regard to the distribution of the assets of estates, do you think they could be distributed at an earlier period than they are at present? No doubt they could by calling the meetings, for proof of debts, at earlier periods. There is no necessity for extending them over so long a period as they do now. There are the first and second meetings; the second meeting may be adjourned for two months; and twenty-eight days from the conclusion of the second meeting the third meeting, for directions, is called; this might be done in less time.

868. Why should not the meetings be held within seven or fourteen days of each other? That would give ample time, I think.

869. And the distribution of funds could be made at once, leaving for creditors who had not proved, a sum sufficient to cover their claims, in the event of their establishing them? Yes, reserving a certain amount for improved debts. That might be done.

870. Do you know what is done by Official Assignees, at present, with the funds that come into their hands? I do not.

871. Have you had any occasion lately to communicate with the Official Assignees, upon matters of business connected with estates in their hands? No.

872. Have you heard complaints as to their inefficiency? None, beyond what has appeared of late in the papers by way of complaint.

873. There have been public complaints made? Yes, through the press; I occasionally have seen remarks, but I have no personal experience on this subject.

874. I believe it is usual now for creditors to accept compositions, however small, rather than risk placing estates in the Court? Yes, that is very often the case. It is a speedy mode of settling the matter; you know your loss, and have done with it.

875.

875. Would you afford greater facilities than there are at present towards making deeds of composition, if there was a proper Insolvent Law? No, I think deeds of assignment and private composition are resorted to, because the public do not like the Insolvent Court as it is at present.

George King,
Esq.
12 April, 1861.

876. Very few convictions, I believe, have taken place under the present Insolvent Act for fraud? Very few.

877. Do you think that is owing to the honesty of persons who have placed their estates in the Court, or to the difficulty of prosecuting? I think it is more the difficulty of prosecuting.

878. You have no doubt that very great frauds have been committed by insolvents, which have not been punished? Yes, the Act—especially as respects offers of composition and the sale of assets—opens the door to gross frauds, particularly the 61st and the 86th clauses.

879. Where any charge of fraudulent conduct has been made against an insolvent, would you place it in the power of his creditors to release his estate, although he might pay 20s. in the pound? No, certainly not.

880. That can be done under the present state of the law? So I believe.

881. At present there are certain claims which are looked upon as preferent under the Insolvent Act, namely, rent and wages, I think, for six months—would you continue that provision? I think three months would be quite sufficient.

882. Can you assign any reason why a landlord should have a preferent claim more than any one else? Because by the sequestration of the estate you take away the right that he has at common law of distraining on the property.

883. Looking upon it as an abstract question, do you think a landlord should have the right of distraining or obtaining payment, in preference to other creditors? I think so.

884. Why? Because the law gives him the right of distraining on property, and if you pass another law to take away that right you must give him something in lieu of it.

885. Then you only argue for it because the law enables him to distrain? Yes.

886. Suppose the law did not enable him to distrain—do you think it is right that he should have the power of distraint? I think so.

887. Have not many men been made insolvent in this Colony solely by reason of the great amount of rent they have been called upon to pay—have they not obtained credit from other persons and run hopelessly into debt merely with the view of paying the landlord? I cannot say.

888. Are you not aware that in George-street houses have been let at from £400 to £1,000 a year, and that creditors have been cheated solely to be able to pay the landlord? I know of no instance as far as my own experience goes.

889. With respect to the final disposal of an insolvent, do you think there should be any power given to the Court of classifying certificates, or would you leave it in the discretion of the Court either to grant or refuse a certificate? I think a classification might be devised.

890. Do you think that would be of any value thereafter in the case of persons going again into business? If an insolvent got a first-class certificate it would be a kind of certificate of character, that he had not been guilty of any dishonesty or breach of the law.

891. Suppose it should be decided to administer insolvent estates in the country districts through the Judges of the District Courts, and one of them should be rather lax in his notions of commercial morality, and should grant a first-class certificate where another would only grant a third-class, do you think there would be any value attached to the distinction then? No, certainly not, if you had a person of lax principles to administer the law.

892. You think then the certificate would have no value in itself if you had to hunt up in connection with it the history of the insolvent, and who granted him his certificate? Very likely not.

893. *By Mr. McArthur:* Do you think it would be better for the Official Assignees to have a fixed salary, or that they should be paid by commission as at present? If in every estate you were to appoint a Trade Assignee to attend to the realization of the assets, leaving the work of accountants to be performed by the Official Assignee as an officer of the Court, having charge of the funds realized and supervising the Trade Assignee, I would, in such case, place the Official Assignee on a salary; but, if the present system is to continue, a commission is a greater incentive to exertion.

894. Which do you think the better plan, the plan at present in operation, or to have Trade Assignees who would work out the estate as you suggest, and let the Official Assignees be simple officers of the Court? I would have Trade Assignees.

895. In that case what should you consider a sufficient salary for a competent person as Official Assignee? Certainly not less than £750 or £800 a year.

896. What do you think should be the salary of an efficient man to act as Chief Commissioner? No salary would be too high for an efficient man, but one not coming up to the standard would be dear at any price: £1,500 per annum is the lowest salary that should be offered to a thoroughly competent Chief Commissioner. His qualifications as a lawyer should be equal to that of the Judges of the Supreme Court; his business knowledge extensive; equally so his discrimination of character. He should be capable of upholding the dignity of his Court, in which he should preside as a Judge, rather to *hear and determine than to talk*.

897. I suppose you believe that is pretty generally the impression of the mercantile portion of the community, that a first-class man is required? *Most unquestionably.*

898. Do you consider that he should be a barrister? Yes.

899. Do you think it is owing to deficiency in the present law, or to a defective mode of administering it, that so many complaints arise? I think the present Act, with very slight amendments might be made efficient; I think the faults found arise chiefly from inefficiency in its administration.

George King, Esq. 900. You do not think any radical change is necessary? Not very great; a few judicious alterations in certain clauses of the Act might make it a very good Act.

18 April, 1861. 901. I think the Chairman has asked you one or two questions with reference to bailiffs or officers being appointed in the interior, whose duty it would be to sell, or to take charge of and wind up estates; do you think there is sufficient accommodation in that way at present? I never found any difficulty in getting anything done in the country, even without resorting to bailiffs. I could always find in any part of the Colony intelligent and competent persons to follow my instructions.

902. The difficulty at present seems to arise from the choice being left to the Official Assignee, and he has, perhaps, some friend, who is not a very competent person, but whom he wishes to employ, though he may have no local knowledge whatever, may be intimately connected with the insolvent himself, and may act in such a way as to prevent the ends of justice? Yes, that may happen.

903. Do you not think it would be an advantage if there could be persons appointed, whether bailiffs, or whatever they might be, in each district, who could be called upon legally? If you make it compulsory on the Official Assignee to employ certain persons to act, you take away his responsibility. At present the Official Assignee and his sureties are responsible to the creditors for the due administration of the estate, but if the Act provides that he shall employ a certain person, you cannot hold the Official Assignee responsible for the acts of such person.

904. The Chairman has also referred to the insolvent keeping proper books, and I think I understood you to say you thought every insolvent should keep certain books? Yes.

905. Do you consider that every trader should keep what we term a regular set of books? Yes.

906. Do you not think that would have a very injurious effect upon a large number of persons engaged in trade in the Colony. I do not suppose there is one in every fifty persons in business at present who understands anything about keeping a regular set of books? As long as a man's books shew his transactions, what capital he begins with in business, what his expenses are, what his profits or losses are, and how he progresses from year to year, even if they are not kept as by a professed accountant, I would consider them proper books.

907. Do you consider that every person engaged in business should examine into his affairs, or, as we term it, take stock at certain periods? Yes, every man in trade ought to be able to shew once a year how he stands.

908. Do you think that, in the event of a man becoming insolvent, and it appearing that he had not taken stock for many years, and that, in fact, he did not know how he stood, and had not taken the trouble to inquire, that should be sufficient ground for refusing his certificate? I do; I think it is a most culpable neglect on the part of any man in business, to omit taking stock to know his real position.

909. I believe many of the insolvencies have occurred through persons being too careless to ascertain how they stand, so that when they fancy themselves worth 30s. in the pound, they are not, in fact, worth 10s.? Yes.

910. I think I understood you also to say, that you consider the responsibility of proving that a certificate should be granted should be thrown on the insolvent; that he should prove that he is deserving of it? Yes; I think it would be very desirable to throw the onus on him.

911. Do you think the present power of the Official Assignees is sufficient for them, in endeavouring to trace out fraudulent insolvencies or fraudulent transactions? Their powers may be sufficient, but the difficulty is to get the materials for tracing anything.

912. Take a case of this kind—Suppose a man becomes insolvent, and his creditors have reason to believe he has been acting fraudulently, and that the estate will realize scarcely any assets; the Official Assignee then says, this may be so, but I have no means of prosecuting him? No funds?

913. No funds, unless out of his own private funds—Do you think that, in such cases, the Government should take the matter up, or that it should be left as it is now, in the hands of the creditors? I think the power should be vested in the Chief Commissioner, on having a case of fraud pointed out, to investigate and proceed with the matter.

914. On behalf of the Government? Yes; or let some officer be appointed on the part of the Government.

915. At present, in a case of the kind, the creditors may be a large number, and perhaps a great many of them may not be disposed to trouble their heads about the matter, they may think it will involve a good deal of trouble and expense, and perhaps result in nothing; and in that way many instances of fraudulent insolvency are hushed up and never known anything of. Do you think that, if the Government were to take the matter up, and the Chief Commissioner had the power to prosecute on the part of the Government, it would have a beneficial effect? I dare say it would. I would give greater powers to the Chief Commissioner than he has at present.

916. You were also asked about parties keeping proper books and entering every transaction in those books—do you think that possible? I should say not in a retail trade.

917. In wholesale transactions it would be perfectly easy, and, in fact, is done in every well conducted house of business? Yes; but in a retail business, even though aggregating a large amount, yet made up of an infinite number of small sales, for cash over the counter, this could not always be conveniently done,—still, the daily cash taken from sales should be entered every day as well as credit sales, and that being done and stock regularly taken, the result of a person's business could be easily checked.

918. By Mr. Love: Are you aware that the Official Assignees are at present appointed by the Judges? Yes.

919. Are you aware that the gentleman last appointed was a Judge's clerk? I am.

920. Do you not suppose a person acquainted with mercantile usage, and having some knowledge of business, would be a better appointment than a Judge's clerk, who is not supposed to know these things? I decidedly think Official Assignees ought to be persons of mercantile experience. George King,
Esq.
12 April, 1861.

921. Are you aware that the present Official Assignees hold themselves only subject to the Judges for their conduct? I am not aware that they do. I have always considered that the Official Assignees were responsible to the creditors for their acts, in the management of estates, because they are supposed to follow the directions of the creditors.

922. *By the Chairman*: The creditors have not the power of dismissing them? No.

923. *By Mr. Love*: They are only subject to the Judges for their conduct? No doubt, as being *quasi* officers of the Court, you can bring them up before the Judges just as you would an attorney of the Court.

924. Are you aware that the Chief Commissioner has no power to compel their attendance? I do not think he has.

925. Do you not think they ought to be made amenable to the Chief Commissioner, and to attend his Court when required at his instance? That opens up a very wide question as to the Chief Commissioner's powers? Virtually, the Official Assignees hold a more responsible position than the Chief Commissioner. The property in estates is all vested in them by the Act—the legal estate of the insolvent in everything passes to them.

926. Would you think it advisable that Assignees should be compelled to publish a yearly return of all estates passing through their hands? It might be very desirable.

927. For the information of the public generally? Yes.

928. At present creditors know very little about how assets are distributed, or whether there is any balance remaining in their hands? Very little.

929. Or whether there is any balance still to come into the estate at some future period? Yes. It may be very desirable to publish an annual statement.

930. Do you believe the ease with which persons, who have been insolvent, have lately passed through the Court holds out inducement to others to become insolvent? No question but it does.

931. Do you consider that private persons not in business, and not running any risks through the failure of other parties, should have the same opportunity of receiving relief in the Insolvent Court? I think they should not.

932. Would you think it advisable that insolvent debtors should be compelled to account to the Court for all property in their possession for six months previous to insolvency? Yes, I think it very desirable that they should do so.

933. Are you aware that at present insolvents cannot be examined without a Judge's order? I am.

934. Do you think it advisable that creditors should be obliged to get a Judge's order for that purpose? It is a matter of very little trouble; it is merely writing a few lines on a form of affidavit—or rather the Assignee does that—to the effect that he has received certain information which renders it desirable that insolvent should be examined, and a Judge in Chambers immediately signs the order.

935. If the Assignee thought proper not to give his consent to the examination of a debtor, could you have the order? You would have to go to the Judge yourself then. I am not aware that the Assignees ever refuse.

936. Do you not think it would be better to afford the creditors greater facilities? I would afford the creditors every possible facility.

937. Without a Judge's order at all—merely at the will of the Chief Commissioner? Yes; the Judge's order is, in fact, in the place of the Chief Commissioner's.

938. Would you prefer having the Insolvent Court, under a proper Judge, entirely independent of the other Courts—constituting a Court in itself, subject only to appeal? Yes; if you have a first-rate man at the head of the Insolvent Court, it might be carried on quite separate from the others; subject of course to appeal.

939. Is it not the general opinion that the gentleman who is at present presiding over the Metropolitan District Court would be a very excellent person for the chief position in the Insolvent Court? I believe many persons think so.

940. *By the Chairman*: In the event of Official Assignees or accountants being hereafter appointed to work any new Act, do you think the appointment of any of the present Official Assignees to such positions would give satisfaction to the mercantile community? I would recommend, in the event of anything of that sort taking place, that whoever may be charged with the appointments should open communications with the Chamber of Commerce, to ascertain the views of the trading community on this point, which would be better than an expression of individual opinions.

941. With whom do you think the power of appointment should rest? When the Official Assignees were first appointed under Judge Burton's Act, I think Sir James Dowling requested a committee of merchants and directors of banks to meet together, and from among persons of their acquaintance to select four fit and proper persons, and they did so. That is now twenty years ago, I think.

942. That would give satisfaction? Yes, I think so.

943. Suppose the same power were vested in the Supreme Court now, and they did not choose to communicate with the Chamber of Commerce, do you think any dissatisfaction would arise as to the appointments? I think the appointment of persons of that class should not rest with the Supreme Court.

944. With whom do you think these appointments should rest? It is a difficult matter to say. The Chamber of Commerce has no recognized legal standing, but I think the recommendation to the appointments should emanate in some way from the mercantile body.

George King, Esq.
12 April, 1861.

945. Do you think the same rule should govern the appointment in these as in other cases; that they should be appointed by the Governor, with the advice of the Executive Council? I do not know; the Governor and the Executive Council might not be able to fix upon very efficient men for the purposes we require.

946. Have you any other suggestions to make for our information? There is one suggestion I have to make: The 61st clause of the Insolvent Act, 5 Victoria, No. 17, says, "and the trustees shall pursue the directions of the greater part in number and value of the creditors present." Now I do not think the trustees or Official Assignees should be bound to follow the directions of the greater part in number and value of the creditors, in any case where it affects the interest of the minority. It may be a case where the greater number are creditors who side with the insolvent that directions may be given to the Official Assignee to sell the assets to a friend of the insolvent, for a sum altogether below the value, in which case the minority, as now sometimes occurs, would be defrauded, without any redress. I would give an appeal to the Court against any directions affecting the interests of the minority. The clause, as it now stands, opens the door to fraud.

947. Are you aware that, by a subsequent Act, the power is vested in the Chief Commissioner to ratify or refuse his assent to any direction of the creditors, and if that is so, does not that meet your objection? I would let the minority have the right of appeal to the Court against any directions.

948. You think the power of appeal should exist? I think so, decidedly. I, myself, have been directed to effect sales of property for £800, worth £2,500—for which there were offers of £2,500.

949. At that time the Chief Commissioner had no power of refusing his assent? I do not think he has now; it is an assumed power more than conveyed by Act.

950. There is a subsequent Act, under which the Chief Commissioner has express power to refuse his assent to any direction of creditors? I would suggest, generally, such alterations in the Insolvent Act as were recommended in the Report of the Select Committee of the Chamber of Commerce on the Insolvent Laws, in January, 1856.

Thomas Chaplin Breillat, Esq., called in and examined:—

T. C. Breillat,
Esq.

12 April, 1861.

951. *By the Chairman:* I think you have been Chairman of the Chamber of Commerce? I have been formerly—the Chairman is changed every year.

952. We are desirous of obtaining the opinions of the mercantile community, as to the working of the Insolvent Act, and as to the amendments it may be necessary to make, and we will be happy to hear any suggestions you may have to make? I have prepared a few suggestions in writing, which I proposed to offer to the Committee, but I have since understood that it is not in accordance with rule for witnesses to read written answers.

953. Perhaps you will hand in this document as an Appendix to your evidence? Certainly. (*The witness handed in the same. Vide Appendix A.*)

954. Do you think the Court, as at present constituted, is sufficient for the disposal of insolvency business? I am of opinion that it is not. I think the great difficulty lies in the administration of the law at present, and that on all questions in which the least difficulty arises, the Chief Commissioner seems to have no power.

955. What power do you think ought to be committed to the Chief Commissioner or Judge of the Insolvent Court? I think the Chief Commissioner should sit as a Judge in Insolvency, with full power and jurisdiction over all matters judicially, there being, of course, a right of appeal against his decisions.

956. Do you think the minor duties performed by him, such as taking proofs of debts, should be performed by a Registrar? I think that might be done equally well by a Registrar, subject to this condition—that the Chief Commissioner should have the power of setting aside improper proofs.

957. The Registrar might also be employed in the duties now performed by the Chief Clerk in Insolvency, and in preparing returns? Quite so. I think half of the time of the Chief Commissioner might be saved, by having a deputy under him, to do those clerical duties which at present he is obliged to perform.

958. Would you suggest any alteration in the position of the Official Assignees? Yes; I think it highly advisable that there should be considerable change with respect to the Assignees. I consider that, under a reformed system, one Official Assignee, or, at all events, two, might do the whole duties of the Court.

959. Those duties that would more properly fall on accountants? The duties that would fall on accountants I think should be performed by Assignees, to be selected by the creditors.

960. *By Mr. McArthur:* Do you mean to say, that you think the Assignees appointed by creditors should go into the books and make up statements of insolvents' affairs? Precisely; I think it is the creditors' duty to look into the position of an estate, and sift the books properly.

961. Would there not be great difficulty in getting Creditors' Assignees to do that duty? If you were not compelled to select them from among the creditors themselves there would not. There might be great difficulty now, when you are compelled to select persons who are creditors.

962. *By the Chairman:* Suppose two men, of undoubted reputation and ability, were appointed as Official Assignees, would they not be sufficient to perform all the duties relating to the investigation of accounts? I think not, in large estates, particularly as the business seems to increase so much.

963. Would you associate Trade Assignees with them? Yes.

964. What duties should be performed by them? They should collect the estate, and act wholly under the direction and control of the Official Assignees. T. O. Breillat, Esq.
965. Have you ever visited the Insolvent Court, and seen the mode of conducting business there? I have. 12 April, 1861.
966. Do you think it is conducted in a tedious manner, or with ability? The business is conducted there in so lax and so tedious a manner that it has perfectly disgusted me from ever going there, for some years past.
967. Is there not a great deal of time consumed by the present mode—a clerk taking the depositions of the witnesses? Yes; and there are too many solicitors employed.
968. Do you think it would facilitate the dispatch of business to have a short-hand writer appointed, who should be sworn to take true depositions of all witnesses? I think it highly advisable. The depositions are taken very badly; the clerk seems not to understand it properly. Too much time is wasted in taking it, and the evidence is taken very imperfectly.
969. Are there many impediments in the way, at present, of persons compelling the sequestration of bankrupt estates? Very great difficulties. I consider that that is one of the main objects of any new law, that there should be a more summary mode of bringing persons to account. I understand there is a process in England by which it may be done, under what is termed the Consolidation Act, very summarily. Perhaps I may be allowed to quote from a pamphlet, published in Melbourne by Sir George Stephen, in which he alludes particularly to this summary process. He says:—"Another important right of an English creditor, under the bankruptcy system, is found in the summary process, by which, under the 78th and seven following clauses of the Consolidation Act, he can compel payment in full, on security for a just debt, within seven days, as the only alternative for being declared a bankrupt." And again, in another part, he observes—"A man, being in trade, owes a creditor £100, he receives a summons to attend the Court within twenty-four hours to shew cause why he should not forthwith pay the debt; he cannot deny it, he cannot pay it, he cannot even give security for its payment, and seven days after he finds himself a bankrupt." I consider it one of the great defects of our existing system, that you are unable to bring a man to account for his property until so long a period, and, before you can do so, it is being wasted and misapplied.
970. Do you think the circumstance of a person allowing judgment to pass against him in an action, and execution being issued, should be an act of bankruptcy? I do.
971. What is your opinion as to the propriety of declaring that the non-payment of a promissory note or acceptance, should *prima facie* be an act of bankruptcy, leaving the acceptor or maker, as the case might be, to pay the money into Court, or to shew that he had a good defence? I do not think that, under the present law, such a thing could be done; but if a clause were introduced into a new law, that a person should be called upon to appear before the Commissioner to shew cause why his estate should not be sequestered, without the necessity of proceeding for a judgment.
972. Suppose the debtor disputes the existence of the debt? Then he would have to satisfy the Commissioner.
973. That would place the Commissioner in the stead of a jury? In lieu of the Supreme Court.
974. Would not that be very arbitrary and un-English? That is according to this English law.
975. Is it not a right that every Englishman insists upon, of having his case tried by a jury? The man has only to give security for the debt.
976. Suppose a person unjustly makes a claim against you for £2,000 or £3,000, and calls upon you to pay the debt, why should you be called upon, before the existence of the debt is ascertained, to give security? It would rest with the Commissioner, and from him there would be a right of appeal. That would be precisely the same as if it were tried before a jury in the Supreme Court.
977. Do you think that in this Colony many persons carry on business long after they themselves know they are bankrupt? Nine-tenths of them.
978. With respect to the duties of a bankrupt himself—what do you think he should do in order to obtain the benefit of any law passed for the relief of insolvent debtors—suppose a bankrupt is desirous of obtaining the relief that would be afforded to him under any Act passed hereafter, what should he be called upon in the first instance to do, and afterwards before he should obtain his certificate? Do you mean relief while his estate is under sequestration?
979. No, I mean before he could obtain the benefit of any law—should he be called upon to shew his transactions and dealings for a specified period, and to afford assistance to the Assignees? Yes; I consider that he should be compelled to attend every meeting of creditors, or at any time when summoned, and to afford every information.
980. Do you think he should shew all his transactions and dealings for a certain period? For at least twelve months, or for such time as they might be called for; but at least for the previous twelve months. That I consider is one of the main defects in the present law, that the Commissioner has no power; he can call upon the man to do it, under the Act but if the man neglects or declines to do it he has no means of compelling him. I have known instances where a man has been called upon to give an account of his transactions for a certain period; he has promised to do so, but has never done it; has been repeatedly before the Commissioner, and had notices to attend, but he has always made excuses; and at last it was abandoned, after considerable expense, because the Commissioner had no power to compel him, although he could order him to do it.
981. Do you think a bankrupt should shew that he became insolvent without any fault of his own, before he should obtain a certificate—that the responsibility should not be thrown

T. C. Brcillat, Esq.
12 April, 1861.

thrown on the creditors of proving that he has been guilty of certain acts contrary to the Bankrupt Law? I consider that he should shew the cause of his having got into difficulties, and the granting of his certificate should rest with the Commissioner, on his opinion of his merits. An honest man may get into difficulties by some indiscreet mode of action, without any dishonest intention.

982. Have you had occasion to come in contact with the Official Assignees relative to estates under their management? Very little.

983. Can you speak as to their business qualifications? The opinion of them generally entertained is that they are inefficient; but I have never known any cases myself where I have had any direct complaint against them.

984. I think, also, they are thought to spend too much money in law—that they avail themselves of the assistance of their solicitors where there is no necessity? That is one very serious complaint against them; they appear to be leagued with the lawyers to a certain extent; and I believe the Act permits them to do it without the sanction of the creditors.

985. Do you think the Trade Assignees should have the power of selecting the solicitor? I think so, of course subject to the sanction of the creditors.

986. Have you any suggestions to make as to proving debts in estates? I consider that in all cases either the principal should attend, or a duly authorized agent, and that, when necessary, a full detail of the whole debt should be given, along with the proof. In the case of a promissory note, it speaks for itself; but even there, when there are so many accommodation bills as there are in this Colony, I think it should be incumbent on the party to prove the value for the promissory note, if required. There are many promissory notes which speak for themselves—for instance, for goods bought and sold according to an account rendered. I think a creditor should always be bound to give full details of the nature of his claim on an insolvent estate.

987. Would you make the giving of an accommodation note an offence under the Insolvent Law? It should be an offence of a certain nature, which should operate as a qualification of the certificate.

988. Are you of opinion that there should be a classification of certificates? I think it is highly necessary.

989. What are your reasons? That there are many cases (such as the one alluded to, of giving accommodation bills) where a man has conducted his business in a loose manner, although there has been nothing fraudulent; in such cases the party should only be entitled to a second-class certificate. I think first and second classes would be sufficient.

990. What do you think should be the salary of an accountant or Official Assignee who would be competent to manage insolvent estates? I think about £800 a year.

991. Considering the amount of business transacted in this Colony, do you think one would be sufficient? No, I doubt whether one would. It would depend entirely on the mode in which creditors act with regard to Trade Assignees. I think, if the creditors did their duty in selecting competent persons to act as Trade Assignees, that one Official Assignee would then be sufficient.

992. Do you think that, when a trader surrenders his estate, he should deliver his books to the Official Assignee on oath, or merely deliver them—do you think the books should be verified? He should be compelled to deliver up all his books; but, I think, it is immaterial about the oath, for in those cases where they desire to retain certain books, the oath would be a matter of very little thought to them, or evaded.

993. *By Mr. McArthur*: Perhaps it would answer all the purposes of a long examination, if you were to tell us how far you agree with the suggestions and answers given by Mr. King, whose evidence you have just heard? I agree in the main with Mr. King, with this exception, that with reference to the two descriptions of bankrupts—that is, persons out of trade, and persons in trade—I think there should be no distinction. I think they should all come under one law. I would make no distinction that would require the machinery of a second Court. No person can become bankrupt or insolvent who has not got into debt, and whether he is a man out of trade, or a man in trade, is not of much importance.

994. *By the Chairman*: Are you aware, that in a Bill lately brought into Parliament in England, the distinction is abolished? I was not aware; I have heard it was talked of for a long time, and I have also heard that in the Act introduced in Ireland it is abolished. I can see little or no difference between the one class of bankrupts and the other.

995. *By Mr. McArthur*: In answer to a question by the Chairman, with reference to persons carrying on business, knowing themselves to be insolvent, you said nine-tenths did so—you mean, of course, nine-tenths of those who became insolvent? I mean that nine-tenths of those persons who go into the Court have been conducting their business with the full knowledge that they have been in a state of insolvency for some time previously.

996. I suppose you have no other suggestions that you deem important? No. The main points, I have ever considered, are the powers of the Chief Commissioner, the position and duties of the Official and Trade Assignees, and a more summary mode of securing the sequestration of insolvent estates.

APPENDIX.

A.

INSOLVENCY LAW.

T. C. Breillat,
Esq.

12 April, 1861.

Items referred to by Mr. Breillat as requiring revision in the present Insolvent Law.

- The Chief Commissioner* I consider ought to be invested with far greater powers than at present possessed; that he should sit as a Judge in insolvency and have full jurisdiction over all matters, subject only to the right of appeal to a higher Court.
- Official Assignee*, instead of being remunerated by a commission on the amount of assets realized, should have a fixed salary, so as to render him independent of all parties.
- Trade Assignees* to be elected by the creditors, to act under the authority of the Official Assignee, but not necessarily a creditor, and to receive either a commission on the gross amount of assets realized, or such compensation as the creditors may agree upon, subject to the approval of the Commissioner.
- Compulsory Sequestration*.—A more summary process of compulsory sequestration is much needed, the delay attending the present system often gives rise to fraudulent preference; in many cases the insolvent's estate is wasted and misapplied before it can be brought under the protection of the law. I believe the English bankruptcy law affords much greater facilities.
- The Bankrupt* to be present at all meetings, and at all other times when summoned, or neglecting to appear to be guilty of contempt (unless good cause shown); to answer all questions touching his present or past position; to produce books or other documents he may have been possessed of; to afford every information relating to all business transactions, and of the causes which have led to his insolvency.
- Witnesses*.—The Commission to have power of summoning witnesses to attend when called upon.
- Proof of Debts*.—Creditors proving debts to attend personally or by duly authorized agent; to accompany affidavits, when necessary, with a detailed amount of all items, and the particulars of all transactions, whether by bill or otherwise; the Commissioner also to have power to set aside or expunge improper proofs.
- Third Meeting*.—The period for holding the third meeting to be shortened to 28 days instead of 42; adjournments can always take place if required.
- Instructions to Assignees* to be given at second meeting, when practicable. The delay under the present law frequently gives rise to great inconvenience.
- Furniture*.—Allowance of furniture should not be granted until the third meeting, when a more correct opinion can be formed of the merits of the insolvent.
- Preferent Claims*.—The amount claimable for rent and wages should be reduced. Rent not exceeding three months, or according to the tenancy, weekly or monthly, and wages in a similar manner. In small estates the assets are often swamped.
- Compositions*, being often of a questionable nature, ought not to be allowed until after the strictest investigation by the Assignee, or until the third meeting. Security should also be given for the amount.
- Remaining Assets*.—The disposal of the remaining assets not to be allowed until a certain fixed period to be approved by the Commissioner, and the insolvent to be prohibited from becoming the purchaser, either directly or indirectly.
- Certificates*.—Classification of certificates recommended.
- Plans of distribution* to be filed within two months from third meeting, or cause shewn.
- 12th Clause of Insolvent Act* should be either repealed or very carefully revised.

WEDNESDAY, 17 APRIL, 1861.

Present:—

MR. McARTHUR, | MR. PIDDINGTON,
MR. SMART.

JAMES HART, ESQ., IN THE CHAIR.

Alfred Macfarlane, Esq., called in and examined:—

997. *By the Chairman*: You have had some experience in the administration of the Insolvent Law in Western Australia? Yes. A. Macfarlane, Esq.
998. Did you hold any office there? For three years I held the office of Commissioner and sole Judge of the Civil Court, which had jurisdiction in Insolvency as well as in Law and Equity; and, as Commissioner on the insolvent side of the Court, I administered an Ordinance, 20 Vic., No 10, taken from 5 Vic., No. 17, and 7 Vic., No. 19, of this Colony, almost word for word. 17 April, 1861.
999. The Acts under which we administer our Insolvent Law were adopted in Western Australia? They were.
1000. Did you find that the laws administered by you gave unusual facilities to debtors to defraud their creditors and to prevent the full and fair disclosure of their affairs? I did. I found there was a much greater desire, on the part of insolvents, to come into the Court than on the part of their creditors to bring them.
1001. Did you find many patent defects in the Act? I found myself constantly hampered for want of what I conceive to be sufficient powers to determine questions arising in the progress of insolvency matters.
1002. Can you point out some instances? In the case of cross-demands, and of questions depending on principles of equity. Again, in the case of fraudulent insolvency, there is only one provision in your Act bearing on that subject, which I think is contained in the 73rd section of 5 Vic., No 17; and I found it impossible to carry out that provision.
1003. Are there other acts than those named in our law, which you think ought to be deemed acts of bankruptcy? I think the incapacity of a person to pay any debt, established by a writing under his hand, should be considered an act of insolvency.
1004. *Primâ facie*? *Primâ facie*; the party having the opportunity to shew cause against his being declared insolvent.

1005.

A. Macfarlane, Esq. 1005. Did you not find that the Acts in question almost precluded you from ascertaining an insolvent's past dealings and transactions? Yes; because these Acts make no provision under which it is obligatory on a trader or other person to keep books which would be useful when the party might happen afterwards to become insolvent.

17 April, 1861.

1006. Upon the whole, do you think that it would be better to amend the present Insolvent Laws in the points that might be considered defective, or to introduce a comprehensive measure, with the advantages which we now possess from having perused the English and the Irish Bankruptcy Acts? In my opinion it would be almost impossible to amend the present Insolvent Laws of this Colony, so as to make them operate beneficially; and I am strongly of opinion that the better and wiser course to adopt would be to introduce one Act, comprising within the four corners of it everything that may be considered proper to be comprised in an Insolvent Debtor's Act.

1007. Would you be inclined to annex the jurisdiction in insolvency to the Supreme Court, or to make it an independent Court? I think it exceedingly objectionable to annex the jurisdiction in insolvency to the Supreme Court; in my opinion the Insolvent Debtor's Court should be a distinct and separate tribunal from the Supreme Court.

1008. Giving the power of appeal, I presume, in nearly all matters? Yes, to the Supreme Court sitting in banco, that is to three Judges, not to one individual, and making the party appealing, unless he happened to be the insolvent, give security to the Court below for the due prosecution of the appeal and payment of costs if defeated.

1009. You have a general idea of the amount of commercial business transacted in this Colony? Yes, if the number of insolvencies, brought into Court, as returned in the last return of the Registrar General, be anything like a fair indication; beyond that I could not with propriety say that I have formed any opinion.

1010. Taking that as your guide, do you think the Chief Commissioner, as at present constituted, or even under any new Act, would be able to dispose of the whole of the insolvency business without some extra assistance? The District Courts not having jurisdiction, as I would recommend they should, I am doubtful whether one Commissioner could discharge all the duties, because in Ireland, where the insolvency business is, I believe, not greater than it is here, there are two Judges for the purpose, and to my certain knowledge, they are kept fully occupied.

1011. Suppose a Registrar was appointed, who, in addition to other duties, should perform those of looking into the proof of debts, and other matters almost of a clerical nature, now performed by the Chief Commissioner—would that be an advantage? I think a Registrar, having that power, joined to a Chief Commissioner, might be sufficient. It is right I should add, that in Ireland the Registrar does possess similar powers to those to which you refer; and, notwithstanding that circumstance, two Judges have been appointed, and are, as I said before, fully occupied. Still I think the experiment might be tried here with one Commissioner and one Registrar.

1012. Would you make the Official Assignees officers of the Court, or give them an independent position? I am strongly of opinion that the Official Assignees should be officers of the Court, subordinate to the Commissioner in every respect, and bound to obey his orders and directions.

1013. Should they be paid by commission or by a fixed salary? Certainly not by commission; they should be paid, I think, a liberal, but fixed salary from the public purse.

1014. The Official Assignees, I should suppose, should be gentlemen who are well versed in accounts? Certainly; and I would be disposed to say also that they ought to be professional men, capable of conducting legal business arising in the progress of any matter, and thus dispense with the necessity of employing professional men, whom otherwise they must employ to conduct legal matters.

1015. Suppose that, in most cases, a Trade Assignee was joined with the Official Assignee, in the working of the estate, and that the power of appointing a solicitor should be left to the Trade Assignee, would not that obviate the complaint that exists at present, as to the expenses that the Official Assignees run estates to? I think it might if you could be certain that Trade Assignees would be appointed by the creditors; but if you refer to the Return of the Registrar General, to which I have before alluded, you will find that in the year 1858 only seven Trade Assignees were appointed, and in the year 1859 not one Trade Assignee was appointed by the creditors, although, I think I am correct in saying that the average number of insolvencies in each of those years was 360, voluntary and involuntary.

1016. Were there any complaints in Western Australia as to any undue favour shewn by the Official Assignees in appointing solicitors, or as to the amount of legal expenses incurred by them? In Western Australia the Official Assignee was an officer of the Court. I had him completely under my own control, and I took care that a solicitor should not be appointed unless it was absolutely necessary, and that the solicitor appointed was always a competent and respectable gentleman.

1017. In administering the Insolvent Law would you throw the responsibility upon the person applying, of shewing that he had become insolvent without any fault of his own, and that he was not guilty of any fraud, instead of leaving it to the creditors, as is now the case, to do so? I would oblige him to make, at the same time as he presents his petition praying to be admitted as an insolvent, a full disclosure of his circumstances. I would oblige him also, to annex to his petition an abstract of his dealings for two or three years previously. I would not require him to go further, but I would leave it with the Court, with the Official Assignee, or with any creditor, to prosecute any inquiries the Court or he might think right, having these disclosures before him and it;—in other words, I would not assume fraud on the part of the insolvent.

1018. Are you favourable to a classification of certificates? No.

1019.

1019. What is your objection? I do not think, in the first place, that the public attach sufficient importance to a variety of certificates to render them desirable; in Ireland but one form of certificate has ever been in use, and I believe I am correct in stating that in England, where certificates of different degrees were granted, that is no longer the case, and that one form alone is granted or refusal, at the discretion of the Commissioner.*

A. Macfarlane,
Esq.
17 April, 1861.

1020. Where estates have to be collected in the interior of this Colony, and the insolvents also reside in the interior, can you suggest any method by which the expense of collecting those estates might be lessened? Yes. I would amend the District Courts Act by empowering the Judges of the District Courts to entertain applications in insolvency, and either to administer insolvent estates themselves, in their own districts, or after petitions had been presented to them and orders of sequestration made upon them, to refer the further conduct of the proceedings to the Insolvent Debtors Court in Sydney, as is the case in Ireland with the Assistant Barristers. In Ireland, there is a class of Judges called Assistant Barristers, who correspond to County Court Judges in England. They are called Assistant Barristers because they assist the Judges of Assize, by transacting business which the Judges of Assize would otherwise have to transact. And under certain clauses of the Acts relating to Assistant Barristers it is provided that any person, or creditor of a person, living in a rural district—that is, outside the City or County of Dublin—may apply by petition to the Assistant Barrister of the county in which he lives, stating the circumstances under which he seeks relief as an insolvent debtor, or prays the benefit of the laws relating to insolvent debtors. The party appears before the Assistant Barrister, he shows that he is insolvent—or, if the claim be on the part of a creditor, the creditor proves that the party is insolvent,—the Assistant Barrister then makes an order of sequestration and refers the further conduct of the matter to the Judges in Dublin. My opinion is that that does not go far enough, and that the Assistant Barrister—or Judge of the District Court, as it would be here—ought himself fully to administer the estate within his own jurisdiction.

1021. Is this the return of the Registrar General that you alluded to in one of your answers? Yes. (*See Statistical Register of New South Wales from 1850 to 1859, p. 137,—“Return of the number of Insolvencies in the Colony for the years 1858 and 1859.”*)

1022. *By Mr. Piddington*: Is there more than one Insolvency Court in Ireland? There is only one Insolvency Court, but the Assistant Barristers or County Court Judges have the limited jurisdiction I have spoken of, and entertain a number of cases.

1023. Then the jurisdiction of the Insolvency Court in Dublin extends over the whole of Ireland? It does—the general jurisdiction.

1024. Is it your opinion that the business of the Insolvency Court in New South Wales does not exceed the amount of business in the Insolvency Court of Ireland? I think it does—that the insolvency business of this Colony does exceed that of Ireland; that is my impression,—I do not speak from positive knowledge.

1025. There is a vast difference in the population of the two places? There is no doubt; but the number of insolvencies that have occurred here within two years, that return being my guide, appears to me to be something enormous. The average is 360 for each year, 1858 and 1859.

1026. The population of Ireland is something like eighteen times as great as that of New South Wales? The population of Ireland is, I should say, about six millions.

1027. Six millions and a half, by the last census? It may be so.

1028. Should you not imagine that the quantity of insolvency business would bear some proportion to the population? I do not think it does, as a matter of fact, if the returns of these two years should be considered anything like a criterion.

1029. Taking this return as your guide, you think the number of insolvencies in this Colony, with a population of 380,000, equals that of Ireland, with a population of 6,500,000? Yes, my impression is so. I speak of insolvencies that come before the Court. There is very little credit given in Ireland, that is the principal reason of the comparatively small number of insolvencies. The legislation has been intended to prevent undue credit, and it has had that effect most signally. The just severity of the Court has also had a good effect.

1030. *By Mr. McArthur*: I think I understood you to say that you do not approve of the classification of certificates? My opinion is the other way.

1031. With reference to the payment of the Official Assignees, I think I also understood you to say you thought they should have fixed salaries? Yes, permanent fixed salaries.

1032. Why do you think that preferable? Because the incomes that the Official Assignees at present draw from the estates under their charge are excessive—assuming the statements made by Sir William Burton in his letters on the subject to be correct, namely, that incomes of something like £1,500 a year fall to each of them.

1033. Do you not think there would be less inducement for an Official Assignee to exert himself, if he had a fixed salary, than if he had a commission? I think his fixed salary should be a liberal one, and there would appear to me to be no difficulty in getting a competent and respectable man, who, for his salary, would discharge his duty as faithfully as can be expected from any Assignee paid by commission. In England and Ireland, where Official Assignees were formerly paid by commission, the practice has been discontinued, and they are now paid by fixed salaries.

1034. Would you prefer a liberal fixed salary, or a small fixed salary and a small commission, bearing some proportion to the amount of assets realized? I would prefer that they should have a liberal fixed salary. 1035.

* *Note (By witness on revision)*:—I find that classified certificates have heretofore been only strongly objected to in England; but by a Bill now before the House of Commons, Sir Richard Bethel proposes that there shall be but one form for the time to come.—A. M.F.

A. Macfarlane,
Esq.
17 April, 1861.

1035. Did I understand you to say that you thought Trade Assignees were not desirable? My statement was that there seemed to be great difficulty in obtaining Trade Assignees, and my authority for that was the fact that in 1858 there were only seven Trade Assignees appointed in this Colony, and in the year 1859 not one, although the average number of insolvencies, compulsory and voluntary, in these two years was 360 in each year.

1036. Do you approve of the present mode of appointing Official Assignees in this Colony? The appointment is with the Chief Justice of the Supreme Court at present, I believe. I think it ought to be vested in the Executive, and I assume that the Executive would give attention to the recommendation of the Judge, or Commissioner of the Court, as the case may be.

1037. Have you ever, in the course of your experience, met with cases in which an estate was taken out of the Court, where the Official Assignee claimed his commission on the whole amount? No, in my own personal experience I have met with no such case. The Official Assignee in Western Australia was a paid officer of the Court, and did not receive any commission.

1038. Supposing the present practice to continue in force, of paying them by commission—do you think that in cases where estates are only in the Court for a few days, and where very little trouble or risk is incurred by the Official Assignee, he ought to have a right to claim commission? Certainly not; nor would I give him commission on sums in the bank, nor on any moneys whatever save those realized by his own personal industry and exertion.

1039. Do you think we have, at present, a sufficient check upon the accounts of the Official Assignees? No, I believe the accounts of the Official Assignees are not subject to the audit of any superior officer. I may be mistaken, but I have formed that opinion in consequence of Sir William Burton recommending that an officer should be appointed for the purpose of auditing the accounts.

1040. I think I understood you to say that an Official Assignee should be a person well acquainted with accounts—I suppose you mean a regular accountant, capable of taking charge of a merchant's office, or any other important situation of the kind? I think he ought to have a good general knowledge of accounts. My impression is that he ought to be a solicitor, and I believe I do not state too much when I say that the members of the profession generally—barristers or solicitors—are not exceedingly familiar with accounts.

1041. Is it not desirable that an Official Assignee should be a thorough accountant, and capable of examining into the affairs of the insolvent? I think a fair knowledge of accounts would be sufficient; I do not think an express professional accountant would be requisite.

1042. In some cases, indeed in the majority of cases, the accounts are very much complicated? I would give power to the Commissioner, in such a case, to call in the aid of a professional accountant. I think that would be a better arrangement than appointing a gentleman, merely because he happened to be an accountant.

1043. What do you think would be a fair salary for a competent person as Official Assignee? From £800 to a £1,000 a year.

1044. What do you think a fair salary for the Chief Commissioner of Insolvency—you have stated that you consider that he should be a first-class man, and that he should have greater powers than those conferred by the present law? I think he ought to be a competent man and a good lawyer, and the salary to be given to him would naturally depend, more or less, on the salary to be given to the Official Assignees, who would be his subordinate officers, and also to the registrar and accountant; and, assuming that the Official Assignees were to have £800 a year each, and that the registrar, who would have to audit the accounts of the Official Assignees, was to have £1,000, I think the Commissioner should not have less £1,200, which I should call a very moderate salary.

1045. Did you find in Western Australia that the law expenses have been extravagant, in proportion to the work done—I think I understood you to say you had the Official Assignee more under your direct control? Yes; but even there I did find that the bills of costs amounted to very considerable sums. I had the matter, however, very much in my own hands, by having the power of revising these costs, which I did.

1046. Do you think it advisable, or possible, to appoint a solicitor, for the special purpose of giving advice in all cases of insolvency, to be paid either by the Government, or by a small commission upon the assets realized in each estate? I think that might be a desirable arrangement, more especially if the same solicitor were employed to prosecute in all cases of fraud arising before the Court.

1047. Do you consider that under the present law sufficient facilities are afforded for such prosecutions? No; I think there is a great difficulty in that respect. The only provision of the kind that I am aware of, in any Insolvent Debtors Act having reference to this Colony, is contained in a section I have previously referred to, No. 73. That relates to what is called fraudulent insolvency, and you will find that, although it is stated that a party committing certain acts, which are specified there, shall be deemed to have committed the crime or offence of fraudulent insolvency, there is no provision made as to the Court before which the party shall be prosecuted, or at whose instance, or with what funds, and other necessary provisions of that kind. A case did arise before me in Western Australia, in which I thought a party clearly and plainly came within the spirit of that enactment, but, for want of sufficient specification of the Court and mode in which the prosecution should take place, I was powerless to punish him.

1048. Could you suggest any remedy for that? In my opinion the Commissioner or Judge of the proposed Court ought to be empowered to deal with every question, whether involving mere law, equity, or criminal jurisprudence. The Judges of the Consolidated Court in Ireland are empowered to deal with every question of law and fact. I am not so certain whether they are empowered to deal, in the same summary way, with criminal cases, or whether

whether such cases are referred to the ordinary Criminal Courts; but I do think it would simplify matters very much, if the Judge of the Insolvent Debtors Court here were empowered to direct a prosecution before himself in, and investigate and adjudicate on, all cases in which he conceived that an act of fraud has been committed by the insolvent, and, if necessary, to take the opinion of a jury of twelve or four, as may be considered desirable, on any question of fact arising in the course of the investigation.

A. Macfarlane,
Esq.
17 April, 1861.

1049. Have you found, in your experience of Western Australia, any case of this kind, where a man becomes insolvent, and he shews almost no assets, his creditors have reason to believe he has been acting fraudulently, but the Official Assignee has no funds in hand to prosecute, and consequently he escapes? I have.

1050. Do you think, that under such circumstances, the Government should take up the matter and prosecute, the same as they do in any other criminal matter? I do; I think public policy requires it; on the certificate of the Commissioner or Judge of the Court.

1051. In the present state of the Insolvent Law in this Colony there is very great delay in collecting assets, and sometimes very great delay in declaring dividends—could you suggest any means by which that evil would be remedied? I would oblige the Official Assignees to make quarterly returns to the Commissioner of the Court, shewing what they had done respecting each estate committed to their care in the previous three months, and I would oblige the Judge of the Court to make an annual return to the Houses of Parliament, shewing what has passed in the twelve months in his Court—the number of cases brought into it, the liabilities returned, the assets returned, the assets realized, and the liabilities discharged.

1052. Do you think an Official Assignee is justified in keeping a general bank account for all estates in his own name? Certainly not; he ought to keep a particular account in the bank applicable to each estate, so that any person could refer to the bank book and see at a glance the condition of each estate.

1053. I believe it is now usual for the Official Assignee to declare a dividend whenever he pleases—do you think he should be compelled to declare a dividend whenever he might have as much as would pay a certain dividend—say 1s., 2s., or 3s. in the pound, or whatever it might be? I think the Commissioner, in every case, should direct the Official Assignee to declare a dividend immediately after the meeting for the second proof of debts. There are but two opportunities for the proof of debts, by the law as it stands, either here or in England, or Ireland—the first and second meetings—and I would assume (subject, of course, to the right of any party to come in, under particular circumstances, and ask leave to prove a debt which he has neglected) that all debts had been proved on the expiration of the second meeting of creditors; and then I think it should be the duty of the Official Assignee to declare and pay a dividend, however small the assets in his hands.

1054. Have you had sufficient experience of this Colony to form an opinion with respect to the amount of credit given here—I understood you to say that one cause of so many insolvencies was the excessive credit given? I could not form a definite opinion on that subject. I have not had sufficient experience to justify my going further than drawing a general inference from the great number of insolvencies occurring. I would be disposed to argue from that, that there was almost unlimited credit given.

1055. Would you consider it proper to withhold a certificate from an insolvent who had not kept proper books of account, and who could not shew a satisfactory statement of his affairs, without reference to any fraudulent intention? I would vest the granting or refusing of a certificate to an insolvent, in every case, in the discretion of the Commissioner, requiring him to look to all the circumstances. I would leave everything to his discretion.

1056. Do you think it desirable that persons should be compelled to shew what capital they had in commencing business, with the causes that led to their insolvency, and the way that capital was lost? Yes. I think any person seeking the benefit of the Insolvent Law should be obliged, as a preliminary step, to make the return to which you refer, along with his application; and if he did not, one of the first orders made by the Commissioner on the insolvent ought to be, to make such a return.

1057. In the event of a debtor, as is frequently the case now, saying he cannot account for anything, that he does not know where his money has gone, and cannot give any satisfactory information—do you think that man should get a certificate? I think that should weigh strongly with the Commissioner in considering his decision. I myself would refuse a certificate under the circumstances you mention.

1058. *By the Chairman:* Do you think there should be any additional punishment? I think, in cases of gross neglect or recklessness, the Commissioner should be empowered to imprison.

1059. *By Mr. McArthur:* I think I understood you to say, that you do not believe it to be possible to work the present law satisfactorily—in other words, you do not imagine that the present dissatisfaction arises so much from the inefficient manner in which insolvency business may be conducted, as from the law itself being defective? I am unwilling to speak of the efficiency or inefficiency of the administration of the law, from the limited observation I have had. I think I can best answer you in this way. I myself have had considerable experience in drafting local Ordinances, owing to peculiar circumstances—the Government of Western Australia having frequently requested of me that I should do so—and I did on one occasion attempt to draft an Ordinance to amend the Insolvent Debtor's Ordinance of that Colony, which, as I said before, is taken almost literally from the Acts in force here; but, after bestowing great attention and labour on it for a considerable time, I found myself unable to do so to my own satisfaction, and therefore I abandoned the attempt.

1060. Then you think it would be much better to have an entirely new Act? Yes, much better.

A. Macfarlane, Esq.
17 April, 1861.

1061. *By Mr. Smart*: What is your objection to the different classes of certificates? I think very little importance is attached to them by the public, and I believe I am correct in stating that so little importance was attached to them in England that the distinction is abolished, and that now only one form of certificate is issued.

1062. I think you are mistaken on that point? I may be. Perhaps I should have said that it is proposed in a new Bill lately laid before Parliament.

1063. Do you not think that the public would naturally regard more favourably, on his entering again into business, a man who had obtained a first-class certificate than one who had only received a third-class? I have always been given to understand that the distinction was so little considered by the commercial world that it was of little moment to maintain it.

1064. *By Mr. McArthur*: Could you suggest any other means by which the public at large could readily form an opinion respecting an insolvent's conduct—do you not think there should be some way of distinguishing men who have become insolvent from circumstances over which they had no control, from those whose insolvency has arisen from gross negligence, giving way to drink, or any of those causes which involve moral culpability? I think that when the Commissioner grants a certificate, or refuses to grant it, he should state his views as to the particular case very clearly and very decidedly, exonerating a man from blame when his insolvency was the result of accident, or circumstances over which he had no control, and censuring a man whose conduct deserved censure, and either postponing or refusing altogether to grant a certificate in the latter case.

1065. But there are hundreds of cases where parties would inquire whether a man had a first, second, or third-class certificate, but would never take the trouble to read the judgment? I should imagine it is scarcely usual among mercantile men to ask for the certificates. But it is a question on which commercial men would be much more competent than I am to give an opinion.

1066. *By the Chairman*: Is not the object of giving a certificate rather to shew that the bankrupt has conformed to the laws in existence relating to bankruptcy and insolvency, than to shew that he has been just and honourable, or the contrary, in his dealings? I think the object of the certificate is to enable an insolvent to commence the world again. I think that is the true object.

1067. And in that view, of course, it shews that he has conformed to the laws in force respecting bankrupts or insolvents, and that he is absolved from any liabilities up to the date of that certificate? Yes.

1068. Where the power of granting certificates is vested in different persons, as would be the case here if we committed it to the District Court Judges, might there not be a conflict of decisions as to the right of insolvents to first, second, or third-class certificates, such as would render the distinction practically valueless—one Judge thinking that a person's conduct, in a certain state of circumstances, entitled him only to a third-class certificate, while another, under precisely analogous conditions, would grant a first-class? That very state of things arose in England. It arises naturally from the diversity of men's minds.

1069. Would you make it a condition precedent to an insolvent's applying for a certificate, that he should obtain the consent of a majority, or of three-fourths or other proportion, of his creditors? No; I would leave the granting or refusing of the certificate entirely in the hands of the Commissioner, without reference to the creditors.

1070. *By Mr. Smart*: With power of appeal to the Judges in Banco? Yes; and there will be an appeal from the District Court Judges naturally to the Judge in Sydney, just as there is from the Assistant Barristers, in Ireland, to the Consolidated Court.

1071. *By Mr. McArthur*: I believe an insolvent gets his certificate here as a matter of course, unless he is opposed? So I understand.

1072. Do you think the obligation should rest with the insolvent to prove that he is entitled to his certificate, and not that it should be given unless he is opposed? I think, before granting or refusing a certificate, the Commissioner should make himself thoroughly acquainted with all the leading facts of the case, and be guided, in granting or refusing, by those facts; and that no certificate should ever be granted or refused without that previous inquiry and deliberation by the Commissioner.

1073. *By Mr. Smart*: Would you give a creditor the power of opposing the granting of the certificate if disposed to do so? I should be disposed to place the entire management of the estate in the hands of the Official Assignee subject to the directions of the Commissioner. I would consider him as the agent of the creditors, and that he is the person who should naturally move the Court to grant or refuse the certificate; the Court then to decide for itself.

1074. You would not allow the creditors to come before the Court, as they can at present? Yes, I think it would be going a great length to prevent the creditors from doing so; but I would make them pay all the costs if they failed in the application.

1075. Then, in the first instance, you would take the report of the Official Assignee as to the insolvent's conduct, and upon the information thus given, if it is satisfactory to the Commissioner, you propose that he should decide, unless the creditors oppose the granting of the certificate? I think every important or other than formal examination should take place before the Commissioner himself, that he might, with his own eyes, see the insolvent's or other witness's manner, and, with his own ears, hear the evidence, and that then, the evidence being taken down, the Commissioner having it and all the papers in the matter before him, should consider the propriety of granting or refusing the certificate. I think the less he depends upon the reports of other persons the better.

1076. In the event of a creditor being dissatisfied with the report of the Assignee, you would not object to his being allowed to appear to oppose the certificate? I would not.

1077. *By the Chairman*: I think I understood you to say you were not opposed to the appointment

appointment of Trade Assignees to act with the Official Assignees, only that, as a matter of practice in this Colony, it appeared to have been neglected? That was the ground. I did not think persons would come forward to act as Trade Assignees, seeing that in two years only seven Trade Assignees have been chosen out of 734 insolvencies.

1078. While the power of appointing the Judge in Insolvency, and the Judges in our other Courts, is confided to the Governor with the advice of the Executive Council, is there any reason why there should be an exception in that respect in reference to Official Assignees—any reason why they should not be appointed by the Executive? None that I can see. I think they should be appointed by the Executive. It is right that I should mention, having previously stated that I thought Official Assignees should be professional men, that I am aware that in Ireland one is a mercantile man, and was chosen because he was a mercantile man.

1079. Is there not a provision in the Irish Act that the persons appointed as Official Assignees should be either accountants or merchants? At this moment I am not in a position to say; certainly that principle has been acted upon to the extent of appointing one merchant; but if you appoint mercantile men or accountants to be Official Assignees and at the same time appoint a solicitor to advise on legal matters and prosecute in cases of fraud, that would meet all the objects that I would have in view in recommending the appointment of professional men.

1080. In the course of your experience I suppose you have seen how very tedious it is to take the deposition of the insolvent and the witnesses? Very tedious.

1081. What would you think of the appointment of a short-hand writer to facilitate the dispatch of business, who should be sworn to secrecy and to the due performance of his duties? It would tend very much to expedition.

1082. It would tend to simplify the proceedings and obtain greater accuracy and also dispatch? Yes, it would above all things secure accuracy of report, which is particularly valuable, inasmuch as the parties would be liable to prosecution for perjury in the event of their giving false evidence.

1083. *By Mr. Smart:* How would you get the depositions signed by the witnesses—would you require them to call again for that purpose after the evidence was written out? They might, if necessary, call next day.

1084. *By the Chairman:* Is there any necessity for witnesses to sign the depositions—persons examined in ordinary trials are sworn to tell the truth, they are not required to sign the depositions, and yet they can be prosecuted for perjury? Yes, that is so. I do not see the necessity.

1085. Are you aware what salaries the Commissioners of the Bankruptcy Court in Ireland receive? I have the strongest belief that each of the two Judges of the Consolidated Court, as it is called—the previous laws relating to insolvency and bankruptcy having been formed into one code—receives £2,000 a year; the Registrar, who is next in importance, receives £800, and each Official Assignee £500.

1086. Have you any other suggestions to favour the Committee with? No, I do not think I have. I would sum up my evidence by strongly recommending as the wisest course that could be adopted here, the introduction of an Act following, as far as the circumstances of the Colony will admit, the Imperial Act 20 and 21 Vic, the one adopted in Ireland with such signal advantage.

Thomas Weedon Bowden, Esq., called in and examined:—

1087. *By the Chairman:* You are an auctioneer and commission agent? Yes.

1088. You have carried on business in Sydney for some time? Yes.

1089. How long? As such, upwards of eight years.

1090. But you have resided in Sydney a much longer period? For half a century, if I see next January.

1091. Then you can speak with some degree of authority as to the working of the Insolvent Law, and commercial matters in general? Some portions of it.

1092. Have you had much to do with Insolvent Estates since the passing of our present law? Yes; within the last few years particularly.

1093. Do you think the law works well, or otherwise? I think the law is inoperative in some cases, and therefore we feel the effects of its inoperation; but I believe the law to be good if it was carried out.

1094. Do you prove your claims in all cases now? Not for trifling amounts.

1095. Have you felt any indifference as to proving, on account of the probability of not realizing, anything? Not in sums exceeding £10; as a rule, I should prove for sums exceeding £10.

1096. Is there a general dissatisfaction on the part of the mercantile community as to the management of estates by the present Official Assignees? I can hardly reply to that in a direct way. There is an indisposition to place estates in the Court, to come under the management of the Official Assignees—not that I would throw any blame on the Official Assignees in the matter—but as the result of cases going through the Court.

1097. Have you had any communication with any of the Assignees on matters of business? With all, I think.

1098. Have you found them to be men of business, possessed of that share of ability which you would expect of mercantile men, or of men who had the management of such matters? I am prepared to say this, that for the most part I find them efficient men. I have had little to do with one of them.

1099. Have they been persons who have been previously engaged in mercantile pursuits, or who have transacted business as accountants? Two out of the four.

1100.

A. Macfarlane,
Esq.
17 April, 1861.

T.W. Bowden,
Esq.
17 April, 1861.

T.W. Bowden, Esq. 1100. Who are these? Mr. Mackenzie and Mr. Morris; Mr. Sumpill and Mr. Perry have not been.

17 April, 1861. 1101. *By Mr. Smart*: What position did Mr. Mackenzie hold as an accountant? He was a trader and merchant here; he carried on business for some years as a coal merchant. As far as I know of his accounts, and I think I have taken dividends from him as often as from any other, I believe they are kept as clearly and correctly as any of them. He is exceedingly attentive, systematic, and hard working.

1102. *By the Chairman*: Was Mr. Morris ever a merchant? He was an acknowledged accountant for some years before his appointment as Official Assignee.

1103. We have heard it stated that the Official Assignees are in the habit of employing particular solicitors as a matter of favour, and also of incurring more legal expenses than are actually necessary in the working of estates—do you think there is any ground for these statements? I know no facts personally to warrant them. I hear what others hear, by report.

1104. You have not been a creditor, then, I presume, where extraordinary legal expenses have been incurred? The fact is, as a creditor, I never look into these things. I may say, that I have a case just in point, where I was a creditor in an estate in which the expenses amounted to £600, and the dividend was only 2s. or 2s. 6d. in the pound, but would of course have been much larger if the law expenses had not been incurred.

1105. Then you are not in a position to give an opinion, having taken the dividends as they came, without investigation? Yes; I believe others do the same.

1106. Have you any suggestions to make as to the improvement of the present state of the Insolvent Law? I think it might be improved in various ways. First of all, I think the mode of getting certificates now is altogether too easy. A man may walk through the Court, defying his creditors, knowing that in all probability he will get through without opposition, on account of the expense involved in opposing him.

1107. What do you think of the propriety of compelling an insolvent to get the consent of a majority, or any other portion, of his creditors, before he could even apply for a certificate? I think it would not work well; the creditors would be applied to individually, and he would carry his point, however undeserving.

1108. You think the administration of the law is too easy, as regards insolvents? I believe the law itself is stringent enough, but creditors are too indifferent about it themselves. To be otherwise they must be obnoxious to the debtor and to all his friends. I think there should be an officer established in the Court, a solicitor or barrister, whose duty it should be to examine all the evidence in each proceeding, and if he saw upon such evidence that the party had committed a fraud, or any act for which he should be punished, it should be his duty to prosecute that man; or if he saw reason to oppose the granting of his certificate, he should lodge an objection and follow it up. Such a burden should not be laid on any creditor or body of creditors; they will not take it up. I know a case in which gross frauds had been practised by the insolvents, and evidence offered before the Commissioner to prove same in opposition to the insolvent's obtaining his certificate, which did not succeed, but certainly would have succeeded had the case been conducted by a legal gentleman. The Commissioner is not supposed to be a public prosecutor to initiate charges, and the creditors generally are unwilling to assume such unpleasant duties, or to employ professional men to do so, on account of the great expense attending such proceedings. There are five or six Crown Prosecutors attached to the District Courts to prosecute offences of far less consequence; and if we had one of them in the Insolvent Court, to review all the proceedings in these cases, and to prosecute when necessary, I think I am warranted in saying it would stop half the insolvencies that now take place.

1109. Would it not answer the purpose if we had one or two active Official Assignees who would transmit the depositions to the Crown Law Officers? I think there should be a man appointed for the purpose; the Crown Law Officers have other things to do.

1110. How do you propose to provide for the expense of so many officers? There would only be one.

1111. It would also be necessary to have a Judge and Deputy Judge or Registrar? I presume the Commissioner would remain as Judge. This officer that I speak of should come forward to oppose a debtor getting his certificate, if there were good cause for so doing appearing on the face of the evidence. I am certain that if that were so, half the men who applied for certificates would not get them, if they continued to pursue the course that many insolvents have done; but my own opinion is that they would not be found in Court at all. I think the Commissioner should hear and determine all claims for certificates where the liabilities did not exceed £500; and this Crown Prosecutor should be there, and if he said there was no objection to it, the certificate should be granted as a matter of course. Where the liabilities exceeded £500, I think no certificate ought to be granted by the Commissioner unassisted by a jury of four, taken from the special jury list. This I think would be a very simple course, and would tend to check insolvencies; it would keep people out of the Court much better than punishment.

1112. *By Mr. Smart*: How do you propose to bring the case before the jury? By means of the Crown Prosecutor. When the insolvent applies for his certificate he is met by objections, of which he has had notice, that the evidence shews that he has done so-and-so, and it should be for him to shew that he did not do it.

1113. *By Mr. McArthur*: If no charge is brought against the insolvent? If no charge is brought against him by the Crown Prosecutor or a creditor, then let him pass certainly.

1114. *By the Chairman*: If any charge or breach of the Insolvent Act was made apparent, would it not be the proper course to prosecute the insolvent in the ordinary tribunals? That would be for perjury or fraud as provided by the Act.

1115. For any case where there had been no fraud, would not the refusal of the certificate be sufficient punishment? The Act says what punishment shall be meted out; I say it is sufficient, only the present system fails to carry it home.

1116. *By Mr. Piddington*: Your objection is not so much to the want of power to punish under the present Act as to the imperfection of the machinery to carry it out? Yes, it is not brought to bear.

1117. You propose the addition of a public prosecutor to the machinery? Yes, to work it. It must be a very gross case indeed if the creditors take it up.

1118. *By the Chairman*: If it would be just to appoint a prosecutor for the purpose of securing the creditors, would it not also be just to appoint a person for the purpose of defending the insolvent? I think not. You do not do so when a man is tried for a misdemeanor. He should get out of it the best way he could. There is a Crown Prosecutor to follow up the case if a man steals a cabbage out of a garden or a fowl out of one's yard; so that I conceive that the matter of expense should not be considered for a moment, when you keep up large establishments for the punishment of the smallest offences.

1119. *By Mr. McArthur*: You would not look on this man in exactly the same light as a Crown Prosecutor? I mean that it should be his duty to do what it is pretty evident nobody else will take it up.

1120. *By the Chairman*: I presume it would be a solicitor in insolvency that you would recommend, who would deal justly both with the insolvent and his creditors? Yes, there should be no bias either way; but he should see that an insolvent is punished if he deserves it. There are very gross cases in which the delinquents escape, because it is nobody's duty to open them up. I do not make this assertion recklessly, for I have taken the trouble to prove to myself that it is so.

1121. Has it not occasionally occurred, where charges of fraudulent insolvency have been brought against an insolvent, that the creditors have compounded with the insolvent and released his estate, so as to deprive the Court of any power they may have possessed of prosecuting? Such cases may have arisen, but I have none on my mind just now. I should like to observe, also, that I think insolvencies would be very greatly checked and lessened in number, if the Assignment Act was altogether done away. I think it is a source of very much evil, and, when worked at all, it is only for the benefit of the wealthy—those with large assets. The poor man, whose liabilities do not exceed £200 or £300, never thinks of the Assignment Act. It is only made use of by persons with large assets and large liabilities, who manage, by this means, to save to themselves thousands of pounds. Such cases do not swell the number of insolvencies, which I have heard stated here at 360 in the year. To these must be added very important cases, which never go into the Court at all, but are dealt with under this Assignment Act. It is frequently brought into use to cover up favouritism, and what the Insolvent Law would call fraudulent preferences, and is never had recourse to but where there is a large amount of assets to be handled, and to be retained in the hands of the debtor, the value of which he shews to the creditors to be a certain sum, out of which he may make one, two, three, or even ten thousand pounds.

1122. *By Mr. Smart*: Is not an assignment preferred in such cases, because the estate can be worked out at less expense than in the Court? I do not think that is the reason which prompts the assignment in most cases.

1123. *By Mr. Piddington*: Under a deed of assignment can transfers be made which would not be valid under the Insolvent Act? It covers up many transactions which the Act would declare to be invalid.

1124. *By Mr. McArthur*: Do you not think the practice of making assignments is, in great measure, founded on the fact, that in the Insolvent Court the dividends are postponed, and, in many cases, the assets frittered away until there is nothing left? No doubt the Insolvent Court has hitherto been dilatory, and the results have been unsatisfactory—and, in some instances, these assignments have been had recourse to by creditors to get immediate possession of the assets—but I say, for the most part, they do not work out the estate themselves; a compromise ensues, a few shillings in the pound is accepted, and much is covered up that ought to have been exposed to the light. As soon as an insolvent contemplates this, the first thing he does is to make it straight with some of his friends, and these very men become trustees of the estate, and they get other friends associated with them, or a trustee who has a very small interest, and who therefore becomes perfectly indifferent to the result, and leaves the management pretty much in the hands of one trustee who has been favoured.

1125. *By Mr. Piddington*: Have you known cases where particular creditors have been favoured at the expense of the general body? I believe that is one of the objects in an assignment, to cover up alienations of property which, if disclosed in the Insolvent Court, would be declared to be in fraud of the creditors generally.

1126. *By Mr. McArthur*: Do you not think it would be hard on debtors and creditors if the power were withdrawn? I think it did not always exist, and therefore what has been once granted may be withdrawn by the same authority, if not found to work well.

1127. Do you not think cases might arise, where a man who could pay 20s. in the pound might be pressed inconveniently by a creditor—do you not think that man's creditors should have the right of giving him time without forcing him into the Insolvent Court? I have known instances where it has been represented to creditors that if they would keep the insolvent out of the Court it would be greatly to their advantage, because he has 21s., or 22s., or more, in the pound, and after the estate has been assigned and worked out it has been found to yield 1s. or 1s. 6d.

1128. *By Mr. Smart*: You have known that also in the Insolvent Court? Yes.

1129. The creditors must be consenting parties to the assignment? Yes.

T.W. Bowden, Esq. 1130. Do you not think creditors prefer assignments, as being worked out at much less expense than in the Insolvent Court? Yes; but I have known estates so assigned to work out very much worse than such estates in the Insolvent Court.

17 April, 1861. 1131. Then you prefer that estates should go through the Insolvent Court? Yes; that is my opinion, the result of much experience in the matter.

1132. *By Mr. Piddington*: Do you not think that, generally speaking, the trustees appointed under deeds of assignment investigate the circumstances of the estate and examine the books with as much accuracy and precision as is done in the Insolvent Court? I do not; they have not leisure to do it, and it is not done.

1133. *By Mr. Smart*: As a matter of fact, are not the trustees selected from among the largest creditors? I have known instances where trustees have had no direct pecuniary interest.

1134. As a general rule they have been the largest creditors? I cannot say it is so. I have heard the remark made.

1135. You admit that they are creditors—that it is not customary for assignments to be made to any but creditors? I know an instance where one of the trustees is not a creditor.

1136. As a rule, is it not the fact that trustees are generally creditors, and interested in the administration of the estate? Yes, and generally friendly to the debtor.

1137. Are they not likely to look after their own interest, and to see that the estate is properly worked out? I find it different in practice.

1138. *By Mr. Piddington*: Is it not desirable, whether the estate is placed in the Insolvent Court or not, that the debtor should be called upon to give as full and explicit an account of his affairs as it is possible to give? No doubt.

1139. Is he so likely to do so when his estate is vested in trustees, and he is not under the same obligation of an oath as he is when called upon to make his statement in the Insolvent Court? No, and consequently he makes verbal statements to the trustees one day which he contradicts the next, neglects to afford them information, or does it in such a way as to make confusion worse confounded.

1140. The very fact of being able to give verbal statements, without the obligation of an oath, is likely to make him make statements not strictly in accordance with the fact? Yes, and to keep back information which the trustees ought to have.

1141. Have you known cases where such a want of truthfulness has been exhibited on the part of the debtor? Generally it arises from indifference. I have known cases where great indifference has been manifested to give correct information, and such information as may have been received is not reliable. They are not under the obligation of an oath, the public eye is not on them at all, and the trustees, even when acting in good faith, are surrounded with difficulties.

1142. *By Mr. McArthur*: I suppose your principal objection to the assignment system arises from the fact that persons take advantage of it who would not go into the Insolvent Court? They wish to keep out of it for the purpose of benefiting themselves in the first instance, and most likely they have alienated large portions of their assets to some of their friends to the damage of the general body of their creditors.

1143. Then I understand you to mean that though, in certain cases, it may be beneficial to creditors that an assignment should be made, yet, on the whole, for the ends of justice, and to lessen the number of insolvencies, it is better that all estates should go into the Court, under improved arrangements for the dispatch of business there? Yes, exactly.

1144. You object to the assignment system because it is beneficial to some creditors to the prejudice of the general body? Yes.

1145. *By Mr. Smart*: If it were done away, how would that lessen the number of insolvencies? Because the object would be lost. The debtor has an object under an assignment, namely, to keep all his assets together. If he goes into Court he has not that chance.

1146. Does not the existence of the assignment system lessen the number of insolvencies in the Court during the year? I believe it increases the actual number of insolvencies. It applies only to large debtors. These men retain all their property, and come out of it better off than they were before, having got rid of a load of debt upon easy terms. But they have done an immense deal of mischief, perhaps to a dozen smaller men, who are forced to go into the Court.

1147. *By Mr. McArthur*: I suppose you mean to say that though persons whose estates are under assignment are not included in the list of the Insolvent Court, they really are insolvents? Yes, as the list stands these men are not included, but they are insolvents notwithstanding, and they have been in a great degree the cause of much insolvency that does appear in the list.

1148. *By Mr. Piddington*: You think, as a general rule, that there is a great deal more favouritism and improper consideration practised under assignment than can be practised if the estate is thrown into the Insolvency Court? Yes, I think the assets would be larger in the Insolvency Court than they are made to appear under assignment, in consequence of preferences given immediately preceding the insolvency, which the Insolvent Court would set aside, and throw into the general fund.

1149. Do you believe there are many cases of improper and fraudulent alienations of property by insolvents to children or wives? On that head I think it is very clear that post-nuptial settlements on wives have been the source of much evil, and very prejudicial to the interests of creditors generally. I think no settlement made within a limited period of insolvency should be allowed to stand.

1150. *By the Chairman*: Whether the party was at the time indebted or not? Yes.

1151. *By Mr. Smart*: Have you known many instances of the kind? There are many.

1152. Have you known any that have been brought before the Court, where the settlements T.W. Bowden, Esq.

1153. A post-nuptial settlement, and the man in debt? There is the difficulty, to make it appear that he was in debt.

17 April, 1861.

1154. *By Mr. Piddington*: You believe the system has worked injuriously to creditors, in consequence of the difficulty of proving that the insolvent was in insolvent circumstances at the time the settlement was made? No doubt; there is that difficulty.

1155. Would you appoint any limit of time within which settlements should be invalid? Yes.

1156. What period? From three to five years, so as to discountenance these things. There is no reason in my mind why a man should provide for his wife and children in this way, at the expense of his creditors.

1157. You think the law ought to invalidate all settlements of that nature, made within a less period than five years before insolvency? I do.

1158. *By the Chairman*: Or the commission of an act of bankruptcy? Yes. I think if that was declared to be the law we should have less of these things.

1159. *By Mr. Piddington*: Is it possible to defraud creditors by disposing of either real or leasehold property within a short period of insolvency—have you known any cases where creditors have been damnified by conveyances made, or mortgages entered into, within a short period of insolvency? I do not call any to mind.

1160. You do not see any advantage in making it compulsory that all conveyances and mortgages should be registered within a limited period? A mortgage may not be registered. The law requires that all alienations of personal property shall be registered within a certain time, say 30 days, but it does not require that mortgages on freeholds should be registered. A mortgage may remain unregistered for any number of years, and be valid at any moment that you may choose to register it. Now, I think, it would be very desirable that the same law should apply to freehold which applies to personalty. A man may appear to be the owner of a large property, when in fact he has not a shilling interest in it, while, on the faith of that property being his, he is getting a large amount of credit in the city.

1161. In order to guard against credit being obtained in that manner, and as a question of public policy, you think mortgages should be registered? Yes, within thirty days. I would go further, and say that equitable mortgages, as they are termed, should be registered. I have known an instance where a man was supposed to be possessed of two very valuable properties, which he built himself, and having held them for years retired from business as a trader, having been supposed to have made enough. He remained for a short time out of business, presently returning to it; but before doing so he alienates this property by settling it on his wife; even the household furniture—fender and fire-irons, and every article—he settled on his wife. Well, that man comes out apparently worthy of credit, and obtains it largely; he lives in some style; his documents lie in his office for two or three years; and he suddenly fails, and has not sixpence of his own. Now if they had been registered, and I had given him credit, it would have been my own fault.

1162. *By Mr. Smart*: I understood you to say, that one of the documents should have been registered according to law? Yes, the settlement of the personalty.

1163. In that case, if you had searched and found his personal effects conveyed to his wife, would not that have excited your suspicion? No doubt; but I should not have thought of looking to that register while he was the reputed owner of a large freehold; I should not think he would make away with his fire-irons and such like things, while he had houses.

1164. Has it not been the custom that all mortgages should be registered? It is not necessary. It is very desirable that such alienations, if found unregistered, on a man becoming insolvent, should be declared invalid.

1165. *By Mr. Piddington*: Do you not think, generally speaking, the trading community are in the habit of giving credit indiscriminately, and without regard to caution? I think it is very easy to establish credit in the community, which may be, of course, greatly increased; but I do not think a stranger could immediately come in and get credit; he must work his way up by some appearances.

1166. Do you think there is as much credit given now as there was two years ago? No.

1167. To what do you attribute the great difference—do you admit there is a great difference? I do.

1168. To what do you attribute it? To the great losses which have been sustained.

1169. Experience has taught them wisdom? Yes.

1170. If they had exhibited the same wisdom two years ago many would have escaped? No doubt.

1171. Then they have only themselves to blame? Yes.

1172. *By the Chairman*: Have you paid any attention to the operation of the Bills of Sale Act, as respects the facilities it affords for carrying on business, while persons are in insolvent circumstances? I have not had much experience of it.

1173. Are you aware that persons in trade obtain credit while the whole of their goods are assigned and are liable to be taken at any moment by the Assignee? Yes, I have known one or two cases that have caused a great deal of trouble to the Official Assignee.

1174. *By Mr. Smart*: They are registered? Yes.

1175. *By the Chairman*: Are you aware that it is not necessary to register any bill of sale, if it is acted upon before an execution is levied? I thought it was imperative that it should be registered within thirty days, or become invalid.

1176. Suppose that is not the case, do you think it desirable to have the law amended in that respect? Yes, I think they should be registered within thirty days, or a very short period.

- T.W. Bowden, Esq.
17 April, 1861.
1177. Have you been in the Insolvent Court lately? Not much.
1178. You are acquainted with it—with the situation of the building itself? Yes.
1179. Do you think it is sufficient for the requirements of the community? I do not; it is altogether a miserable place; it is much better now than it was, but it is still insufficient.
1180. There is very little accommodation either for the public or professional men there? It is a very unsuitable place.
1181. Supposing the constitution of the Court were remodelled, and the Official Assignees made officers of the Court, do you think it would be necessary to have a separate building erected? Better accommodation is necessary, even for the present officers and business.
1182. Is there anything else that strikes you? I disagree with what I heard just now from the last witness, that the Judges of the District Courts should take charge of insolvency business in the country. It strikes me that that would be injurious to a large body of creditors resident in Sydney. All the storekeepers in the country districts receive their supplies direct from Sydney, and most of their creditors are here. But if the meetings were held in the District Circuits, the body of the creditors would know very little about the proceedings. It strikes me it would be found to work very badly in practice.
1183. *By Mr. McArthur*: I understood you to say that you approved generally of the suggestions made by Mr. Macfarlane, but that you did not agree with some of them? That is one that I disagree with.
1184. *By the Chairman*: Suppose power were given to the District Judges to take proofs of debts, and to take the evidence of insolvents, and that the evidence should be finally reviewed by the Judge in Sydney—would that meet your objection? I think the last witness proposed that they should have the collection of the assets, and absolute control over estates. He said the practice in Ireland is different from what he recommends, but he would go further, and recommend that the business should be entirely disposed of in the country in these cases. As far as taking the proofs of debts, and so on, I think it would be very desirable.
1185. Have you paid any attention to the duties of the messenger in Insolvency here? No.
1186. Are you aware that the duty is assigned to him of taking possession of the whole of the assets in insolvent estates? Nominally he does; he makes a list; I am not aware that he leaves anybody in charge. I believe it is his duty to make a correct inventory.
1187. Is it not his duty to take possession? He attaches every thing; it is a formal thing.
1188. Does it not occur to you that it is desirable that these duties should be performed more efficiently by a responsible person? I am not prepared to suggest any thing. With respect to the Official Assignees being paid by salary instead of commission, I think that would be injurious in practice—it would take away half the motive they have for exertion.
1189. Suppose the Official Assignees were paid by salary, and associated with Trade Assignees paid by commission, would not that be found to work well? That would be better than leaving them without that assistance.
1190. Suppose each Official Assignee had to administer estates by himself, and that a small commission was allowed in addition to salary? Even that would be better.
1191. *By Mr. Smart*: Would you fix the commission in proportion to the assets recovered, or allow the same rate, whether they were large or small? I would have it the same all through. In many instances the Official Assignee has a great deal of trouble, and nothing for it; and were it not for a large insolvency now and then they would not be properly paid.
1192. *By the Chairman*: What would you say to leaving it to the discretion of the Court? I think it is very well as it is.
1193. Does it not absorb too much of the assets—the Official Assignees obtain very large incomes now? That is because there are so many insolvencies. My idea is that, under better arrangements, there would be only half the number of insolvencies, and therefore they would only receive half the amount.
1194. *By Mr. Smart*: The creditors would still suffer in the same proportion if the insolvencies were reduced, if the Assignees were paid at the same rate? They would not get the same amount.
1195. *By Mr. Piddington*: The deduction from each estate would be the same, but the aggregate received by the Assignees would not be the same? Yes.

1861.

Legislative Assembly.

NEW SOUTH WALES.

INSOLVENT ESTATES.

(RETURN IN REFERENCE TO.)

Ordered by the Legislative Assembly to be Printed, 24 April, 1861.

RETURN to an *Address* of the Honorable the Legislative Assembly of New South Wales, dated 23 January, 1861, praying that His Excellency the Administrator of the Government would be pleased to cause to be laid upon the Table of this House, the following Returns:—

- “ (1.) The amount of Liabilities and Assets in all Insolvent Estates passing through the Insolvent Court, from the 1st January, 1858, to the 30th June, 1860, as stated in the Schedules.
- “ (2.) The amount of Assets realized in each Estate by the Official Assignees.
- “ (3.) The amount of Dividend paid to Creditors in each Estate.
- “ (4.) What proportion of Assets now remain in the hands of Official Assignees in each Estate.
- “ (5.) What has been the amount of expenses—particularizing Assignees' commissions, and Law costs incurred—in each Estate, with the name of the Solicitor employed in each case; also, the amount which the Debts sold brought in cases where such a mode of realizing such Assets has been adopted.”

(Mr. Love.)

RETURNS by JOHN MORRIS (Official Assignee), in compliance with a Resolution of the Legislative from 1st January, 1858,

NAME OF INSOLVENT.	RESIDENCE.	Liabilities as per Schedule.			Assets as per Schedule.			Assets realized.	Amount paid to Creditors.			Rate, &c.		
		£	s.	d.	£	s.	d.		£	s.	d.			
Thomas Matthews.....	Yass	507	3	0	691	0	0	299	2	6	157	2	1	5s. 4d.
Chas. Geo. Robertson	Redfern							151	13	2	95	2	4	{Rent, & prefer- out, & dividend.}
Daniel O'Reilly	Sydney	288	10	0	15	0	0							
William E. Rogers.....	Sydney	91	6	2	25	0	0							
Benjamin Holman.....	Sydney	242	16	11	81	9	0	18	2	6	13	2	6	Preferent
William Downe	Windsor	53	18	8	45	10	6							
Z. S. Bamford.....	Mudgee	515	15	0	126	17	0	28	10	0	18	16	6	Preferent
John H. Speir.....	Sydney	67	6	4	19	14	0							
Henry Copeland.....	Orange							1,365	13	3	954	9	1	8s. 1d.
C. G. Martin	Sydney	818	13	2	512	10	2	352	1	11	271	2	9	6s. 8d.
W. G. Wells.....	Sydney	432	16	9	15	0	0							
Henry Sewell	Sydney	138	11	2	67	9	3	2	6	6	1	6	6	
John Buckle	Sydney	150	7	1	61	5	0	14	13	3	11	16	6	20s.
John Mc'Gill.....	Sydney	394	7	9	63	5	0	13	19	0	8	0	10	6d.
William Dickinson.....	Sydney	489	0	0	171	10	0	139	3	0	94	0	8	4s.
Rudolph Schlostien	Sydney	2,282	15	1	2,214	10	5	60	3	10	29	7	2	1½d.
John Golder	Burwood	27	16	0	5	0	0							
James Cook	Sydney	43,947	12	11	41,665	6	9	12,990	1	7	11,939	7	6	{Dividend, pre- ferent, & mort- gages paid ..}
Thomas Collins	Parramatta ..	315	4	10	184	9	6	115	1	5	72	19	5	7s. 2d.
Henry Lord.....	Sydney	781	18	9	316	3	6	97	11	6	64	12	9	4s.
John Sprod	Illawarra													
E. W. Cook	Sydney	728	18	11	195	0	0	58	13	2	44	6	8	Preferent
Thomas Dawson.....	Sydney	2,759	4	10	2,035	3	10	422	18	2	330	6	5	{Dividend, & pre- ferent claims}
Saul Solomon	Sydney	1,286	10	0	80	5	0	8	1	6	4	0	0	Lien on phaeton..
John Jenkins	Sydney	1,376	12	0	250	12	0	119	6	6	88	4	3	6d.
John Moloney.....	Sydney	9,023	15	2	8,304	19	6	822	13	0	557	1	0	{Preft. claims, & 8½d.}
C. M. Bindon	Shoalhaven ..	275	16	2	55	0	0	12	10	0	10	0	0	20s.
George Butt	Albury	722	7	7	50	0	0	45	0	6				
William Roberts.....	Kincumber ..	517	4	9	217	19	10	27	2	3				
Hugh Murphy.....	Sydney	8,308	17	0	9,030	7	0	1,736	9	4	628	7	10	Preferent, & 2s. 4d.
John W. Wheeler	Sydney	918	9	6	715	18	6	3	5	6				
William Nesbitt	Redfern.....	213	16	10	12	10	0							
Robert King	Sydney	1,783	0	0	76	1	6							
R. and F. Smith.....	Newtown	597	9	2	578	13	1	259	17	3	209	10	5	6s. 4½d.
Barton Haigh	Newtown	92	7	3	21	0	0							
John Regan.....	Sydney	39	19	6	13	19	0							
George Tutton	Bathurst	908	0	0	776	0	0	649	11	9	512	8	11	9s.
M. A. West	Sydney	46	14	2	10	0	0							
Alfred Levien	Sydney													
Henry Severn.....	Sydney	62	11	9	6	0	0							
Robert Green	Sydney	477	12	0	410	0	0							
W. G. Hawkin	Hexham	230	0	0	13	10	0							
Thos. Lawless & Co.....	Sydney	8,341	10	3	12,806	6	6	200	15	5				
William Chisholm	Goulburn	341	10	0	251	12	9							
J. Wolst-holme.....	Sydney	401	0	0	65	0	0	26	16	9	21	0	0	Preferent
Isaac Moses.....	Muswellbrook	1,401	4	3	529	13	9	113	12	9	90	0	0	Do. and rent..
Carried forward	£	92,400	10	8	82,786	12	4	20,184	17	3	16,256	12	1	

INSOLVENT ESTATES.

Assembly, passed on 23rd January, 1861, in relation to Estates under his charge, as such Assignee, to 30th June, 1860.

Official Assignee, Commission.	Law Costs.	To whom paid.	Balance in hands of Assignee.	REMARKS AND EXPLANATIONS.
£ s. d.	£ s. d.		£ s. d.	
15 15 0	31 11 10	Messrs. Dunsmuir & Co.— compulsory costs	15 12 1	{ A large portion of assets concealed at Wagga; carriage, &c.; removal to Yass-for-sale.
10 10 0	20 13 10 28 2 10	Johnson and Johnson Mr. Fitzhardinge	3 0 8	{ Insolvent absconded; estate compulsorily sequestrated; Messrs. Johnson employed by direction of creditors.
3 4 0				{ Nothing to realize.
3 3 0			5 18 0	{ Furniture, &c., given to insolvent.
72 2 1	32 19 4	Messrs. Templeton & Jones— compulsory costs		{ Furniture sold by auction, netted £4 17s. 6d.; household effects allowed to insolvent.
17 12 1			10 18 1	{ Assets consisted of book debts, disputed.
1 0 0				{ £95 for debts due, disputed, and not recovered.
2 2 0			5 7 4	{ Furniture, &c., allowed to insolvent.
3 3 0				{ Insolvent absconded; no schedule filed; Chief Constable placed in possession until <i>Rule Nisi</i> made absolute. The charge due on goods and Chief Constable's charges amounted to £175.
6 15 6				{ Expenses were for fixtures removed, and rent of premises.
6 0 4	13 9 10	Messrs. Johnson & Johnson		{ Furniture, &c., allowed to insolvent.
610 10 2	35 9 4 32 2 9	Yarrton, solicitor to estate. Daintry, employed by direction of creditors	24 9 10	{ Debts placed in hands of insolvent for collection, but nothing recovered.
8 10 0				{ Assets disposed of—the insolvent.
8 9 9			11 1 2	{ Debts, £13, due for grog scores, not recoverable by law.
7 16 1			5 15 5	{ Paid insolvent's allowance, £20.
20 7 11	29 13 2	Rodd & Dawson—conveyancing	5 6 6	{ Assets stated to consist of £2,131 12s. 1d., good debts, but which turned out entirely fictitious.
4 1 6				{ Landed and leasehold properties, valued at £25,000, were conveyed to mortgagees having first been offered for sale, but without receiving an offer.
6 6 0				{ Paid insolvent's allowance, £23 2s.
41 2 8	12 6 6 138 8 8	W. Macnish Johnson & Johnson		{ Assets consisted of debts, which, having been partly collected, remainder were sold by auction, and netted £12 14s.
2 10 0				{ Compulsory sequestration; no schedule filed; nothing to realize.
			41 9 6	{ Debts due, £110—partly collected, and remainder sold for £10.
				{ Brig "Hebe" valued at £1,300 in schedule, sold prior to sequestration by mortgagee. Debts partly collected; remainder sold for £15, by direction of creditors.
				{ Furniture, &c., given to insolvent.
				{ Assets greatly overvalued.
				{ Landed properties mortgaged on the whole to the extent of £7,500.
				{ Debts due by Archbishop Polding, £800, disputed—eventually compromised for £48. The costs were incurred in investigating mortgages, &c., which were ultimately valueless to the estate.
			18 15 3	{ A large debt attempted to be proved, but not yet completed.
				{ Effects valued in schedule only realized £22; about £20 was claimed by party employed for selling same, who sued the Assignee, who paid £5 into court, and received a verdict.
86 16 7	953 0 3	Jas. Husband	26 9 2	{ Landed properties mortgaged for £1,965; having been submitted for sale by auction unsuccessfully, was ultimately conveyed to mortgagees. Costs were incurred on the several actions commenced against Corporation and others, by directions of creditors, some of which were afterwards referred to arbitration, and portion of costs received from Corporation. £105 included in Mr. Husband's charges was paid in arbitrator's fees.
3 5 6				{ Landed property mortgaged for full value. Debts disputed.
				{ Nothing to realize.
				{ Furniture, &c., allowed to insolvent.
14 19 9				{ Debts, after the greater portion were collected, were sold by auction, and netted £1 2s.
				{ Furniture, &c., allowed to insolvent.
				{ Do. Nothing to realize.
32 9 7	36 8 4	Johnson & Johnson	40 8 6	{ Costs for contesting and investigating Fitzpatrick's bill of sale, which turned out to be invalid, the proceeds of the effects secured thereunder passing to the estate.
				{ Nothing to realize.
				{ Estate released from sequestration.
				{ Nothing to realize.
10 0 0	67 2 2 100 0 0	Rodd & Dawson—compulsory costs Johnson & Johnson	11 5 3	{ Landed property valued at £5,000; mortgaged, £3,500; equity of redemption sold for £17 1s. 6d., by auction. The other assets were a debt alleged to be due by Carney, £6,000, which turned out abusive, and sundry small effects realized by private sale.
3 3 0			2 13 9	{ Schoolmaster. Assets consisted of debts claimed to be due by parties removing the pupils without notice.
5 0 0			13 12 9	{ Debts, £188—contra accounts to larger extent. Stock and effects secured to creditor by bill of sale.
1,045 15 6	1,531 8 10		242 3 3	

INSOLVENT ESTATES.

RETURN, &c.

NAME OF INSOLVENT.	RESIDENCE.	Liabilities as per Schedule.		Assets as per Schedule.		Assets realized.		Amount paid to Creditors.		Rate, &c.
		£	s. d.	£	s. d.	£	s. d.	£	s. d.	
Brought forward..		92,400	10 8	82,786	12 4	20,184	17 3	16,256	12 1	
Joseph Cox	Sydney	745	0 0	25	0 0					
Charles Asselin	Sydney	449	12 0	102	0 0					
John Wallace	Tambaroora ..	1,481	15 0	280	0 0	20	11 6			
Bernard Symon	Sydney	1,706	14 6	1,089	19 6	251	13 9			
James L. Michael	Sydney	704	0 9	818	19 0	55	5 3	24	5 9	Preferent, 1s. 9 ^d .
George Falla	Newtown	293	14 0	98	10 0	89	9 9	68	8 8	5s. 1d. ...
John Kaleski	Albury	1,987	9 2	1,083	11 0	45	10 9			
Jno. H. Duke	Sydney	40	13 0	10	0 0					
Alfred Heather	Sydney	40	16 7	12	0 0	4	1 0	4	1 0	10s.
Richard J. Lee	Five Dock ..	1,148	8 0	797	10 0	43	16 6			
James Simpson	Sydney	806	0 0	337	2 6	240	4 6	53	15 6	Preferent, 20s.
William Grey	Chippendale ..	150	8 9	51	16 0	16	17 9	11	12 5	1s. 6d.
Edward Casperson	Albury	212	5 0	15	0 0					
William A. Leer	Sydney	211	11 7	76	8 8	63	10 6	41	1 7	15s.
M. U. Westphalen	Albury	549	1 1	49	5 0					
John Bushby	Sydney	562	19 6	525	0 0					
Henry Parkes	Sydney	53,823	3 1	43,027	7 0	966	4 9	506	3 1	Preferent, 2s. 6d.
J. Patterson	Balmain	63	12 8	24	10 0					
John Ford	Sydney	223	6 3	35	0 0	24	14 0	18	12 0	Preferent
Anne Brown	Sydney	125	14 10	15	5 0					
D. Dyson	Windsor	37	5 6	5	12 6					
C. Oldham	Sydney	56	17 3	16	0 0					
Jas. H. Campbell	Sydney	78	0 4	26	4 2	22	14 0	3	0 0	Preferent
Henry J. Bate	Pitt Water ..	82	13 0	79	0 0					
Bernard F. Hughes	Bathurst	2,526	16 2	4,677	8 5	1,523	18 11	1,368	10 0	Secured claims ..
John Carpenter	Sydney	102	2 6	2	0 0					
Frederick Barden	Sydney	1,033	10 11	800	15 5	38	2 6			
Jas. Richards	Cook's River ..	805	19 2	631	10 0	357	14 0	342	6 0	Secured claim
Charles Grey	Balmain	124	8 0	79	5 9	15	18 0			
Joseph Fowlds	Newtown	85	17 8	25	0 0					
Bridget Windred	West Maitland ..	506	7 7	90	0 0	26	9 2			
Michael M'Dermott	Sydney	1,535	16 0	48	5 0					
Duncan and Moor	Sydney	820	0 0	510	0 0	52	6 5			
Adolphus Hukins	Wollongong ..	301	11 6	221	11 8	96	7 6	81	19 7	3s. 4d.
Joseph H. Barsden	Kelso	350	1 3	218	0 0	319	13 2	319	13 2	20s.
Alexander M'Nab	Sydney	276	3 4	22	13 0					
Joseph Walker	Newtown	348	6 4	18	17 2					
Charles Adams	Sydney	258	5 0	78	0 0	26	13 4	22	13 4	Preferent
John Hunter	North Shore ..	177	0 7	90	0 0					
A. J. Tebbutt	Morpeth	1,009	2 0	204	10 4					
William Newman	Redfern	508	16 0	170	0 0					
Carried forward		£ 168,756	16 6	139,275	9 7	24,476	14 3	19,122	14 2	

INSOLVENT ESTATES.

—Continued.

Official Assignee, Commission.	Law Costs.	To whom paid.	Balance in hands of Assignee.	REMARKS AND EXPLANATIONS.
£ s. d.	£ s. d.		£ s. d.	
1,045 15 6	1,531 8 10	.....	242 3 3	Assets consisted of furniture, &c., allowed to insolvent.
.....	.....	.....	.....	Assets consisted of leasehold, valueless. Furniture given to insolvent.
.....	.....	.....	13 15 6	Assets consisted of horse running wild, £70; Book debts, £200; no particulars given in schedule, and books in hands of third party. No claims proved.
11 14 7	{ 6 10 8 53 8 10	Messrs. Fitzhardinge & Co. } " Johnson & Johnson }	.....	In the schedule a worthless lease, valued at £300, and other assets overvalued and secured by a bill of sale, to the holder of which the Assignee handed £133 10s. 8d. from proceeds of sale, and paid the rent of the premises; the debts were very doubtful.
5 10 0	20 0 0	Messrs. Johnson and Johnson	.....	Disputed debts, £700, sold by auction for £16. Law costs for conveyancing.
8 18 6	2 2 0	Mr. E. J. Cory	.....	Assets consisted of land mortgaged, and book debts disputed.
5 5 0	.....	.....	38 9 3	Furniture, &c., given to insolvent. Do. do.
.....	.....	.....	.....	A worthless leasehold, valued at £400, and horses, &c., at Port Macquarie, £300; sold Assignee's interest therein for £25; paid Klump, for retaining possession of premises, £10 10s.; assets turned out nearly utterly worthless.
5 5 0	21 0 0	Messrs. Johnson & Johnson	.....	From the proceeds of the sale £106 18s. 1d. was paid to Moore & Co., they holding a bill of sale over insolvent's effects; the balance was, after deduction of expenses, paid to preferent creditors.
12 12 0	29 1 10	Messrs. Johnson and Co.	2 12 5	Furniture, &c., £30, given to the insolvent.
2 2 0	.....	.....	.....	Furniture, &c., given to insolvent.
5 5 0	.....	.....	1 8 3	Do. do. Do. do.
.....	.....	.....	.....	Assets consisted of land mortgaged to Messrs. Tooth for £512, and conveyed to them.
.....	.....	.....	.....	All the estate were claimed by Sir Daniel Cooper under mortgages by the insolvent to him; a number of examinations and meetings of creditors took place with reference to the legality of these mortgages; legal proceedings, by the directions of the creditors, were taken to recover the property claimed under these mortgages, on the ground that, notwithstanding such mortgages, the property belonged to the estate; subsequently the creditors directed the Assignee not further to contest the validity of the mortgages, and to sell the debts due to insolvent subsequent to the date of the mortgages to Mr. Wilshire, for £500; the Chief Commissioner after argument refused to ratify these directions ordering this sale, and upon appeal against this decision to a Judge, the Chief Commissioner's decision was confirmed; ultimately the Assignee obtained £500 less charges (being £100 more than the creditors insisted on this property being sold for) upon sale of the debts subsequent to the date of the mortgage. If the Assignee had been allowed to continue the legal proceedings commenced by him, he would, as advised by his counsel and attorneys, have recovered all the properties included in Sir D. Cooper's mortgages, for the benefit of the creditors of the estate.
48 6 3	360 9 6	Messrs. Johnson & Co.	34 5 4	Nothing available; furniture, &c., given to insolvent.
.....	.....	.....	.....	Furniture given to insolvent.
.....	.....	.....	.....	Nothing available; furniture given to insolvent.
.....	.....	.....	.....	Do. do.
.....	.....	.....	.....	Do. do.
.....	.....	.....	.....	Do. do.
.....	.....	.....	10 6 5	.....
.....	.....	.....	.....	The landed property on first being submitted for sale by auction would have realized sufficient to pay off mortgages and leave a large balance from creditors, but they refused to allow the sale, and eventually directed that a sum should be accepted not sufficient to pay off the mortgages, the value of the property having very much depreciated. Action was brought against Davis and some money recovered, but there will not be sufficient realized in the estate to pay expenses.
70 0 0	122 8 2	Messrs. Johnson & Johnson	.....	Landed property valued at £700, mortgaged for full value.
.....	.....	.....	.....	Compulsory sequestration; property realized very little in excess of mortgage.
4 4 0	.....	.....	28 16 6	Paid for rent, £2; assets consisted of debts.
4 4 0	9 8 6	Messrs. Rowley & Co.	12 10 7	Interest in some land not yet disposed of.
.....	.....	.....	.....	Nothing to realize.
3 3 0	.....	.....	23 0 8	Costs of compulsory sequestration and conveyancing.
5 5 0	35 0 0	Mr. Jas. Husband	.....	Assets consisted of furniture, &c., sold by auction.
8 8 0	.....	.....	.....	Insolvent paid 20s. by indorsed promissory notes, passing through the hands of the Assignee.
15 19 8	5 5 0	Messrs. Johnson & Co. ....	.....	Furniture, &c., given to insolvent.
.....	.....	.....	.....	Compulsory sequestration.
.....	.....	.....	.....	Furniture, &c., given to insolvent.
3 3 0	.....	.....	.....	Furniture, &c., allowed to insolvent, subject to bill of sale.
.....	.....	.....	.....	Assets consisted of debts placed in agent's hands for collection; no returns.
.....	.....	.....	.....	Assets consisted of land, part paid for by insolvent, but of no benefit for creditors.
1,271 6 6	2,196 3 4	.....	407 0 2	

NAME OF INSOLVENT.	RESIDENCE.	Liabilities as per schedule.			Assets as per Schedule.			Assets realized.			Amount paid to Creditors.			Rate, &c.
		£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	
Brought forward		168,756	16	6	130,275	9	7	24,476	14	3	19,122	14	2	
William Wright	Sydney	4,196	4	10	1,672	0	0	366	19	3	270	3	3	1s. 2d.
W. L. Douglass	Sydney	27	1	4	7	0	0							
James H. Gannon	Tamworth	5,013	8	7	4,765	15	9	79	12	6				
Mark Forster	Kingsgrove	372	8	0	365	10	0							
H. Gallagher	Sydney	192	6	6	61	17	6							
Henry Tholwall	Bathurst	155	4	6	131	2	0	21	7	3	14	3	11	2s. 2d.
Lewis Tartarin	Sydney	309	19	6	175	0	0	114	7	10	85	17	1	7s. 6d.
Ashby Harding	Kiama	218	17	6	111	19	3							
Jasper Holder 1859.	Chippendale	937	2	6	792	5	11	136	9	0	104	7	6	5s. 8d.
Dennis Heary	Sydney	66	14	7	16	0	0							
Isaac Davis	Sydney	83	14	6	24	0	0							
Charles A. Goodchap	Sydney	No schedule filed.												
Robert Bragg	Balmain	163	8	0	96	10	9	41	3	6	28	13	9	10s. 6d.
Frederick King	Tentersfield	6,785	15	5	6,335	12	5	1,762	17	6	1,402	0	4	8d.
Jas. W. Butcher	Redfern	84	17	6	9	6	6							
Humphrey Jones	Sydney	1,600	18	3	2,315	6	7	928	3	5	761	5	1	6s.
Charles & Roberts	Sydney	No schedule filed.												
William Small	Ryde	72	2	0	35	0	0							
Bernard Keough	Lochinvar	2,009	0	0	1,579	15	0	24	12	0				
William Barnsley	North Shore	56	12	0	32	0	0							
James Plowright	Sydney	43	7	6	8	0	0							
Michael Cassidy	Sydney	250	0	0	25	0	0	9	13	6				
Camillo Valenti	Sofala	3,086	7	4	1,399	0	0	2,271	18	5	1,720	4	4	11s.
Martin & Hill	Sydney	5,950	5	4	1,105	6	9	371	2	10	624	16	8	2s. 3½d.
Charles King	Albury	3,558	1	0	171	18	0							
George Williams	Sydney	296	6	0	200	15	0	9	13	1				
Ulricho D'Antonia	Sydney	161	0	0	3	0	0							
Dennis Shtel	Shoalhaven	208	15	6	30	17	0							
John Davis	Sydney	3,230	18	8	2,821	11	0							
James Fussell	Sydney	453	8	0	77	10	0							
Richard R. Lardner	Glebe	137	15	11	24	12	0							
George F. Morris	Maitland	355	16	0	5	0	0							
John Holland	Shoalhaven	95	6	5	60	0	0	17	0	0	13	13	7	6s. 3d.
Charles Craighton	Sydney	989	0	7	960	0	0	574	12	1	462	13	0	5s. 4d.
Edward James	Sydney	868	12	7	652	0	0	245	7	3	169	16	10	2s. 6d.
Michael Kellerher	Sydney	398	19	0	13	10	6							
William Clarke	Sydney	385	6	4	90	0	0	19	13	11	11	0	11	Preferent
William Newland	Sydney	205	0	0	149	5	2	4	10	6				
Peter Johnson	Sydney	73	1	7	32	6	0	7	10	0	6	17	6	20s.
Henry M'Rickards	Sydney	298	13	11	27	15	6							
George Pugsley	Glebe	76	11	9	9	2	6							
Robert Sealey	Sydney	269	4	0	5	0	0	20	0	0				
John Mitchell	Sydney	273	3	5	4	0	0							
Frederick L. Flint	Sydney	455	10	0	97	10	0	22	14	3	8	18	0	
Margaret Hopkins	Sydney	90	14	0	7	0	0							
William Gambell	Sydney	83	16	7	44	13	0							
Thomas Dybeck	Sydney	53	15	0	11	4	10							
Jas. Montgomery	Sydney	61	7	8	59	14	2							
George Chaffer	Sydney	401	2	8	20	10	0							
George Lindsay	Paddington	85	9	7	23	2	3							
George Wright	Sydney	157	17	2	15	0	0							
A. F. D. Greville	Sydney	72	13	10	30	0	0							
J. R. Packard	Bathurst	514	0	0	170	0	0							
William Kingsall	Sydney	79	1	11	20	15	1							
Henry Woodward	Sydney	583	3	4	91	6	0	10	0	0				
Jas. Nugent	Lochinvar	678	15	6	545	0	0	45	11	0				
Carried forward		£ 216,055	13	2	166,693	16	0	32,081	13	4	24,807	10	11	

INSOLVENT ESTATES.

7

—Continued.

Official Assignee, Commission.	Law Costs.	To whom paid.	Balance in hands of Assignee.	REMARKS AND EXPLANATIONS.
£ s. d.	£ s. d.		£ s. d.	
1,271 6 6	2,196 3 4		407 8 2	
18 8 0	{ 11 2 10 38 3 10	Dunsmuir & Co. Johnson & Co.	17 3 1	{ Assets mortgaged to Mr. Row, to whom equity of redemption was sold for £300. Nothing to realize.
5 0 0	27 0 8	Johnson & Johnson	26 7 4	{ The whole of the assets mortgaged to and realized by Messrs. D. Cohen and Co. Assets mortgaged; equity of redemption, twice offered for sale—no offer. Furniture, &c., allowed insolvent; debts disputed.
3 3 0				{ Assets sold by Sheriff, under execution, prior to sequestration; balance handed to Assignee.
6 6 0				{ Small portion of furniture given to insolvent.
6 16 6			1 15 6	{ Assets sold by Sheriff, under execution, prior to sequestration. Allowance made to insolvent. Landed property mortgaged to Mr. Friend, to whom I sold my equity of redemption.
5 5 0				{ Furniture given to insolvent. Furniture given to insolvent. Debts partly collected; remainder sold by auction for £1.
88 2 10	143 14 8	Messrs. Johnson and Co.	8 0 0	{ Property valued at £3,000 was realized by mortgagee, prior to sequestration: £1,271 7s. 8d. was paid by Assignee in discharge of further mortgage. The interest in a store, valued at £1,000, only realized £165. The costs were incurred in investigating mortgages, and for conveyancing.
48 3 11	14 3 0	Messrs. Want & Co.		{ £172 10s. paid mortgagee of property. Debts mostly collected; remainder sold by auction, realized, net, £6 8s. 6d. Estate released from sequestration.
5 5 0			18 18 0	{ Assets consisted freehold; mortgagee has sold, and a balance will be handed to Assignee. Furniture, tools, &c., given to insolvent.
			9 13 6	{ Do. do. An allotment of land was the only asset in the estate.
117 2 10	73 6 2	Messrs. Johnson & Co.	9 12 0	{ Insolvent had concealed £500, which was afterwards recovered, and insolvent was prosecuted for fraudulent insolvency, and sentenced to 3 years penal servitude.
43 11 2	{ 34 7 0 72 10 0	Messrs. Rodd & Dawson .. Messrs. Johnson & Co.	6 19 8	{ Messrs. Rodd and Dawson's costs were for compulsory sequestration, Messrs. Johnson and Johnson's costs were for suing a Mrs. Gordon, against whom a verdict was obtained, but no effects discovered.
5 5 0				{ Assets consisted of had book debts. Court fees, £4 8s. 1d. Great portion of furniture claimed by party as belonging to him. Nothing to realize.
				{ Assets consisted of disputed debts, and furniture allowed to insolvent.
				{ No available assets, everything mortgaged for full value, with the exception of household furniture, valued at £110, which the creditors allowed to insolvent.
				{ Debts claimed by third party, and were not recoverable. No available assets. Do.
3 6 5				{ Household effects; £30 given to insolvent.
31 9 10	2 2 0	Johnson & Johnson		{ Debts partly collected; remainder sold by auction for £5 4s. net.
12 5 11	5 5 0	Johnson & Johnson	2 19 2	{ Stock-in-trade enormously overrated, furniture, £100, given insolvent by creditors; remaining debts sold, £1, by auction. No available assets.
2 2 0	2 2 0	{ Johnson & Johnson, con- veyancing		{ Tan liquor, &c., valued at £50, worthless; furniture, &c., allowed insolvent.
4 10 6				{ Debts due for grog scores; not recoverable.
1 12 6				{ Furniture, &c., given to insolvent. No available assets. Do.
			20 0 0	{ Insolvent ordered to pay £5 per month. No available assets.
3 3 0			7 16 3	{ Machinery, &c., very much overvalued. No available assets. Do. Do. Do. Do.
				{ Insolvent compromised with his creditors. No available assets. Do.
				{ Everything sold by party holding bill of sale. No available assets.
3 3 0			6 17 0	{ Assets consisted of horse, cart, &c., claimed by third party; interest therein sold for £10.
			43 18 6	{ Assets all mortgaged; equity of redemption sold for £40.
1,685 8 11	2,600 0 6		587 8 2	

NAME OF INSOLVENT.	RESIDENCE.	Liabilities as per Schedule.			Assets as per Schedule.			Assets realized.			Amount paid to Creditors.			Rate, &c.
		£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	
Brought forward		216,055	13	2	166,803	16	0	32,081	13	4	24,807	10	11	
William Ward	Sydney	438	10	5	127	5	0	11	5	0				
Edward Lees	Glebe	49	15	8	43	0	0							
Robert Fisher	Redfern	3,065	9	4	2,911	0	0	378	16	5	224	10	5	1s. 7d.
Stephen Doyle	Sydney	410	12	11	85	15	5	29	8	6	23	11	3	Preferent
Benjamin Goddard	Sydney	71	7	5	60	9	6	2	2	6				
Patrick Tate	Sydney	34	7	9	15	0	0							
Frederick White	Sydney	91	7	0	37	6	11							
Henry Hoolor	Rocky Point..	109	6	0	48	9	0	11	12	0				
Henry Hussey	Sydney	60	4	0	15	0	0	9	12	0	8	0	0	20s.
H. C. Antil	Que mbeyan ..	210	11	10	77	0	0	14	13	6	11	11	5	4s. 6d.
Francis Sandoe	Sydney	497	12	0	124	15	0	13	15	0				
Robert Oliphant	Sydney	135	1	1	25	0	0	2	5	0	2	5	0	Preferent
T. Robertson	Newcastle...	27	7	1	8	0	0							
George E. Levicn	Ashfield	1,122	14	0	30	0	0							
E. J. M. Stewart	Bathurst	580	5	0	35	0	0	12	14	0				
Thomas Wallis	Sydney	47	19	0	10	0	0	30	0	0	29	6	4	20s.
Matthew Judge	Major's Creek	310	0	0	114	0	0	59	19	0	43	14	9	1s. 11d.
Jas. P. S. Mahoney	Araluen.....	1,963	17	5	2,170	17	8	547	14	10	332	3	11	3s. 4d.
James Nichols	Botany Road	496	9	8	474	16	9	214	2	7	192	5	11	To secured claims.
Samuel Cohen	Grafton	No schedule filed.												
John Knox	Sydney	40	5	8	5	15	0							
William Thompson	Sydney	197	17	5	44	0	0	14	17	6				
Thomas Murphy	Sydney				5	0	0							
Thomas Neale	Sydney	16	5	2										
Edwin Richardson	Maitland	216	16	7	180	16	4	28	15	0	17	14	7	2s. 5d.
John Rea	Parramatta ..	72	13	6	23	9	11							
Thomas Smith	Liberty Plains	191	1	9	21	0	0							
Godfrey Levy	Sydney	333	0	2	81	14	6	23	12	0				
William Pirih	Newcastle	199	5	0	151	15	0							
Charles Blackman	Goulburn	602	9	6	448	9	0	261	6	5	229	17	2	6s. 8d.
R. T. Outridge	H. M. Gaol ..	408	10	11	9	0	0							
Frederick Reyling	Sydney	745	14	3	681	18	0	49	1	0	36	2	5	Preferent, 6s.
John Lamb	Sydney	900	15	7	23	2	0	14	9	0	10	1	6	Preferent, 12s.
Charles Blackenry	Newcastle	337	3	3	77	16	9	6	4	0				
Thomas Jamieson	Sydney	245	19	0	15	0	0							
Henry Hudson	Sydney	38	6	0	2	10	0							
T. E. Adkin	Sydney	42	2	5	8	1	6							
William Love	Sydney	988	0	0	35	0	0							
William Purss	Sofala	577	0	0	515	3	4	266	17	9	128	0	1	5s.
Charles Tibbey	Sydney	186	9	10	93	0	0	8	1	0	5	0	0	Preferent, 20s.
1860.														
Andrew Morrison	South Creek	228	0	0	30	0	0	3	0	0				
David Armstrong	Newtown	1,534	10	9	1,479	0	0	32	0	0	8	5	0	Preferent
George T. Palmer	Gininderra ..	357	3	8	291	0	0	138	1	0	115	8	0	6s. 8d.
Charles Miran	Sydney	55	11	3	7	0	0							
William H. Hayes	Sydney	173	0	0	15	0	0							
Jno. Graham	Maitland	1,623	5	1	1,529	7	6	52	9	0				
Peter M'Kinnon	Sofala	283	15	6	64	17	0	32	5	10				
Wm Cheeseman	Balmain	212	16	3	31	12	6	2	19	0				
John Cameron	Sydney	181	4	0	5	0	0							
W. F. M'Kaughan	Liverpool	161	11	8	74	0	8	13	7	3				
T. W. Smith	Balmain	534	6	7	50	0	0	33	8	9	22	10	8	6s. 2d.
E. M'Roberts	Randwick	3,815	0	0	3,500	0	0	419	4	0				
Andrew Moreton	Sydney	91	7	9	5	0	0							
George Kinchington	Albury	841	2	0	503	11	0							
James M'Roberts	Parramatta ..	2,310	7	10	2,228	15	0	164	13	6				
T. Ormond	Sydney	12	4	0	3	14	0							
George Tully	Newcastle	38,328	19	4	34,172	11	9	1,203	19	7	163	1	0	Preferent
Carried forward		£ 283,020	12	5	219,729	12	0	36,188	5	3	26,411	6	4	

INSOLVENT ESTATES.

—Continued.

Official Assignee, Commission.	Law Costs.	To whom paid.	Balance in hands of Assignee.	REMARKS AND EXPLANATIONS.
£ s. d.	£ s. d.		£ s. d.	
1,685 8 11	2,600 0 6	.....	587 8 2	
.....	.....	.....	7 2 6	{ Insolvent claims a large sum of money as due by some party in Ireland. No available assets.
.....	.....	.....	.....	{ Part of assets sold by Sheriff under execution prior to sequestration. Lands mortgaged, £1,680; conveyed to mortgagees; costs incurred in commencing action against Mr. Salamon (who compromised), and for conveyancing.
18 18 0	75 19 0	Jas. Husband .....	.....	{ Debts due for grog scores; not recoverable. Furniture, &c., given to insolvent. No available assets. Do.
3 3 0	.....	.....	2 2 6	{ Paid attachment fee; assets consisted of interest in a lease, worthless.
.....	.....	.....	.....	{ Effects allowed insolvent. Furniture sold.
1 12 0	.....	.....	.....	{ Costs; compulsory sequestration. Furniture allowed insolvent. Nothing available.
2 2 0	7 5 0	T. E. Weedon .....	.....	{ Mr. Greer paid Court expenses and preferent claim. Proceeds of sale of assets by auction.
3 3 0	.....	.....	12 14 0	
.....	
6 6 0	4 14 8	Mr. Jas. Husband .....	.....
27 7 9	61 3 0	{ Mr. Jas. Husband, costs— compulsory sequestration }	82 1 2	{ The large deficiency between the assets realized, and those set forth in the schedule, was caused by reason of the disastrous floods in the neighbourhood, which swept away great part of the assets. The book debts sold by auction for £50.
10 0 0	7 7 0	Mr. Wm. Hellyer	4 5 2	{ Property mortgaged; only realized sufficient to pay mortgage. Rule nisi not made absolute. Nothing to realize.
.....	.....	.....	.....	{ Costs for investigating a supposed concealment of property. Insolvent absconded. Nothing to realize. Do.
.....	9 10 0	Mr. Jas. Husband	5 7 6	{ Debts due, £127, for grog scores, &c., not recoverable. No available assets. Do.
3 3 0	.....	.....	.....	{ Paid the rent since sequestration. No creditors proved. Land mortgaged to Bank for more than its value. Assets very much overvalued. Pauper.
8 3 0	.....	.....	13 14 0	{ Land enormously overvalued, and mortgaged to full extent. Furniture and personal effects, partly sold. Assets consisted of book debts. No available assets. Do. Do. Do.
13 14 4	1 16 0	Mr. J. T. Gannon	4 18 5	
3 3 0	.....	.....	.....
2 2 0	.....	.....	6 4 0	
.....	
13 6 8	60 13 6	{ Mr. Wm. Hellyer, costs— compulsory sequestration }	21 18 9	{ Insolvent had absconded. Assets consisted of policy on life, £50, of no value to estate.
3 1 0	.....	.....	.....
3 0 0	.....	.....	.....	{ Wearing apparel, &c., given to insolvent.
5 0 0	.....	.....	9 10 0	{ Assets mortgaged for full value; sales twice attempted unsuccessfully.
6 18 0	.....	.....	5 6 10	{ Insolvent is entitled to an annuity of £100, which is paid to Assignee. No available assets. Do.
.....	.....	.....	.....	{ Allowance made to insolvent; property mortgaged, only partly realized.
.....	.....	.....	31 6 0	{ Debts, &c., disputed.
.....	.....	.....	31 15 7	{ Assets consisted of book debts. Nothing to realize.
.....	.....	.....	2 19 0	{ Furniture, &c., allowed to insolvent, subject to payment of rent. Furniture, &c., allowed insolvent.
4 4 0	.....	.....	.....	{ Real property mortgaged to full value; this sum realized from sale of leasehold. Nothing to realize.
20 0 0	.....	.....	351 13 5	{ All the assets overvalued and mortgaged. No available assets.
.....	.....	.....	.....	{ Landed property mortgaged for full value. Pauper.
5 0 0	.....	.....	148 7 6	
.....	
.....	.....	.....	364 5 1	{ Nearly all the assets realized have been by direction of the creditors expended in ascertaining whether there was a coal field on one of the properties. The principal portion of the assets returned in the schedule consists of properties subject to mortgages, which are undergoing investigation, and if same are held to be good sufficient will not be realized to liquidate such mortgages.
1,843 15 8	2,628 8 8	.....	1,692 12 1	

INSOLVENT ESTATES.

ESTATES TRUSTEES

RETURN, &c.,

Name of Insolvent	Residence	Liabilities as per Schedule			Assets as per Schedule			Assets realized			Amount paid to Creditors			Rate, &c.
		£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	
Brought forward		283,020	12	5	219,729	12	0	36,188	5	3	26,411	6	4	
Henry Doyle	Sydney	164	14	1	54	2	6	6	15	0				
James Byrnes	Sydney	116	8	3	81	0	0	66	18	0	57	6	2	10s. 2d.
William Allen	Sydney	6701	14	0	5,253	11	7	2,280	13	1	1,700	5	11	5s.
Thomas O'Brien	Rosebrook	112	5	0	72	10	0	16	11	6				
Michael Shea	Sydney	491	12	11	452	0	0	72	1	9	57	7	3	5s.
George Murray	Camperdown	139	2	0	83	16	0							
William McDowell	Sydney	420	4	2	262	0	0							
Henry Falconer	Paddington	68	5	7	12	0	0							
Henry Jones	Sydney	107	6	0	5	0	0	36	1	6	10	0	0	20s.
Thomas Rogers	Newtown	100	17	6	7	0	0							
James Smithers	Newcastle	540	4	0	430	0	0	111	16	6				
J. Taylor	Sydney	20	10	0										
J. Kingsbury	Singleton	103	0	0	15	16	0							
A. G. Pantou	Grafton	1,427	0	0	2,150	0	0							
Thomas Pye	George's River	252	13	0	119	0	0	27	7	6				
Robert Appleton	Newtown	50	0	9	10	0	0							
George Cobban	Boxhill	742	15	0	342	0	0	164	3	7				
Edward Johnson	Sydney	719	3	0	360	0	0							
W. E. Cater	Sydney	13	15	3	3	10	0							
Elijah Mockett	Adelong													
Thomas Orley	Sydney	98	0	2	97	17	6	16	19	8	5	0	0	Preferent
George Eckart	Sydney	278	19	11	63	3	0	13	16	6				
R. B. Cooke	Sydney	247	5	7	112	19	0	147	19	11	50	0	0	Preferent
George Smith	Manly Beach	700	0	0	30	0	0							
Henry Jeffreys	Sydney	11,301	6	2	3,403	18	11	308	0	0				
Charles Poole	Sydney	1,631	15	8	970	3	0							
Jeremiah Finn	Cook's River	152	16	3	5	0	0	11	7	6				
Peter O'Connell	Sydney	236	15	0	38	0	0	21	0	0	16	16	4	2s. 3d.
Thomas Cross	Sydney	113	18	0	95	0	0	273	18	5	222	14	7	19s.
Nathaniel Payten	Paramatta	1,352	9	5	639	10	3	358	6	1				
William Butler	Maitland	170	12	5	75	13	9							
Farquar McLean	Wellington	176	17	0	25	14	0							
W. W. Dyke	Grafton	179	9	2	87	10	0							
Samuel Daniels	Sydney	94	11	0	16	0	0							
Kirchner & Co.	Sydney	129,364	12	4	52,237	6	3	3,212	13	0				
James E. Thorman	Braidwood	399	13	10	100	16	6	23	5	6	13	10	0	Preferent
Robert Curran	Sydney	19	0	6	1	0	0							
Joseph Wyatt	Sydney	1,807	18	9	1,772	10	0	452	8	11	374	18	10	10s.
Robert Manning	Sydney	37	1	1	26	18	2							
N. J. Wellham	Newcastle	372	6	11	35	0	0	14	10	5				
Bo Wang	Sofala	437	10	10	374	10	5	17	3	9				
W. H. Moore	Burwood	216	5	6	21	10	0							
William Buff	Sofala	121	12	2	32	10	0							
Thomas W. Wallis	Braidwood	12,707	13	6	3,614	14	5	759	12	1	129	4	0	Preferent
Charles H. Rooke	Sydney	804	0	0	52	18	0							
James Skinner	Ollera	1,379	14	6	1,132	1	11	253	6	5				
M. D. Mears	Sydney	351	4	7	220	0	0	56	14	5				
Total		459,505	13	5	294,734	13	2	44,912	5	3	29,045	19	5	

E. & O. F.
Sydney, 22 February, 1861.

STATISTICAL TABLES
INSOLVENT ESTATES.

Continued

Official Assignee, Commission...	Law Costs.	To whom paid.	Balance in hands of Assignee.	REMARKS AND EXPLANATIONS.
£ s. d.	£ s. d.		£ s. d.	
1,848 15 8	2,828 8 8		1,692 12 1	
6 13 9			6 15 0	
104 4 10			322 4 2	Portion of landed property mortgaged, Furniture &c., allowed.
6 6 0	2 2 0	Messrs. Johnson & Johnson	16 11 6	Composition by insolvent.
				No available assets.
4 4 0			19 5 0	Assets consisted of land mortgaged for full value, No available assets.
5 0 0				Creditors proved; paid in full.
			106 10 6	Pauper.
				Due to preferent creditor, £75; effects enormously overvalued.
				Pauper.
				No assets available.
				Assets all mortgaged; a compromise has been effected with mortgagee; and steps are being taken for the realization of remaining assets.
			27 1 6	Interest in horses running wild sold by auction.
				Nothing realized.
			131 0 11	Most of assets sold by the widow of insolvent's son.
				The creditors have directed me to sell insolvent the effects for £10.
				Nothing to realize.
				Estate released from sequestration.
			77 14 5	Debts disputed, £77.
			33 16 6	Furniture, &c., allowed to insolvent.
			92 12 11	Preferent claim only proved.
				Only wearing apparel.
			308 9 11	The assets consisted of land in which is turned out in solvent hall no interest, and disputed debts which I received as assets £2,378 3s. of which the Assignee has at present received £308 9s. 11d.; so soon as balance is received and a dispositive plan settled a plan will be filed.
				Assets consisted of wardrobe, &c., of the estate, valued and held by Mr. Neale.
2 2 0	2 2 0	Mr. Deniehy	19 7 6	Collected from a debt not entered in the schedule.
13 18 10	24 13 0	Messrs. Johnson & Johnson	5 1 11	Refunded by party purchasing assets under misrepresentation.
			332 10 7	Assets not divided in consequence of an attempt made by certain creditors to prove claims which insolvent alleged to be fictitious. An investigation has taken place before the Chief Commissioner but no decision arrived at.
				Nothing available.
				Do.
				Do.
				Do.
			1,006 16 10	The assets returned consisted of landed property chiefly mortgaged to its full value, and book debts to the amount of £45,332 15s. 0d., included in which is £29,352 15s. 0d. retained to be due by Bank of New South Wales, which have instead of admitting same, claim to be secured creditors, and do not admit anything to be due by them beyond the value of the property mortgaged to them. The other book debts are retained enormously in excess of their value. At the date of sequestration the books had not been made up for about 18 months. No plan has yet been filed in consequence of investigations before the Chief Commissioner, which have not yet concluded. Proceedings, by direction of some of the creditors, are being taken to contest the validity of a marriage settlement upon Mrs. Kitchner. I have paid wages, rent, expenses, and preferent claims, and also £1,000 in discharge of a collateral security, from which I expect shortly to receive about £2,000.
3 3 0				Assets consisted of ginger-beer bottles, &c., considerably overvalued.
			3 5 12	Nothing realized.
25 0 0	28 7 1	Messrs. Johnson & Co., conveyancing	0 0 0	Assets mortgaged for £1,000; insolvent made compromise with his creditors.
			0 0 0	Nothing available.
			0 14 10 5	Furniture, &c., given to insolvent.
			0 16 17 9	Assets chiefly consist of debts due by Chinese which paid unable to collect.
			0 0 0	Furniture, &c., given to insolvent.
			0 0 0	Nothing available.
			613 7 4	By direction of the creditors a thorough investigation into insolvent's conduct is at present pending before the Chief Commissioner with a view to prosecute insolvent if possible.
			0 0 0	Nothing available.
			233 0 5	Remainder of assets mortgaged for more than their value.
			0 28 10 5	Insolvent allowed £3 per week and furniture &c. allowed
2,014 3 1	2,695 12 9		6,524 16 7*	

* And £543 13s. 6d., being expenses and payments made by the various estates for rent, allowances to insolvent, Court fees, &c., &c., and as explained in the remarks to each estate.

JOHN MORRIS, Official Assignee

William Dibbley
Charles Murray
James Murray
James Murray
Francis W. Woodward
Southern David Pick

NAME OF INSOLVENT.	LIABILITIES AS PER SCHEDULE.			ASSETS AS PER SCHEDULE.			ASSETS REALIZED.	AMOUNT OF DIVIDEND.	ASSETS UNREALIZED.
	£	s.	d.	£	s.	d.			
Sarah Reeves	50	2	2	8	0	0	7 19 6	4 13 6	.....
Alexander Beith Grant	1,622	19	4	602	8	3	51 2 0	.....	.....
John Newman	6,873	11	9	4,443	9	3	2,526 19 10	2,018 7 0	Bad debts
Andrew Farley	492	0	5	1,465	19	5	33 7 0	21 18 0	Do.
Patrick Sullivan	416	18	6	21	2	10	59 4 6	34 16 8	.....
Frederick Aquillar	463	5	6	67	5	0	17 5 6	12 9 6	.....
Grenado George John Chapman	417	2	8	75	0	0	8 1 6	5 0 0	.....
John Rowley	791	5	0	423	0	0	.....	.....	Bad debts
John Philips	283	4	0	152	17	0	10 11 0	.....	.....
James Miller Foans	175	2	3	30	0	0	.....	.....	Do.
Isaac Thomas	2,681	8	0	115	0	0	20 0 0	4 2 0	Bad debts
John Anderson	303	0	0	15	0	0	.....	.....	Do.
Charles Martyn	6,334	3	11	6,010	10	9	100 0 0	90 19 6	.....
Alfred C. Brayne	94	0	0	35	0	0	.....	.....	.....
Henry Bachfield	266	8	0	28	5	0	36 17 0	26 18 0	.....
Richard Crowe	969	5	0	45	0	0	.....	.....	.....
John Tighe	408	16	3	39	5	0	.....	.....	.....
John Longfield	289	5	11	20	0	0	.....	.....	.....
Charles Gee	55	4	9	6	0	0	.....	.....	.....
William Marshall	25	13	2	15	15	0	.....	.....	.....
Stephen Pettit	52	3	6	11	10	0	.....	.....	.....
Jacob Staynor	134	17	6	28	0	0	.....	.....	.....
Samuel Barr	100	12	10	5	0	0	.....	.....	.....
Thomas Marchant	681	10	10	453	0	0	119 13 9	102 1 7	.....
Edward Johnson	676	15	9	39	10	0	.....	.....	.....
John Brown	443	0	0	5	0	0	.....	.....	.....
James Ewart	3,685	2	8	3,390	0	0	.....	.....	.....
James Melloy	69	12	8	16	10	0	.....	.....	.....
George James Morris	95	1	2	35	0	0	11 14 8	6 3 2	.....
Chud Gale	110	0	0	16	0	0	.....	.....	.....
George Morphett	138	10	2	62	0	0	138 10 2	138 10 2	.....
Malachi Hardiman	1,797	0	6	4,800	13	9	127 18 6	77 6 3	.....
Edward Bathurst	351	8	2	50	0	0	46 3 9	29 16 9	.....
Edward Swinden	129	11	3	100	16	6	27 7 9	19 15 3	.....
Charles Edward Hime	276	10	0	95	0	0	15 12 0	15 12 0	.....
Charles Leo Morris	1,059	16	6	324	10	6	139 0 0	115 16 3	.....
Richard Jackson	57	16	8	15	0	0	.....	.....	.....
Charles Nash	228	13	3	160	0	0	40 17 6	28 17 0	.....
Edward Davies	119	4	0	47	0	0	6 6 6	.....	.....
William Cox	182	7	3	180	5	0	23 0 9	4 2 9	.....
William McDonald	11,402	12	3	5,974	1	11	5,380 11 8	3,448 10 5	.....
Boger Hogan	355	16	0	5	0	0	13 4 3	12 2 0	.....
William Bird	85	17	11	71	6	5	.....	.....	.....
Chezlyn Basford	No Schedule filed			.....	.....	.....	37 18 6	.....	.....
Walter James Brown	55	3	5	7	0	0	.....	.....	.....
Maria Jackson Harrington	716	6	3	449	11	5	260 14 3	196 15 4	(Debts still un-realized)
John Hughes (deceased)	323	6	10	310	0	0	.....	.....	.....
James Towns	159	6	0	36	15	0	37 0 0	23 7 6	.....
William Callaghan	1,131	1	1	804	4	0	.....	.....	.....
Andrew O'Dowd	109	13	6	15	0	0	.....	.....	.....
John Harph	50	4	3	12	16	9	.....	.....	.....
Cover Matheson	160	2	0	64	7	2	.....	.....	.....
Charles Mann	580	18	8	193	11	0	110 19 6	86 17 3	Bad debts
Thomas Allen	561	18	0	14	6	6	.....	.....	.....
Benjamin Charles Cowper	295	8	0	210	0	0	.....	.....	.....
Arthur and Charles Czuzens	214	15	4	138	0	0	16 17 0	.....	.....
John Usher	133	1	4	12	10	0	.....	.....	.....
Samuel Dyball	166	16	0	79	7	6	8 0 0	.....	Bad debts
Henry Robert Carter	304	0	4	41	5	9	18 6 3	8 1 9	Do.
Samuel Pritchard	356	0	0	54	6	0	.....	.....	.....
Frederick Myers	31	17	4	23	17	0	.....	.....	.....
Robert Forrest	496	6	0	105	0	0	.....	.....	Bad debts
Daniel Charles Carter	1,015	15	3	717	0	11	24 17 6	10 4 0	Do.
David Small	517	14	4	266	10	9	.....	.....	Do.
John James	167	12	5	5	0	0	.....	.....	.....
Robert Turner	314	17	0	221	0	0	60 19 4	38 0 10	Bad debts
Alfred Flower	708	7	4	407	0	3	174 14 0	139 10 10	.....
John Potkerry	1,089	6	0	275	0	0	100 12 0	79 19 11	Bad debts
David Bevan Evans	52	2	2	12	0	0	.....	.....	Do.
Matthew Beirne	697	16	4	608	15	0	.....	.....	Do.
John McQuire	344	10	0	5	0	0	.....	.....	.....
William Hastings Farrow	412	4	0	18	2	0	.....	.....	.....
Margaret Loftus	485	15	0	25	11	0	.....	.....	.....
Thomas Ford	179	10	0	31	0	0	.....	.....	.....
Thomas Bowman	82	6	0	71	18	0	.....	.....	.....
Robert Millard	2,883	13	0	439	1	6	27 11 0	.....	Bad debts
James Smith	358	4	0	265	14	6	.....	.....	.....
Joseph Millsome	1,032	5	0	80	8	9	30 2 4	23 13 4	Bad debts
Michael and Alexander Alexander	1,320	13	0	1,257	15	0	558 8 6	448 7 8	Do.
John Henry	56	6	0	15	0	0	.....	.....	.....
Timothy Alfred Cowell	409	0	0	233	0	0	106 15 0	8 14 8	.....
James Greer Pillar	530	17	0	224	0	0	32 15 0	.....	.....

INSOLVENT ESTATES.
ESTATES TAKEN OVER

—Continued.

ASSIGNEE'S COMMISSION.	LAW COSTS.	NAME OF SOLICITOR.	OTHER EXPENSES.	REMARKS.	BOOK DEBTS WHEN SOLD.
£ s. d.	£ s. d.		£ s. d.		
2 2 0			1 4 0	Court fees.	
5 5 0	44 12 0	James Husband	2 5 0	Do.	(Book debts with other assets.)
126 3 5 63 1 8	17 2 7	Bradley & James.	153 11 7	Rent, wages, and fees.	
	16 8 6	M. C. Stephen.			
	7 15 4	Robert Banbury			
3 3 0	2 2 0	M. C. Stephen	6 4 0	Sundries and fees.	
3 0 0			21 5 10	Rent and fees.	
3 3 0			1 13 0	Court fees.	
1 17 0			1 4 6	Do.	
1 6 6			9 4 6	Nothing realized. Sundries and fees.	
3 3 0	2 2 0	M. C. Stephen	10 13 0	Nothing realized. Sundries and Court fees.	
5 0 0			9 0 6	Nothing realized. Sundries and Court fees.	
2 2 0	2 2 0	Iceton & Pownall J.	7 17 0	Nothing realized. Wages and fees.	
				Nothing realized.	
				Do.	
				Do.	
				Do.	
				Do.	
				Do.	
5 19 8	3 3 0	M. C. Stephen	8 9 6	Sundries, rent, and fees. Nothing realized.	
				Do.	
				Mortgage, furniture given up.	
				Nothing realized.	
2 2 0			3 9 6	Sundries and fees.	
6 18 0			1 1 0	Nothing realized.	
6 11 7	31 16 10	D. H. Deniehy	12 3 10	Court fees.	
5 5 0			11 2 0	Sundries and fees.	
3 3 0			4 9 6	Do.	
6 19 0	6 6 0	M. C. Stephen	9 18 9	Do.	
3 3 0				Sundries and Court fees.	
3 3 0			8 17 6	Nothing realized.	
3 3 0	2 2 0	M. C. Stephen	13 13 0	Sundries and Court fees.	
269 0 7	12 1 4	Do.	310 17 7	Do.	
				(Rent, allowance, fees, and other expenses.)	
			1 2 3	Court fees.	
				Nothing realized.	
6 0 0	23 17 0	J. Russel Jones	2 16 6	Court fees.	
	5 5 0	M. C. Stephen		Nothing realized.	
13 0 8	3 3 0	M. C. Stephen	44 12 3	Rent, wages, and fees.	
				Bill of sale.	
3 3 0	2 2 0	M. C. Stephen	8 7 6	Sundries and fees.	
				Bill of sale.	
				Nothing realized.	
				Do.	
5 10 11	3 3 0	M. C. Stephen	15 7 4	Do.	
				Sundries and fees.	
				Nothing realized.	
				Do. mortgage.	
				Bill of sale.	
				Nothing realized.	
				Commission and Court fees.	
2 2 0			6 2 6	Sundries and fees.	
				Bill of sale.	
				Furniture given up.	
				Bill of sale.	
3 3 0			11 10 6	Wages and Court fees.	
				Bill of sale.	
				Nothing realized.	
3 3 0	6 6 0	M. C. Stephen	13 9 6	Sundries and fees.	
8 14 8	3 3 0	Do.	22 4 6	Rent and fees	Sold for £
5 0 9	3 3 0	Do.	12 11 6	Sundries and fees.	
				Nothing realized.	
				Bill of sale.	
				Nothing realized.	
				Do.	
				Do.	
				Do.	
				Do.	
				Funds not yet distributed.	
2 2 0			4 7 0	Bill of sale.	
				Sundries and fees.	
27 18 5	20 0 0	William Hellyer	62 18 2	Rent, wages, and fees.	
	3 3 0	M. C. Stephen			
	6 1 2	Edward Burton			
5 6 10	3 3 0	M. C. Stephen	81 13 6	Nothing realized. Rent and Court fees.	
		Do.		Do.	

NAME OF INSOLVENT.	LIABILITIES AS PER SCHEDULE.			ASSETS AS PER SCHEDULE.			ASSETS REALIZED.	AMOUNT OF DIVIDEND.	ASSETS UNREALIZED.
	£	s.	d.	£	s.	d.			
Thomas Byrnes	13	19	0	5	0	0	.....	.....	.....
William Thompson	117	1	0	10	14	0	.....	.....	.....
Hugh Maxwell	1,945	16	1	29	9	0	18	3	9
Colin Cowan	165	13	4	63	15	0	5	16	6
Edward M'Evoy	1,057	1	0	306	4	5	31	11	6
James Campbell	1,145	3	2	1,122	0	0	58	1	9
Jacob Inder	4,202	10	0	1,075	0	0	500	0	0
Thomas Clifton	74	17	4	14	10	0	.....	.....	.....
Patrick O'Maher	130	0	0	13	0	0	.....	.....	.....
James Mitchell	48	7	11	28	15	6	.....	.....	.....
Gabriel Bryant	89	13	7	13	15	4	.....	.....	.....
James Clough Murray	642	11	6	232	18	8	64	5	6
Jane M'Grath	288	17	7	114	0	8	23	19	10
William Robert Skead	38	13	7	13	4	4	.....	.....	.....
Henry Goodwin	596	19	4	193	2	2	54	10	6
James Everingham	87	6	2	18	7	0	1	16	6
George Patrick	7,667	10	9	641	10	0	250	0	0
Daniel Packer	43	17	0	4	0	0	.....	.....	.....
Henry Ward	185	17	0	90	0	0	59	13	6
Richard Holt Thane	50	0	4	20	0	0	.....	.....	.....
Thomas Huskisson Cowell	564	17	10	15	0	0	.....	.....	.....
Robert Sparrow	587	19	11	40	0	0	.....	.....	.....
John Hill Furlonger	29	14	10	17	15	0	.....	.....	.....
John Kenny	29	1	4	9	15	0	.....	.....	.....
Patrick Grady	285	18	7	225	0	0	.....	.....	.....
Henry Newbon	1,349	6	8	1,285	14	7	.....	.....	.....
Samuel Thomas Gill	200	15	0	95	0	0	.....	.....	.....
George Harpur	15	2	8	.....	.....	.....	.....	.....	.....
Edward Howard Lomax	35	7	9	10	0	0	.....	.....	.....
Lewis Barnett	327	12	9	50	15	0	.....	.....	.....
William Coleman Leslie	72	18	11	20	19	9	.....	.....	.....
Oliver Maxwell	504	15	7	504	15	7	.....	.....	.....
Anastasia Walsh	637	0	0	561	3	5	.....	.....	.....
George Dean Skardon	101	7	6	9	14	6	.....	.....	.....
James Behan	759	7	3	192	9	6	.....	.....	.....
Henry Wood	316	9	6	13	0	0	.....	.....	.....
John Prestage	45	14	4	32	15	0	.....	.....	.....
Decimus John Toolcy	108	17	6	20	0	0	7	12	6
Fitzarthur Hogue	370	4	4	224	0	0	38	0	6
Alexander Gow	No Schedule	.....	.....	.....	.....	.....	105	0	0
Robert Pearson	502	10	0	98	16	6	127	18	1
Philip Lacombe	432	11	3	221	7	4	183	18	4
William Ellis	5318	0	1	25	0	0	.....	.....	.....
Thomas Underwood	10,653	6	0	10,405	0	0	64	6	0
James Belcher	No Schedule	.....	.....	.....	.....	.....	.....	.....	.....
Joseph Pitt	60	13	6	5	0	0	.....	.....	.....
Thomas Buff	127	8	8	95	15	0	.....	.....	.....
Thomas Threlchley	2,064	3	4	1,920	0	0	.....	.....	.....
Francis Burke	407	11	6	33	5	0	.....	.....	.....
William Baks	171	18	0	153	10	0	.....	.....	.....
Alexander Fleming	2,919	0	0	2,505	0	0	136	9	6
Edmund Burgess	104	19	3	77	0	0	45	9	6
James M'Crossin	1,207	16	7	2,887	8	3	.....	.....	.....
John Wood	158	17	7	7	10	0	.....	.....	.....
John Casey	64	9	3	13	0	0	.....	.....	.....
Edward Watts	301	5	1	220	10	0	81	11	6
Renben Couzins	153	0	0	41	0	0	51	2	6
Alfred Hatch	2,895	5	3	585	2	6	402	8	9
Thomas Cross	1,487	10	0	345	0	0	2	17	6
James Chester Crisp	1,251	9	6	35	0	0	.....	.....	.....
Joseph Taylor	202	15	0	115	0	7	19	3	0
Thomas Barnes	702	12	6	170	12	0	74	15	0
Samuel Pierce	116	2	4	75	0	0	18	7	7
George Jordan	110	0	0	12	0	0	.....	.....	.....
Joseph D. Downey	43	5	1	14	0	0	.....	.....	.....
George Chapman	101	3	0	3	0	0	.....	.....	.....
John Huley	218	9	4	21	5	0	17	11	6
William Sauerbier	144	0	0	54	7	6	9	0	6
Charles Fish	31	8	0	11	0	0	.....	.....	.....
Michael Lennon	600	0	0	70	0	0	6	12	6
Abraham Polack	15,874	11	6	20,403	0	0	.....	.....	.....
Thomas Pearce	872	19	1	22	14	6	2	5	0
Richard Murray	98	6	4	11	10	0	.....	.....	.....
George Wells	75	5	2	10	0	0	.....	.....	.....
Samuel Whiddon	485	18	0	446	1	6	.....	.....	.....
Thomas Brennan	159	8	7	25	0	0	.....	.....	.....
Edward Jones	8	10	0	1	0	0	.....	.....	.....
Joseph Palmer	40	8	8	20	0	0	6	8	0
William Elmhurst Potts	1,024	0	0	105	5	8	17	8	3
Gordon Forbes Davidson	8,769	15	1	3,002	1	3	.....	.....	.....
Saul Solomon	222	7	2	35	0	0	.....	.....	.....

N.B.—With reference to the Column headed "Assets Unrealized," it is to be observed that in every estate, excepting those in course of collection, all assets have been realized, with the exception of bad and doubtful debts, for which the Assignee has had no authority from the Creditors to sue.

RETURN of ROBERT HAMILTON SEMPILL, Official Assignee, in accordance with the Motion of

No.	INSOLVENT'S NAME.	LIABILITIES.			ASSETS.			DIVIDEND PAID.		PROPORTION OF ASSETS IN HAND IN TREASURY.					
		£	s.	d.	£	s.	d.	Rate per £.	Amount.						
1	Reynolds	6,170	0	6	6,070	7	0	208	3	6	Preferent proofs, 20s.	89	17	4	.....
2	Brown	34,384	14	2	95	0	0	.....	.....	.....	.....	.....	.....	.....	.....
3	M'Gee	58	19	0	5	0	0	.....	.....	.....	.....	.....	.....	.....	.....
4	Bell	697	4	10	65	0	0	.....	.....	.....	.....	.....	.....	.....	.....
5	Chambers	1,216	16	6	1,109	15	0	74	6	4	Prof. proof, 10s. on £26.	13	0	0	10 15 5
6	Stein	436	0	5	5	10	0	5	0	0	.....	.....	.....	.....	2 4 2
7	Winning	33	6	0	4	0	0	.....	.....	.....	.....	.....	.....	.....	.....
8	Lawley	479	0	5	407	9	4	26	0	0	.....	.....	.....	.....	.....
9	Sugden	1,565	17	9	1,553	10	0	50	2	3	.....	.....	.....	.....	14 16 3
10	Robinson	61	9	6	5	0	0	.....	.....	.....	.....	.....	.....	.....	.....
11	Hoare	403	2	8	29	1	8	.....	.....	.....	.....	.....	.....	.....	.....
12	Skerrett	435	1	9	420	0	0	13	19	6	.....	.....	.....	.....	.....
13	Robinson, Alexr.....	637	16	11	26	0	0	6	3	2	.....	.....	.....	.....	.....
14	Barron	127	18	0	34	12	0	97	7	0	.....	.....	.....	.....	84 8 11
15	Paterson	426	15	0	95	10	0	37	2	0	.....	.....	.....	.....	25 10 0
16	O'Farrell	553	10	0	15	0	0	.....	.....	.....	.....	.....	.....	.....	.....
17	Watt	3,807	0	0	3,403	15	0	186	7	0	Preferent proof, 20s.	34	15	0	128 3 10
18	M'Creedy	177	0	9	49	7	6	14	18	7	3s. 5 ³ / ₄ d. on £45.	7	15	2	.....
19	Russell	31	19	0	3	0	0	.....	.....	.....	.....	.....	.....	.....	.....
20	Turner	201	10	9	38	12	6	87	16	4	20s.	65	6	4	.....
21	Wilson	94	11	6	1	0	0	6s. 59	8	0	.....	.....	.....	.....	.....
22	Sacks.....	1,366	5	5	250	0	0	5	5	0	.....	.....	.....	.....	.....
23	Hughes.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
24	Briggs	208	17	7	72	7	6	71	0	0	4s. 7d. on £101.	23	3	0	.....
25	Pratt	145	11	3	63	4	0	2	19	9	.....	.....	.....	.....	0 16 3
26	Saunders	91	14	5	5	0	0	.....	.....	.....	.....	.....	.....	.....	.....
27	Whitfield	677	0	10	527	0	10	.....	.....	.....	.....	.....	.....	.....	.....
28	Paine.....	608	1	9	53	14	3	.....	.....	.....	.....	.....	.....	.....	.....
29	Boyce	401	16	7	280	0	0	.....	.....	.....	.....	.....	.....	.....	.....
30	Moody	235	1	3	46	3	0	.....	.....	.....	.....	.....	.....	.....	.....
31	Rowe.....	7,549	11	4	585	0	0	1,909	1	2	.....	.....	.....	.....	1,415 2 11
32	M'Evoy.....	128	9	6	61	11	0	10	4	6	4s. 1 ¹ / ₂ d. on £1918s. 6d.	4	2	9	.....
33	Langley	517	0	0	986	19	2	96	10	7	Prof. 11s. 4 ¹ / ₂ d. on £1265s.	72	0	1	.....
34	Stone.....	1,206	14	4	785	8	2	88	10	0	.....	.....	.....	.....	17 13 3
35	Banfield.....	105	14	0	60	4	4	.....	.....	.....	.....	.....	.....	.....	.....
36	Walton	237	0	0	17	0	0	20	18	6	.....	.....	.....	.....	8 16 6
37	Goodin	102	15	1	31	15	2	13	18	11	.....	.....	.....	.....	10 8 11
38	Hall	272	3	0	60	10	0	5	15	0	Prof. proofs, 6s. 6 ¹ / ₂ d. on £65s. 6d.	2	1	0	.....
39	Silk	268	0	4	95	0	0	21	16	0	.....	.....	.....	.....	13 7 6
40	Gouldsborough	89	8	5	17	17	0	.....	.....	.....	.....	.....	.....	.....	.....
41	Martin	1,582	14	1	1,167	0	5	.....	.....	.....	.....	.....	.....	.....	.....
42	M'Conville	70	4	6	7	0	0	4	10	6	.....	.....	.....	.....	0 16 0
43	Bradley.....	1,233	10	0	467	0	0	136	3	1	Prof. pfs. 20s. on £72 10s. 8 ³ / ₄ d. on £512 11s. 11d.	89	13	6	.....
44	Sloan.....	86	8	0	5	0	0	.....	.....	.....	.....	.....	.....	.....	.....
		£69,183	17	1	19,086	4	10	3,253	6	8	.....	402	15	2	1,727 3 11

INSOLVENT ESTATES.

19

MR. LOVE, from the date of Mr. Sempill's appointment on 8th March, 1860, to 30th June, 1860.

EXPENSES.			SOLICITOR'S NAME.	WHAT DEBTS SOLD BROUGHT.	REMARKS.
Commission.	Law Costs.	Other Expenses.			
£ s. d.	£ s. d.	£ s. d.		£ s. d.	
.....	118 9 0	.....	.....	Property mortgaged over its value. Disbursements (£118 9s.) are for interest on mortgages, rent, taxes, &c.
.....	0 19 0	.....	.....	Four acres of land, value £20, held to order of creditors. Furniture given to insolvent.
.....	0 3 0	.....	.....	Furniture, &c., given to insolvent.
.....	Furniture, &c., given to insolvent.
.....	50 10 11	.....	.....	Property mortgaged over its value. Disbursements (£50 10s. 11d.) paid in rent, City taxes in arrear, repairs to houses, &c.
2 2 0	0 13 10	.....	.....	No debts proved.
.....	0 7 0	.....	.....	Furniture, &c., given to insolvent.
.....	0 10 10	.....	.....	Assets realized were received by agent (Wallis); who never paid the same to me, but went into insolvency a few days after the receipt of the money by him.
.....	19 11 0	.....	.....	Property mortgaged over its value, except one lot unsaleable. Disbursements, £19 11s. are for auction charges, Court fees, cartage, storage of goods, &c. £13 10s. was also paid to insolvent's attorney (for costs incurred by him before sequestration) to release a deed held on lien for the amount.
.....	0 5 6	.....	.....	Assets given to insolvent.
.....	0 5 0	.....	.....	No assets recovered by special messenger sent from Turon to Tambaroora by Assignee.
.....	14 10 10	.....	.....	Agent employed to attach cattle paid himself £13 9s. 6d. by sale of cattle on account. There is a claim on behalf of this estate for £100 or more, for cattle collected in estate of Andrews, alleged to be Skerrett's.
2 2 0	1 1 0	3 0 2	McCulloch..	.....	No debts proved. Expenses, £3 0s. 2d., for Court fees, cartage, storage of goods, &c.
.....	4 8 4	8 9 9	Billyard....	.....	Disbursements, £8 9s. 9d., for store rent, cartage, sale charges, advertising, &c. Law costs, £4 8s. 4d.—under direction of creditors, action brought and verdict to estate for £8t. Defendants have moved for new trial.
.....	0 13 4	10 18 8	McCulloch..	.....	Expenses, £10 18s. 8d., are—agent's charges, Court fees, sale charges, &c. The assets realized are for cattle, which were mortgaged, and the mortgaged claims the money.
.....	0 7 6	.....	.....	Assets given to insolvent.
.....	23 8 2	.....	.....	Assets sold at auction on 1st November, 1860, by order of creditors, for £45, except a legacy for £1,500 now in litigation at Copenhagen. Disbursements, £13 8s. 2d., are for agency, Commissioner's fees, and attachment fees at Bathurst. Goods sold in error by agent refunded. Landed property mortgaged over its present value.
2 2 0	5 1 5	.....	.....	Disbursements, £5 1s. 5d., are for advertising, sale charges, bailiff's fees, &c.
.....	0 3 0	.....	.....	Furniture, &c., given to insolvent.
8 15 8	13 14 4	.....	.....	Disbursements, £13 14s. 4d., are for allowance to insolvent, sale charges, attachment fees, &c.
1 1 0	3 3 0	2 5 5	Iceton ...	.....	Law costs, £3 3s.—by direction of creditors. Disbursements, £2 5s. 8d., are for boat hire, advertising, &c. No debts proved.
.....	7 10 9	.....	.....	Assets in goods given up to insolvent.
.....	Expenses, £7 10s. 9d., are—Court fees, &c., &c. Furniture and assets, valued at £270 by insolvent, and ordered to be given up to him.
.....	No schedule filed. Estate released on payment of creditors.
7 2 0	8 10 0	.....	.....	£32 paid to Allen and Bowden, viz—for rent £17, and £5 5s. law costs incurred by insolvent, and for which they held lease of land for 99 years in security on licn. Disbursements, £8 10s., are—Court fees, bailiff's fees, sale charges, advertising, &c.
.....	2 3 6	.....	.....	Stock-in-trade stated as assets, and was taken, by one creditor ten days before sequestration. Furniture given to insolvent.
.....	0 3 0	.....	.....	Expenses, £2 3s. 6d., are Court fees, cartage, advertising, &c.
.....	0 11 0	.....	.....	Furniture given to insolvent.
.....	0 4 0	.....	.....	Assets, 100 shares in Fitz Roy Iron Company, were transferred in security before sequestration; half an acre of land, unsaleable. Furniture given to insolvent.
.....	0 3 0	.....	.....	Assets and debts irrecoverable.
.....	0 3 0	.....	.....	Assets—half share in the "Caroline" schooner, lost at sea, action pending against Insurance Company for insurance; also £100 due to insolvent by Captain Watkins, lost in the "Caroline."
2 2 0	2 10 6	.....	.....	Estate released on payment of creditors by insolvent. Bill due to Assignee for Court fees paid by him, and other expenses, £2 10s. 6d.
.....	493 18 3	.....	.....	Assets of goods in possession at date of sequestration claimed by trustees of Thompson, Symonds, & Co., and action brought against Assignee; verdict in his favour; new trial pending. Disbursements, £493 18s. 3d., for rent, wages, &c., &c., in carrying on the business and holding goods by order of creditors.
2 2 0	3 19 9	.....	.....	Expenses, £3 19s. 9d., are—Court fees, sale charges, cartage, advertising, bailiff's fees, &c.
9 13 0	14 17 6	.....	78 0 0	Expenses, £14 17s. 6d., are—Court fees, bailiff's fees, sale charges, advertising, &c.
.....	70 16 9	.....	.....	Expenses, £70 16s. 9d., are for bailiff's expenses in attachment and recovery of property concealed, agency, advertising, &c.
.....	0 3 0	.....	.....	A horse died of disease. Furniture given to insolvent.
2 2 0	15 0 0	.....	.....	Expenses, £15,—Court fees, allowances to insolvent, bailiff's fees, cartage, advertising, &c.
.....	3 10 0	.....	.....	Expenses, £3 10s. 0d.,—Court fees, livery of horse, cartage, &c.
2 2 0	1 12 0	.....	.....	Expenses, £1 12s. 0d., for Court fees, bailiff's fees, &c. Commission, £2 2s. 0d., remitted to insolvent's widow.
.....	8 8 6	.....	.....	Expenses, £8 8s. 6d., are bailiff's fees, Court fees, advertising, &c. Furniture given to insolvent.
.....	1 4 6	.....	.....	Expenses paid by Assignee, and still due, £1 4s. 6d. No commission, assets having been given to insolvent.
.....	0 5 0	.....	.....	Assets all sold by Sheriff, and nothing left for creditors.
2 2 0	1 12 6	.....	.....	Expenses, £1 12s. 6d.,—Court and bailiff's fees, &c.
6 2 10	40 1 9	.....	.....	Expenses, £40 1s. 9d.,—bailiff's fees, keeper's wages, rent, allowance, sale charges, advertising, &c.
.....	0 8 0	.....	.....	Assets given to insolvent.
49 10 6	9 5 8	951 3 4	.....	78 0 0	

ROBERT HAMILTON SEMPILL, Official Assignee.

RETURN of the several Insolvent Estates assigned to the late Mr. ADAM WILSON,

NAME.	PER SCHEDULE.		AMOUNTS.	
	Liabilities.	Assets.	Received.	Paid.*
	£ s. d.	£ s. d.	£ s. d.	£ s. d.
Grace Thomas	143 16 4	2 0 0	.....	.....
Penman William	65 9 0	20 0 0	.....	.....
Crego John Bourne	455 12 10	115 14 7	15 0 0	2 2 6
Ramsay and Burt	2,122 17 4	1,035 2 0	20 0 0	16 14 6
Stephens J. H.	289 0 0	270 0 0	.....	.....
White Henry	915 16 6	10 0 0	.....	.....
Haviland Edwin	646 7 2	202 0 0	91 2 3	2 11 2
Murray Geo. Henry	258 10 6	12 0 0	.....	.....
Burns John	149 4 4	85 10 0	.....	.....
Hart Abraham	1,472 10 10	95 0 0	51 9 1	4 17 6
Lloyd Joseph	523 0 0	323 0 0	60 0 0	5 15 6
Brown William	42 6 3	6 0 0	.....	.....
Edwards John	678 12 4	361 2 0	203 0 0	118 8 9
Jones Saml.	131 9 5	34 8 0	20 0 0	4 5 6
Egan Peter	2,903 19 10	1,264 7 3	75 19 4	19 9 10
Hordern Joseph	432 12 4½	357 10 0	154 0 0	70 15 5
Bury H. D.	19 5 0	13 0 0	.....	.....
Casey Archd.	37 13 7	17 0 0	14 0 0	.....
Whiteman Thos.	144 14 7	31 0 0	10 8 0	1 13 0
Wormersly Byfield	127 9 4	72 2 8	11 15 1	1 0 0
Wood Charles	42 6 8	17 0 0	2 19 0	0 17 0
Robertson John	4,287 9 1	3,220 8 8	384 11 5	86 0 1
Smythe Willm.	1,049 10 10	1,509 0 0	803 1 0	601 9 11
Paul Ann Chart.	115 13 4	38 15 0	.....	.....
Clark John	209 19 10	64 15 7½	78 1 6	2 7 4
Denning Willm.	516 5 1	118 15 0	82 16 7	74 10 11
Tuckwell Eliz.	284 16 7	74 15 0	19 10 0	0 10 0
Merrill Rt. Dodge	No Schedule.	.....	.....	.....
Swan H. A.	70 2 11	34 15 5	.....	.....
Robertson Chas.	839 15 6	20 0 0	2 19 0	.....
Scott Chas. Geo.	175 12 3	65 14 4	.....	.....
Graham Thos.	526 0 0	290 0 0	30 0 0	33 4 6
Dent Geo.	364 5 3	.....	35 0 0	1 18 0
Ahern Wm.	86 2 6	13 10 0	.....	.....
Brooks G. G.	147 18 6	17 0 0	.....	.....
Sheffield Anty.	186 4 3	90 0 0	56 12 0	9 8 6
Bowman John	685 8 2	516 9 6	177 5 3	4 6 6
Hutchinson W. B.	141 5 7	10 0 0	2 2 0	.....
Hayward W.	44 9 3	14 4 0	5 4 0	.....
Bowen Martin	316 18 0	49 0 0	.....	.....
Hardy Willm.	87 18 0	70 0 0	11 18 4	.....
Rivett Thos.	No Schedule.	.....	.....	.....
Bridson Mattw.	93 10 6	65 5 6	.....	.....
Adatus John	150 0 0	18 0 0	3 0 0	.....
Whiteman Saml.	72 6 6	10 0 0	2 0 0	.....
Anderson J.	79 14 0	9 0 0	.....	.....
Barnes P. J.	92 11 7	48 6 2	24 6 9	6 14 6
Amess John	94 7 0	25 0 0	.....	.....
Green G. A.	867 19 9	288 15 11	33 19 7	5 5 0
Bibbey John	No Schedule.	.....	5 11 0	5 11 0
Whitworth R. P.	15 17 7	3 0 0	.....	.....
Gregory Wm.	505 5 11	24 0 0	5 0 0	.....
Davis and Horton	No Schedule.	.....	.....	.....
Lockyer F. M.	143 0 0	25 0 0	83 6 8	55 16 8
Henderson P. E.	No Schedule.	.....	.....	.....
Brown Thos.	52 17 0	22 0 0	.....	.....
Russell Jas.	125 9 4½	16 0 0	.....	.....
Simcs W. J.	48 16 0	7 10 0	.....	.....
Brown Jas. T.	83 2 6	10 0 0	2 19 0	.....
Henderson H.	323 16 6	63 0 0	244 10 6	44 8 7
Watkins W. H.	820 11 0	25 16 6	15 0 0	.....
Cooke J. and Son	3,792 18 2	2,011 1 11	806 16 6	313 18 8
Shearston Jno.	137 14 0	88 6 8	1 10 0	.....
Langan Rd.	317 7 0	11 0 0	.....	.....
Wills R., senr.	110 16 5	1 10 0	.....	.....
Reed John	13 0 0	5 0 0	.....	.....
Sorgeant S. B.	8,764 3 0	2,945 19 5	2 12 6	0 16 6
Hickey John	352 11 3	30 0 0	.....	.....
Harris Thos.	46 3 0	41 15 0	6 11 0	2 4 0
Mann Alexr.	168 0 0	11 9 4	2 2 0	.....
Halket Alexr.	186 10 0	174 0 0	.....	.....
Robins Ann	62 16 0	5 0 0	.....	.....
Walker J. A.	1,571 6 3	491 17 0	.....	.....
Price K.	1,786 14 8	1,120 0 0	.....	.....
Smith Hugh	329 11 11	149 1 6	.....	.....
Hayes C. D.	1,511 8 10	50 0 0	.....	.....
M'Lenahan J. W.	292 0 5	231 11 8	.....	.....
Jones and Palmer	5,447 19 7	69 7 0	.....	.....
Vinson Edwd.	17 10 0	3 5 0	.....	.....
Gorman Wm.	58 2 6	17 8 3	201 16 9	91 17 6
Carried forward	.....	.....	.....	.....

* This includes Mortgages, Allowances to Insolvents, and Court Fees.

NAME.	PER SCHEDULE.		AMOUNTS.	
	Liabilities.	Assets.	Received.	Paid.*
	£ s. d.	£ s. d.	£ s. d.	£ s. d.
Brought forward				
Nicholson Thos.....	1,312 0 0	153 6 0	50 4 1	1 5 6
Matthews J. A.	4,029 10 4	406 10 10	25 18 8	0 10 6
West Josiah	244 15 5	106 4 0	30 6 0	16 11 0
Conty Jeremiah	772 9 4	191 11 4	.....	.....
Mobbs John.....	1,175 0 0	572 15 11	.....	.....
Burrows F.	1,411 0 0	1,241 7 5	80 0 0	.....
Tierney Michl.	350 11 0	259 0 0	.....	.....
Phillips John	121 2 3	8 0 0	.....	.....
Penrose Wm.	87 15 0	31 11 0	.....	.....
Roberts J. R.	226 11 11	78 3 0	.....	.....
Falls Jas.....	149 0 0	28 3 0	2 16 0	1 0 0
Colles H. P.	6,941 17 0	30 0 0	.....	.....
Cameron J.	37 6 2½	20 0 0	.....	.....
Hart P. Augusta	126 1 5	5 0 0	.....	.....
Newton W. H.	35 7 6	25 15 0	.....	.....
Swift Q. V.	259 5 10	34 0 0	80 0 0	3 12 8
Deacon T. M.	418 7 0	231 7 6	13 10 0	3 18 6
Hill Norris	650 18 2	86 0 0	.....	.....
Malone Henry.....	654 18 0	588 6 2	226 10 9	166 14 8
Edwards Edward	1,455 13 0	1,942 13 7	1,588 3 1	350 18 7
Margrave P. H.	166 17 0	38 17 4	.....	.....
Hewett Owen	620 12 2	111 14 0	650 0 0	583 18 0
Slatyer Jas.	67 12 6	16 0 0	.....	.....
Muriel Robt. (Private).....	1,012 19 3	1,219 3 11	149 19 3	.....
Miller ——— (Ditto)	750 0 0	410 0 0	.....	.....
Muriel and Miller	10,773 15 7	6,677 13 5	2,645 1 0	189 3 0
Thompson H. O.	248 9 0	177 6 0	15 7 6	4 14 0
Hamilton John	601 9 0	187 0 0	100 0 0	6 16 6
Parker George	273 14 2	30 0 0	9 0 0	.....
Lilly E. J.	434 16 1	360 5 0	.....	.....
Boniface B. B.	505 19 0	116 18 2	24 4 6	5 0 0
M'Analty Geo.	584 16 6	180 0 0	113 11 10	15 9 6
Blomley Jas.	70 19 4	8 0 0	.....	.....
Lambourne Sarah	55 0 0	18 0 0	.....	.....
Herman F. L.	219 0 0	42 0 0	34 7 9	2 0 0
Mais H. C.	138 12 8	40 2 0	13 10 0	.....
Williams Wm.	88 3 6	12 0 0	.....	.....
Coventry Andw.	2,264 1 11	2,151 10 0	995 19 4	778 17 8
Green Jas.	511 15 0	121 5 0	166 14 3	28 3 6
Mance Thos.	96 6 4	37 0 0	32 15 0	6 11 6
Doran John	291 10 0	152 18 4	25 13 0	7 14 0
Taylor W. S.	1,766 17 6	477 18 9	292 14 7	30 18 0
Cameron A. C.	38 9 2	4 0 0	.....	.....
Baker T. C.	506 0 0	480 3 1	.....	.....
Smith and Pattison	3,117 0 0	1,763 15 6	1,035 17 6	972 9 0
Gorman John	3,063 15 4	1,538 12 0	201 16 9	71 17 6
Maher Thos.	157 0 0	15 0 0	.....	.....
Cuthbertson J. B.	112 5 0	3 0 0	.....	.....
Minors J.	358 17 6	327 0 0	.....	.....
Tickle John.....	256 6 6	31 14 5	33 1 8	1 4 0
Peach N. F.	287 9 3	150 17 6	.....	.....
Da Costa F. G.	161 11 0	5 0 0	.....	.....
Cummins P.	88 3 9	25 18 9	3 6 6	.....
Cina non John	118 0 0	3 0 0	.....	.....
Rawlings E.	4,739 3 6	4,713 17 0	1 16 6	1 16 0
Carmichael David	443 11 2	40 0 0	3 0 0	.....
Moses M.	125 0 0	35 0 0	.....	.....
Collins Saml.	54 3 0	9 0 0	.....	.....
Stearson Jas.	2,143 17 2	1,774 8 6	516 14 5	68 9 11
M'Donagh L.	190 15 8	148 2 8	13 6 9	3 14 0
Martyn and Schroder	4,944 17 1	1,779 13 6	175 10 10	1 7 0
Glaugham J. O.	600 7 5	470 0 0	183 8 5	36 4 11
Roche C. W.	73 6 9	8 10 0	1 1 0	.....
Blaney W.	57 10 0	5 0 0	.....	.....
M'Mullen Michl.	81 6 9	7 0 0	.....	.....
Jerrell Wm.	538 9 1	436 15 0	.....	.....
Everingham Wm.	350 4 0	23 6 0	5 0 0	2 10 0
Royal Peter.....	9,219 14 9	9,419 14 0	397 19 4	469 9 5
Cutcliffe	280 0 8	20 0 0	.....	.....
Capper F. H. J.	488 18 0	93 10 0	12 0 0	.....
Carried forward .....	.....	.....	.....	.....

—Continued.

COMMISSION TO OFFICIAL ASSIGNEE.	LAW COSTS.	DIVIDENDS.	REMARKS.
£ s. d.	£ s. d.		
231 12 10			
5 0 4	.....	7d.	
2 11 10	.....	11s. 7d.	
3 0 7	.....	.....
.....	
.....	
.....	80 0 0	.....	{ Mr. Wright, solicitor, for expenses of action on property secured (action withdrawn); cash from Melbourne to pay the expenses from Messrs. Edwards and Co.
.....	
.....	
.....	
1 16 0	.....	.....
.....	
.....	
11 0 0	.....	10s.	
2 2 0	.....	.....
.....	
11 6 4	6 12 8	1s.	{ Mr. Wright, solicitor. Rent and supplies to carry on the Inn—large.
39 10 2	{ 20 12 5 } 203 1 10	1s.	{ Mr. Yarnton, solicitor. Milford and Cary, solicitors.
.....	
32 10 0	20 1 0	.....	Stanhouse and Hardy, solicitors.
.....	
9 13 8	.....	.....	A dividend since Mr. Wilson's death.
.....	
127 5 0	13 19 11	4s.	Mr. Wright, solicitor.
3 3 0	3 10 0	.....	Mr. Wright, solicitor.
10 0 0	.....	1s. 1½d.	
2 2 0	.....	.....
.....	
2 8 5	.....	.....
7 13 3	3 11 2	2s. 0½d.	Paid Miss Donnison, by direction of creditors, Mr. Wright, solicitor. (£16 7s. 1d.)
.....	
3 8 9	.....	14s. 1½d. pref.	
1 10 0	.....	18s. 10d. pref.	
.....	
49 2 6	2 6 10	4s. 11d.	Mr. Wright, solicitor.
8 11 6	.....	4s.	
5 5 6	12 2 2	8s. 11d.	Mr. Wright, solicitor.
2 2 9	.....	2s. 4½d.	
6 10 9	.....	18s.	
.....	
.....	.....	.....	Effects all mortgaged.
51 3 6	5 1 1	2s. 5d.	{ Mr. Want, solicitor. Large amount paid on mortgage, Lewis Marks.
10 1 10	112 0 0	.....	Mr. Wright, solicitor.
.....	
.....	
2 14 0	.....	.....	All mortgaged.
.....	.....	.....	Mortgaged.
.....	
2 2 0	.....	.....
.....	
3 0 0	.....	.....
.....	
27 19 9	2 0 8	2s. 5½d.	Mr. Wright, solicitor.
3 13 0	.....	1d.	
8 7 11	33 16 6	8s.	{ Mr. Hart, solicitor. Compulsory sequestration; nearly all book debts not recovered.
13 16 9	.....	6½d.	
1 1 0	.....	.....
.....	
.....	
2 10 0	.....	.....
.....	
20 2 3	.....	.....	{ A contract in a building was carried on by the Official Assignee per direction of the creditors, and the sum of £91 12s. 4d. is due the Official Assignee.
.....	
2 2 0	.....	.....
728 6 2	.....	.....

NAME.	PER SCHEDULE.		AMOUNTS.	
	Liabilities.	Assets.	Received.	Paid *
	£ s. d.	£ s. d.	£ s. d.	£ s. d.
Brought forward				
McClelland J.	173 7 1	21 4 0		
McEvoy M.	336 0 6	207 0 0		
Leeder John	205 7 9	80 9 6	20 7 9	3 11 6
Nixon Thos.	43 6 11	9 0 0		
Rowley T., junr.	257 7 6	170 0 0	43 2 3	2 19 6
Pearce Thos.	186 0 7	74 0 0	5 16 4	0 7 0
Sinclair Thos.	989 8 4	620 0 0	36 1 3	28 9 9
Dunlop Wm.	36 12 1	11 19 6		
Jennings Jno.	61 10 0	21 0 0	15 8 6	9 13 0
Plumb Wm.	49 13 7	3 0 0		
Mauley Robt.	224 10 6	59 0 0	2 19 6	
Wright J.	39 11 1	20 17 0	2 8 6	0 3 0
Waugh Alexr.	309 8 4	172 2 9	139 6 11	5 18 6
Paine H. E.	258 7 0	66 0 0		
Curry Ralph	422 10 5	104 11 8		
Williamson Andw.	25 17 0	10 0 0		
Molesworth W. F.	103 1 6	40 0 0	24 0 0	2 5 0
Beaver J. and C.	416 10 11	325 5 0	128 16 10	7 11 0
Pritchard C. P.	235 1 0	95 0 0	75 0 0	2 0 0
Aubusson C. J. F.	466 13 6	97 0 0	3 3 0	0 1 0
Nott John	7,042 7 0	20 0 0	5 0 0	
Frey Jean	149 4 0	43 6 0	19 0 0	6 17 6
Fishburn W. H.	657 1 2	550 8 0	291 6 4	6 2 3
Newbourn H. J.	262 12 9	81 16 0		
Galt Lewis	25 8 0	3 0 0		
Murphy Saml.	183 13 5	14 11 0		
Cook Thos.	43 7 11	3 10 0		
Robinson John	574 11 10	540 0 0	138 15 7	68 17 0
Sayer T. B.	428 13 6	332 19 10	67 9 8	4 5 8
McRae John.	125 0 0	40 0 0	28 13 0	21 8 4
Evers Jas.	2,287 12 6	1,748 0 0		
Williams F. W.	161 8 0	3 0 0		
Carter Geo.	No Schedule.			
Cavanagh W. W.	250 6 3	196 0 0	52 18 6	5 0 0
Robinson B.	509 1 6	90 0 0	62 15 0	6 17 0 53 17 4
Carnoy John	20,152 13 11	30,103 0 0	494 2 3	456 13 1
Canavan P.	87 10 8	72 9 0	7 17 9	1 11 6
Byrnes Thos.	174 5 0	40 0 0		
Gibbes Willm.	No Schedule.			
Page Martin	No Schedule.			
Arthur Jas.	No Schedule.			
Garsed John	13,620 3 10	13,630 18 6	538 1 0	322 19 0
Wheatley —	98 11 5	13 10 0		
Total .....	£ .....	.....	.....	.....

* See Note, page 20.

N. B.—In several of these estates dividends have been declared since the late Mr. Wilson's death. Many of the estates made having under the securities.

Sydney, 19 April, 1861.

INSOLVENT ESTATES.

—Continued.

COMMISSION TO OFFICIAL ASSIGNEE.	LAW COSTS.	DIVIDENDS.	REMARKS.
£ s. d.	£ s. d.		
728 6 2			
2 2 0		1s. 10½d.	
4 6 3		9½d.	
3 3 0			
5 5 0			
2 2 0			
2 19 6			
2 5 6			
10 10 0		6s. 10½d.	
2 8 0		13s. 7½d.	
10 6 6		5s. 8d.	
7 10 0		2s.	
3 2 0			
5 0 0			
3 3 0			
14 11 3		6s.	
6 18 9			£68 17s. was paid to Mr. Sharp (rent).
6 14 7			Mr. Fitzhardinge, solicitor.
2 2 0	5 2 8		{ The alleged property was in England, in equity; a Bill of Costs sent out to Mr. Mackenzie; no funds to pay it.
5 5 0			
6 5 6			{ The sum of £53 17s. 4d. was paid to Mr. Baptist by direction of creditors.
24 4 1	10 0 0		{ Mr. Deniehy, solicitor; mortgaged money repaid included in expenses.
2 2 0			
28 12 6	156 9 6		Solicitors, Messrs. Wise, Wright, Holroyd, and Isaacs.
£889 4 4			

had the assets secured under mortgage, bill of sale, or assignment, the expenses in many cases are nominal, by payment being

J. P. MACKENZIE,
 Official Assignee of the above Estates.—
 (Assigned to me at the death of the late
 Adam Wilson, Official Assignee.)

RETURNS called for by the LEGISLATIVE ASSEMBLY.

NAMES OF ESTATES.	PER SCHEDULE.		REALIZED.	COURT FEES AND OTHER EXPENSES.
	Liabilities.	Assets.		
	£ s. d.	£ s. d.	£ s. d.	£ s. d.
Abbott Sylvanus	307 9 7	10 0 0	.....	.....
Abrahams Willm.	2,737 0 0	2,214 0 0	944 3 9	99 0 8
Arrowsmith Willm.	227 15 0	89 0 0	30 15 6	8 12 6
Arkins John	No Schedule filed.		39 10 7	2 10 0
Bissland John	74 7 0	52 4 0	11 7-10	2 19 0
Barnett Lewis	327 12 9	50 0 0	.....	.....
Brown David	3,408 3 3	2,307 0 0	18 1 6	4 12 0
Byrne Sylvester	623 1 6	71 18 0	61 8 6	4 18 3
Beattie, W. W.	86 6 6	16 0 0	.....	.....
Bubb Joshua	200 19 11	.....	.....	.....
Bird Thomas	248 18 11	36 9 0	.....	.....
Brown Geo. Willm.	5,447 5 6	3,897 15 6	2,140 5 7	20 14 0
Bullie John	933 7 6	470 16 0	178 15 11	9 16 7
Booth Thomas	169 17 6	37 3 9	11 0 0	3 4 0
Bainbrigg Sarah	62 3 9	31 10 0	.....	.....
Beauchamp H. H.	130 17 4	65 8 6	.....	.....
Bradley Peter	445 0 0	221 7 0	.....	.....
Becke Cecil Aug.	486 5 11	48 2 6	.....	.....
Brown Joseph	355 10 0	75 15 0	12 0 0	4 7 6
Brown Willm.	168 4 10	155 0 0	18 12 9	5 10 3
Burnett Thos.	No Schedule filed.		60 0 0	1 5 6
Brown Richd.	1,238 4 3	655 14 0	185 18 9	11 12 7
Booth John	616 13 0	30 0 0	.....	.....
Butters Duncan	136 9 11	14 10 0	.....	.....
Bland H. S.	1,943 3 6	1,327 13 1	212 15 1	24 8 9
Burt W.	395 6 9	24 10 0	.....	.....
Birch Geo.	1,041 10 4	864 0 8	.....	.....
Barker Arthur	853 2 0	40 0 0	.....	.....
Brewer Francis	144 1 4	130 0 0	.....	.....
Clarke Robt.	213 9 10	47 11 8	.....	.....
Crowley John.	419 14 7	168 0 0	27 3 10	3 6 6
Charlow Robt.	59 17 6	21 0 0	9 6 3	2 2 6
Cripps C. J.	260 19 1	214 0 0	17 14 0	2 6 6
Cunningham M.	36 19 7	1 0 0	.....	.....
Champion John.	308 7 0	94 15 0	12 12 6	0 4 6
Casey Willm. Patk.	1,077 11 10	800 4 11	408 16 0	40 7 11
Coleman Jade	220 0 0	10 0 0	3 5 0	1 15 0
Cripps James	136 0 0	75 13 0	.....	.....
Cahill Michael	1,732 9 0	1,680 0 0	.....	.....
Cantwell Thomas	313 5 4	158 11 6	51 15 0	3 8 6
Cooper Chr.	13,182 12 0	7,695 17 0	182 12 8	.....
Cootes Joseph	113 12 6	87 0 0	33 14 9	5 3 2
Crux Arthur	832 2 6	570 0 6	139 3 10	13 1 0
Creigh John	228 5 6	111 0 0	.....	.....
Crook Saml.	4,529 13 8	2,771 18 0	54 7 4	1 15 0
Crane Henry	239 0 6	26 0 0	.....	.....
Church James	63 8 10	6 1 0	.....	.....
Cohen B. B.	415 19 0	40 0 0	.....	.....
Cooper J. E.	185 16 10	30 0 0	.....	.....
Colliver Louisa	107 7 6	20 0 0	.....	.....
Carried forward .....	.....	.....	.....	277 2 2

INSOLVENT ESTATES.

of MURKIN commencing 1 January, 1858, and ending 30 June, 1860.

COMMISSIONER, OFFICIAL ASSIGNEE.		LAW COSTS.	DIVIDEND.		REMARKS.
£	s.	£	s.	d.	
53	2	5			Clothes only.
3	3	3			One-third of the charges was incurred by the removal of goods brought away to a better market.
3	3	0	33	17	Paid tax costs to Mr. Wright, solicitor. Compulsory sequestration.
2	18	10			Mortgaged. (Of no value to estate.)
3	3	0			
4	1	6			
103	4	2			Clothes and furniture only.
8	9	0			Bill of sale. Nothing available.
2	2	0			Insolvent had only his clothes and surveying instruments, and these were seized for rent.
					Insolvent resided at Lane Cove. A cow never found, and a horse (valued £3) died from starvation.
					Clothes and furniture, lien upon for rent.
					Insolvent was a travelling hawker. All his assets (excepting book debts) secured, and in possession of Mr. Falloon, Albury. No dates or particulars of book debts.
					Insolvent a hawker. The only asset was furniture, secured by bill of sale; and £111, book debts, not recovered; owing over several districts.
					Insolvent property and lease mortgaged.
					Schedule misrepresented. Leasehold mortgaged.
					A sum of money recovered by the Official Assignee.
					Insolvent absconded.
					Only furniture and apparel.
					Furniture and clothes only.
					Paid Mr. Hart, solicitor, tax costs of compulsory sequestration.
					Paid Mr. Husband tax costs for recovering £105 2s. 9d. in an action.
					Furniture and clothes only.
					This estate was released. Assets, leasehold property, and mortgage; remaining part being furniture.
					Furniture and apparel given to insolvent by creditors.
					All the effects secured.
					Clothes and furniture only.
					Insolvent was a pawnbroker; the amount owing being complicated to make out, and most of them disputed.
					This amount paid by a friend of insolvent's to pay rent and expenses.
					Damaged goods.
					Furniture and wearing apparel. A few book debts bad.
					Estate released by an arrangement with the mortgagee and creditors.
					No dividend declared. A dispute as to right to sell. Landlord claimed furniture.
					Insolvent absconded. No assets could be found to attach. The receipt was a dividend in an estate.
					Assets mortgaged.
					Raid Mr. Fitzharding, solicitor, for bringing an action against M. E. Murnin, by directions of creditors and having lost it, Official Assignee had to pay out of his own pocket, in June last, £169 8s. 7d., no part yet repaid to him. The action was by the creditors directions.
					Furniture and clothes.
					No available assets.
					Furniture and clothes only.
					Ditto ditto and tools of trade.
					Furniture and clothes.

RETURN, &c.

NAMES OF ESTATES.	PER SCHEDULE.				REALIZED.	COURT FEES AND OTHER EXPENSES.
	Liabilities.		Assets.			
	£	s. d.	£	s. d.		
Brought forward.....						£ 277 2 2
Dibley Ebenezer	1,542	15 0	1,450	0 0	20 0 0	6 14 8
Dunn Nichodemus	220	3 0	193	10 0	82 5 8	8 9 0
De Witt Gilbert	419	0 0	140	12 6		
Davidson James	851	11 4	904	11 8		
Dharris Joseph	528	10 0	253	0 0		
Dixon John	2,190	13 0	10	0 0		
Dorrington John	93	10 0	77	0 0	4 6 0	
Dunn John W.	690	2 9	84	5 0	42 2 5	5 9 0
Davis John	92	7 0	83	10 0	17 8 5	15 17 6
Dobson J. S.	312	5 0	103	17 6	13 17 6	3 2 0
Dwyer Dennis	No Schedule filed.					
Davis Noson	64	9 0	5	10 0		
De Lannoy A.	28	15 0	5	0 0		
Dwyer J. J.	76	11 0	12	0 0		
Dillon David	192	10 3	16	16 0	8 0 0	0 15 0
De Boos C.	108	5 7	15	0 0		
Evven R. R.	556	7 1	93	14 10 1/2	61 10 0	3 15 6
Furnifol Robt.	660	0 0	607	0 0	69 19 6	3 16 0
Frazer W.	1,298	6 6	1,283	1 6	658 15 8	19 10 6
Foley W. H.	207	14 6	28	0 0	0 11 6	
Fryer J. R.	9,071	5 6	4,353	18 6	89 13 0	20 7 0
Fitzpatrick Phillip	142	0 2	12	0 0		
Faucett Benjn.	249	0 2	68	1 6	26 10 0	3 17 0
Fairbrother Edwd.	451	0 0	357	10 0		
Garard J.	33	17 9	10	0 0		
Goldfinch T. B.	815	17 0	810	0 0	20 0 0	3 7 6
Glasscock Andw.	166	2 8	22	16 5		0 15 0
Goldring H. W.	5,770	16 0	2,591	5 8	500 6 4	19 11 11
Gibbes John	234	16 0	75	0 0	74 8 11	2 3 0
Gordon S.	32	15 0	1	10 0		
Galbraith Thos.	963	10 0	1,147	14 8	934 4 8	11 0 0
Green J. G.	166	19 9	51	0 0	18 14 6	0 15 0
Glasson Florence	60	6 0	3	0 0		
Garty John	2,311	1 0	2,260	0 0	59 8 2	18 16 6
Harris Thos.	902	7 3	94	0 0		
Hoch Aloes	427	9 0	163	10 0	16 19 0	4 4 6
Hall James	270	12 4	136	0 0		
Hornfield Henry	No schedule filed.					
Harris Richd.	2,856	15 0	3,317	2 5	1,557 17 11	26 18 9
Hayes Francis	133	1 4	27	9 0		
Hackett Oliver	792	10 0	450	0 0		
Heffernan M. B.	58	16 6	19	16 0	0 19 0	
Jewell M. M.	6,986	12 2	4,580	0 0		
Keppie Peter	186	14 6	5	0 0		
Lockett G. F.	253	2 10	43	0 0		
Lees T. J.	189	1 0	86	0 0	42 5 2	2 17 8
Lawlers J.	158	12 11	3	0 0		
Lennard Mattw.	66	1 1 1/2	20	0 0		
Lawrence Thos.	85	16 6	35	9 8	27 18 9	1 15 0
Lloyd G. A. & Co.	249,610	13 9	138,076	5 8		
Lay H. M.	494	14 7	65	6 9		
Love W.	4,000	0 0	2,824	17 6	482 6 9	4 13 6
Lewis W.	65	0 0	35	0 0	31 13 0	2 0 0
Carried forward.....						£ 440 4 2

—Continued.

COMMISSION, OFFICIAL ASSIGNEE.	LAW COSTS.	DIVIDEND.	REMARKS.
£ s. d. 242 2 0	£ s. d.		
2 15 6	{ 20s. 2½d. 7s. 1d. }	Land; being a leasehold mortgage of no value.
6 5 0	{ All assets mortgaged, and a debt said to be owing by Government disputed under a contract.
.....	{ Confine in gaol. Assets being book debts, and no dates or particulars furnished, Assignee informed, not good.
.....	Clothes only.
1 0 0	{ Only this trifling sum realized. Farming implements secured by lien.
4 16 2	Leasehold; no value.
1 0 0	{ Paid off equitable mortgage, Wilson & Blair; nothing left.
Nil. Forgotten.	20s.	{ Paid off lien to H. M. Rusden; balance paid Court fees.
.....	{ The insolvent always intoxicated; much trouble has arisen in the discovery of some allotments, but they are all encumbered. Compulsory sequestration.
.....	Only clothes.
2 2 0	20s. pref.	Only clothes and furniture.
6 5 1	{ 20s. pref. 4s. 6d. con. }	
8 15 0	2 2 0	.....	{ Paid Teale and Garrett, solicitors. Property (land) mortgaged; sold by mistake, and had to be re-conveyed.
32 18 0	9s.	Only a bridle sold; little property at Maitland pledged.
0 11 6	{ Paid Mr. Husband, solicitor, Official Assignee, and F. Smith. Obtained a judgment for upwards of £2,000; an appeal lodged—to go to England.
8 0 0	20 0 0	.....	Clothes and furniture.
2 13 0	15s.	All mortgaged; and insolvent's conduct bad.
.....	Clothes.
2 6 2	{ All mortgaged, excepting license, which was deposited as a lien; this was paid off—£12 18s. 4d. to Mr. Vaughan.
1 2 0	Assets, only furniture; fees paid by insolvent.
25 0 5	1s. 11½d.	{ This estate was assigned to trustees, and by them sequestrated; another dividend soon payable.
7 9 0	20s.	Ditto, ditto.
.....	Clothes only.
46 14 4	18 12 0	.....	{ Paid Holden and M'Carthy, solicitors, for abstract of title, and closing mortgages.
3 3 0	20s. pref.	Clothes.
5 19 0	1s. 2½d.	Ditto.
.....	{ Assets secured. Official Assignee attempted to recover but could not succeed.
2 12 0	10s. 4½d. pref.	Land at Waverley, mortgaged. (No value to estate.)
.....	{ Leasehold at Randwick; secured and of no advantage to estate.
.....	{ This man was a saddler, Maitland, and absconded; nothing could be found.
74 3 0	37 0 0	{ 20s. pref. 2½d. con. }	{ Paid Bodd and Dawson tax cost; compulsory sequestration.
.....	Furniture and clothes only.
0 19 0	Secured to Mr. Waller under bill of sale.
.....	Furniture and clothes. Insolvent paid fees.
.....	Bill of sale. No available assets.
.....	Clothes only.
5 9 6	20s. pref.	Clothes and furniture only.
.....	Furniture, valued at £30, given to insolvent.
1 13 0	2s. 2d.	Clothes only.
.....	Furniture and clothes only.
.....	A writing clerk; paid this by order of the Court.
.....	20s. and 5s.	{ By the directions of the creditors 5s. in the £ was accepted for the assets and preferent claims, to be paid 20s. in the £ upon the goods and private estate, payment in full, and all expenses being also borne by the purchaser.
24 10 0	3s.	Assets, salary owing to insolvent as clerk at Albury.
3 8 6	6 8s. 3½d.	{ Composition, cash 3s. in the £, and two promissory notes, both dishonored, and the same man insolvent again.
529 15 10	Composition.

—Continued—

COMMISSIONER, OFFICIAL ASSESSOR.	LAW COSTS.	DIVIDEND.	REMARKS.
£ s. d.	£ s. d.	£ s. d.	
620 15 10			Clothes and a little furniture.
14 0 0		1s.	Furniture only; lauded property all mortgaged.
31 18 0	5 7 8	2s. 9½d.	Ditto, ditto.
1 14 6			Paid Mr. Husband, solicitor, tax costs; examining
3 0 0			insolvent for alleged fraud.
25 0 0		18s. 10d.	Clothes only.
			Assets, comprising horse and cattle, all secured.
2 4 7		6½d.	Furniture allowed, subject to landlord's claim.
7 19 6	3 3 0	6s. 10d.	Clothes and furniture only.
			(This man was a dealer; his assets being nearly all
			book debts could not be collected; no date or par-
			ticulars.
			Assets, book debts; only recovered the amount as
			credited. Mr. S. Brown, solicitor; examinations,
			cost of.
2 2 0		20s. pref. 2s. 8d. con.	(This insolvent absconded; his book debts cannot be
16 5 0		7s. 9d.	collected; account badly kept.
			Book debts not recoverable, being a publican.
			The proceeds of sale were made away with by Wal-
			lace, the auctioneer at Braidwood, who is insolvent,
			and undergoing a rigid examination.
			All the assets mortgaged to a Mr. Creek.
			Clothes only.
			Ditto.
			This estate is under investigation by Towns & Co.,
			to prove a partnership. No dividend yet declared.
			Furniture and clothes only.
5 9 6		20s. pref. 1s. 4d. con.	Debts of a publican; not recoverable.
4 3 6		9s. 10d.	Expenses paid by insolvent, upon the allowance of
			furniture.
			Clothes and furniture only.
3 14 0		2s. 2d.	This insolvent paying from monthly salary; pro-
			perty secured to his landlord—rent.
5 5 0		20s. pref. 9½d. con.	
7 10 0		20s. pref. 6s. 5½d. con.	
5 18 0		20s. pref. 9½d. con.	
			Furniture and clothes.
			Furniture only.
			Ditto.
19 17 0		20s. pref. 8s. 8½d. con.	Debts said to be owing in all cases had larger contra-
			accounts.
13 2 0		3s. 9d. pref. 3s. 4d. con.	
5 14 0		3s. 2d.	
8 7 6		1s. 20s.	Bill of sale; only a trifle left to realize.
			Paid in full by monthly instalments.
			Clothes only.
			Book debt of £37, owing by a man insolvent, whose
			estate paid nothing.
			Furniture only.
			Dispute as to assets; settlement now completed, and
			no dividend will be paid. Furniture allowed.
2 0 0		12s. 4d.	Clothes only.
2 1 0		12s. 4d.	Furniture only.
7 3 0	14 0 6	2s. 5d.	Furniture only.
2 7 6		12s. 5d.	(Paid Mr. Husband, solicitor, tax costs, investigating
39 9 3	67 15 2	20s. pref. 6s. 6½d. con.	a fraud.
3 3 0		1s. 9d.	Paid Mr. Hellyer, tax costs, compulsory sequestration.
3 3 0		12s. 6d.	Only furniture.
			Released from sequestration.
			Compulsory sequestration; nothing found.
			Clothes only.
			Ordered to pay in full by monthly instalments.
4 12 0		3s. 5½d.	Clothes only.
2 1 0			Furniture allowed by expenses being paid.
			Clothes only.
745 5 8			

NAMES OF ESTATES	PER SCHEDULE.		REALIZED.	COURT FEES AND OTHER EXPENSES.
	Liabilities.	Assets.		
	£ s. d.	£ s. d.	£ s. d.	£ s. d.
Brought forward				638 7 6
Richardson James	856 0 0	10 0 0		
Shearman W.	1,576 14 7 ¹	1,500 0 0	23 5 0	5 1 0
Sykes A.	563 11 0	35 0 0	1 19 8	0 4 6
Spiers J.	60 13 4	53 7 8		
Scranes W.	96 9 9	20 0 4		
Simmons Alfd.	64 0 0	48 0 0	12 15 0	1 0 0
Smith Francis.	389 14 5	74 8 0		
Spiers Alexr.	2,470 8 6	2,410 9 9	186 18 6	48 19 0
Savage Henry.	21 0 0	1 10 0		
Simmonds C.	88 13 6	22 5 0		
Skerritt J.	249 16 6	10 0 0		
Stewart Geo.	111 5 9	9 0 0	1 18 6	
Smith W., junr.	80 1 9	3 15 0		
Selby W. A.	975 0 0	700 0 0	169 3 6	22 18 6
Stewart Jas.	445 17 4	40 0 0	21 19 0	2 8 6
Searjent W.	75 13 9	15 10 5		
Smith W.	169 12 2	50 0 0		
Sturzaker J.	209 0 0	46 12 6		
Steel Jas.	128 17 0 ⁵	15 0 0		
Smithwick Peter	32 15 6	14 8 0	35 0 0	1 5 6
Smith Jas.	1,599 1 4	1,467 17 10		
Tibbey Chas.	2,405 11 11	65 3 6	35 19 6	1 18 6
Tucker W.	282 14 0	209 5 0	70 0 0	4 13 6
Tomlison J.	231 1 11	32 16 0	12 19 0	0 17 0
Taylor G.	491 2 9	57 15 9	8 0 0	0 17 0
Turnbull G.	122 13 6	75 0 0	41 11 7	1 10 0
Underwood R.	8,562 18 2	12,196 18 2		
Vidler G.	430 4 0	643 0 0		
Whiteman J.	320 10 7	73 9 5		
Wilson L.	332 2 11	3 0 0		
Walton Edwd.	2,561 9 9	2,050 0 0	345 8 3	18 12 8
Williams E. H.	104 5 0	29 4 6		
Wareham J. V.	902 17 0	760 0 0		
Ward Geo.	568 13 0	76 11 0	68 0 0	5 14 0
Williams C. T.	132 15 0	10 0 0		
Williams W. O.	937 18 6	376 12 0	74 6 6	4 13 0
Watson W. S.	6,710 0 0	5,492 0 0	35 2 11	
Wylie H.	66 7 2	28 4 5	29 18 0	
Wormleighton John	864 14 10	576 0 0	17 16 0	2 10 6
Wholohan M.	762 4 0	41 6 0		
White Edward J.	735 16 5	730 0 0		
Webb Henry	980 7 0	650 0 0	237 17 10	45 15 7
Wright Gilbert	7,116 3 11	5,025 6 3	271 5 4	103 10 6
Wadesden S.	507 2 8	266 13 3		
Williams Jno.	57 18 0	26 9 9		
Wilkinson Jas.	99 4 4	26 19 7		
Wallace Robt.	1,302 16 8	735 16 2	151 3 4	6 15 0
Wallace Andw.	55 8 6	11 5 0	5 18 0	
White W.	92 18 9	12 0 0		
Endicott Thos.	1,465 6 5	1,224 10 0		
Frazer Wm.	1,293 6 5	1,283 1 6	653 14 8	9 0 6
Falconer Jas.	41 5 3	14 10 0		
Glasson Jno.	1,712 0 6	1,453 15 0	210 0 6	3 8 0
Grant Thos.	310 7 3	368 9 0	68 18 3	7 2 6
Gill Jas.	47 5 3	7 1 0		
Haining J.	87 14 6	9 0 0		
Horsey Josiah.	360 10 9	51 16 0		
Harris W. U.	204 8 2	28 16 0		
Carried forward.				935 2 9

INSOLVENT ESTATES.

—Continued.

COMMISSION, OFFICIAL ASSIGNEE.	LAW COSTS.	DIVIDEND.	REMARKS.
£ s. d.	£ s. d.		
745 5 8	Clothes.
3 3 0	1½d.	Furniture allowed by paying expenses.
1 15 2	{ £38 of this amount are book debts, no particulars, date, or residence; a country estate.
.....	Furniture and clothes.
2 0 0	11s. 1d.	Only a publican's license and furniture.
.....	Released by a decree of Supreme Court.
24 7 0	{ 20s. pref. 2s. 9½d. con. }	{ £36 16s. of the expenses was allowance to insolvent.
.....	Confine in gaol.
.....	Furniture and clothes.
.....	Clothes.
1 18 6	{ Clothes and a little furniture allowed by paying expenses.
.....	Clothes.
8 9 6	45 10 2	3s. 1d.	Paid Mr. S. Brown, tax costs, compulsory sequestration.
3 3 9	{ 20s. pref. 10½d. con. }	.....
.....	Clothes and furniture.
.....	Clothes, furniture, and tools of trade.
.....	Book debt at Bathurst; furniture and clothes.
.....	Clothes and furniture.
2 4 0	12s. 11½d.	{ All mortgaged to Messrs. Tooth, and some of this property made away with.
.....
3 2 0	1s. 8½d.	Compromise by creditors.
5 0 0	5s.	.....
1 2 0	4s. 7d.	.....
1 3 0	5s. 6d.	Clothes and furniture allowed.
4 6 0	6s. 8½d.	.....
.....	{ This estate is mixed up in Equity with family matters. Furniture secured by bill sale.
.....	{ Bill of sale over property, and sold by Mr. Baker, auctioneer, for the security to Messrs. Tooth.
.....	{ Furniture, wearing apparel, and book debt of a publican not recoverable.
.....	Clothes only.
17 5 6	{ 20s. pref. 1s. 4½d. con. }	.....
.....	Clothes, and a little furniture.
.....	{ All this estate (excepting a little furniture) mortgaged to Bev. M. Scope; tried at auction, and not worth the advance upon it.
6 18 0
.....	Clothes only.
6 14 3	{ 20s. pref. 8d. con. }	.....
2 5 0	{ Law suit pending for the recovery of an asset, bill of sale to two persons.
3 0 0	12s. 9½d.	.....
1 17 6	6s. 8½d.	Landlord to the lease of premises secured to him.
.....	{ Furniture and clothes only. Insolvent to arrange with his landlord as to remaining and paying rent.
.....	{ A life interest of insolvent in a house, no offer for it at auction.
12 17 9	{ 20s. pref. 3s. 2½d. con. }	.....
13 8 6	59 13 4	.....	.....
.....	{ Book debts collecting at Bathurst, nothing yet realized.
.....	Furniture and clothes only.
.....	Ditto, ditto
.....	47 14 8	.....	{ Mr. Husband, solicitor, tax cost on action to recover a debt.
7 9 3	{ Mr. About, solicitor, tax costs of nonsuit, in consequence of Mr. Husband meeting with an accident, and did not appear, on the road to Berrima. (A case at Berrima.)
.....	28 17 9	.....	.....
1 2 0	20s.	.....
.....	Only clothes and a little furniture.
.....
32 18 0	9s.	.....
.....	Only clothes.
10 10 0	Dividend not yet declared; will be immediately.
3 16 6	Dividend payable in a few days.
.....	Only clothes.
.....	Ditto.
.....	{ Book debts; nothing recovered. Clothes and furniture.
.....	{ A mariner; only a few nautical instruments; given to him.
927 2 10

NAMES OF ESTATES.	PER SCHEDULE.		REALIZED.	COURT FEES AND OTHER EXPENSES.
	Liabilities.	Assets.		
	£ s. d.	£ s. d.	£ s. d.	£ s. d.
Brought forward.....	.....	.....	.....	935 2 9
Handley and Bunting	710 19 8½	70 1 6	.....	.....
Hamilton G.	8,488 10 0	7,763 9 11	278 18 5	10 14 11
.....
Joseph and Weil.....	17,215 11 7	12,910 7 7	14,874 18 0	491 19 2
.....
Jewell M. M.	6,986 12 2	4,580 0 0	.....	.....
Jones J. W.	546 1 10	270 3 6	.....	.....
Kyle J. J.	459 6 4	95 0 0	74 19 0	2 0 0
King E.	186 14 6	5 0 0	40 0 0	3 18 9
Kain Patk.	220 9 4	22 10 0	.....	.....
Keisson J. A.	156 4 8	15 10 0	.....	.....
Kellick Jno.	835 7 2	818 0 0	.....	.....
Kilpatrick B.	1,004 7 10	591 5 0	167 14 10	10 7 5
O'Heher T.	221 10 10	16 1 9	.....	.....
Potts L.	7,130 3 1	4,685 15 5	1,164 9 9	48 8 4
.....
Purkis and Lambert	67,044 14 8	35,921 14 2	.....	118 17 4 This includes £42 allowed to insolvent.
Prichard Joseph	797 18 5	667 13 0	667 10 0	38 8 6
Blake Isidore Jno. ....	.....	.....	.....	.....
Grover J. A.	103 11 0	17 0 0	.....	.....
Simmons Joseph, junr.	18,025 11 6	30,300 0 0	.....	.....
Richardson James	123 8 7	73 19 11	6 0 11	.....
Loss Commission paid Trade Assignee	.....	.....	.....	£1,763 15 2
TOTAL.....	.....	.....	.....	.....

NOTE.—The only debts that were sold alone was the estate of Purkis & Lambert, being included in the expenses is allowances made to the insolvents, and also the counsel's fee for moving the confirmation. The present mode of making out the schedules misleads creditors; for in many, or I may say, in most cases, the available very remarkable, that an asset (land and houses) passing through

Sydney, 15 February, 1861.

—Continued.

COMMISSION, OFFICIAL ASSIGNEE.	LAW COSTS.	DIVIDEND.	REMARKS.
£ s. d.	£ s. d.		
927 2 10			
.....	.....	.....	{ Furniture and book debts of a publican; not recoverable.
14 0 0	8 12 0	4s. 11½d.	
998 6 9	{ 134 0 0 5 1 2 }	13s. 1½d.	{ Mr. Fitzharding, tax costs in action to recover goods at New Zealand. One-third of the commission charged went to the Trade Assignee. The expenses of agency and collection, and many charges incidental to recovering assets that were held by parties, who for months would not surrender them, caused heavy rent, &c. Insolvent's conduct shameful.
.....	.....	.....	All the property mortgaged beyond its value.
.....	.....	.....	{ The only asset is a parcel of land and house secured to a female, and examinations have been gone into respecting it.
2 0 0	.....	20s. pref.	Ditto.
2 0 0	.....	7s. 3d.	Ditto.
.....	.....	.....	Furniture and clothes only.
.....	.....	.....	Ditto.
8 7 0	.....	{ 20s. pref. 2s. 10½d. con.	This estate not yet closed, but soon will be.
58 3 0	.....	2s. 10d.	Clothes and furniture only.
259 0 0	{ 18 7 8 73 5 0 }	{ 10d. 6½d. 5 rd of 1d.	{ Paid tax costs, Holden and M'Carthy. Paid tax costs, Mr. Husband, for obtaining a decree of the Supreme Court for Fisher's estate to pay Purkis and Lambert's estate the dividend claimed; very much opposition offered.
33 7 0	.....	2s. 10d.	
.....	.....	.....	{ This estate was released nearly directly after the sequestration.
.....	.....	.....	Furniture and clothes only.
.....	.....	.....	{ This estate is preparing to pay off the liabilities, through Mr. M'Culloch, who has an assignment of all the property.
2 0 0	.....	20s. con.	
2,314 6 7			
332 15 7			
1,981 11 0			

the uncollected ones after declaring two dividends. The net amount is £97 5s. of plans of distribution, and the charges paid to Government for each and every meeting of creditors. assets are comparatively nothing, and although introduced as assets secured either under mortgages or liens; and it is my hands rarely produce the advances, even if by private sale.

J. P. MACKENZIE,
Official Assignee.

Vertical line of text or artifacts on the left side of the page.

Small, faint text located in the lower-left quadrant of the page.

Small, faint text located at the bottom center of the page.

Small, faint text located in the bottom right corner of the page.

1861.

Legislative Assembly.

NEW SOUTH WALES.

UNPAID MAGISTRACY.

(RETURN IN REFERENCE TO.)

Ordered by the Legislative Assembly to be Printed, 8 March, 1861.

RETURN to an *Address* of the Honorable the Legislative Assembly of New South Wales, dated 26 February, 1861, praying that His Excellency the Administrator of the Government would be pleased to cause to be laid upon the Table of this House,—

“(1.) Returns made by the Clerks of Petty Sessions of the
“several times, if at all, that the Unpaid Magistracy attended
“at their respective Benches, during the year 1860.

“(2.) A list of such places as have had Petitions forwarded to
“the Honorable the Colonial Secretary, praying for Police
“Magistrates, during the year 1860.”

(Mr. Meston.)

(1.)

RETURNS made by the Clerks of Petty Sessions of the several times, if at all, that the Unpaid Magistrates attended at their respective Benches, during the year 1860 :—

No such Returns made by Clerks of Petty Sessions.

(2.)

LIST of Places for which Police Magistrates have been petitioned for, during the year 1860, viz. :—

- 1.—Condoblin.
- 2.—Campbelltown and Appin.
- 3.—Gunning and Collector.
- 4.—Gunnedah.
- 5.—Grafton.
- 6.—Muswellbrook.
- 7.—Tenterfield.
- 8.—Tamworth.
- 9.—Warialda.

1861.

Legislative Assembly.

NEW SOUTH WALES.

UNPAID MAGISTRACY.

REPORT FROM THE SELECT COMMITTEE

IN REFERENCE TO

THE UNPAID MAGISTRACY;

TOGETHER WITH THE

PROCEEDINGS OF THE COMMITTEE,

AND

MINUTES OF EVIDENCE.

ORDERED BY THE LEGISLATIVE ASSEMBLY TO BE PRINTED,

22 *March*, 1861.

SYDNEY:

THOMAS RICHARDS, GOVERNMENT PRINTER,
PHILLIP-STREET.

1861.

1861.

EXTRACTS FROM THE VOTES AND PROCEEDINGS OF THE
LEGISLATIVE ASSEMBLY.

VOTES, No. 19. TUESDAY, 12 FEBRUARY, 1861.

19. Unpaid Magistracy :—Mr. Meston moved, pursuant to notice,—
(1.) That “a Select Committee be appointed” to inquire into the Working of the Unpaid Magistracy in the Administration of Justice, especially in the remote Districts of this Colony, and the necessity of appointing Police Magistrates where required in addition.
(2.) That such Committee consist of Messrs. Robertson, Rusden, Morris, Windeyer, Wilson, Markham, Flett, Daniel, Lesley, and the Mover.
Debate ensued.
Mr. Rusden moved, That the Question be amended by the omission of the words “a Select Committee be appointed,” in section (1), with a view to the insertion in their place of the words “it is the duty of the Government immediately”; and by the omission of the entire section (2).
Debate continued.
Question,—That the words proposed to be omitted stand part of the Question—put and passed.
Whereupon Original Question put and passed.

VOTES, No. 27. TUESDAY, 26 FEBRUARY, 1861.

12. Unpaid Magistracy :—Mr. Meston moved, pursuant to notice, That an Address be presented to the Administrator of the Government, praying that His Excellency will cause to be laid upon the Table of this House :—
(1.) Returns made by the Clerks of Petty Sessions of the several times, if at all, that the Unpaid Magistracy attended at their respective Benches during the year 1860.
(2.) A List of such places as have had Petitions forwarded to the Honorable the Colonial Secretary, praying for Police Magistrates, during the year 1860.
Question put and passed.

VOTES, No. 34. FRIDAY, 8 MARCH, 1861.

1. Paper :—Mr. Robertson laid upon the Table, Return to Address in reference to Unpaid Magistracy, adopted, on motion of Mr. Meston, on the 26th February last.
Ordered to be printed, and referred to the Select Committee on Unpaid Magistracy, now sitting.

VOTES, No. 35. TUESDAY, 12 MARCH, 1861.

3. Unpaid Magistracy :—Mr. Meston, with the concurrence of the House, moved, without notice, That the Progress Report from the Select Committee appointed in the Session of 1856-7, on the Administration of Justice and Conduct of Official Business in Country Districts, together with the accompanying Minutes of Evidence, brought up 16th December, 1856, be referred to the Select Committee now sitting in reference to the Unpaid Magistracy.
Question put and passed.

VOTES, No. 42. FRIDAY, 22 MARCH, 1861.

2. Unpaid Magistracy :—Mr. Meston, as Chairman, brought up the Report from, and laid upon the Table the Minutes of Proceedings of, and Evidence taken before, the Select Committee, appointed on the 12th February last, to inquire into the Working of the Unpaid Magistracy in the Administration of Justice, especially in the remote Districts of this Colony, and the necessity of appointing Police Magistrates where required in addition.
Ordered to be printed.

CONTENTS.

	PAGE.
Extracts from the Votes and Proceedings.. .. .	2
Report	3
Proceedings of the Committee	6
List of Witnesses	8
List of Appendix	8
Minutes of Evidence.. .. .	1

1861.

UNPAID MAGISTRACY.

REPORT.

THE SELECT COMMITTEE of the Legislative Assembly, appointed on the 12th February last, “to inquire into the working of the Unpaid Magistracy in the Administration of Justice, especially in the remote Districts of this Colony, and the necessity of appointing Police Magistrates where required in addition,” and to whom were referred, on the 8th instant, a “Return to Address in reference to Unpaid Magistracy,” and, on the 12th, “the Progress Report from the Select Committee appointed in the Session of 1856-7 on the Administration of Justice and Conduct of Official Business in Country Districts, together with the accompanying Minutes of Evidence, brought up 16th December, 1856,”—have agreed to the following Report:—

That, availing themselves of the evidence accompanying the Progress Report referred to them, and considering the urgency of arriving at speedy conclusions in consequence of the numerous complaints made from all quarters of the country, they have been induced to close their investigation earlier than was anticipated in the first instance.

In the Progress Report of 1856 occurs the following graphic passage:—“Your Committee find, that not only does there much inconvenience at present arise from the scarcity of Magistrates in some country districts, and from inattention to their duties in others, occasioning postponements of cases under the Masters and Servants Act, the Vagrant Act, and other laws, but great injustice also, and that greater regularity would follow the appointments of Stipendiary Magistrates.” These sentiments your Committee readily indorse, and further add, that since the date of that Report, these irregularities have rather increased than diminished.

From deaths, departures, and resignations, it appears that the actual number of country Magistrates have been much reduced, whereas in cities and towns they have been proportionally increased.

And, while the names of many worthy gentlemen are upon the Commission, your Committee cannot avoid stating that magisterial nominations, in not a few instances, have been too indiscriminately made, and, frequently, more as honorary distinctions to individuals, than from the probability of social benefit to the community.

They

They are further of opinion, and the evidence accords with their own convictions in shewing, that, although exceptionable cases might be found, where justice may have been totally blind,—yet, upon the whole, the numerous complaints relative to the mal-administration of the laws, on country and other Benches, have arisen more from negligence or non-attendance on the part of the resident Magistracy, than from any marked deficiencies of knowledge either in matters of law, right, or equity.

Nor can they abstain from noticing, that, in the outlying districts, where Magistrates reside 50 miles or more from their respective Benches, as in the examples of Balranald and Warialda (letter from Bench at the place last mentioned is appended in the Evidence), the deduction inevitably follows, that their regular attendance is next neighbour to impossibility.

Your Committee also find that in various quarters of the country, persons competent to fulfil the duties of Justices in an adequate manner are very difficult to be obtained; and the fact, that, within the past year, petitions or applications have been made to the Colonial Secretary for Stipendiary Magistrates, from Warialda, Tamworth, Condobolin, Campbelltown and Appin, Gunning and Collector, Gunnedah, Grafton, Muswellbrook, Tenterfield and Glen Innes, and that during the present year similar applications have been received from several other localities,—clearly demonstrates, both the general dissatisfaction in the rural districts arising from the uncertain and irregular administration of justice by the Unpaid Magistracy; and, the necessity which exists for immediate reform.

They therefore recommend—

1. That a new Commission of the Peace should be issued, to be composed of men having at least a fair share of education and intelligence—men of worth and status, who will in very deed, fulfil those duties which they solemnly undertake to perform.
2. That, if possible, a system should be devised for obtaining a regular attendance of Magistrates at the several Courts, either by their attendance in rotation, or in such other way as your Honorable House may deem calculated to facilitate a more equitable administration of justice.
3. That in those districts where a sufficient number of competent Magistrates (say six), cannot be obtained, itinerating Stipendiary Magistrates should be forthwith appointed.
4. That, in order to remedy the many difficulties which attend on Courts of Petty Sessions in the outlying Districts (where materials for an Unpaid Magistracy do not exist), the appointment of Police Magistrate should be conferred on the Clerks of Petty Sessions, when competent.
5. That the Clerks of Petty Sessions be empowered to take informations and grant summonses in all Civil and Criminal cases, but in no instance to have the power of issuing Warrant.

In

In conclusion, your Committee refrain from specifying more particularly those places where Stipendiary Magistrates may be required, and whether these should hold single or double powers, leaving the several details for the further consideration of your Honorable House; but they cannot omit their earnest recommendation that active measures be immediately taken to place the Courts of Petty Sessions in the rural, and especially the remoter districts on a more efficient basis than that upon which they are so defectively constituted at present,—in order to facilitate the better administration of justice, and to promote peace, contentment, and obedience to the laws amongst all orders of the widely-spread community of New South Wales.

ROBT. MESTON,
Chairman.

*Legislative Assembly Chamber,
Sydney, 20 March, 1861.*

PROCEEDINGS OF THE COMMITTEE.

TUESDAY, 19 FEBRUARY, 1861.

MEMBERS PRESENT :—

Mr. Daniel,		Mr. Markham,
Mr. Flett,	|	Mr. Meston,
Mr. Lesley,	|	Mr. Morris.

Committee met pursuant to summons.

R. Meston, Esq., called to the Chair.

Committee deliberated relative to the course of the proposed inquiry.

It was Resolved :—

That, in the first instance, evidence be taken in reference to the administration of justice by the Unpaid Magistracy, especially in the outlying districts, and also in regard to localities where the services of Stipendary Magistrates may be desirable.

Whereupon, the prospect of obtaining evidence, and the disadvantage arising from the general absence of parties in the country—considered.

Mr. McDonald Monro to be summoned for the next sitting.

Respecting certain information for the purposes of this Committee, and assistance derivable from the labours of a former Committee,—

It was Resolved :—

That the Chairman do move in the House, That an Address be presented to the Administrator of the Government, praying that His Excellency will be pleased to cause to be laid upon the Table,—

(1.) Returns made by the Clerks of Petty Sessions of the several times, if at all, that the Unpaid Magistracy attended at their respective Benches during the year 1860.

(2.) A list of such places as have had Petitions forwarded to the Honorable the Colonial Secretary, praying for Police Magistrates, during the year 1860.

2. That when such Returns are laid upon the Table, a motion be made to refer the same to this Committee, together with the Progress Report from the Select Committee on the Administration of Justice and Conduct of Official Business in Country Districts, and accompanying Minutes of Evidence, brought up 16 December, 1856.'

[Adjourned till to-morrow, 20th instant, at *Twelve* o'clock.]

WEDNESDAY, 20 FEBRUARY, 1861.

MEMBERS PRESENT :—

R. Meston, Esq., in the Chair.

Mr. Flett,		Mr. Markham,
Mr. Lesley,	|	Mr. Rusden,
		Mr. Windeyer.

D. Buchanan, Esq., M.P., examined.

Witness withdrew.

J. Ralfe, Esq., called in and examined.

Witness withdrew.

Mr. McDonald Monro, the witness called for this day, not in attendance.

[Adjourned.]

FRIDAY, 22 FEBRUARY, 1861.

MEMBERS PRESENT :—

R. Meston, Esq., in the Chair.

Mr. Flett,		Mr. Markham,
Mr. Lesley,	|	Mr. Morris.

Committee met pursuant to summons.

Mr. W. Denton called in and examined.

Witness withdrew.

Mr. J. Marks called in and examined.

Witness withdrew.

Mr. Davies, Mr. Walsh, and Mr. Garrett to give evidence at the next sitting.

[Adjourned till Tuesday, 26th instant, at *Eleven* o'clock.]

TUESDAY, 26 FEBRUARY, 1861.

MEMBERS PRESENT :—

R. Meston, Esq., in the Chair.

Mr. Flett,		Mr. Rusden.
------------	--	-------------

C. H. Walsh, Esq., M.P., examined.

Witness withdrew.

J. J. Davies, Esq., C.P.S., *Molong*, called in and examined.

Witness withdrew.

T. Garrett, Esq., M.P., requested to give evidence this day, not in attendance.

Mr. Garrett and Captain Battye to be examined on Friday.

[Adjourned till Friday, 1st March, at *Eleven* o'clock.]

FRIDAY,

FRIDAY, 1 MARCH, 1861.

MEMBERS PRESENT :—

R. Meston, Esq., in the Chair.

Mr. Flett,	|	Mr. Markham,
Mr. Lesley,	|	Mr. Morris.

T. Garrett, Esq., M.P., examined.

Captain E. M. Battye, J.P., *Superintendent of Mounted Patrol, Western Districts*, pursuant to summons, *this day*, attended to give evidence, but—eventually requesting to leave before being called upon—excused by Committee from waiting longer.

Examination of Mr. T. Garrett concluded.

Captain J. M'Levie to be summoned at the following meeting.

[Adjourned till Wednesday, 6th instant, at *Eleven o'clock*.]

WEDNESDAY, 6 MARCH, 1861.

MEMBERS PRESENT :—

R. Meston, Esq., in the Chair.

Mr. Lesley,	|	Mr. Markham
	|	Mr. Rusden.

Captain J. M'Levie, *Inspector General of Police*, called in, and examined.

Witness withdrew.

F. T. Rusden, Esq., M.P., a Member of the Committee, examined in his place.

And, at the close of the examination of Mr. Rusden, the Chairman signifying his willingness to give evidence,—

Motion made and *Question*,—That F. T. Rusden, Esq., do take the Chair *pro tempore*, during the examination of Mr. Meston,—*agreed to*.

Whereupon, Mr. Meston vacated the Chair, and the same taken by Mr. Rusden.

R. Meston, Esq., M.P., examined in his place (as a Member of the Committee).

And Messrs. Morris and Markham, Members of the Committee, also desiring to give evidence,—

The same fixed for the next sitting.

[Adjourned till Friday, 8th instant, at *Ten o'clock*.]

FRIDAY, 8 MARCH, 1861.

MEMBERS PRESENT :—

R. Meston, Esq., in the Chair.

Mr. Flett,	|	Mr. Markham,
Mr. Lesley,	|	Mr. Morris,
	|	Mr. Rusden.

A. Morris, Esq., M.P., a Member of the Committee, examined in his place.

G. Markham, Esq., M.P., a Member of the Committee, examined in his place.

Committee then considered the nature of the entire Evidence.

The Chairman submitted a Draft of the points to be touched upon in the Report.

Committee deliberated; and Report at length,—to be considered at the next meeting.

[Adjourned till Wednesday, 13th instant, at *Eleven o'clock*.]

WEDNESDAY, 13 MARCH, 1861.

MEMBERS PRESENT :—

R. Meston, Esq., in the Chair.

Mr. Flett,	|	Mr. Markham,
	|	Mr. Morris.

Committee met to consider Draft Report.

Before the Committee—the Return to Address in reference to Unpaid Magistracy, and the Progress Report from Select Committee on the Administration of Justice and Conduct of Official Business in Country Districts, with accompanying Evidence, of Session 1856-7, severally referred by the House on the 8th and 12th instant.

Draft Report submitted by the Chairman, read.

Committee deliberated.

Motion made (*Mr. Morris*) and *Question*,—That copies of the Draft Report be circulated amongst the Members of this Committee prior to the date of the next meeting,—*agreed to*.

Clerk directed accordingly.

[Adjourned till Wednesday, 20th instant, at *Eleven o'clock*.]

WEDNESDAY,

WEDNESDAY, 20 MARCH, 1861.

MEMBERS PRESENT:—

R. Meston, Esq., in the Chair.
 Mr. Flett, | Mr. Morris,
 Mr. Lesley, | Mr. Rusden,
 Mr. Markham, | Mr. Windeyer.

Copies of the Draft Report having been circulated, pursuant to Resolution at the last sitting, Committee met to finally consider same.

Draft Report read,—

And certain verbal amendments having been agreed to,—

Motion made (*Mr. Lesley*) and *Question*,—That the Report be further amended by omitting the 4th recommendation, viz. :—“ 4. That, in order to remedy the many difficulties which attend on Courts of Petty Sessions in the absence of a second Magistrate, the Clerk of each Bench, when considered competent, should be invested with magisterial authority,”—with a view to substituting the following:—“ 4. That, in order to remedy the many difficulties which attend on Courts of Petty Sessions in the outlying Districts (where materials for an Unpaid Magistracy do not exist), the appointment of Police Magistrate should be conferred on the Clerks of Petty Sessions, when competent,”—*agreed to*.

Amendment agreed to.

Motion made (*Mr. Markham*) and *Question*,—That the Report be further amended by omitting the 5th recommendation, viz. :—“ 5. That, under all circumstances, the Clerks of Petty Sessions should possess the power of issuing process generally in all Civil, and summonses in all Criminal cases, as well for the sake of greater conveniency to the public as for their more impartial adjudication by the Justices,”—with a view to substituting the following:—“ 5. That the Clerks of Petty Sessions be empowered to take informations and grant summonses in all Civil and Criminal cases, but in no instance to have the power of issuing Warrant,”—*agreed to*.

Amendment agreed to.

Further verbal amendments *agreed to*.

Motion made (*Mr. Lesley*) and *Question*,—That the Draft Report, as amended, be the Report of this Committee,—*agreed to*.

Chairman requested to report.

LIST OF WITNESSES.

	PAGE.
<i>Wednesday, 20 February, 1861.</i>	
D. Buchanan, Esq., M.P.	1
J. Ralfe, Esq., Surveyor	3
<i>Friday, 22 February, 1861.</i>	
Mr. W. Denton	4
Mr. J. Marks	6
<i>Tuesday, 26 February, 1861.</i>	
C. H. Walsh, Esq., M.P.	7
J. J. Davies, Esq., C. P. S., Molong	11
<i>Friday, 1 March, 1861.</i>	
T. Garrett, Esq., M.P.	12
<i>Wednesday, 6 March, 1861.</i>	
Capt. J. McLerie, Inspector General of Police	17
F. T. Rusden, Esq., M.P.	19
R. Meston, Esq., M.P.	21
<i>Friday, 8 March, 1861.</i>	
A. Morris, Esq., M.P.	22
G. Markham, Esq., M.P.	24

LIST OF APPENDIX.

(To Evidence given by T. Garrett, Esq., M.P., 1 March, 1861.)

	PAGE.
A.	
Extract from the <i>Illawarra Mercury</i> of 20th November, 1858	16

(To Evidence given by F. T. Rusden, Esq., M.P., 6 March, 1861.)

	PAGE.
A.	
The Bench of Magistrates, at Warialda, to the Chief Secretary, relative to the appointment of a Stipendiary Magistrate at Warialda.— <i>February, 1861</i>	21

1861.

Legislative Assembly.

NEW SOUTH WALES.

MINUTES OF EVIDENCE

TAKEN BEFORE THE

SELECT COMMITTEE

ON THE

UNPAID MAGISTRACY.

WEDNESDAY, 20 FEBRUARY, 1861.

Present:—

MR. FLETT,
MR. LESLEY,
MR. MARKHAM,MR. MESTON,
MR. RUSDEN,
MR. WINDEYER.

ROBERT MESTON, Esq., IN THE CHAIR.

David Buchanan, Esq., M.P., examined:—

1. *By the Chairman*: We want your evidence with respect to what you have seen of the administration of justice by the unpaid Magistracy of the country. I suppose your information is pretty extensive? Well, it is pretty extensive; I have been over the country in very many directions. D. Buchanan,
Esq., M.P.
20 Feb., 1861.
2. We wish to confine ourselves more immediately to the Colony of New South Wales. What quarters of this Colony are you chiefly acquainted with? New England—in fact, almost every district.
3. Are you acquainted with the working of the Magistracy in Tenterfield or Glen Innes? I have not been present at Tenterfield in the Court, but lower down, at the Clarence Town Bench, on the Williams River, I have seen very gross cases.
4. Will you mention them? I have seen a case where, on a simple charge of drunkenness, a man was imprisoned for fourteen days, notwithstanding the remonstrances of various people; although there were two Justices of the Peace in the town they would not try him or allow him to bail. There was no other charge against him than that of simple intoxication, without any breach of the peace. He remained in the lock-up—you know the dimensions of those places, that they are very small—for thirteen days. Of course his punishment should have been only twenty-four hours.
5. *By Mr. Lesley*: When he was sentenced was that the time given him? He was never sentenced, he was waiting to be tried. When the Magistrate came up, he was so indignant at the treatment that the man had received that he ordered his instant liberation, and censured the Magistracy of the town severely for their conduct. This was a Magistrate who had been written to by a storekeeper in Clarence Town, and came up post-haste to deal with the case.
6. Who was the Magistrate that came up? Mr. Phillips.
7. *By Mr. Rusden*: Do you recollect the man's name? Kirkwood, I think; I am not certain.
8. About what time was this? About two years ago. There was another case in the same district. The Clerk of the Court happened to be ill, and the chief constable, who was public prosecutor, did duty as Clerk of the Court; and Mr. Holmes, the Magistrate, performed the functions of public prosecutor, and gave judgment in the case he prosecuted. It struck me and several others as very indecent on the part of the judge to try and press home charges against the parties, and then give judgment against them.

D. Buchanan,
Esq., M.P.

20 Feb., 1861.

9. *By the Chairman*: Can you mention any more instances? The next case I saw happened on the Morpeth Bench. I may say, in fact, that I saw the whole Morpeth Bench instructed in their duties by a constable. A witness happened not to be present, and one of the Magistrates on the Bench very loudly called out to the constable to go and apprehend him immediately, whereupon the constable, a sergeant of police, stepped forward and said, your Worships, you cannot do that; I must first call his name three times at the door, and after that your Worships must issue a warrant. And then their Worships did it according to the instructions of the constable. That had a very curious appearance in the eyes of the people in the Court, and created a great laugh. The next case that I saw, where the injustice of the proceedings on the part of the Bench was very strongly exemplified, was in the case of a Mr. Farthing, a coal miner, and proprietor of several drays. He was riding on his dray, and a constable came up and remonstrated with him; the man did not know the constable, he being in plain clothes; his name was on the dray, and when he was asked to come off he would not do it. The constable flew at him, and in the struggle which followed dislocated his thumb, which circumstance cost him three or four guineas for medical attendance. He summoned the constable for this assault before the Morpeth Bench, and brought two respectable witnesses who saw the whole affair happen, and they swore upon oath that the constable was very violent, and used very violent language, and that they saw him perpetrate the assault charged against him. The only evidence on the constable's side was that of the constable himself, a principal in the case, who merely gave his statement; and yet the Bench decided in favour of the constable.

10. *By Mr. Rusden*: Of whom did the Bench consist? Of the Police Magistrate (Mr. Day) and Mr. Allman, I think. It seemed to me such a gross thing that the oaths of these two respectable men, backed by the statement of Farthing himself, should be thrown aside, and the mere statement of the constable, an interested party, should be preferred, and the case dismissed. The case was well reported; in fact, I exposed it in every newspaper in the Colony.

11. *By Mr. Lesley*: Do you know any more cases? I may mention a case which I saw myself, in which I was very much struck at the injustice of it; the punishment was not considered equal to the deserts of the man. There was a lady, a respectable woman, walking along the streets of Maitland, and without preface a man goes up to her and tears her shawl off her shoulders, and when she remonstrated, he lifted his fist and struck her a blow which felled her to the ground, and dislocated her shoulder. The medical evidence, given by Dr. Liddell, was to the effect that the blow must have been of the most violent description. But for this monstrous assault the man was fined £5. Two parties in a skirmish at the punt the day after, in which a man got a black eye, were fined £5 too. So that this brutal assault—greatly enhanced from the fact of the party assaulted being a woman, a blow that, if it had struck her on the head, would have carried death with it—was placed on a par with a mere quarrel between two parties at the punt, in which one got a black eye.

12. *By Mr. Flett*: The Magistrate could not have fined him more? The man should have been committed to take his trial.

13. The woman had probably done something to provoke the assault? Nothing in the world. It was a brutal and unprovoked assault. I was present and heard the evidence.

14. *By the Chairman*: Have you any more cases to mention? I saw another case, which happened, if I mistake not, at Maryland, on the borders of New England, where John Day, who refused to live in a habitation or gunyah that was certainly not fit for any human being to exist in, was brought before the Bench—

15. Where? At Warwick.

16. That is more than two years ago? Yes. He quoted the Act which provides that decent habitations should be given for human beings; but in the teeth of that Act he got three months' imprisonment. The habitation was most disgraceful; a man could not stand up straight in it.

17. *By Mr. Markham*: Do you know the Magistrates that gave that judgment? Well, I forget now. Captain O'Connell, I believe, was one of them. I could not be certain as to the Magistrates; but, at all events, I am positive as to the case. The man was marched to Brisbane, 200 miles distant, handcuffed. What I complain of is, that the Magistrates decided in the teeth of the Act, which provides that decent accommodation should be given. Then there was that case at the Warialda Bench, where they charged the most exorbitant sum of £1,000 for bail for a working man. His name was Fairless. I know the man well.

18. About what time was this? About eighteen months ago. He was brought up on some charge or other, and, more as a joke than anything else, said he would shoot the Clerk of the Bench, unless he got a Magistrate to try him next day.

19. *By Mr. Rusden*: He wrote a letter—did he not? Yes; I believe he did. However, he was committed to take his trial for this, and bail was demanded to the extent of £1,000, and not being able to get bail to such an amount he was committed to gaol, and remained, I think, six months in Maitland gaol, until the Attorney General released him.

20. *By Mr. Flett*: You mention that case to shew that either from ignorance or improper motives the Magistrates erred in demanding excessive bail? Yes; perhaps from a combination of both.

21. *By the Chairman*: Are there any other cases that have come within your own personal knowledge? These are all the cases that I have at my immediate recollection. You have me rather unprepared; but I dare say if I had had time to reflect I could have mentioned a great many more.

James Ralfe, Esq., called in and examined:—

James Ralfe,
Esq.

20 Feb., 1861.

22. *By the Chairman*: What is your profession? Surveyor.
23. Where do you reside? At Port Macquarie.
24. How long have you been there? Thirty years.
25. You are aware that this is a Committee appointed to inquire into the conduct of the unpaid Magistracy in general, and their attention to their magisterial duties? I have understood so from my friend Mr. Flett.
26. If I mistake not you have seen some extraordinary proceedings on the Port Macquarie Bench in your experience? Yes, there have been some extraordinary proceedings in the course of a number of years. I suppose you wish me to confine my observations more to the present than the past. At present we have only one paid Police Magistrate, and he is the only Magistrate in the District of Port Macquarie that can sit on the Bench.
27. You allude to Major Crummer? Yes.
28. Are there no unpaid Magistrates? Not nearer than twenty-five miles; Mr. Freeman, who resides at that distance from Port Macquarie, has declined acting for some two or three years past.
29. Is justice regularly administered by Major Crummer—does he attend regularly to his duties? He is very regular in his attendance—every morning.
30. Does his administration of justice give general satisfaction? Not latterly.
31. From what cause? Major Crummer is a very infirm man, and imbecile from ill health and wounds that he received at Waterloo; but this would not be felt at all if he had any unpaid Magistrates to assist him; it comes more conspicuously before the public because he is alone on the Bench. I volunteered to take upon myself the duties of a Magistrate, in order to assist him, but my letter was disregarded by the Government. I never had any ambition for the honor, but seeing the district so exceedingly void of magisterial assistance to Major Crummer, I did volunteer to assist him.
32. You think that two or three unpaid Magistrates appointed there would be of the greatest benefit to the administration of justice in the district? Yes, of the greatest benefit, and it would relieve the district of a great deal of bad feeling, I may almost call it, which exists in consequence of the delay in the appointment of new Magistrates.
33. *By Mr. Lesley*: Are there any parties residing in the district who could be appointed? Yes, there are several well educated men there, who would, I am sure, be just and upright in their decisions.
34. *By Mr. Flett*: Do you consider that Major Crummer is fit for his duty at the present moment? No, certainly not—speaking of him in the abstract I am compelled to say he is not; I am obliged to give that conscientious opinion.
35. Have you not heard that though the duty is his in name it is in reality conducted by Mr. Becke, the Clerk of the Court, and does not give satisfaction? Mr. Becke is obliged to guide him in many of his decisions; and that circumstance has given rise to the report that Mr. Becke is the representative of the Bench. But this, as I said before, would not have been felt if there had been unpaid Magistrates.
36. Are you aware that many cases that have lately come before the Bench, in which Major Crummer could not adjudicate by himself, have been postponed from time to time for want of Magistrates? Yes, I know that has been the case; and I also know that several decisions have given great dissatisfaction.
37. You are also aware that the inhabitants of Port Macquarie have wished more Magistrates to be placed on the Bench for the last twelve months or two years? Yes, they have often asked me if I would accept the office.
38. You are also aware that names have been submitted to the Government? Yes.
39. *By the Chairman*: By petition? Not by general petition. This was not a straightforward proceeding that was adopted. Several gentlemen's names were mentioned, the relatives of certain parties there. I was left out myself, and though I had no ambition for the office, I was a little indignant at it; I made inquiry and found that the reason was that I was a Government officer. There were young gentlemen, lads or youths of so little experience, and so little adapted for such a responsible duty, that it perfectly surprised me that they could be nominated and myself left out. It was done more on a principle of favouritism than with a view to the public benefit.
40. Were these names recommended by the people at public meetings, or how? Three or four young men were nominated by Magistrates who were relatives of these young men.
41. In fact they were nominated by a clique? Exactly so. One Magistrate nominated his nephews, and another his sons-in-law. I may say thus much without mentioning names.
42. *By Mr. Flett*: How long is it since this took place? Twelve or eighteen months.
43. Is it your opinion at the present moment—it must be—that some Magistrates are required at Port Macquarie? It is absolutely necessary, if the administration of justice is to be carried on as it should be.
44. And that the Government should lose no time in appointing—how many—half-a-dozen, probably? Yes.
45. At Rolland's Plains and Port Macquarie? Yes.
46. Country gentlemen, of course, as much as possible? Yes, of course; but we are certainly very awkwardly situated down there. At Rolland's Plains there are plenty of gentlemen, but their interests are so involved one with the other, that it seems to me there is some danger in appointing them, unless there is a check by some itinerating Magistrate going there occasionally. It would give rise to a great deal of bad feeling if they were left to themselves.
47. *By the Chairman*: What is the distance of Rolland's Plains from Port Macquarie? About twenty-five miles.

- James Ralfe, Esq. 48. *By Mr. Lesley*: Is there any Court House there? No, there is no Court there.
 49. *By Mr. Flett*: Then there is really only one unpaid Magistrate in the whole district of the Hastings, that is Mr. Freeman? Only Mr. Freeman.
 20 Feb., 1861. 50. And he is not fit for duty? No, he is incapable of it. It was nothing else but the entire want of Magistrates that induced me to step forward.
 51. *By Mr. Markham*: Are you of opinion that the duties of the two places, Rolland's Plains and Port Macquarie, could be combined and better performed if the Police Magistrate were an active young man, who could travel from one to the other, and hold Courts at each? Yes, unquestionably; I certainly think it would be better for the Police Magistrate at Port Macquarie to go to Rolland's Plains once or twice a month.
 52. Is there a lock-up at Rolland's Plains? No; no Court House, or anything. All must be conducted at present in a private dwelling.
 53. In case the Police Magistrate at Port Macquarie were done away, do you not think the duty would be as well done if proper men were appointed as Justices, say six? I think they could do all that there is to be done there.

FRIDAY, 22 FEBRUARY, 1861.

Present:—

MR. MORRIS,	|	MR. LESLEY,
MR. MARKHAM,	|	MR. FLETT.

ROBERT MESTON, Esq., IN THE CHAIR.

Mr. William Denton called in and examined:—

- Mr. W Denton. 54. *By the Chairman*: You have been for some time resident at Armidale? For twenty years.
 22 Feb., 1861. 55. In what business are you engaged? I am an auctioneer and general agent.
 56. You understand probably the nature of the business respecting which you are called here; this Committee is appointed to take evidence with regard to the general conduct and attendance of unpaid Magistrates upon the Benches. Your experience in Armidale extends over a considerable period? It does.
 57. How long is it since you had a Police Magistrate there? About two years.
 58. What is your opinion with regard to the general attendance of the Magistrates before the Police Magistrate was appointed? It was not to be depended upon at any time.
 59. When they did attend, did their administration of justice give general satisfaction? Sometimes not.
 60. There are a good many lawyers about Armidale, I believe? Yes; I believe there are a few bush lawyers there.
 61. The Committee wish to know particularly about the general attendance of Magistrates upon the Bench, both before and since the appointment of a Police Magistrate at Armidale? Before the appointment of the Police Magistrate the attendance was not to be depended upon at any time; parties coming from a great distance frequently had to return without having their business at the Court done, for want of the attendance of Magistrates. Since his appointment, however, the Police Magistrate has been punctual in attendance.
 62. Do the other Magistrates give regular attendance along with him? At present there is but one unpaid Magistrate in the district, and he is about to leave it.
 63. What is that gentleman's name? Mr. Solomon Cohen.
 64. *By Mr. Morris*: When you say there is only one unpaid Magistrate in the district of Armidale, do you mean the police district or the town? I mean in the town and neighbourhood.
 65. *By the Chairman*: You mean Armidale township and its vicinity? Yes.
 66. *By Mr. Morris*: Only one Magistrate in the whole district? Only one in the town; there are several in the district.
 67. *By the Chairman*: The electorate has four Benches, I believe? Yes; Walcha, Armidale, Bendemeer, and Bundarra.
 68. There are four Benches in the district then? Yes; there are four Benches.
 69. Some of these have been appointed lately? I believe the Benches of Bundarra and Walcha have been appointed only recently.
 70. You know nothing about the administration of justice there, I suppose? I believe Mr. Weaver, the Police Magistrate, attends at Walcha and Bendemeer once a month.
 71. *By Mr. Morris*: And how often at Bundarra? I am not aware that he goes there.
 72. *By the Chairman*: Do you know how many Magistrates there are connected with the Bench at Bendemeer? I am only aware of three.
 73. Who are those three? Mr. Berry, Mr. Gibson, and Mr. Buchanan.
 74. That is Mr. Buchanan of Tara? Yes.
 75. How many Magistrates are there connected with the Walcha Bench? I am not aware of any resident Magistrate there.
 76. That is a supplementary Bench, is it not? There is a Court of Petty Sessions held there, and attended by the Police Magistrate once a month.
 77. *By Mr. Morris*: Are there no gentlemen in Armidale or its neighbourhood fitted for the appointment of Magistrates who could attend the Court? Oh, yes, there are gentlemen, I believe, who could do so.

78. Are there not some gentlemen in Walcha, who formerly held Commissions of the Peace, who have resigned? I believe there are.

79. *By Mr. Flett*: What induced them to resign? I am not aware of the reason.

80. *By Mr. Morris*: Does it not appear to you very desirable that country gentlemen, and especially those who are competent to discharge the functions of Magistrates, should perform the duties in preference to paid Magistrates? I think it is desirable to have a paid Magistrate.

81. Do you not think it the duty of persons competent to discharge the functions of a Magistrate, and residing sufficiently near to attend the Court of Petty Sessions, to take upon themselves those duties—and do you not think it would be advantageous to the public if they did so, in teaching them habits of public business? The experience I have had of the unpaid Magistracy leads me to believe that they are not to be depended upon for regular attendance.

82. That is not creditable to the persons who are appointed Magistrates? I do not know.

83. Do you not think that there are people in the neighbourhood of Armidale who, if appointed Magistrates, would discharge the duties of their office; it is a populous place, I understand? I do not know that I am justified in answering that question; I have seen Magistrates who did not attend when appointed.

84. Are there any storekeepers appointed Magistrates? One; Mr. Cohen.

85. Are there any more fitted to perform the duties of Justices of the Peace? I believe there is one; but I do not think he would accept the appointment.

86. *By Mr. Flett*: Do you think that storekeepers generally are proper persons to be made Magistrates, seeing the connection they have, and the relation to the people frequenting their establishments? I do not think I can say they are.

87. *By the Chairman*: How far is Salisbury Court from Armidale? About twenty miles.

88. That is Mr. Marsh's place, and he is a Magistrate, I believe? Yes, he resides there, I believe; he was formerly a Magistrate, but resigned.

89. *By Mr. Morris*: Suppose that country gentlemen, and persons fitted for the office of Magistrates, were willing to accept the appointment, and would attend to their duties, do you not think that would be better than having a paid Magistrate, and be more beneficial to the public? It would be a saving to the Colony in money.

90. But would it not be a means of educating them, as it were, for taking part in public business, and also in that way desirable? Yes, if they really would give their attendance.

91. But do you think the Government should encourage this neglect of the duties of unpaid Magistrates by appointing paid Magistrates, when unpaid Magistrates are numerous? Well, my opinion is that the system of unpaid Magistrates has not worked satisfactorily in the district to which I belong. Still, I think, the Government ought not to encourage their neglect of duty.

92. *By Mr. Markham*: Are you not aware that the number of Magistrates formerly in the district was greatly in advance of the number at present? Yes.

93. At that time was their attendance to be depended upon as regular? It was not.

94. Did any dissatisfaction arise out of the fact of their non-attendance on one part, and dissatisfaction of their jurisdiction on the other? Yes.

95. Did any public movement take place in consequence? There was.

96. Was the result a petition from the people for a Police Magistrate? Yes.

97. Did one or any of the Magistrates threaten to resign if that took place, and if an examination took place into the conduct of the Clerk of the Bench? Yes; and they did resign.

98. *By Mr. Morris*: Did they resign because a Police Magistrate was appointed, or rather because the Government ordered an investigation into the conduct of the Clerk of the Bench, or were the two charges mixed up together? I think the two charges were mixed up together.

99. *By Mr. Markham*: Since the appointment of the Police Magistrate, has the attendance of unpaid Magistrates, on the Bench, been generally more regular? It has been more regular ever since.

100. Has the jurisdiction since then given satisfaction, or otherwise? Generally it has given more satisfaction.

101. *By Mr. Morris*: Are you a resident in Armidale? Yes.

102. Have you many opportunities of attending, and do you make it a practice to attend at the Police Court? Very often.

103. Are there more or less cases of crime, drunkenness, or otherwise, than formerly? I think about the same average.

104. Is Armidale a very orderly place? It is not a disorderly place.

105. Except at elections? Except at elections.

106. Is there much drunkenness? A fair share.

107. Has there been any decrease of late? I do not think it is decreasing.

108. *By Mr. Markham*: Now, do you think it desirable that other gentlemen residing in the neighbourhood, and suitable persons, should be placed in the Commission of the Peace? I do. There is a deficiency of Magistrates in the neighbourhood.

109. *By Mr. Flett*: Do you not think that if six or eight gentlemen of property, fitted for, and willing to do duty, were appointed Magistrates, it would do away with the necessity for a Police Magistrate? If you could get men who would attend and do their duty.

110. *By Mr. Markham*: But can you get them? I doubt it.

Mr. W.
Denton.

22 Feb., 1861.

Mr. James Marks called in and examined:—

- Mr. J. Marks. 111. *By the Chairman*: Where is your place of residence, Mr. Marks? In New England.
 112. In what part of New England? About seven miles from Walcha.
 22 Feb., 1861. 113. What is your profession? I believe I am a grazier.
 114. How long have you resided there? Three years on the first of June next.
 115. You have a Court of Petty Sessions at Walcha? Yes.
 116. How is it attended by the Magistrates? I am not aware.
 117. Do you ever hear how it is attended? I have heard that it is not very well attended.
 118. Are there any Magistrates about there at all? None there at all except Mr. Tagtor, who lives about twenty-five miles from Walcha.
 119. Does he ever attend? Sometimes.
 120. How is justice administered at that Court, satisfactorily or otherwise? I would not like to take upon myself to say.
 121. Does the Police Magistrate attend there? Yes, once a month.
 122. Where does he come from? From Armidale.
 123. Are there any gentlemen in the neighbourhood whom you think fit to be appointed to the Commission of the Peace, or any in the district? There are some very respectable gentlemen in the neighbourhood who are competent for the appointment.
 124. You reside nearly seven miles from that Court yourself? That is all.
 125. *By Mr. Morris*: Do many cases come before the Walcha Bench? A good number.
 126. Of what class are they particularly? Small disputes about the neighbourhood.
 127. What is the population of Walcha? I would not like to take upon myself to say.
 128. How many public-houses are there there? Three.
 129. Are there one hundred inhabitants in the town? More than one hundred; I should say three or four hundred.
 130. Is the attendance of the Police Magistrate once a month sufficient to work off the cases? I do not consider that it is.
 131. How far is Walcha from Armidale, the residence of the Police Magistrate? From thirty-two to thirty-four miles.
 132. How far is Bendemeer from Walcha? About the same distance.
 133. And about sixty miles from Armidale? No, about forty-two.
 134. *By Mr. Lesley*: Have the gentlemen you have referred to as fit for Magistrates been in the Commission of the Peace before? I believe one has.
 135. Do you know the cause of his resignation? I am not aware what it was.
 136. *By Mr. Morris*: Does the Police Magistrate give satisfaction to the public at Walcha? Well, I could not say; I have been but once in the Court House.
 137. Have you heard any complaints against him? I have heard a few.
 138. In what respects? In different respects.
 139. Can you particularize? I do not wish to say anything of the matter, as I do not wish to be called in question with regard to it.
 140. Do you think the decisions of the Police Magistrate have the public confidence? I have only been once in the Court; but I have no good opinion of his decisions.
 141. *By Mr. Flett*: What you allude to then is from hearsay? I have no good opinion of him from the decision in my own case which was brought before him.
 142. *By Mr. Morris*: From what you have seen of the working of Courts of Petty Sessions, do you think they are better conducted under Police Magistrates than under unpaid Magistrates? I think it would require a Police Magistrate at Walcha besides a few unpaid Magistrates.
 143. *By Mr. Flett*: Do you think it requires a Police Magistrate at Walcha, besides the attendance of the Police Magistrate from Armidale? I do.
 144. *By Mr. Morris*: Does it come within your knowledge that the presence of a Police Magistrate is generally desired at the townships in the interior? Yes, I think it is.
 145. From what cause does that arise? I will state as an instance, that we have a Court held only once a month; and if a servant leaves my employ I must go to Armidale for a summons; I must ride the thirty-two miles there and the thirty-two miles back, and do the journey in a day, or else neglect my business. Now, if we had a Police Magistrate at Walcha, we could procure a summons without much trouble if a man did leave his employ.
 146. Do you not think that easy access to Police Courts rather encourages litigation than not,—that a multiplication of Benches in districts has a tendency to encourage an undue resort to them, and often to frivolous cases being brought before them on account of their convenient accessibility? Well, I do not know that.
 147. *By Mr. Markham*: Do you think that it would be productive of more good than evil to have these Benches throughout the district,—is the inconvenience to the people a greater evil than the increase of Benches would be? I think it would be a great convenience to Walcha if we had a Police Magistrate there.
 148. *By Mr. Flett*: Would not a few unpaid Magistrates do the duties the same as a Police Magistrate; an unpaid Magistrate could do the duty equally as well; and you would not have to ride so far for a summons, if independent gentlemen, having a stake in the country, were appointed and did their duty, and resided within a reasonable distance of the Court? Provided you could find proper persons to attend daily. I have ridden one hundred and thirty miles, backward and forward, to have my business done, without having a hearing of it at all; but if we had a Magistrate, or a Bench of Magistrates, I should not be put to that trouble.
 149. *By Mr. Markham*: That is some time ago? Yes.
 150. *By Mr. Flett*: Have you got a Court House or lock-up at Walcha? Yes, both.

151. And you think there are plenty of gentlemen in the neighbourhood who would act if appointed to the Commission of the Peace, and who are fit for the duty? I am quite aware of that. Mr. J. Marks.
22 Feb., 1861.

152. *By Mr. Morris:* The Police Magistrate, I suppose, is acquainted with all the residents in that neighbourhood? I suppose he is.

153. He could give the Government information as to the fitness of persons for the Commission of the Peace? I am not sure he could.

154. *By Mr. Flett:* Do you think he would be a proper person to apply to? I do not know that.

155. Is it your opinion, that in the appointment of gentlemen to the Magistracy, they should be independent men of property, or men above want? Those are the men who should be appointed; that is my candid opinion.

TUESDAY, 26 FEBRUARY, 1861.

Present:—

MR. FLETT, | MR. RUSDEN.

ROBERT MESTON, ESQ., IN THE CHAIR.

Charles Hamilton Walsh, Esq., M.P., examined:—

156. *By the Chairman:* You are practising the legal profession at Goulburn? I am a solicitor, and I reside at Goulburn. C. H. Walsh,
Esq., M.P.
26 Feb., 1861.

157. Have you been there many years? Some thirteen years.

158. I suppose you have had many opportunities of seeing the working of the administration of justice in your quarter, both in the township and in the country? Yes.

159. Has it of late given general satisfaction? I suppose you are referring now to the administration of justice before the Benches?

160. Before the Magistrates in Petty Sessions? I was examined before a Committee into the state of the Magistracy here some few years ago, and I stated then that, generally speaking, the administration of justice in the Magistrates' Courts was unsatisfactory, and that that arose from a want of uniformity in their proceedings rather than from any want of confidence in their integrity. I also stated that I thought the great defect in the administration of justice by the Magistrates arose from their not making themselves acquainted with the law, and that the Magistrates in this Colony laboured under a disadvantage which Magistrates in the older countries do not suffer from, namely, that except in the Circuit towns the Magistrates of the interior have but few opportunities of observing the administration of justice in the superior Courts. In England and Ireland, the Magistrates attend the Courts of Quarter Sessions, and also the Assize Courts, and there they are brought into contact with the administration of justice, not only in the cases in which they themselves may have committed, but also in cases in which they are obliged to sit as jurors; and in my former examination I stated that upon the carrying out of the District Courts and Courts of Quarter Sessions throughout the Colony an opportunity would be afforded to Magistrates of observing this regular administration of justice; and, in order that they might be compelled to avail themselves of that opportunity, I suggested that Magistrates should be obliged to serve on juries in the Courts of Quarter Sessions. At that time, from the constitution of the Court, they were judges in it, and therefore exempt from service on juries. To some extent that suggestion was acted upon, in making the District Court Judge sole Judge of the Court of Quarter Sessions in criminal matters. But the law did not go far enough; having made that provision, it should have provided that Magistrates should be eligible to serve upon juries in Courts of Quarter Sessions. In consequence of that not being done you never see Magistrates at the Courts of Quarter Sessions now; they leave the business entirely to the District Court Judge, and thus deprive themselves of one very important opportunity of acquiring some knowledge of law. I think it highly desirable, not only for that reason, but also to improve the character of our Quarter Sessions' juries, that Magistrates should be obliged to serve upon them. That my idea in that respect might be carried out, another improvement is necessary; and that would be to reduce the number of peremptory challenges that a prisoner on his trial for felony is entitled to make. This right of peremptory challenge was given by the law *in favorem vite*, and formerly was exercised only in capital felonies. Now that the punishments, under our law, are not so severe, the same reason for it does not exist; but, as Magistrates are supposed by prisoners generally to have less sympathy with crime, they are invariably challenged; whereas if the right were limited, some of them must come on in their turn. I have had a good deal of experience in defending prisoners, and I should consider it no hardship at all to limit a man's challenge—except in capital cases—say to some five or six. When I was before the Committee last time, I was asked with reference to the mode of appointing Magistrates, and whether it was desirable to leave the appointments in the hands of the Government, or in the hands of the Attorney General. At that time I had not given the matter much consideration, and I answered generally with respect to the administration of justice in the Colony, and particularly of criminal justice. I think that our condition now is a very anomalous one. I am sure it is without precedent, except in these Colonies, that the whole criminal prosecutions of the country should be under the control and in the hands of a political Minister, shifting about with the Ministry of the day.

C. H. Walsh,
Esq., M.P.
26 Feb., 1861.

161. *By Mr. Flett:* You are referring to the grand jury? To the Attorney General having the powers of a grand jury. I think the sooner that is set right the better for the country; and I conceive that the way to set it right is by the appointment of a Minister of Justice, who should hold his office on the same terms as the Judges hold theirs, and not be turned out politically, but be removable only on the vote of both Houses of Parliament, and to that extent independent of the influence of the Crown. He should be, in fact, in the same position as the Judges. To him I would intrust the appointment of the Magistrates of the Colony. Then I think that there ought to be subdivisions of the different police districts, and that Magistrates should be appointed for each division; that there ought to be a certain number for each division, and that that number ought to be kept up within that division. According to the present system, you will find one corner of a county or district, where it is thickly settled, with an over-supply of Magistrates, while on the other side of the district, where there does not happen to be a resident gentry, there are no Magistrates at all, nor any provision made for the administration of justice.

162. *By Mr. Rusden:* They should be ratably distributed, so to speak, as nearly as possible? Yes. And then the question would arise, If you cannot find the men in the district how are you to appoint them? Well, my idea is this, that there is no district in which you will not find men fit to serve on special juries. When the Jury Act is extended you generally find men of that class in every district; and I can see no reason why men of that class—who are called up to decide rights involving thousands, and questions of life and death—should not be put in the Commission of the Peace to discharge its duties.

163. How are these men selected as special jurors—by whose authority? The mode of proceeding under the Jury Act is this: A jurors' list, consisting of all persons coming within the description of jurors given in the Act, is made out by persons appointed for the purpose, in the same way as the electoral list. This list is subject to the revision of the Bench of Magistrates, and every person they choose to dub "Esquire" or "Merchant" becomes entitled to serve as a special juror. Practically no great inconvenience arises from the limitation of the class of special jurors, because I think generally speaking the Magistrates, in order to add to the numbers of the class of jurors to which they themselves belong, generally extend the term "Esquire" pretty liberally.

164. *By Mr. Flett:* For that reason I doubt whether it would be a very good test to go by? I do not mean to say it ought to be an absolute test; but I think that if you can find men that are properly qualified to be special jurors—men that come within the definition of special jurors under the Jury Act—the Minister of Justice might select from among them a sufficient number of Magistrates.

165. *By Mr. Rusden:* What are the objections to the grand jury system in England? The grand jury system in England is now very much under discussion, and I believe an experiment is about being tried to do away with it in the city of London. A Bill has several times been brought before Parliament for the purpose of doing away with it in the Central Criminal Court. I look upon it, that a Minister of Justice (appointed as I have suggested), discharging the duties of a grand jury in this Colony, would be a much more safe tribunal for the subject than twelve or thirteen gentlemen shut up in a room, proceeding secretly, which the grand jury does. The chief difficulty about the establishment of a grand jury in this Colony is, that you have not the material.

166. *By the Chairman:* Have you had any experience of the working of the Courts of Petty Sessions in the remoter parts of your neighbourhood? My experience extends, I may say, to the entire Southern District, from Goulburn to Albury.

167. Suppose we confine our inquiry particularly to the remote places where the District Courts do not extend? So far as the districts to which the District Court does not extend are concerned, I cannot speak from personal observation; but I am very frequently consulted by letter by parties who complain of injustice being done to them; and upon many occasions I have had the depositions procured and sent to me, and the decisions were certainly not what they ought to have been in many cases. At the same time, in most cases, though the proceedings were irregular, they really met the merits of the case. I have known some very extravagant things, but I confess I have known the same in the old country.

168. There is one subject which has occupied our attention very much, and that is the non-attendance of the local Magistrates at the Courts of Petty Sessions? That is a matter which I have thought of too; and in some correspondence I had with Mr. Forster, when he was in office, I suggested to him whether it would not be desirable, in reference to proceedings before Magistrates partaking of civil jurisdiction—under the Masters' and Servants' Act, the Impounding Act, and things of that kind—to legislate so as to give the Government power to fix a precise day in each district for holding Courts of Petty Sessions; that the Clerk of Petty Sessions should summon a certain number of the Magistrates of his district to attend these Sessions; that they should be fined for non-attendance in the same way as jurors are fined for non-attendance; and that they should sit from day to day, if necessary, at this special Court, until they had finished the list before them. Such a Court need not be held too often. In the Goulburn District, for instance, once a fortnight would be sufficient. At present we have four Petty Sessions in the week, at which the Magistrates are expected to attend; but I think summonses of that kind are now seldom disposed of in less than a fortnight, because of non-attendance, and very frequently they go beyond that. But if we had a special Court fixed, at which Magistrates would be obliged to attend in turn, or find a substitute, and in which they should sit from day to day till the list was disposed of, a very great improvement would be effected. Another matter for facilitating the proceedings in such cases, and expediting the business of the Court, would be to do away with the taking of depositions in matters where the fines were under £20. There is an immense waste of time in taking depositions. In the Petty Debts Court, where Magistrates have jurisdiction

jurisdiction to the extent of £10, no depositions are taken; and why should there be depositions taken in a trumpety dispute between master and servant—a matter that could really be settled in ten minutes. Even at this moment there is nothing which makes it obligatory upon Magistrates to have depositions taken. There is no law obliging a Magistrate to take depositions in cases of summary jurisdiction. C. H. Walsh,
Esq., M.P.
26 Feb., 1861.

169. *By Mr. Rusden*: It is never omitted? It is never omitted; but the reason is, that under a statute of George II or George III it was required that the evidence given should be set out in the conviction; but since the passing of Sir John Jervis' Acts the evidence has not been set out in the conviction, and consequently the reason for taking the depositions in these cases does not now exist.

170. Do you not think it ought to be done in justice to the prisoners? I am speaking now of cases within the Magistrate's summary jurisdiction. Of course, in matters where he is acting ministerially, he is bound to do it. In respect to summary jurisdiction I do not know of any statute making it obligatory. It is done; and, I think, ought to be obligatory in cases over a certain sum; and it is desirable that, in cases of appeal or prohibition, they should have depositions. In point of law, however, depositions are of no value in appeal cases, except as giving information. The case must be gone into *de novo*. The only other case in which they might be necessary would be an application for a prohibition to the Supreme Court, and the statute which gives that remedy does not require the depositions; you can have a prohibition on affidavit without the depositions.

171. *By Mr. Flett*: Suppose the Magistrates might have acted improperly? You might get that out on affidavit. In cases from the Small Debts Courts, where they take no depositions, you may have a prohibition on affidavit of the facts that occurred at the time.

172. *By the Chairman*: By your plan you would allow the Magistrates to adjourn the Court only until the next day? That is, if you establish the special Court I am speaking of, I would have it proceeded with from day to day until the list was finished; but I believe that if the taking of depositions were done away in the cases I am speaking of, the Court would never require to go over the day, or that it would be a very rare occurrence.

173. In your district you think once a fortnight would be often enough for such a Court to be held? I do not think there are many cases where it would require to be oftener than once a week or once a fortnight, and in some places once a month would be sufficient.

174. *By Mr. Flett*: Would there not be some difficulties on account of putting off cases under the Masters and Servants Act so long? Of course there might be some cases in which there would be individual hardship, but, as a general rule, I do not think it would work badly. With reference to cases under the Masters and Servants Act, I think it would be desirable that Magistrates should have the power to award compensation to the servant for delay in paying him his wages; I think it is an unjust thing to the servant to keep him hanging about the Court for a week or fortnight for his wages when it comes out at last that he was entitled to them. I should give him costs and compensation for loss of time as well as damages for breach of contract. You do it in the superior Courts, and a servant ought to have the same justice in the inferior Courts.

175. *By Mr. Rusden*: Are you aware that it was a proposition of this Government that Clerks of Petty Sessions should have the powers of one Magistrate? No, I am not aware that there was such a proposition as that. I think it was under Mr. Parker's administration that several gentlemen who had been Clerks of the Bench were appointed Police Magistrates.

176. With power to act as one Magistrate? I am not aware of that. There is a statute which enables the Government to give the power to Police Magistrates to discharge the functions of two Magistrates, but that is by special proclamation.

177. *By the Chairman*: Do you think the Clerks of Petty Sessions generally, in case of only one Magistrate attending, would be competent to act along with him? I do not think the Clerk of Petty Sessions, as a general rule, ought to be a Magistrate. He labours under one disadvantage, and it is this—he hears the party's story before he prepares the information. He hears a great deal about the case that does not come before the Bench at all. I think, too, that although the Clerks of the Benches are generally intelligent and respectable men, a great many of them are wholly unfit to discharge the duties of Magistrates. I see no reason, however, why Clerks of Petty Sessions should not have extensively the powers which they have now under the Masters and Servants Act, namely, of issuing the summons in any matter of assault, and so on.

178. But not to sit on the Bench? No. I know no reason why they may not initiate a matter.

179. *By Mr. Rusden*: Are you in favour of a large addition to the number of Police Magistrates? If we could afford to put Police Magistrates—supposing that we could get a sufficient number of competent men—in every district, and do away with the unpaid Magistracy altogether, it might be worth trying; but I do not think the Colony is in a position to attempt such an experiment just now.

180. You are aware that at one time there were a great number of paid Police Magistrates, that they did not give satisfaction, and that in consequence a large number of unpaid Magistrates were appointed? At that time the country was studded with Police Magistrates, and their duties were not confined to magisterial duties. There was a certain espionage which they were required from head quarters to exercise, which made them unpopular; but there is not the same necessity for that now.

181. Do you think it might not arise politically? Whatever my thoughts may be, I cannot say that I know that that entered into the matter at that time.

182. *By the Chairman*: From your great experience and shrewd observation, what is the best system you would recommend for carrying out the administration of justice in the magisterial Courts? I do not know that I can suggest anything more than I have just

C. H. Walsh, Esq., M.P. shadowed forth in the answers I have given already. There is one point I may mention : I think the Police Magistrates ought to be a shifting body ; I think they ought to be moved about.

25 Feb., 1861.

183. *By Mr. Rusden* : Itinerating? No, that is not what I mean. I mean that they ought to be changed from place to place ; that they should be entirely under the control of the Government, with respect to their stations, so that if a vacancy occurred in a certain district, the Government could say to Mr. So-and-so, go to such a place. I would always shift a Police Magistrate the moment I found him making a nest. I can speak with some confidence with respect to that, from observation of the working of the Police Magistracy in Ireland. There they are ordered to change at a moment's notice, and I know they are shifted about very frequently.

184. *By the Chairman* : Would you also recommend that in the country districts they should itinerate from one place to another? That has, I understand, been carried out pretty well in some of the remote parts of the Colony. I think the Police Magistrate of Deniliquin told me the other day that he rides 600 miles in a month, in the discharge of his duties. He has two very remote places to attend, I know. The great difficulty in carrying out anything of that kind is the great distances between the towns in the remote interior. You can hardly expect that a man, whom you would wish to see discharging the duties of Police Magistrate, would accept the office if he had to be constantly in the saddle riding about.

185. *By Mr. Rusden* : My idea is this—-that the Clerks of the Bench should have the powers of one Magistrate, so as to be able always to make a Bench, able to deal with all cases that would come before the Court, if one of the unpaid Magistrates should attend on any Court day, and thus cure the great fault of the administration of justice in the interior, namely, the postponing of cases in consequence of the non-attendance of Magistrates; but I understood you to object to this, because the Clerk of the Bench, when drawing the information, hears the cases beforehand? There is also this objection—that the Clerk of Petty Sessions is so much brought into contact with the people in the discharge of his other duties. There are none of these Clerks of the Bench that do not discharge the duties of three or four other officers, and they are thus so much brought into contact with the people that the instances are very rare in which the people would have confidence in their administration of justice.

186. Does not that objection apply also to some of the unpaid Magistrates—storekeepers, for instance, who are much in communication with the public? When I was examined before, I expressed an opinion that respectable storekeepers in the different towns ought to be in the Commission of the Peace, and since then there have been several appointments made in that way.

187. And they have worked well, I believe? Not as far as my observation goes. I know one case in which a very respectable man, connected with a very large business—a man of very great intelligence, and perhaps as independent in his character as any man in the Colony of New South Wales—was appointed by Mr. Cowper. There was no dissatisfaction whatever expressed at the appointment; on the contrary great satisfaction was expressed in the neighbourhood; and he acted very regularly for about three months, when he resigned, giving as his reason that he would not subject himself to the solicitation which he was exposed to in consequence of his appointment. I think the great bane of the Magistracy in this Colony has been that amongst the Magistrates themselves, the appointment has been looked upon as giving a man a certain social status. I should treat the Magistrates of the Colony exactly as special jurors are treated.

188. Would you pay them? No.

189. Special jurors are paid? But the payment is a mere nominal thing. I never could understand why jurors are paid in this Colony; they are not paid sufficiently, and unless you pay a man as much as will compensate him for his loss of time, I cannot understand why you pay him anything at all.

190. *By Mr. Flett* : There is one reason against making the Clerk of the Bench a Magistrate, namely, that it puts him at once on an equality with the other Magistrates, and they lose whatever control they may have had over him? I know of one case where a Police Magistrate discharges the duty of Clerk of Petty Sessions, and I think the great defect in his proceeding is, that he has not assumed the position which his Police Magistracy should entitle him to do; he has, for instance, given up the chair to the other Magistrates, and I think he made a mistake in that. The reason why it was said that a Police Magistrate might dispense with a Clerk of the Bench was this, that the Judges in the Supreme Court take their own notes, and there is no reason why a Police Magistrate should not take his own depositions. I know that in Ireland, it is the Police Magistrate that takes the depositions in the country districts. Generally, with reference to the administration of justice in the Magistrates' Courts of this Colony, and the prosecution of offences and other matters of this kind, in relation to the police business of the country, I think the great cause of complaint is the class of men you have as chief constables. Now, in Ireland, where they have the best constabulary in the world, the chief constable is invariably a gentleman, and occupies the position of a gentleman; he ranks with subaltern officers in the army. He is the man that is responsible for the conduct of the business in Petty Sessions; he attends the Petty Sessions Court; looks after all prosecutions for police purposes; and also after the regularity of the business of the Court. The Clerk of Petty Sessions in Ireland is, generally speaking, a man something of the same stamp that you make a chief constable of here.

191. *By Mr. Rusden* : Then the chief constable is the superior officer? Yes.

192. And the Clerk of the Bench is his clerk? Just so. I believe that the circumstance of the chief constables here not holding that position, is one reason why we have not the advantage

advantage of an efficient police in this country. It is absurd to expect from a chief constable, who is socially in the same position as the publicans of the township—who associates with them—and who is a man of the same stamp, that surveillance which a chief constable of a better class would be likely to enforce. In many places in the interior there is now a police force that is a disgrace to any community. Generally the most worthless fellows in the district are appointed constables.

C. H. Walsh,
Esq., M.P.

26 Feb., 1861.

193. *By Mr. Flett*: There is one question which this Committee is appointed more particularly to consider, and I therefore ask you whether it is your opinion that it is necessary there should be Police Magistrates in all the districts again—if there were proper men to be made unpaid Magistrates you think it would be quite unnecessary to have Police Magistrates? With compulsory attendance on the part of the unpaid Magistrates I think it would be unnecessary in most instances. I may say, from my observation of the unpaid Magistrates, that their attendance at Court is most irregular and uncertain; but that does not always arise from neglect of duty. I know one or two Magistrates in the Southern District who rarely, if ever, attend the Police Office, and yet I do not believe there are any other Magistrates who do an equal amount of business with them. They investigate cases at home, issue summonses, and do a great deal of business without ever attending the Petty Sessions.

194. *By Mr. Rusden*: If your proposition were carried out it would induce those Magistrates who will not attend to resign? I would not give them the power to resign; I would make them attend.

195. You cannot appoint a man to be a Magistrate against his will? Is he not obliged to act as a juror against his will?

196. Jurors attend once in three months, but a Magistrate's attendance would be fortnightly? The Government could appoint enough and let them take their turn. If a Magistrate sends in his resignation now the Government may say they will not accept it.

John Joseph Davies, Esq., called in and examined:—

197. *By the Chairman*: You are Clerk of Petty Sessions at Molong? Yes.

198. How long have you been there? Fifteen months.

199. How many Magistrates attend the Bench at Molong? Five.

200. Including the Commissioner of Crown Lands, Mr. Sibthorpe? Yes.

201. Do the Magistrates give regular attendance at your Bench? Some of them. Those who live rather remote, such as Mr. Campbell, do not attend very often, unless summoned.

202. On the whole you can say the others are pretty regular? Yes; I think there has been but one instance in which we have had no Bench since I have been there.

203. How often does the Bench sit at Molong? Once a week—on Tuesday. The occasion on which we had no Bench was unfortunately licensing day under the Pedlars' Act, and in that case, as there was no Magistrate to adjourn the Court, there were no licenses granted for three months.

204. Does Mr. Sibthorpe attend frequently himself? Yes.

205. He is a most regular Magistrate? He has been since I came there.

206. Have you any difficulty in making up a Bench of two Magistrates? No, not when Mr. Sibthorpe is in the town.

207. Supposing he is absent is there any difficulty then? There is sometimes a difficulty in making up a Bench of two Magistrates, but not often.

208. Are the people in that quarter generally satisfied with the mode in which justice is administered on the Molong Bench? I think, on the whole, they are.

209. There is not much dissatisfaction expressed? No, it has not reached my ears.

210. In that condition of affairs I suppose you do not think a Police Magistrate is at all required in Molong? I think the business of the Bench would be better conducted, most decidedly.

211. Then you admit that there are irregularities in conducting the business of the Bench? Most decidedly.

212. Of what nature? In one instance the Bench was written to by the Attorney General to send down to him the depositions in a case out of which arose a prosecution for perjury. I was directed to make out these depositions, which I did; and the committing Magistrate came into the Court and said to me,—“You need not send down the whole of those depositions; send down only the first six folios.” I said,—“The Attorney General has written for the whole of them.” “It's of no consequence,” he said; “send down only those.” Of this I made a minute in the record book, and this minute was seen next Court day by the other Magistrates, who immediately directed me to send down the whole of the proceedings to the Attorney General, which I did. An irresponsible Magistrate could do that, but a responsible paid Magistrate would never attempt it.

213. Are there many gentlemen in your quarter who are fit to be appointed Magistrates, in addition to the four you have at present? There is one who is said to belong to our Bench, but the other Magistrates object to his sitting, as he belongs to Wellington; he has property in the Molong District, and consequently has a right to sit on that Bench.

214. Are there other gentlemen in the district, not yet appointed as Magistrates, whom you would consider suitable if a new Commission was issued? Yes, I know one or two in particular.

215. *By Mr. Rusden*: I hardly understand your remark about some Magistrates saying another has no right to sit on their Bench. If I were a Magistrate, I should be able to sit in any Court of Petty Sessions as a Magistrate of the Territory? Certainly; but I should say, in explanation, that ours is a divided Bench.

J. J. Davies,
Esq.

26 Feb., 1861.

J. J. Davies, Esq.
26 Feb., 1861.

216. *By the Chairman*: There are two cliques? Yes; at least there is one Magistrate in particular—the oldest in the district—who is certainly opposed to the new Magistrates, and his fellow Magistrates, generally speaking, on any question that arises. But the real evil arises from a sort of partizanship on the part of subordinates in office, who make it their business to carry everything that is done in Court on one day to the other party, and thus arises a great deal of heart-burning.

217. *By Mr. Rusden*: Still you have no difficulty in making a Bench? No.

218. *By the Chairman*: With reference to the gentleman you speak about, should he come there, do the other Magistrates associate with him? Merely "good morning." The gentlemanly feeling of politeness is not done away with, but still they do not act cordially together. In the instance which I have mentioned, with respect to the depositions, there was actually injustice done, because the evidence which was withheld by the committing Magistrate would have gone to exculpate the accused party; I considered so myself at the time, and therefore I was perfectly justified in making the minute in the record book.

FRIDAY, 1 MARCH, 1861.

Present:—

MR. MORRIS,	|	MR. FLETT,
MR. MARKHAM,	|	MR. LESLEY,
MR. RUSDEN.		

ROBERT MESTON, ESQ., IN THE CHAIR.

T. Garrett, Esq., M.L.A., called in and examined:—

T. Garrett, Esq., M.L.A.
1 Mar., 1861.

219. *By the Chairman*: Have you had considerable acquaintance with the rural districts, or have you resided more generally in towns? More particularly in the country districts.

220. Have you seen the working of the Petty Sessions Benches in the quarter with which you are acquainted? In my capacity as a reporter I have had an opportunity of seeing the principal portion of them.

221. What is your opinion of the working of Courts of Petty Sessions generally? I cannot speak of them generally.

222. As far as your acquaintance goes? The opinion I have formed, after a good deal of thought, is that the Benches of which I have a knowledge were wanting in that acquaintance with the law which is requisite to administer it correctly.

223. The Justices of the Peace are deficient in legal knowledge, you think? To the best of my judgment I think that is the case. I have known cases in which they have given decisions directly contrary to the law, and others in which objections were taken under exactly the same circumstances, and two different rulings given.

224. *By Mr. Morris*: You can, I suppose, give the Committee an instance? I will. It is well known that Courts of Petty Sessions have no power to decide upon disputed boundaries of or titles to landed property. In the Court of Petty Sessions at Wollongong two cases arising out of such a dispute were heard, and the attention of the Bench having, in the first case, been called to the point that the Court had no jurisdiction, as it was a question of boundary, that objection was overruled. In the other case, arising out of the same circumstances, the same objection—that a question of title was involved—was held good, and the case was put out of Court. This was a case of my own reporting, and therefore coming under my own knowledge. I will read an extract from a notice on the two cases published in the *Illawarra Mercury* of 29th November, 1858. (*Same read and handed in. Vide Appendix A.*) There was the same objection raised in both cases; in the one it was overruled—in the other supported by the Bench.

225. *By the Chairman*: Have you anything else of that kind to bring forward? There are other cases, of a similar character, to which I might refer.

226. *By Mr. Morris*: This case that you mention, I imagine, arose merely from a want of knowledge by the Magistrates, rather than any undue leaning to one party or another? No; it arose from favouritism to one lawyer more than another.

227. Perhaps the ability and authority of one lawyer was greater than that of the other? The Bench was swayed more by the one, Mr. Owen, now a judge, and an attorney of high standing; the other was Mr. Sperling—a man of not very high repute in the district. It was notorious that Mr. Owen could sway the Bench on almost any case.

228. That arose probably from their opinion of his ability and rectitude? Not only that, but he terrified them with his legal knowledge, as they are afraid he would bring the question he may be dealing with before the Supreme Court. They did not know when his objections were tenable or not.

229. *By the Chairman*: What is the result of your observation as to the attendance of Magistrates? As a reporter I know that frequently, on days when many cases were down for trial, no Magistrates were there. My opinion is that the appointment is sought as a social distinction, rather than with the intention of being of service to the public by fulfilling the duties. Mr. Cowper's circular, which was issued eighteen or more months ago, failed to have any effect at all upon them. I have written many notices in the local press upon the matter, still without effect.

230. You are in favour of a Police Magistrate there? I am not.

231. *By Mr. Morris*: What is your remedy? You cannot afford to give such a salary to a Police Magistrate as will insure the services of an independent and well-qualified man for the office; the salary would be but sufficient to serve the purpose of men retired from business, perhaps with some little education, or of men of respectability, but no means or special qualifications for the position. Such persons in the country districts would come under the influence of the local gentlemen, to whom they would lean, and they would be more likely to be swayed by class feelings than the country gentlemen themselves.
232. *By the Chairman*: What principle do you apply for the selection of Magistrates? The plan I propose, and which I have considered well, is nomination by the people, in this way: That, according to the number of population in a district, the people should have the power of nominating a certain number of persons for the Magistracy, and that these gentlemen, when nominated, should be subjected to an examination by the District Court or Supreme Court Judges, as to their legal knowledge—more particularly with regard to the principles of those statutes under which the cases they are likely to administer will come, such as the Masters and Servants Act, the Publicans Act, &c. After they were examined, and the Court satisfied that they were competent, they and no others should have Commissions from the Crown.
233. How would you deal with those districts in which there would be found no gentlemen willing to become candidates, or, becoming candidates, on examination were not considered competent for the office of Magistrates? Then it would be positively necessary to appoint Police Magistrates; but there would be very few districts in which such circumstances would exist.
234. *By Mr. Morris*: Do you not think there are plenty of gentlemen whose common sense and ordinary knowledge of equity would make them as good Magistrates as those who would stand the test of the examination you propose? There are plenty of those gentlemen, no doubt, but generally they have not previous to appointment devoted even ordinary attention to the law they had to administer; and, under the present system, the appointments are given more as social distinctions, not with the special view of the party's competency to perform his functions, or on account of his qualifications for the discharge of the duties of his office.
235. *By the Chairman*: What measures would you take to obtain the requisite attendance of Magistrates when appointed? I would make a provision that if they failed to attend a certain number of days they should be struck off the Commission; you could not fine or punish them any other way. The honor should be taken from them, and others be appointed in their places.
236. Could not that be carried out by calling upon them to attend in rotation? That is theoretically the process pursued now.
237. Where do they carry it out? In most places, in the best way they can. In Wollongong, and I believe in Sydney, by means of varying the roster periodically, the list is gone through.
238. You do not imagine that, by any stringent rule in application to Magistrates, any part of the roll should be bound to attend? I think that according to the present law, by implication, those who are appointed are bound to do the duty required of them—and they generally do it.
239. You cannot compel them—therefore the country suffers? It should be a regulation, if elected as I suggest, or under any other system, that, if the duties are not performed, the honor should not be allowed to rest upon the person who had neglected to perform them; the Commission should be withdrawn, unless a sufficient excuse is offered. There are cases of Magistrates being elected Members of this House—that should excuse them from their duties as Magistrates.
240. What is your opinion regarding the general character of Clerks of Petty Sessions? I have had an opportunity of making acquaintance with only two or three.
241. Are they generally competent men? Yes. I am acquainted with Mr. Turner, of Wollongong, Mr. Mcarees, of Kiama, and with Mr. Fox, at Bombala. These gentlemen are fully qualified.
242. Do you think the plan would work well of giving Clerks of Petty Sessions the power of Magistrates when only one Magistrate attends? I would rather see the power given in this way—to act as one Magistrate when two were required; but not to act ministerially, or sit on the Bench to adjudicate singly.
243. *By Mr. Morris*: You are aware that there are no cases in which two Magistrates are required to act ministerially? I would allow the Clerk to act judicially when only one Magistrate is present, and the business requires two, and give him power to do office business, such as granting summonses.
244. You think the Clerks should have the power to issue summonses and swear informations? I do; I think it would save trouble and delay.
245. You think it would operate well if they had the power of one Magistrate to co-operate with another. Yes; but in no other cases.
246. That is when two Magistrates take their seats on the Bench? Yes.
247. As equal to themselves? He should be subordinate, except in cases of necessity, when he takes his seat on the Bench, and when there is only one other Magistrate.
248. Then you are not in favour of Police Magistrates? Except in extreme cases, because the expense would be extraordinary. If the system were adopted on the recommendation of this Committee, every little township in the Colony would send in an application claiming a Police Magistrate.
249. What is the general character of chief constables, with regard to their qualifications for the offices they hold? I cannot say much about them. The one party I know assumes great

T. Garrett,
Esq., M.L.A.
1 Mar., 1861.

T. Garrett,
Esq., M.L.A.

1 Mar., 1861.

great power in the Court, and there is a feeling against him on that account; and, speaking generally, I suspect that where the interests of Magistrates clash with those of others, he favours the Magistrates, being their subordinate. It is almost natural that he should consult the interests of those who have the power over him.

250. *By Mr. Morris:* You remark in your evidence that the Magistrates who act in your district were deficient in legal acquirements? Deficient in legal knowledge with respect to the cases they administer.

251. Is it a fact that a large amount of legal knowledge is necessary for Magistrates to determine the few cases in which they are called upon to act judicially? I think they ought at least to have a knowledge of the laws they administer, not only of the leading principles which regulate the action of our Courts, but of others—the law of evidence for instance.

252. Are the Magistrates that have come under your notice shrewd men in their own business? Some of them are; but there are cases among the last appointments, under the Parker administration, of men who had scarcely been out of the district, and who had never been engaged in business at all.

253. But have they correct judgments of abstract justice? They are not men of large understanding, or men who have taken an active part in life, but gentlemen who had sufficient influence to get themselves appointed. Mr. Henry Osborne was requested to nominate and recommend gentlemen for the Commission of the Peace, and out of the fourteen he recommended, there was Mr. R. J. Marshall, his brother-in-law; Mr. F. P. McCabe, his son-in-law; Mr. J. W. Wilshire, who married Mr. Osborne's brother's daughter; and, Mr. Redhall, also a son-in-law, absent in England, and by common report of weak intellect, if not of unsound mind. The whole fourteen were appointed, with the exception of Mr. John Stewart, who refused to accept appointment. Another gentleman, who then represented the district, was also asked to recommend gentlemen for the Commission of the Peace, and he recommended four, not one of whom were appointed. The only way this was to be accounted for was that Mr. Osborne supported the Government of the day, whilst Mr. Marks almost generally opposed them.

254. But, as you have mentioned the names of those proposed by Mr. Osborne, could you also give us the qualifications of those rejected as the nominees of Mr. Marks, because it is probable that substantial objections stood in the way of their appointment? Well, from what I recollect of the debate at the time, it appeared that these gentlemen were fully equal in social standing and ability to those who were then appointed, and since then some of them have been put on the Commission.

255. Would you not, as a Member of the Legislative, feel yourself justified by that circumstance in recommending a person for the Magistracy? I was asked the other day to recommend a gentleman for the Commission of the Peace; the memorial was sent to me, and I placed it in the hands of the Colonial Secretary.

256. Could you imagine any person in a position better adapted to afford information in such a case than a Member of the House, who would in some measure be responsible for a good selection? Well, political influence is usually brought to bear upon these appointments. Support is given by local gentlemen to Members of Parliament, who owe their seats perhaps to half-a-dozen active men, and a recommendation or a request from them to the Member is received with great consideration at any rate; and, from what I have noticed of electioneering matters, I believe it is often a stipulated condition that the gentlemen should be recommended after supporting the candidate.

257. Then there appears to be a pretty general desire among persons of property of any description to become Magistrates? Merely for the social distinction, not from any real desire to assist in the administration of justice.

258. Is there not a difficulty in getting gentlemen, competent by education and means, to become Magistrates? I believe there is. The reason of this I understand is owing to the disrepute into which the Benches have fallen, not only from the character of the appointments, but from the way they behave on the Bench.

259. You have told us that in order to have a suitable Magistracy you would require some test, and which test of fitness you would apply by examination of candidates—do you not suppose that, if such a test were used, such men as lawyer's clerks and indolent, but moderately well educated young men would very likely go through the examination better than men of property and standing? You forget that, by the plan of election I propose, before they were recommended they would have to be nominated by the people, by whom they would not be approved if idle, disorderly, or wanting in respectability of character.

260. Do you suppose that men of property, education, and standing, would be willing to become candidates if the Magistrates were to be chosen by popular election? The people themselves would nominate these gentlemen, and I believe the elections would be conducted far differently from political elections, and do away with those feelings and that mode of action to which you allude. I think we should by this means have men of the best intelligence and character, and that the administration of justice would be managed with the confidence of the public.

261. Do you suppose that, when popular feeling runs so high as it did in the Shoalhaven District with respect to Mr. Berry and the Municipality, the great majority of the people would not nominate those whom they considered hostile to the unpopular party; for instance, not those who took a favourable view of Mr. Berry's case? I think the feelings of the people would not be brought to bear upon the question at all.

262. The feeling is different there then to what it is in any other part of the world? No; if these gentlemen, who are nominated, have to pass through the ordeal of first being examined as to their fitness, and then having their qualifications submitted for the approval of the Crown, jealousies of that kind would be done away with.

263. Do you find the operations of elections generally in the country carried out in that way—that where men mostly have business of their own to attend to, the best men in the district are elected for the municipality? The best men who offer are, as a general rule, elected for the municipalities.

T. Garrett,
Esq., M.L.A.

1 Mar., 1861.

264. But do the best men offer? The people choose them as the best, and we must assume that they are so.

265. *By the Chairman:* By the Magistrates being elected you mean that the people should consent to their being made Magistrates? No; I think a vote should first be taken.

266. *By Mr. Morris:* If the Magistrates were elected by the people, would not a party spirit be imparted to the Bench—is not that a necessary consequence? I cannot see that it would if it rested there, and no after-proceedings took place to affect public feeling.

267. Why? Because he must be a capable man, or he would never obtain a seat. The personal likings of the people may interfere, he must however have the esteem and confidence of a majority, which he ought to have, it is the next essential to a knowledge of his duties. At present gentlemen are appointed in whom the people have no confidence; influence secures the appointment of almost all of them.

268. Have you not observed that Magistrates may be struck off the commission for corruption—are your objections founded on their deficiency in proper attainments, or on their susceptibility of being influenced by corrupt motives? They are frequently influenced by considerations which never appear before the Court. In a case to which I may allude, Mr. Marshall (Mr. Osborne's brother-in-law) was defendant, and it was tried by Mr. McCabe, Mr. Wiltshire, and Mr. William Osborne—all relatives. It was as to damages done to a pig by a dog; Mr. Marshall saw nothing of the occurrence, but stated his opinion that the dog could not injure the pig, whilst a witness swore that the entrails of the pig were pulled out. Yet the Bench stated that they would take Mr. Marshall's opinion before the other man's swearing to the fact. What makes the thing more glaring is, that on an application for a new trial, it was refused by the Magistrates who tried the case.

269. Is not that an exceptional case? Where you give the power of nomination to a man, and the nomination is received with consideration on political grounds, he recommends his friends and relatives; and this shows the danger of the system. Five of the persons nominated by Mr. Osborne were related to one another and himself.

270. In your reading or conversation have you not heard that more serious objections are made to the Magistracy of those countries where they are elected by the people, as in America—a large portion of the people consider them a disgrace, and have no faith in them as a judicial tribunal? I think that whoever reads the social history of America, will find that there are fewer complaints respecting the administration of justice than in other countries. In this case that I allude to, Mr. Marshall swore that the dog belonged to him; that it was only six months old, and not able to kill a pig. The other man swore that the dog tore the sow so much that she died soon afterwards. The three relatives tried the case of the other relative.

271. Have you been in any other part of the country (besides Illawarra) where the cases coming before the Bench are mostly under the Masters and Servants Act? In Cooma I have heard that where the superintendents of large stations are Magistrates of the Bench, it is a matter of public rumour that they take an interest in impounding cases, and disputes arising out of them, and between masters and servants, because they are influenced by considerations one towards another.

272. Your experience leads you to believe that in masters' and servants' cases the Magistrates lean rather to the master than to the servant? That is the result of my experience in Illawarra and elsewhere.

273. Have you in your travels or association with country people never heard a contrary opinion expressed—that generally speaking the Magistrates have an undue leaning towards the servant? I never heard it named; in the manner of conducting trials in little matters of this kind, the clerks usually throw the weight of their influence in favour of the master.

274. Have you had any experience of the way in which Police Magistrates discharge their duties? No; but I believe that Police Magistrates would be more open to be influenced in favour of the employer, and be more ready to give way to those influences than the employer himself.

275. *By Mr. Flett:* From the evidence you have given, you appear to think that Police Magistrates are open to tip? No, I do not say that; but they are generally picked from a class of men who have been in better circumstances, and who are of respectable standing, but with little means.

276. *By Mr. Morris:* Are you not aware that the Police Magistrates who have been appointed to the commission of late in the country districts, have been Clerks of the Bench? I believe that is almost a rule now.

277. I apprehend that, if Police Magistrates are necessary, the best class to look to would be the Clerks of the Bench; and that that also would be the class of officers best entitled to promotion? Decidedly, because they have generally a better knowledge of the principles which should guide courts of law, and there is no other means of promotion except appointing them Police Magistrates. I know, from my connection with the paper, that the Benches have generally settled into social factions, and that if the clerk attached himself to one side he made enemies of the other.

278. *By Mr. Rusden:* I gather from your remarks that you are in favour of Police Magistrates? Not generally. It might be necessary to appoint Police Magistrates in very distant districts, where gentlemen qualified for the Commission of the Peace live at an extreme distance from the Court, so that they could not attend. I explained that the clerk should act ministerially, or in the issue of warrants, summonses, and other office duties, and also act conjointly in making up a Bench when two Magistrates were required.

T. Garrett,
Esq., M.L.A.

1 Mar., 1861.

279. You prefer the nomination of unpaid Magistrates generally? I do, under the system I have recommended.
280. Do you not think that, if chosen by popular election, it must be by a majority of the people, and that this would induce party feeling among the Bench? It may to a small extent, but I suspect it is party feeling exhibited indirectly that has regulated appointments up to the present; then you would secure a qualification by examination and election.
281. You allude to the time of Mr. Donaldson's administration? I believe they are so regulated at the present time. I think the system has always been open to that objection.
282. Many persons consider that that measure was objectionable? It was scarcely more objectionable than the present mode, selections were made from gentlemen recommended by all Members of the House alike; but ever since the recommendations of the supporters of the Ministry of the day will receive more consideration than those of opponents. As long as the power of nomination lodges in the hands of Members of Parliament, so long will political influence affect the selection of Magistrates; but in making the Magistracy elective by popular vote, although some little party feeling might be engendered, it would be checked by the examination as to qualification.
283. What do you think of this suggestion—that a Minister of Justice be appointed, removable only by a vote of both Houses, who should be intrusted with the appointment of Magistrates? He would have to seek information from some quarter, and he would most likely seek it from Members of the House. I think the appointment of Magistrates was at one time placed in the hands of the Judges, and was found not to work well.
284. *By Mr. Platt*: He could get information from gentlemen in the various districts, such as Magistrates and clergymen? That would make the Bench a close corporation.
285. *By Mr. Morris*: That system being now to a great extent pursued, is it not a close corporation at present? No.
286. *By the Chairman*: Do you not know that it was the practice of the Government to send circulars to the Benches, asking them to recommend persons for the Commission of the Peace? But by Mr. Plunkett's evidence before the last Committee, it appears that this was found not to work well; it was an objectionable practice; you may recollect a case at Wide Bay, a few months ago, where the Bench mustered to blackball a man as to whose appointment they had been referred to.

APPENDIX A.

[Extract from the Illawarra Mercury of 29th November, 1858.]

"The cases to which we allude are James Slevin v. William Keep and William Ratty, for damages done to property, tried on the 4th November; and Ratty v. Slevin, for a violent assault, tried on the 15th of the same month.

"Both cases arose out of the disputed possession of a tree. The parties (*i. e.* Slevin and Keep) possess land divided by a road. It was alleged by Slevin that a tree had been growing on this road, which had been fallen, and had fell on what he swore was his land. Keep, believing that the tree was on the road, or else on his own land, proceeded—with the assistance of Ratty, whom he employed—to cut the tree up; whereupon, Slevin interfered, and asserted his right to the tree, as it was on his land. This was denied by Keep and Ratty, who refused to desist from sawing and quit the spot. Slevin thereupon committed what, to use the mildest terms, cannot be termed anything but a most violent assault—knocking Ratty down by a blow on the head with a bludgeon, hitting him with the same when down, and afterwards knocking him down a second time by a blow so severe that it rendered him insensible for some time. These are the circumstances, as developed in the evidence, out of which both these cases arose. In both cases objection was taken as to the jurisdiction of the Bench; but the decision in the first case was to overrule the objection, and in the second to support it!

"To enable our readers to judge for themselves, we place so much of both cases as refers to the objection in parallel columns:—

COURT OF PETTY SESSIONS.

Thursday, Nov. 4.

(Before Messrs. MacCabe, Thomson, and Marshall.)

"W. Keep and ——— Ratty were charged with having damaged a tree, the property of James Slevin, to the extent of £2, by cutting and removing a portion of it. * * * * *

"A tree, which had been growing on the road, fell on the land of plaintiff, and the defendants had commenced to saw up this tree, thinking they had as much right to it as plaintiff, as they were still of opinion it was on the road. Mr. Sperling objected to the jurisdiction of the Court, as it was a question of boundary, and also as no evidence of ownership had been given. The Bench overruled the objections. * * * * *

"found the defendants guilty, and sentenced them to pay 5s. each and costs.

Monday, Nov. 15, 1858.

(Before Messrs. Irving, Hopkins, and Gordon.)

"James Slevin was charged with having assaulted William Ratty, at Brandy and Water Creek, on the 1st instant, by beating him violently with a stick. * * * * *

"Mr. Owen here said he would endeavour to save the time of the Court by submitting an objection which, he was of opinion, would be fatal to the case. He objected to the jurisdiction of the Court, on the ground that the subject matter of the case had arisen out of a dispute as to the boundary or ownership of land, and quoted the latter part of the 29th clause of the Act under which the charge was brought, to shew that it was not competent for the Bench to hear and determine any case of assault where the right and title to land was involved. He contended that the plaintiff's own evidence shewed that there was a question as to the boundary of defendant's property. Mr. Sperling argued that this was not a boundary, but simply one of assault, and nothing else. He read a quotation from Burns' Justice, to shew that in case of a person being found illegally on the land of another, the owner of the land, having previously requested the trespasser to remove, might use reasonable and necessary force to compel him. He contended that a great more force and violence had been used than was necessary, and which constituted an assault. The Bench, after consulting together for some time, decided that the objection started by Mr. Owen was fatal to the case."

THURSDAY, 6 MARCH, 1861.

Present:—

Mr. LESLEY, | Mr. MARKHAM,
Mr. RUSDEN.

ROBERT MESTON, Esq., IN THE CHAIR.

Captain John M'Levie, Inspector General of Police, called in and examined:—

287. *By the Chairman:* You have had great experience in this Colony, Captain M'Levie? Yes, considerable experience in matters of Police.

288. The matter into which we are now inquiring is between the unpaid and Police Magistrates, in different parts of the Colony. We find great difficulty in getting the business of the Benches conducted by the unpaid Magistrates, from a variety of causes, and many petitions have come in for the appointment of Police Magistrates. Do you think the efficiency of the Bench would be increased by the appointment of Police Magistrates to the various Benches of the Colony? As a general rule, I have no doubt it would; but there are Benches in this Colony where the Magistrates are exclusively unpaid, and where the duties are efficiently performed.

289. But in remote districts, where Magistrates could not be got—where, sometimes, two Magistrates cannot be found to sit for sixteen weeks together—how are we to do in that case? A difficulty exists there. I have correspondence with all the Benches, on matters of account, &c., and I find that at the Condobolin Bench they are sometimes three months without a Magistrate, but the duties are of so light a nature as not to justify the Government in incurring the expense of a Police Magistrate. I give that as one instance. It has been suggested frequently that this difficulty might be met by the appointment of itinerating Magistrates.

290. Would you give a Police Magistrate—were such an officer appointed—a single or a double power? There are objections to the double power being conferred on any one man, but no instance has ever come within my own knowledge to justify such objections.

291. Do you think the constabulary would be better regulated by the appointment of Police Magistrates than under the present system? I do not think the appointment of a Police Magistrate would at all affect that point, because I look upon it, that an unpaid Magistrate—as regards the control of the constabulary—has by law quite as much power as a paid Magistrate.

292. But what is his power over the constabulary—does it not resemble the position of the master to the servant? The Bench appoints under the Act, and not any individual member thereof.

293. It is the same power as is given under the Master and Servants Act? It is within my own knowledge that at some Benches of the Colony where there are paid Magistrates, the paid Magistrates in some instances have assumed to themselves the right of the appointment of police. The matter has been referred to me by unpaid Magistrates; and I have always held that the Act vests the appointment in the hands of the Bench, whether it be composed of paid or unpaid Magistrates.

294. In the Bench as a whole? Exactly. I think the less the Magistrates on the Bench have to do with the police the better. I look upon it that the Magistrates should know nothing of the police, or of police cases, until they are put before them on the Bench. I have a very great objection to cases being investigated by Magistrates, and instructions being given before the case is heard. The Magistrate should go on the Bench with his mind clear of all previous knowledge of the case.

295. By giving Police Magistrates the double power, might there not be a collision between them and ordinary Magistrates? Any unpaid Magistrate who was desirous of seeing the public business carried on without obstruction could not, on public grounds, make any objection to the appointment.

296. Providing the Police Magistrate had a double power, should he, in that capacity, always take the chair in preference to any of the senior Magistrates—a difficulty sometimes arises then? I do not think the double power should give him any right to the chair; but it has been generally conceded, I believe, in most Benches, that the Police Magistrate should take the chair. The double power, however, should give him no right to that precedence.

297. Do you not think the senior Magistrate, out of courtesy, should be chairman? That is a matter of etiquette, which I would leave to each Bench to determine for themselves.

298. Would the situations of Commissioner of Crown Lands and Police Magistrate be incompatible with one another? I think so. I think the duties of the two offices, if amalgamated, must frequently clash.

299. Do you think the ordinary Magistrates would attend better were a Police Magistrate appointed, or would their attendance not be so regular? I should think they would be more likely to make their attendance less regular, knowing that a paid Magistrate was there to do the duty.

300. If a new Commission were issued, on what principle do you think the new Magistracy ought to be appointed? Do you mean as to their qualifications?

301. As to the nomination of gentlemen in the various districts—on what principle should they be selected? So long as we have no Lord Lieutenants of the Counties, or Lord Chancellors, the appointments could not be left in any other hands than the present.

302. Than in the hands of the Government? Than in the hands of the Government.

303. The question has been mooted in high quarters, and received a favourable acceptance, that there is very great difficulty sometimes in proceeding with the business in Petty Sessions

Captain
John M'Levie.
6 Mar., 1861.

Captain
John M'Levie.
6 Mar., 1861.

in consequence of the non-attendance of unpaid Magistrates—one not being able to form a Bench,—would it be advisable to give, *pro. tem.*, to the Clerk of the Bench, the power of a Magistrate, in order that the business of the district might be advanced? Since the introduction of that law, making, in certain cases, the Clerk of Petty Sessions a Police Magistrate, I have not found it to work well; I think it places the Clerk of Petty Sessions in a false position.

304. He would be placed in two positions—at one time he would be the Magistrate, and then he would descend to the position of clerk, which I suppose would be considered *infra dig.*—you do not think that advisable? It is within my own knowledge in some instances where Clerks of Petty Sessions are Magistrates, that they have assumed to themselves power which should only be exercised by the whole Bench.

305. Would you have any objection to giving them the power of issuing summonses and swearing informations when Magistrates were absent by reason of long distance from the Bench? I have always been of opinion, both as regards the Sydney Bench, and that of the country, that a man competent to fill the office of Clerk of Petty Sessions should have the power of issuing process; that is the case now in the London Police offices. By that means you would relieve the Magistrates who would sit upon the case, of having a knowledge of the facts of the case before hearing them in evidence.

306. *By Mr. Leley*: Of any knowledge of the case? Precisely; if an information comes before a Magistrate before he issues process by summons or warrant, his mind must be biassed one way, and he cannot, however dispassionate he may be, get rid, to a certain extent, of that bias; but it would be very different if the case came before him for the first time when it was brought forward to be heard in Court.

307. *By the Chairman*: The great source of complaint from the country districts has been not so much from the want, as from the non-attendance, of Magistrates—do you think any power is required to make the Magistrates attend to their duties? It is an honorary appointment, and I do not see how you could compel gentlemen to attend.

308. Do you not consider that the oath which a Magistrate takes when he undertakes that office ought to be sufficient to bind him to attend to his duties? To bind him to attend; but not, in my opinion, to neglect his own private business to attend.

309. The difficulty is this: Magistrates now are not bound to attend; the public business suffers by reason of their non-attendance? Undoubtedly.

310. Could not some provision be made which would compel regular rosters and attendance? In a great many Benches of the Colony there is so much want of unanimity among the Magistrates, that when one goes on the Bench, another will not go; that must operate against the public interest.

311. There is, no doubt, a difficulty in getting Magistrates to attend? Yes.

312. It would be difficult to get them to attend if, by so doing, they would neglect their own business? Yes.

313. And every gentleman in the country has an occupation of his own to attend to? Yes; the unpaid Magistracy of this Colony are very different from the unpaid Magistracy of England. The unpaid Magistracy there are men of property, who have nothing else to attend to.

314. Have you any plan to propose which would remedy these evils consequent on the non-attendance of the Magistracy? The only thing which suggests itself to me with regard to the matter is, that I would give the Clerk of Petty Sessions the power of issuing process out of the Court, and make a paid Police Magistrate itinerate. By giving the Clerk of Petty Sessions this power, the presence of the paid Magistrate would not be required constantly; but if the Clerk of Petty Sessions has not such a power the public interest would suffer as much as it does now, because the presence of a Police Magistrate to issue process would be as necessary as his presence to hear the case.

315. *By Mr. Rusden*: Does not the objection you have made to the Clerks of Petty Sessions (if made Magistrates) having in some degree a previous knowledge of the case by taking depositions, equally apply to a Police Magistrate? Yes; but my answer to the question put by the Chairman was, that I objected to the Clerks of Petty Sessions having this power.

316. Yes; but the question would equally apply to the Police Magistrate: does he not get that previous knowledge? Yes; but by the plan I suggest—processes being issued by the Clerk—the Magistrate's mind would be free from bias, inasmuch as he would know nothing of the case until it were brought before him on the Bench.

317. But the objection would apply as at present—the Police Magistrate has a foreknowledge? Yes.

318. If it be found necessary in up-country districts that the Clerk of Petty Sessions should have the power of one Magistrate, might not the chief constable issue process to prevent his having a foreknowledge of the case? No; I think not; that is a power I would not trust to the class of men who are at present chief constables.

319. We want, if we can, to expedite the police business in the country. By giving the Chief Clerk the power of one Magistrate, would not the objections to such an appointment be done away with—by having a superior man as chief constable, so that a Magistrate should not have a previous knowledge of the case? I see more than one objection to the chief constable doing that duty, even if the chief constables of the Colony were, as a class, competent to do it. The first objection is this: at all Benches there are, of course, civil processes as well as criminal processes, and I think an officer of police should be entirely unconnected with any civil matters that might come before the Court.

320. *By the Chairman*: The chief constable is generally public prosecutor? He ought to be.

321. What is your opinion of the ability of the chief constabulary in general in this Colony? There are some of them very efficient men, but others I have no opinion of; a
great

great many of the chief constables of the Colony, I am sorry to say, receive their appointment merely as a matter of private expediency; there are, however, some first-rate men.

Captain
John M'Leerie.
6 Mar., 1861.

322. I suppose such would be your answer also, if I were to ask you your opinion of the Clerks of Petty Sessions in the Colony. You have heard many complaints alleged by the Judges against the efficiency of Clerks of Petty Sessions? Yes; some are not very efficient, but others are well qualified for the office. There are Clerks of Petty Sessions in the Colony fit for any office connected with the administration of justice in the interior.

323. *By Mr. Rusden*: Of course it is your opinion that it would not do, if such were the determination of the Government, to give to all Clerks of the Benches the power of one Magistrate;—there must be a selection, some being efficient, and others inefficient? Do you mean the power on the Bench or off the Bench?

324. On the Bench? I see great objection to that.

325. *By Mr. Lesley*: As a general rule, do you not think the Clerks of Petty Sessions in New South Wales equal, if not superior, to the general body of the Magistrates in education and attainments? I have no doubt they are to the general body.

326. *By Mr. Rusden*: You mentioned the Bench at Condobolin? Yes.

327. Perhaps you are aware that there are many Courts of Petty Sessions in the interior subject to the like inconvenience? I have no doubt there are in that part of the Colony.

328. Magistrates living at such a great distance? Yes; I mentioned this particular place, because it occurred to me that lately I had to pass the abstract of pay for the clerk without signature, because (in consequence of the distance) there was no Magistrate to sign it.

329. Do you not think that if there was a compulsory attendance of Magistrates it would be a good thing—the same as jurors are obliged to attend? Then you must alter the mode of appointment altogether;—at present it is an honorary appointment.

330. But jurors are compelled to attend? Their attendance is compulsory, no doubt, but they are put in the jury list under a law, and liable to fines for non-attendance.

331. If they were to attend each Court day—not, of course, altogether, but in rotation—it would not come very severe upon them? We tried that in Sydney, by establishing a roster, but we could not get them to attend.

332. It does not answer? The names are published, but they do not attend regularly; you must leave it to the honour of the gentlemen who hold the appointment.

333. I have known a case postponed for twelve months in consequence of the impossibility of getting a Magistrate to attend? Yes, it is a denial of justice.

334. *By the Chairman*: Do you not think the number of Magistrates has generally increased in the townships and city, here, rather than diminished? The list of Magistrates—both in the city and in the rural districts—has greatly increased since the last Commission of the Peace was issued.

335. I was looking over the list the other day, in those districts that I know, and I find—from resignation and departures—many of them are reduced two-thirds in the list; in fact, there are some places where there are none at all scarcely? You mean to say, the new appointments are not equal to the number of casualties by deaths?

336. Not equal to them? And that there was an increase in the new appointments?

337. *By Mr. Markham*: I understood you to say, that although you would give a power to the Clerk of the Bench to draw informations and issue processes, you would not confer the Commission of the Peace upon him? Certainly not; I would only give him the power to which I have referred; it would be conceding to him a duty which ought only to be performed by a Magistrate; but I have always been of opinion, that a Clerk of the Bench ought to have the power to draw informations and issue processes. It is the case in the Police Courts at Home. If you go into a Police Court in London to file an information, you never see a Magistrate, and the Magistrate knows nothing of the case until he hears it on the Bench. In some cases, the information is sworn by the Clerk, in the presence of a Magistrate.

338. Can you offer us any further suggestions in reference to this matter? The only suggestion that occurred to me, to meet the object of the Committee, and secure attendance on the different Benches, is the appointment of itinerating Magistrates, and the giving to Clerks of Petty Sessions the power to issue summonses and processes. The absence of Police Magistrate in going his rounds would not be felt by the public.

Francis Townsend Rusden, Esq., M.L.A., a Member of the Committee, examined in his place:—

339. *By the Chairman*: Can you afford us any information in reference to the Magistracy in the Gywdir District? I have no complaint whatever to make of the manner in which the Magistrates there perform their duties. I believe, as a body, they are very efficient; but I beg to refer you to this letter from the Bench of Magistrates at Warialda to the Chief Secretary, where they give the distances at which the Magistrates reside from the Bench. (*Vide Appendix A.*) I think the nearest is fourteen miles. There is another fifteen; another, thirty; another, forty; another, forty-five, and so on. I think the Bench there consists of about six Magistrates, and these are the distances. There is no Magistrate residing at Warialda, except Mr. Sharp, the Commissioner for Crown Lands, and we have had the most conclusive evidence I think before the Committee, and also before the Committee appointed to inquire into the System of tendering for Runs, that the duties of Commissioner of Crown Lands and those of Magistrate are incompatible with each other.

F. T. Rusden,
Esq., M.L.A.
6 Mar., 1861.

340. Is it your opinion that the duties of Crown Lands Commissioner and the duties of a Magistrate should be vested in one person? Certainly not. Before the Committee to which

F. T. Rusden,
Esq., M.L.A.
6 Mar., 1861.

I have referred, we had it given in evidence that a good deal of the inefficiency of Commissioners of Crown Lands, and of the delay in reporting upon tenders, and performing the duties of their district, was owing to their preferring to discharge the duty of Magistrate on the Bench—thereby keeping themselves stationary, as it were, instead of itinerating and doing the duties of their district. I think, with Mr. Walsh, that some means might be adopted by the Government to compel an attendance of unpaid Magistrates at their various Benches. Unless the Government give to Clerks of Petty Sessions the power of one Magistrate, they might make it compulsory that two Magistrates should attend in the up-country districts. It is entirely with reference to the up-country districts that I am now speaking. It might come very hard upon them if you were to compel the attendance of two Magistrates, because you might not get a sufficient number to undertake the duties. But if the Clerk of Petty Sessions had the power of one Magistrate, I think then it might be in the power of the Government to compel the attendance of Magistrates in rotation, and if any individual Magistrate could not attend on his particular day, he might arrange with a brother Magistrate to take his place. They might change their duties so as to suit their own convenience, and thus there would always be a regular attendance.

341. *By Mr. Markham*: Will you suggest any mode by which attendance might be made compulsory? I think Mr. Walsh, in his evidence, has made a suggestion in reference to that.

342. Would you render it compulsory that they should attend, and make it a rule that if they neglected to attend a certain number of times without reasonable excuse they should be struck off? I think Mr. Walsh's idea was that they might be fined in the same way as jurors are fined for non-attendance. He also said, I think, that he would not give them the power of resignation; but that, I think, is very stringent. When it was suggested to him that if attendance were made compulsory Magistrates would resign, he said, "But I would not let them resign." I think a fine might be imposed, and if then they neglected to attend it might be in the power of the Government to dismiss them, because if there were sufficient numbers appointed the attendance of any one Magistrate would not be required more than twice a year or twice in six months. It would not, therefore, be very hard upon him. I must confess it appears to me that the non-attendance of the Magistrates amounts to a complete veto upon the administration of justice. I do not believe, however, that the Magistrates are generally inefficient. I think they pay great attention to their duties when they do attend, and that the great evil we have to meet is the non-attendance of Magistrates.

343. *By Mr. Lesley*: Owing to the great distance they have to travel to attend? Yes. With regard to Clerks of Petty Sessions having the power of one Magistrate, I must confess that I do not see the force of the objections which I have heard urged by many in reference to such a course; but I am satisfied that a selection would have to be made by the Government. Therefore, where a Clerk of Petty Sessions was required, he might have to be changed, and another more efficient put in his place. That will be, however, a matter for the consideration of the Government.

344. Do you think that, by giving the Clerks of Petty Sessions power to issue process, an itinerating Magistrate would not be sufficient to visit the different Benches? I think if the Clerk of Petty Sessions had the power of one Magistrate, he might itinerate. In our own district the Court of Petty Sessions is held at Warialda; but Bingara has become extremely populous. There are no less than three or four public-houses there. But if a case arises, the parties have to travel to Warialda—a distance of thirty or forty miles. There is also another place which has risen into importance in our district—Moree. Two public-houses are being established there, and I am satisfied that if a Magistrate were appointed, with an itinerating power, Courts of Petty Sessions might be held here also at very little additional expense to the Government. In another part of my district is Wee Waa. There is there a Police Magistrate, Mr. Smith, who holds an occasional Court at Walgate, and to do this there are two hundred miles at least to be travelled backwards and forwards to the Court. If there happens to be no Magistrate in attendance at the time, of course the distance has to be re-travelled before justice can be obtained. These recommendations would apply to those out-districts most particularly. These places rise so rapidly into importance that although at the commencement of a year they may not have been eligible, in less than three months, from their growing importance, some provision of the kind I have mentioned may become necessary.

345. *By Mr. Markham*: The opening of a gold field in their vicinity would soon make a difference? Would at once make a difference.

346. *By Mr. Lesley*: You think that if an itinerating Magistrate were appointed he could easily manage to go the round of Warialda, Moree, and Bingara? Easily; Warialda would be in some degree central. It would be thirty miles to Bingara in one direction, and about fifty miles in another direction to Moree.

347. *By the Chairman*: And you would suppose that the ordinary Magistrate would officiate during the intervals when the Police Magistrate might be absent? Decidedly. I may say from my own personal knowledge of the present Clerk of the Court there that, having been for so long a time a Government officer, and having performed his duties so efficiently, I think he would be a very eligible person upon whom to confer the power of one Magistrate.

348. What is his name? Mr. Snape.

349. You are aware that one Magistrate cannot hold a Court and adjudicate in a case exceeding five pounds? Yes, it requires a Bench to adjudicate as a Small Debts Court, which comes round once in three months.

350. Therefore the question is, whether a Magistrate should have a single or a double power? I think that he should not have a double power, because there would always be Magistrates in attendance.*

APPENDIX

* NOTE (addendum by witness on revision):—If some plan of compulsory attendance was adopted, as I previously stated.

SELECT COMMITTEE ON THE UNPAID MAGISTRACY.

APPENDIX A.

THE Bench of Magistrates at Warialda to the Chief Secretary, relative to the appointment of a Stipendiary Magistrate at Warialda.

F. T. Rusden,
Esq., M.L.A.

Police Office, Warialda,
February, 1861.

6 Mar., 1861.

Sir,

We have the honor to bring under your notice the very serious inconvenience and loss of time the Magistrates, and more particularly the public of this district, sustain, from the great difficulty experienced in forming a Bench.

2. The majority of Magistrates acting in this District reside long distances from this township—Messrs. Adams, 15 miles; Labatt, 14; Wyndham, 30; R. King, senr., 43; R. King, junr., 40; M'Donall, 45; Lethbridge, 50; and Capel, 50 miles—in consequence of which, since the appointment of Police Magistrate at Warialda has been done away with, it generally occurs that the police business is postponed, causing much inconvenience, annoyance, disappointment, and expense to the Magistrates who may have ridden from 14 to 50 miles, and to the parties interested. For example, we mention one of the many instances which happened on the 7th instant :—

COMPLAINANT.	DISTANCE FROM WARIALDA.	DEFENDANT.	DISTANCE FROM WARIALDA.	CAUSE OF COMPLAINT.	HOW DISPOSED OF.
Charles Bull.....	260 Miles.	William Tait	260 Miles.	Recovery of Wages...	Postponed until the 21st instant, in consequence of there being no second Magistrate.
Lethbridge, Bro.	50 "	F. Marshall.....	50 "	Misconduct as a hired Servant .....		Ditto.
Janet Mitchell.....	50 "	Mary Brand	50 "	Recovery of Wages...	Ditto.
District Constable, Bingara...	27 "	Samuel Turner	27 "	Gambling in his Licensed House.....	Ditto.
District Constable, Bingara...	27 "	Samuel Turner	27 "	Ditto	Ditto.

3. The Magistrate who attended rode a distance of 50 miles.

4. Both Moree and Bingara are now becoming places of some importance, and it frequently occurs that matters arise at those places and in their neighbourhood requiring police interference and judicial inquiry.

5. To obviate the above-mentioned serious grievance we have the honor to propose that a resident Magistrate be appointed at Warialda, and respectfully suggest the present Clerk of Petty Sessions, Mr. Snape, be placed in the Commission of the Peace, with such additional salary as the Government may allow, and that he be directed to attend Bingara and Moree when business requires, and hold the usual fortnightly Court at Warialda. The advantages such an appointment would confer to the district would more than compensate for the additional expenditure.

6. We have much pleasure in bringing Mr. Snape's name under your notice, as we believe he is in every way efficient and competent for the performance of such duties.

We have, &c.,

G. L. LETHBRIDGE, J.P.
H. R. LABATT, J.P.
FRANK WYNDHAM, J.P.
A. A. ADAMS, J.P.
RICHARD KING, J.P.
RAWDON M'DONALL, J.P.

The Honorable
The Colonial Secretary,
Sydney.

FRANCIS TOWNSEND RUSDEN, Esq., IN THE CHAIR.

Robert Meston, Esq., a Member of the Committee, examined in his place :—

351. *By the Chairman* : You are a Member of the Legislative Assembly for the Tenterfield Electorate? Yes.

R. Meston,
Esq.

352. Can you give the Committee any information in reference to the Magistracy, in regard to the districts with which you are acquainted? Yes. I am a Magistrate, and I beg to make heavy complaints of the non-attendance of Magistrates, both at Tenterfield and northern Glen Innes. There is an additional Bench once a month at Inverell and Byron Plains. In the Police District of Glen Innes seven Magistrates have left in the course of the last three years, and at the present moment there is only one remaining. Inverell is fifty miles distant from Glen Innes: there is only one Magistrate there. The Clerk of Petty Sessions at Glen Innes, by agreement with the Government, goes to Inverell once a month, and officiates at both places; and as the Inverell Magistrate seldom goes to Glen Innes, or the Glen Innes Magistrate to Inverell, there is seldom any business done at either place. At Tenterfield there are plenty of Magistrates, but no attendance. Although in some cases the distance is a matter of complaint, it can be no excuse for non-attendance in this instance. The various Magistrates, except one, will never attend, and he lives not more than twenty miles distant. One Magistrate belonging to Tenterfield has not sat on the Bench there for ten years, others not for five years, and others for periods ranging from one to three years. Some have been seen riding past the Court House when one Magistrate was sitting waiting for a second. On one occasion when a Magistrate was requested to come in, in order that a case requiring two Magistrates might be proceeded with, he said, "No; we'll make the Government give us a Police Magistrate." From his own personal knowledge, he could say that for sixteen weeks two Magistrates at one time had not sat upon the Tenterfield Bench, and that the arrears in Police business and Court of Requests had all been laying in abeyance during that period. It is well understood that I made an application to the House for a Police Magistrate, and —

6 Mar., 1861.

353. You were refused? Yes, I was refused on the ground that there were other places which equally required a Police Magistrate, and this investigation is the result of the refusal.

R. Meston, Esq.
6 Mar., 1861. I think an itinerating Stipendiary Magistrate, with competent powers to travel betwixt Tenterfield, Glen Innes, and Inverell (this circuit would be sufficiently large), would really be the only means of obtaining an adequate administration of justice in that quarter, giving the Clerk of Petty Sessions power to issue summonses and swear informations.

354. *By Mr. Markham*: What is your opinion with regard to giving the power of one Magistrate to Clerks of Petty Sessions qualified to discharge the duties? I am decidedly in favour of it. A more deserving body of men I do not know, taking them altogether.

355. From your own knowledge of the Clerk of Petty Sessions in your own district, do you think he would be competent to discharge the duties? As far as Glen Innes goes, I am quite sure that the Clerk of Petty Sessions would be fully competent to discharge the duties.

356. What is his name? Mr. Wyatt.

357. If the Clerks of Petty Sessions are to have additional trouble, I suppose they will have some additional remuneration; but it would not put the Government to so great an expense as the appointment of Police Magistrates throughout the country? No.

358. *By the Chairman*: The Gold Fields being within twenty miles of Tenterfield, must involve additional police business? Yes, many of the cases must be brought to Tenterfield. The Sub-Commissioner holds his Court, but having only the power of a single Magistrate, there are many cases in which he cannot adjudicate.

359. Do you not think the country will be extremely grateful to this Committee and to the House, if, as the result of this inquiry, they expedite the police business? Yes.

360. Delay in this respect is the great evil under which we labour? Yes, and the sooner we bring our investigation to a close the better it will be for the country, because there are so many applications.

FRIDAY, 8 MARCH, 1861.

Present:—

MR. LESLEY,	|	MR. MORRIS,
MR. MARKHAM,	|	MR. FLETT,
	|	MR. RUSDEN.

ROBERT MESTON, Esq., IN THE CHAIR.

Augustus Morris, Esq., M.L.A., examined:—

A. Morris, Esq., M.L.A.
8 Mar., 1861. 361. *By the Chairman*: Have you not some information to afford the Committee on the subject of its inquiry. Is not Balranald one of the most remote districts in that part of the Colony? It is the most remote.

362. It is next to South Australia? Yes.

363. How is justice administered in that district? Justice is well administered when Magistrates attend the Courts.

364. Where is the Court House? In the district of Balranald there are three Courts; one at Hay, on the Murrumbidgee; a second at Balranald, ninety miles below Hay; and another at Wentworth, at the junction of the Darling and Murray, one hundred and forty miles below Balranald. At Hay there is a resident Police Magistrate, who visits Balranald about once in two months; and there is a resident Police Magistrate at Wentworth, who itinerates the Darling for a distance of three hundred miles.

365. Then the administration of justice is pretty effective there? It is effective at Hay and at Wentworth, but not at Balranald, which is situated ninety miles from Hay, the head quarters of the Police Magistrate; and there are no unpaid Magistrates nearer than fifty miles from Balranald, and consequently cases are constantly put off.

366. Then you do not consider the attendance of the Police Magistrate once in two months sufficient for Balranald? The Police Magistrate resides at Hay, and sometimes it is impossible on account of floods for him to get to Balranald; nor can he exercise any supervision over the police at that distance under any circumstances. The police, therefore, are in a bad state, being composed, as I may say, of the dregs of the community.

367. What alterations for improvement would you recommend? Those recommended by the Magistrates when they met at Balranald some two or three months ago, that is to confine the duties of the Police Magistrate to the district of Hay, which should include the township of Bouligal, on the River Lachlan, about thirty-six miles from Hay, where there are already two public-houses and other buildings. This township commands the route from the Lachlan to the Murrumbidgee. We further recommended that the Police Magistrate at Hay should perform the duties of Police Magistrate and Clerk at Hay and Bouligal, which, being within thirty-six miles, he can attend as often as necessary. The Bench also recommended that the Clerk of the Bench should be done away with at Balranald, and a Police Magistrate appointed there to do the duties of Police Magistrate and Clerk; and that a new Court of Petty Sessions should be established at a place called Euston, about seventy miles below Balranald, being halfway between it and Wentworth, where a police station is absolutely necessary. Great complaints are made there of the depredations of men travelling about, not only upon the settlers' stores and shepherds' stations, but upon the stores in the small townships. The Bench pointed out that the expense would be very little more to have two Police Magistrates doing duty as Clerks than having one Police Magistrate and two Clerks as now. The expense I am inclined to think would not be greater than what it is at present. There is no doubt that unless something of this sort is done at Balranald the

the establishment should be broken up, as the police are under no supervision, and, except when the Police Magistrate pays his occasional visit, it is impossible to get any cases decided. The Magistrates that live within fifty miles are necessarily fully one-half of their time away—the country being so very scant in grass, almost a desert, the settlers have to occupy a very large extent of country, so that they are often, even when on their own station, fifty miles from home. It is nearly all wallee scrub and poor salt bush plains. I have never heard a complaint of the administration of justice itself, but it is impossible to get a regular attendance of Magistrates. I never heard a single instance of mal-administration.

A. Morris,
Esq., M.L.A.

8 Mar., 1861.

368. *By Mr. Lesley*: This matter has been taken into consideration before, then? Yes.

369. To whom were the recommendations made—to the Government? To the Chief Secretary.

370. And nothing has been done in it? I think the appointment of this Committee has stopped the action of the Government; they have always exhibited a willingness to do all that they can to have justice administered in that distant part of the country. I am opposed to Police Magistrates if there were country gentlemen sufficient to undertake the duties. I think it a most monstrous thing that men of property should be relieved of their duties in this respect.

371. But I suppose you have no material down there for the Bench? No material. We have no material of any sort or description. I do not mean gentlemen who have stations only, but we have not even storekeepers who could attend, if competent.

372. Is it the incompetency of gentlemen in the district that makes the scarcity of Magistrates? There are none to undertake the duties, competent or incompetent. I am alluding of course to the Police District of Balranald.

373. What number of inhabitants does the township comprise? I think it consists of about thirty people, men, women, and children; and they are nearly altogether supported from my station, or in a great measure. I am of opinion that, at my election, when, on account of no notice being communicated to the electors by the Government, the people who assembled there were only about forty, more than thirty were people dependant upon myself.

374. *By Mr. Markham*: Did you hear the evidence of Captain M^rLerie the other day? No; I was not here.

375. Would you think it advisable to give to Clerks of Petty Sessions power to draw informations and issue process in the absence of Justices of the Peace? I would, undoubtedly; I think it highly desirable in a country like this that we should give every facility possible in that way, that is of having these formal acts done without delay.

376. Do you think it desirable that a Magistrate should not be aware of the nature of cases before trial, as he would be by swearing the information before a case came on for hearing? He ought not to be, if possible.

377. If he drew the information, it would put him so far in possession of the facts of the case; but if the information was drawn by the Clerk, he would know nothing about it until the time for taking evidence? Of course.

378. Would that be one reason why the Clerks should have this power? I think that even in this respect it would be desirable; the Magistrate would then appear wholly in his judicial capacity, and not as a kind of officer of police.

379. *By the Chairman*: You heard the proposition, that when only one Magistrate attended, the Clerk should be given, *pro tem.*, the power of a Magistrate—do you think that would work well? I am inclined to think not. I do not think any one should take his seat upon the Bench unless a Magistrate by right. It might create ill feeling.

380. Do you not think there is vast inconvenience experienced from the non-attendance of Magistrates? I think it could be obviated in districts where there are no country gentlemen willing to be appointed Magistrates, by having a Police Magistrate to perform both duties; but in no cases should districts be relieved, by the appointment of a Police Magistrate, where there are fit persons to be made unpaid Magistrates; it is so desirable to induce country gentlemen to attend to public business, and acquire habits of attending to public affairs. I think they should never be relieved from magisterial duties except when it is absolutely necessary.

381. Then if, as a Member of the Legislature, the question of the appointment of Police Magistrates in country districts came before you, you would only vote for them where they were absolutely required? I should have to use my own judgment as to whether they were required or not. I am not desirous of adding to the expenditure on the public service, and I believe a scheme may be devised, by which greater efficiency may be obtained, with a very little additional expense; but that I hope I shall be able to suggest as a member of this Committee.

382. *By Mr. Markham*: Do you approve of the two offices of Police Magistrate and Clerk being combined? I do not, as a mere abstract proposition; but when we are compelled, in a country like this, either to incur an extravagant expenditure, or submit to great inconveniences, I think it might be done with good effect in extreme cases. In some instances the two offices are inconsistent and incompatible. But I have seen so very little injustice perpetrated willingly, at any rate by Justices of the Peace, that I have not the slightest dread of the consequences of what does appear otherwise incompatible. As far as my own observation goes, and from what I have learnt from the experience of others, I do not think justice is administered so well in any other country. No doubt many mistakes are made, but they are errors of judgment, exactly such mistakes as we all make in the ordinary transactions of life.

George Markham, Esq., M.L.A., examined:—

G. Markham, Esq., M.L.A. 383. *By the Chairman:* You have some important communications to deliver to the Committee, from the District Court of Petty Sessions at Armidale? I have some information upon this important question, which it may be desirable for the Committee to obtain.

8 Mar., 1861. 384. Will you please to state all the circumstances you refer to? I have had fourteen years' almost continuous residence in the district of Armidale, and I have had every opportunity of becoming acquainted with the working of the local Courts of Petty Sessions, not only there but in the whole district. Fourteen years ago there were thirteen Justices of the Peace in that district. At that time the attendance was by no means regular, notwithstanding the number. Very frequent complaints were made of the manner in which justice was administered, and several cases came under my own knowledge of the grossest injustice by the Magistrates who generally attended the Bench, who, indeed, were so particular in their attendance as in fact to monopolize the Bench.

385. *By Mr. Flett:* You have known instances of great injustice by them? Yes, I mean in their decisions; I could give instances if necessary. About 1854 six other Magistrates were appointed, and this did not tend to mend the matter; complaints were as rife as ever against the decisions of the Bench and the favouritism shewn from time to time in certain cases. In 1858 there were fourteen Justices in all in the district, and the complaints against the Bench, and especially against the Clerk of Petty Sessions, became so great that the people petitioned against the conduct of the Clerk, and against that of certain of the Magistrates (two of them) over whom, the petition stated, he exercised undue influence. The petition which was sent to the Government also prayed for the appointment of a Police Magistrate. The Justices generally threatened to resign if the investigation into the conduct of the Clerk of Petty Sessions, and into that of the Magistrates, were granted by the Government. The petition prayed for a Court of Inquiry. The result was, that an inquiry did take place into the allegations and charges made; Mr. Day being appointed the Commissioner.

386. *By the Chairman:* What was the consequence? The Clerk was dismissed, but the Justices did not resign.

387. Not then? They did not then resign.

388. Was a Police Magistrate appointed? A Police Magistrate was subsequently appointed.

389. And any new Magistrates? And two new Justices. After the appointment of the Police Magistrate and these new Justices, the other Magistrates sent in their resignations. Whether they were received or not I cannot tell.

390. Since that time how has justice been administered? I believe according to the evidence taken before the Court. There have been no complaints.

391. Then Armidale, at the present moment, is reduced to the condition of having only one unpaid Magistrate? And in a short time, I believe, it is to be deprived of his services, as I understand that gentleman is coming to Sydney.

392. Who is that—Mr. Cohen? Yes. The Police Magistrate itinerates once a month, between Armidale, Walcha, and Bendemeer, and is consequently absent from Armidale a considerable portion of his time, in consequence of this itineration.

393. Being so well acquainted with Armidale, you probably know whether there are not some gentlemen whom you think fit to be put on the Commission of the Peace for that district? There are a few who, I think, would discharge the duties very efficiently and honestly.

394. And would attend to the duties? I have not the slightest doubt of it.

395. *By Mr. Rusden:* You said there had been no complaints since the appointment of the Police Magistrate? I have heard none since then.

396. You are aware that my brother petitioned against the decision of the Bench, in a case relating to a horse? I am aware of that, but it did not occur to me at the time I said there had been no complaints. I now remember that Mr. Rusden petitioned against the decision of certain Justices, and this is the only instance of complaint within my knowledge at the present moment. But the decision of the Justices was sustained. I have heard the evidence given by Captain M'Leric, and I may say that, with him, I approve of the suggestion made by the Chairman, that Clerks should have the power of issuing general process in all civil cases, and summonses only in criminal cases. I approve also of the combined offices of Police Magistrate and Clerk, in remote districts, but only where unpaid Magistrates cannot be obtained; that is, where the material cannot be found for the appointment of unpaid Magistrates.

397. *By Mr. Flett:* With this proviso, I think, that whilst other Magistrates attend at the Court House to take their seats he should not take his seat? I think you would not find men to take the appointment under those circumstances.

1861.

Legislative Assembly.

NEW SOUTH WALES.

ADMINISTRATION OF JUSTICE—DISTRICT COURTS.

(PETITION OF SAMUEL WARD.)

Ordered by the Legislative Assembly to be Printed, 26 March, 1861.

To the Honorable the Legislative Assembly of New South Wales, in Parliament assembled.

The humble Petition of Samuel Ward, of Camden,—

HUMBLY SHEWETH:—

That your Petitioner is defendant in an action of trover brought against him by one Alexander Brand, to recover the value of horses purchased by your Petitioner at public auction in the town of Camden, in January, 1859, sold on account of the late George Cutter, of Nattai, who was known for many years to possess horses and cattle, and to brand his stock as the horses purchased by your Petitioner are branded.

That the said Alexander Brand, who your Petitioner has reason to believe was the hired servant of the said George Cutter, has claimed the said horses as his property, and sued your Petitioner in the District Court at Camden for the sum of one hundred pounds (£100).

That the said action was entered for trial in the District Court held in Camden by His Honor Mr. Justice Cary, on the 13th day of February, 1860, Mr. William Cary, the son of His Honor the Judge, being counsel for the plaintiff, and Mr. Forbes counsel for your Petitioner. That on that occasion, the plaintiff, Brand, not answering when called on, the case was ordered to be struck out of the list; but plaintiff appearing afterwards, the case was restored to the paper, and continued to the next Court, without allowing your Petitioner any costs, whereby your Petitioner was deprived of his expenses for the day, amounting to more than twenty pounds. Your Petitioner's case has been materially injured by said continuation, inasmuch as, on that occasion, Cutter, who sold the horses, was present to give evidence for your Petitioner, and died before next Court.

That in the Court held in Camden, on Monday, 21st of May, 1860, Mr. Justice Cary presiding, and his son, Mr. William Cary, being counsel for plaintiff, notwithstanding the loss of important evidence through the death of Cutter, and the Judge summed up in favour of Brand, a unanimous verdict was returned by the Jury for defendant.

That on that occasion His Honor reflected on the verdict in language to the effect that either Brand was the greatest scoundrel he ever saw, or the most injured man that ever entered a Court; and when the next case, Brand *v.* Thompson, was called on, the Judge said, if it was like Brand *v.* Ward, he would give a verdict for the plaintiff. On the same occasion, His Honor, without application either from plaintiff or his counsel, directed executions of taxed costs, amounting to £35 15s. 6d., to be stayed, to allow plaintiff to move for new trial if he desired to do so. On the following day, Tuesday, 22nd May, the plaintiff applied for leave to move for new trial, and reflected on the moral character of the district in general, and the jury in particular, stigmatizing them as "swindlers and rogues." That on being appealed to by one of the jury who had tried the case, for protection from such aspersion, His Honor refused to notice the matter.

That your Petitioner received notice from Brand of his intention to move for new trial at the Court held Monday, 13th, and Tuesday, 14th August, 1860. Brand, the plaintiff, not appearing at the Court, your Petitioner's counsel moved that execution for costs might issue, and His Honor did, without application from or behalf of the said plaintiff, Brand, suggest the possibility of said plaintiff being ill or detained by the state of the roads, and expressed his determination to afford same plaintiff time to file affidavit as to cause of absence, such affidavit to be filed at Camden, and copy of the same to be sent to defendant; defendant's costs for the day to be paid by plaintiff, and taxed costs of the action to be paid into Court within one month, or no new trial to be allowed. That on that occasion, His Honor Mr. Justice Cary informed Frederick William Meymott, Esquire, who acted for defendant's counsel, that it was of no use to advance arguments, as he had made up

his mind. That notwithstanding the postponement upon the supposition of the bad state of the roads, during the same sitting of the Court, in *Foulks v. Cady*, application being made on behalf of defendant for a postponement in consequence of the state of the roads, it was refused. That at the Court held at Berrima, Monday, 20th day of August, His Honor Mr. Justice Cary informed Frederick William Meymott, Esquire, as Petitioner's counsel, that he had consented to accept plaintiff's affidavit there, and ordered the notice of motion for new trial to be continued. At the same time, it was disclosed and admitted by His Honor, that he (Mr. Justice Cary) had privately, at a road side inn, instructed said plaintiff how to proceed, and although none of the conditions specified had been complied with, directed said motion to be continued.

That at the Court held in Camden on Monday, the 12th day of November, 1860, the said Alexander Brand applied for leave for new trial, and notwithstanding it was shewn to His Honor that the roads at the time were not in such a condition as to prevent travelling, and that Brand was not seriously ill, and lastly that the document said to be a medical certificate, on which the affidavit was founded, was not signed by a duly qualified medical practitioner, His Honor overruled all objections and granted leave to move, and intimated to your Petitioner's counsel that it was of no use to shew cause why such new trial should not be granted, as he (Mr. Justice Cary) had determined what he meant to do six months before, and granted a new trial and changed the venue to Parramatta.

That at the Court held in Parramatta, on Monday, the 31st day of January, 1861, your Petitioner, supposing that, as the orders of the Court (ordering the payment into Court by plaintiff Brand of costs of action within one month) had not been complied with, the case must terminate, he therefore had not secured the presence of witnesses, but His Honor overruling all objections, he was therefore compelled to move for a postponement, which was granted; but your Petitioner was charged with costs above eleven pounds, notwithstanding for the payment but three guineas had been allowed at any of the postponements granted to the plaintiff, and which amount, although execution had issued, Petitioner never recovered.

Your Petitioner deems a great hardship that he should continue to be saddled with the heavy expenses of this protracted lawsuit, when the plaintiff has failed to comply with the conditions under which alone a new trial was granted. And your Petitioner has already expended not less than one hundred pounds, besides loss of time and neglect of business, without the least probability of recovering any portion thereof from the plaintiff, Alexander Brand.

Your Petitioner therefore humbly prays your Honorable House will cause an inquiry to be made into the conduct of His Honor Mr. Justice Cary, with reference to the allegations contained in this Petition, and to adopt such measures as in the wisdom of your Honorable House may be deemed expedient.

And your humble Petitioner will ever pray.

SAMUEL WARD.

1861.

Legislative Assembly.

NEW SOUTH WALES.

ADMINISTRATION OF JUSTICE—DISTRICT COURTS.

(RESIDENTS IN THE DISTRICT OF CAMDEN.)

Ordered by the Legislative Assembly to be Printed, 26 March, 1861.

To the Honorable the House of Assembly, in Parliament assembled.

The humble Petition of the undersigned residents in the District of Camden,—

SHEWETH :—

That the administration of justice under the District Courts Act by an intelligent upright judge, learned in the law, would be an advantage hardly to be estimated to the inhabitants of the District, if his duties be performed with that temper, discretion, and absence of bias requisite to obtain the respect of the public, and give confidence in the soundness and impartiality of his decisions.

That your Petitioners humbly conceive the conduct in the duties of his Court of His Honor Mr. Justice Cary, the Judge of this District, and his decisions, have not been calculated to gain the confidence of the inhabitants, nor to induce them without reluctance to submit to his decision questions in which their rights and interests are at stake.

That a variety of causes have been entered for trial in the District Court, Camden, during the progress of which your Petitioners believe that exception might often have been justly taken to the demeanour and ruling of the Judge. They confine themselves, however, to the mention of a series of cases in which one Alexander Brand was plaintiff, and His Honor the Judge's son, Mr. William Cary, barrister-at-law, the plaintiff's counsel so long as he travelled the Circuit

That, in the trial of these causes, in which property to a considerable amount was contested, the conduct and the general demeanour of the Judge were not such as to give confidence in his impartiality; that, on the contrary, it seemed as if the cases had been prejudged, the bias of His Honor the Judge in favour of the plaintiff being, in the humble opinion of many of your Petitioners, too marked to escape notice, and his decisions not borne out by the facts or by the evidence offered.

That your Petitioners have reason to believe that several plaints filed by the above-mentioned Alexander Brand were not brought to trial, the defendants having settled his demands out of Court, under an opinion which seemed to prevail that it would be a useless sacrifice of time and money to contest them with Brand before Mr. Justice Cary, and not in the belief that in making them he had either law or justice to support him.

That the case Brand v. Ward has been the subject of litigation above a year, and, as your Petitioners are aware, is set forth at some length in a humble Petition to your Honorable House on the part of the defendant, Ward; that various of the allegations, as stated in this Petition, are known (as having been witnesses to the circumstances) to some of your Petitioners; that the chief part of them are of common repute in the neighbourhood, and are believed to be fact by the public; and that the conduct of Mr. Justice Cary in this cause, taken as a whole, has not been of that decorous, unbiassed character which they conceive ought to characterize the proceedings of the Judge.

That your Petitioners desire to guard themselves from being supposed to impute malice or direct corruption to His Honor Mr. Justice Cary, but that they conscientiously believe the interests of justice have suffered at his hands, and that the confidence which a community ought to have in the decisions of its Judge has in a great measure ceased to exist.

Your Petitioners therefore humbly but earnestly implore the interference of your Honorable House, and that, taking the premises into consideration, you will cause such inquiry to be made into the general conduct of Mr. Justice Cary, in his office as District Judge, as to your Honorable House shall seem meet.

And your humble Petitioners will ever pray.

(Here follow One hundred and forty (140) Signatures.)

1861.

Legislative Assembly.
NEW SOUTH WALES.

ADMINISTRATION OF JUSTICE—DISTRICT COURTS.

(REPORT FROM MR. JUSTICE CARY, IN CASE BRAND *v.* WARD.)

Ordered by the Legislative Assembly to be Printed, 19 April, 1861.

MR. JUSTICE CARY to THE HONORABLE THE COLONIAL SECRETARY.

Liverpool,

15 April, 1861.

SIR,

I have the honor to acknowledge the receipt of two Petitions, presented to the Legislative Assembly, respecting my administration of justice at Camden, with your note inviting my comments on them. The case referred to—that of Brand *v.* Ward—and its circumstances, are as follows:—

In February, 1860, I had to hold a Court at Camden, but, owing to the flood (the first of that year), I did not reach my post until mid-day, instead of 10 A.M. Before any case was called on, I stated publicly, that, in consequence of the state of the weather and roads, if any plaintiffs living at a distance were absent, or their witnesses, I should not strike out their cases, so as to compel them to commence *de novo*, and incur all the costs over again, but should continue them until the next sitting; and that, as to absent defendants, defended cases would be in like manner adjourned, and no order made as to costs until the cases were finally disposed of.

If my memory serves me, there were only two jury cases, of which Brand *v.* Ward was one, and, I believe, called on first. Brand did not appear; and the second case for a similar cause was not proceeded with. I therefore discharged the jury, who were anxious to return to their homes. Later in the day, Brand appeared and asked to have his case restored to the list, and then and there tried. This I refused, but I ordered the case to stand first on the list for the May sitting.

At that sitting, the case of Brand *v.* Ward was tried by a jury; and now comes the real question, on which side law and justice prevailed? All other matters are of secondary importance. The case was as follows:—

Brand brought an action of trover against Ward, to recover the value of several horses, the property of Brand, and converted by Ward to his own use—damages laid at £100.

The evidence in substance was, that Brand had for several years been in possession of a number of horses, most of them bred by himself, which were all along depasturing on his enclosed paddocks—land purchased and occupied by himself. In December, 1859, or January, 1860, one Cutter, personally, with three or four assistants acting under his orders—or by his servants without his personal presence, but acting under his orders (I forget which)—entered Brand's paddock at Nattai, and drove away the horses, about 36 in number, to Camden. Brand hearing of this, went to Camden and applied to the Bench there for an order for the restitution of the horses; this was refused; the horses were forthwith, on the same day, sold by auction at Camden, Brand being present, and protesting against the sale. The horses, the subject matter of the action, were amongst those above-mentioned, and were

purchased by Ward, the defendant. For the defence, evidence was given to shew that the horses were not Brand's property, that he had been for years the servant of Mrs. Cutter (Cutter's wife), then lately deceased, that they belonged to her, and that Cutter took them as his own. But it appeared that 14 or 15 years back Cutter had been transported to Van Dieman's Land for seven years, and since his return had never exercised any control over the horses, but that they were all along on Brand's land, and managed by him.

I directed the jury that the question was not one of *right* to the property, but of possession; they had not to determine whether the horses of right belonged to Mrs. Cutter, Mr. Cutter, or the plaintiff, but who had possession of them at the time of and anterior to the seizure by Cutter and his servants. That, if they belonged to Cutter, he should claim them by due course of law and not by violence, or in any way against the will of Brand, the possessor.

The evidence of possession—of long possession, was uncontradicted and unquestioned. The verdict of the jury was for the defendant; in legal phraseology, was perverse.

Such are the simple facts of the case itself. So I laid down the law, and I insist that my law was right; if wrong, the Supreme Court alone, and not popular clamour should correct it; and, until so corrected, I should continue to set aside similar verdicts.

The Petitioner, Ward, states, that "when the next case, *Brand v. Thompson*, was called on, I said, if it was like *Brand v. Ward*, I should give a verdict for the plaintiff;" I did say so, and should have done so. But instead of trying it myself without a jury, I ordered it to be tried at Berrima by a jury. In that case the evidence was the same, my direction to the jury was the same; but the verdict was for the plaintiff. And now the Camden purchasers had a legitimate opportunity for testing the soundness of my law; Mr. Thompson, the defendant, is reputed to be wealthy; or if he preferred loss to litigation, as one decision would have set at rest a number of cases then at issue, or likely to be so shortly, the various defendants might, at a very small expense, have united together and appealed to the Supreme Court; but there was no appeal, Mr. Thompson paid the money awarded to Brand by the jury.

Brand, on the same day that his case against Ward was decided, personally gave notice of motion for a new trial; his counsel, Mr. W. Cary, never appeared further in the matter. In August following, that motion had to come on to be heard. Again there was a flood—Brand was absent—he had no counsel—I then ordered that he should pay the costs of the day, and that if he did not file an affidavit within one month, accounting for his absence, his motion should be discharged, and execution should issue against him for the costs of the trial.

On my way to Berrima, I stopped at an inn where Brand was staying; he came into my room, and urgently inquired about his new trial; I told him he would hear from the Registrar at Camden, and that he had better go to Berrima and consult a barrister or attorney, who would have to draw an affidavit for him.

Harm is attempted to be made out of this; but, I confess, I cannot see it. I am frequently asked questions by suitors, and, where I am not called on to speak as to the merits of a case, usually answer. Residents in the country, who have no professional assistance at hand, are, in my opinion, entitled to a civil and plain answer to such questions.

The Petition contains several other minor points, which I am willing to explain if an inquiry is instituted; but, as I have answered the main grievances, I will not at present weary you with minor details.

In conclusion, I must remark, that, while Mr. Ward has no reason to complain, Mr. Brand has much cause to do so. It has come out on various trials before me, that Cutter not only took away his horses, but almost all his personalty—cattle, gig, carts, drays, stock-in-trade as a wheelwright, and household furniture. The law has been powerless to vindicate his rights—he is now ruined and insolvent.

I have, &c.,

HENRY CARY.

THE HONORABLE

THE COLONIAL SECRETARY,

&c., &c., &c.

1861.

Legislative Assembly.
NEW SOUTH WALES.

RULES OF COURT.

(DATED IN 1859 AND 1860.)

Ordered by the Legislative Assembly to be Printed, 3 April, 1861.

IN THE SUPREME COURT OF }
NEW SOUTH WALES. }

Thursday, the 6th day of October, 1859.

REGULÆ GENERALES.

The following General Rules, for regulating the Practice on the hearing of Cases in Chambers, shall take effect on Monday, the 10th day of October instant:—

1. Every Summons to shew cause, returnable in Chambers, shall be numbered by the Chief or Second Clerk, in the order in which it is presented to him for that purpose, and the same number shall be marked on the entry of the Summons in the Chief Clerk's Book.

2. On every Chamber Day, a List of all such Summonses for hearing on that day, in the order of their numbering as aforesaid, shall be exhibited in the Public Chamber, or other room appointed for that purpose, specifying the number of each case, the names of the parties, and the name of the Attorney applying.

3. Every case shall be called on and heard, without reference to priority on any other ground, according to that order. Provided that any matter may be postponed or adjourned, where the Judge shall see fit, as at present.

ALFRED STEPHEN.
J. N. DICKINSON.
S. F. MILFORD.

IN THE SUPREME COURT OF }
NEW SOUTH WALES. }

REGULA GENERALIS.

Tuesday, 12th of June, A.D. 1860.

It is ordered, that after the service of any Writ of Summons for the appearance of any defendant, where the defendant shall at the time of the service of such Writ reside in the Colony of Queensland, the time limited for appearance shall be one calendar month.

J. N. DICKINSON.
SAML. FRED. MILFORD.
EDWARD WISE.

IN THE SUPREME COURT OF }
NEW SOUTH WALES. }

REGULA GENERALIS.

Saturday, the 30th day of June, A.D. 1860.

It is hereby ordered, that the 7th General Rule of this Court, dated the sixth day of March, one thousand eight hundred and fifty-six, be amended by adding thereto the words following, that is to say: "Or within such further time as the Court, or some Judge thereof, shall allow."

J. N. DICKINSON.
SAML. FREDK. MILFORD.
EDWARD WISE.

IN THE SUPREME COURT OF }
NEW SOUTH WALES. }

Monday, the 12th day of November, 1860.

REGULA GENERALIS.

It is ordered, that the Officers of this Court intrusted with the expenditure of Moneys collected under 20th Victoria, No. 11, shall furnish to the Colonial Treasury, within the first four days in such month, a statement of the Cheques drawn by them respectively during the last preceding month against the credits opened in favour of them respectively at the Bank of New South Wales.

J. N. DICKINSON.
SAML. FREDK. MILFORD.
EDWARD WISE.

IN THE SUPREME COURT OF }
NEW SOUTH WALES. }

Saturday, the 24th day of November, A. D. 1860.

REGULA GENERALIS.

It is ordered, that no Plea of Cross Action shall be allowed except after a Summons to shew cause.

J. N. DICKINSON.
SAML. FREDK. MILFORD.
EDWARD WISE.

IN THE SUPREME COURT OF }
NEW SOUTH WALES. }

Saturday, the 8th day of December, 1860.

REGULÆ GENERALES.

1. That no Application shall be made to the Court for the Release of any Estate from Sequestration unless, and until Notice of, such Application shall have been filed in the Office of the Chief Commissioner of Insolvent Estates, and Notice thereof be given to the Official Assignee of the particular Estate.

2. That such Notice shall be so filed at least three days before such application, and shall distinctly set forth the grounds relied upon for the release of the Estate from sequestration.

J. N. DICKINSON.
SAML. FREDK. MILFORD.
EDWARD WISE.

IN THE SUPREME COURT OF }
NEW SOUTH WALES. }

Monday, the 10th day of December, 1860.

REGULÆ GENERALES.

The following Rules are hereby established, for the dispatch of Business in the several Departments of the Supreme Court, during the ensuing year :—

SITTINGS FOR CAUSES.

1. There shall be Four Sittings for Causes, commencing respectively on Monday, the 11th day of February, the 6th day of May, the 5th day of August, and the 4th day of November; and ending severally on Thursday in the fourth week following; but no causes shall be set down for trial in the Banco Court on the 4th, 5th, 6th, and 7th days of March.

COMMON JURIES.

2. At those Sittings, the last Thursday in the Jury Court shall be, exclusively, for the trial of Common Jury Causes, if there be any.

SPECIAL JURIES.

3. The first fortnight of each Sittings, in that Court, shall be set apart for the trial of Causes by Special Juries of Twelve. But no such Cause shall be set down, except for the first three days of the Sittings, as at present.

SPECIAL JURY REMANETS.

4. Every such Cause, the trial of which has not been commenced within that fortnight, shall go over as a Remanet.

JURIES OF FOUR IN JURY COURT.

5. No Cause, for trial in the Jury Court by a Jury of Four, shall be set down for any day of the Sittings earlier than Monday in the third week.

REMANETS GENERALLY.

6. Remanets from any Sitting may be set down (each according to its appropriate List and the Class of Jury to which it belongs) for such day or days of the next Sittings as the Prothonotary may think fit.

THE

THE LIKE.

7. On each day Remanets will have precedence over all other Causes.

SATURDAYS.

8. There will be no Sitting of the Court in Sydney, in any branch of its Jurisdiction (except for the trial or disposal of Prisoners), on any Saturday.

CAUSES, &C., PARTLY HEARD.

9. Provided that any Argument or Trial, partly heard but not concluded on Friday, may be continued on the next day, if the Court, or Presiding Judge shall think fit.

LAST SATURDAY IN TERM.

10. Provided also, that the Court will sit on the last Saturday in each Term.

FOUR TERMS.

11. There shall be Four Terms;—commencing respectively on Monday the 8th day of April, the 10th day of June, the 7th day of October, and the 9th day of December; and ending severally on Saturday in the third week following, excepting the Fourth Term, which will end on Saturday the 21st day of December.

MONDAYS, WEDNESDAYS, AND THURSDAYS IN TERM.

12. On every Monday, Wednesday, and Thursday in Term, New Trial Motions will have precedence of all other Business; except that on the First day of Term, other Motions will have precedence.

TUESDAYS AND FRIDAYS IN TERM.

13. On every Tuesday and Friday (two Judges only then ordinarily sitting), business will be taken in order as follows:—First, Criminal Cases on Points reserved. Secondly, Motions, not being New Trial Motions. Thirdly, Demurrers and Special Cases, other than as aforesaid.

EQUITY AND INSOLVENCY.

14. The Primary Equity Judge will sit on every such Tuesday and Friday in Term at 11 o'clock:—on the former day for Equity, and on the latter day for Insolvency, and such other matters as by the late Act may be taken by one Judge only.

BUSINESS BEFORE EQUITY JUDGE.

15. After the disposal of those matters, the said Primary Judge will sit on every such Friday in Equity.

EQUITY AND INSOLVENCY OUT OF TERM.

16. The Primary Judge will sit at the same hour, on every Tuesday, Wednesday, and Friday out of Term; on the two former days for Equity only, and on the last mentioned day for Insolvency; after which, all such other matters as aforesaid will be taken, and then Equity.

APPEALS IN EQUITY.

17. Appeals in Equity shall be set down for the three days next succeeding the first, second, and third terms:—and for the 23rd, 24th, and 27th days of December.

APPEALS IN INSOLVENCY.

18. Appeals from the allowance or disallowance of an Insolvent's Certificate will be heard on such days as shall be for that purpose specially appointed.

FINES AND ESTREATS.

19. Schedules of Fines and Estreated Recognizances shall be returnable on some Friday in Term, at 11 o'clock; to be then heard before one Judge only.

CHAMBER BUSINESS.

20. Chamber Business will be taken on Tuesdays and Fridays, at 10 o'clock; in Term and Vacation alike—Provided that a Summons may be returnable on any other day, by order of a Judge.

THE LIKE DURING THE HOLIDAYS.

21. Summonses, during the January and July Vacations, shall be returnable exclusively on Friday; and then in cases of Emergency only.

CRIMINAL SESSIONS.

22. The Sessions of Gaol Delivery at Darlinghurst shall respectively commence on Friday the 1st day of February, Tuesday the 2nd day of April, Monday the 3rd day of June, Monday the 29th day of July, Monday the 30th day of September, and Monday the 2nd day of December.

J. N. DICKINSON.
SAML. FRED. MILFORD.
EDWARD WISE.

1861.

Legislative Assembly.

NEW SOUTH WALES.

TURNER AND WOOD.

(RETURN IN REFERENCE TO.)

Ordered by the Legislative Assembly to be Printed, 10 April, 1861.

RETURN to an *Address* of the Honorable the Legislative Assembly of New South Wales, dated 1. March, 1861, praying that His Excellency the Administrator of the Government would be pleased to cause to be laid upon the Table of this House,—

“Copies of the Depositions in the case of Turner and Wood, sentenced by the Deniliquin Bench to one year's imprisonment with hard labour, for camping with the Blacks.”

(*Mr. Buchanan.*)

SCHEDULE.

	PAGE.
The Police Magistrate, Deniliquin, to the Colonial Secretary, 22 March, 1861, enclosing copies of depositions in the case of Turner and Wood	2

TURNER AND WOOD.

POLICE MAGISTRATE, DENILQUIN to COLONIAL SECRETARY.

*Police Office,
Deniliquin, 22 March, 1861.*

SIR,

I have the honor to acknowledge the receipt of your letter of the 12th instant, requesting copies of the depositions in the case of Turner and Wood, for the purpose of being laid before the Legislative Assembly, and to enclose them herewith.

It may not be out of place to make a few observations with reference to the sentence, which appears so disproportionate to the offence, and which, if viewed only through the medium of the depositions, will still appear rather harsh, as it is not there shewn what character the men bore; although it was sworn by one of the police that they were "reputed thieves," a fact within my own knowledge and that of other magistrates, and also of the public generally.

In adjudicating in cases under the Vagrant Act, magistrates would act unjustly in awarding punishment if they were not to be influenced, to a certain extent, by the description of person convicted. It is intended that a previous conviction, or the character of being a notorious thief, should have weight. If it were otherwise the intention of the law would be defeated.

Now, in sentencing Wood and Turner for the single offence of lodging with the aboriginal natives, it could scarcely be expected that I would deal with them very leniently, when they were both well known idle vagabonds, and under the eye of the police at the time, there being no moral doubt of their having committed a robbery a few days before.

Besides this, Wood had, when living here about a year before, been convicted under the Vagrant Act, which rendered it imperative upon me to deal with him as a rogue and a vagabond.

I may mention that the men were suspected of having committed the robbery, because of their bad character, coupled with the fact of their suddenly appearing to have plenty of money to spend in drink, when it was known that neither had had money for some time previous, and one of them (Turner) having given up working for a livelihood altogether. With what justice the suspicion rested upon them will be apparent when I inform you that, when on the road to Albury Gaol, they offered to disclose to one of the police escort, for the sum of £6, where the unspent proceeds of the robbery were still concealed, making no secret of their guilt. I merely mention this fact, in order that you may see how well the men sustained the reputation they had for being rogues and vagabonds.

If it were necessary, two members of this Bench, who know the men even better than I, could prove that Turner has been a reputed thief for the last thirteen years.

I need only say, in conclusion, that I acted as my common sense and conscience guided me, and in accordance with the law.

I have, &c.,
JOHN KELLY,
Police Magistrate.

[Enclosure.]

COPIES of Proceedings in the case Police v. Turner and Wood.

Constable Fitzpatrick being duly sworn, saith, as follows:—From an occurrence which happened yesterday morning, I found it my duty to keep an eye upon the prisoners (Wood and Turner), which I did until the hour of twelve last night; at that hour I lost sight of them; but I got information that they had gone to the blacks' camp, which is distant very nearly a mile from the centre of the town of Deniliquin; I then went to the camp accompanied by Constables Glennan and M'Farlane; by going cautiously, I got close to the camp without the blacks or their dogs hearing me; and I distinctly heard the prisoner Wood speaking to the blacks; in going up close to where he was I came in contact with the other prisoner (Turner), who was lying down within, as near as I can guess, six or eight yards of the camp fire; I pulled the blanket off him, and he appeared at first quite drunk, but after about a quarter of an hour he became right, and was able to walk; I took him into custody; he then sung out to the prisoner (Wood) that he was going to the "Bloody watch-house;" and Wood called out "What is the matter;" I then went to where Wood was and took him also into custody; he remarked to me that "He was a bloody fool to come out of the camp, and might have made his escape at the other side;" the two prisoners were within the blacks' camp fires; it was about one o'clock when I arrested the prisoners, and there was no corrobbery going on at the time.

JOHN J. FITZPATRICK.

Taken and sworn to, at Deniliquin, in the Colony of }
New South Wales, this eighteenth day of Jan- }
uary, 1861, before me,—

JOHN KELLY, Pol. Magt.

A true copy.—M. A. M'KENNA, C.P.S.

Constable

Constable Glennan, being duly sworn, saith, as follows:—I saw the two prisoners, before the Court, in the blacks' camp last night; the prisoner (Turner) was lying down under a bush with a blanket about him; I heard Wood speaking in the camp; after he had been taken into custody, he said he was a "damned fool" that he did not make his escape; the prisoners were within a few yards of the fires; I was listening for about twenty minutes to Wood speaking to the blacks, and both he and Turner were within the fires; it was about a quarter to one o'clock when we took them into custody; there was no corrobory going on at the time, and no noise except the blacks talking.

THOMAS GLENNAN.

Taken and sworn to, at Deniliquin, this eighteenth }
day of January, 1861, before me,— }

JOHN KELLY, Pol. Magt.

Both prisoners declined to ask this witness any questions.

A true copy.—M. A. M'KENNA, C.P.S.

Constable M'Farlane, being duly sworn, saith, as follows:—I am lock-up keeper; Constable Fitzpatrick came to me last night, and we went down to the blacks' camp, where we saw the prisoners (Wood and Turner); Turner was lying between two bushes, and Wood was speaking to the blacks; Turner was lying not more than ten yards from the nearest fire; there were a great many fires about; I should say that it was about half-past twelve or a quarter to one when the prisoners were taken, as it was one when we got to the lock-up; there was no corrobory going on, and I saw no other white people there; after the prisoners went towards the lock-up, I returned to get the blanket which Turner had been using, and, when about to take it away, a blackfellow came up and claimed it, and I gave it to him.

JAMES M'FARLANE.

Taken and sworn to, at Deniliquin, this eighteenth }
day of January, 1861, before me,— }

JOHN KELLY, Pol. Magt.

Prisoners declined to ask this witness any questions.

A true copy.—M. A. M'KENNA, C.P.S.

James Taylor, being duly sworn, saith, as follows:—I live at Deniliquin, and occasionally act as barman for my brother, who is a hotel-keeper; I know the prisoner Turner, but not the other man; they were both in the bar last night, and I served them with a bottle of brandy about half-past ten or eleven o'clock; they both said that they were going to the blacks' camp, and "supposed they would get what they wanted"; Wood paid me three half-crowns for the brandy, and the other man gave one shilling and sixpence, which left them one shilling in debt.

JAMES TAYLOR.

Taken and sworn to, at Deniliquin, this eighteenth }
day of January, 1861, before me,— }

JOHN KELLY, Pol. Magt.

The prisoners declined to ask this witness any questions.

A true copy.—M. A. M'KENNA, C.P.S.

John Waring, inn-keeper, being duly sworn, saith, as follows:—I keep the St. George Hotel; there was a robbery committed there on Wednesday last, somewhere about midnight; it was an old man named Wooley who was robbed; he lost about twenty-three pounds and his watch; I saw the prisoner (Turner) in the old man's company—in a general company; the prisoner (Wood) was living in the house working at the time; the prisoner George Turner has been in the habit of coming to my house; at the time I had not any suspicion that either of the prisoners had committed the robbery, but in the evening having heard that they were very free with money, and from conversations I had with the police I became suspicious of them; I don't know anything of Turner's character, I have only seen him within a few weeks; Wood, I have known for two years; I don't know anything bad of the character of either; they have always acted honestly by me.

J. WARING.

Taken and sworn to, at Deniliquin, this nineteenth }
day of January, before me,— }

JOHN KELLY, Pol. Magt.

A true copy.—M. A. M'KENNA, C.P.S.

Examined by Constable Fitzpatrick:—Ginny, an aboriginal girl, having assented with a nod to speak the truth, saith as follows:—I know him big fellow George; I see him that big fellow George at the camp two nights; him take my blanket and want me sleep along a him, and I run away; after police been at camp my cooley take 'm blanket back again; that fellow was drunk; he no sleep along a gin that night; he give 'm black fellow money to bring grog along a camp, and he drink 'em grog; that little fellow (carpenter) (pointing to the smaller prisoner) sleep along a Mary that night; that fellow George often sleep along a camp—him never sleep with me.

Stated before me, this nineteenth day of January, 1861,—

JOHN KELLY, Pol. Magt.

A true copy.—M. A. M'KENNA, C.P.S.

Duvy, an aboriginal native, having been told to speak the truth by the Police Magistrate, saith as follows:—I no tell 'em lie; I see him one fellow—carpenter; I see him along a cobra; I see him two fellow at camp; Peter bring him down; and I was sleeping; him wake me up, and want to lie down along Ginny; Ginny run away and George take him blanket and keep it; George give me ten shillings to go and fetch 'm one fellow bottle of grog; he give me one fellow nobbler, and one to Henry; and that one fetch 'm pint pot, and mine give him some to another blackfellow; he give him grog to Louisa.

Stated, at Deniliquin, this nineteenth day of }
January, 1861, before me,— }

JOHN KELLY, Pol. Magt.

A true copy.—M. A. M'KENNA, C.P.S.

*Police Office, Deniliquin,
23 March, 1861.*

Sir,

As you mentioned to me that I had omitted to take down certain evidence given by Constable Fitzpatrick, upon the trial of Wood and Turner, for unlawfully lodging with the aboriginal natives of this Colony, I do myself the honor to enclose an affidavit, setting forth the matter so omitted, as you appear to deem it of considerable importance.

As the omission of the evidence in question might be considered culpable neglect on my part, I beg to remind you that much conversational evidence was given by Fitzpatrick and other constables, when the offence with which the men were charged had been proved, and the deposition of each witness might be regarded as concluded.

I have, &c.,
M. A. M'KENNA,
Clerk of Petty Sessions.

The Police Magistrate,
Deniliquin.

On this twenty-third day of March, One thousand eight hundred and sixty-one, *John James Fitzpatrick*, of Deniliquin, constable of police, being duly sworn, maketh oath and saith as follows:—The men Wood and Turner, who were convicted in the Police Court here, on the nineteenth day of last January, under the Vagrant Act, were reputed thieves, and I stated while on my oath as a witness for the prosecution, that Wood was a "reputed thief," and that I had known him for two years to be a man of the worst character; that I had known Turner for about nine months to be a very bad character, and had every reason to believe him a thief; that I had always to keep a watchful eye upon both men. I find that a portion of this evidence has been omitted in the deposition taken upon the said seventeenth of January.

JOHN J. FITZPATRICK.

Sworn by the deponent, on the day first above }
mentioned, at Deniliquin, before me,— }

M. A. M'KENNA, a Commissioner for Affidavits.

1861.

Legislative Assembly.

NEW SOUTH WALES.

PETITION OF MR. N. L. KENTISH.

REPORT FROM THE SELECT COMMITTEE

ON THE

PETITION OF MR. N. L. KENTISH;

TOGETHER WITH

THE PROCEEDINGS OF, AND MINUTES OF EVIDENCE TAKEN BEFORE
THE SELECT COMMITTEE APPOINTED IN THE
SESSIONS OF 1860 & 1861.

ORDERED BY THE LEGISLATIVE ASSEMBLY TO BE PRINTED,
19 April, 1861.

SYDNEY:

THOMAS RICHARDS, GOVERNMENT PRINTER, PHILLIP-STREET.

[Price, 9d.]

47—A

1861.

CONTENTS.

	PAGE.
Extracts from the Votes and Proceedings	3
Report	5
Proceedings of the Committee of 1860	7
" " 1861	8
List of Witnesses	11
List of Appendix	11
Minutes of Evidence	1

EXTRACTS FROM THE VOTES AND PROCEEDINGS OF THE
LEGISLATIVE ASSEMBLY.

1860.

VOTES No. 3. THURSDAY, 27 SEPTEMBER, 1860.

18. Mr. N. L. Kentish:—Mr. Kemp moved, pursuant to *amended* notice, That a Select Committee be appointed to inquire into the allegations contained in the Petition of Mr. N. L. Kentish, presented to this House on 3 May last,—such Committee to consist of Mr. Daniel, Dr. Lang, Mr. Black, Mr. Parkes, Mr. Gordon, Mr. Lord, and the Mover.
Debate ensued.
And the name of Mr. Weekes having been added to the proposed Committee, on motion of Mr. Robertson,—
Question—That a Select Committee be appointed to inquire into the allegations contained in the Petition of Mr. N. L. Kentish, presented to this House on 3 May last,—such Committee to consist of Mr. Daniel, Dr. Lang, Mr. Black, Mr. Parkes, Mr. Gordon, Mr. Lord, Mr. Weekes, and the Mover—put and passed.

VOTES No. 5. TUESDAY, 2 OCTOBER, 1860.

3. Mr. N. L. Kentish:—Mr. Lord moved, pursuant to *amended* notice, That an Address be presented to the Governor General, praying that His Excellency will be pleased to cause to be laid upon the Table of this House, copies of all Correspondence between the Molong Bench and the Government, and all other papers having reference to the case of Mr. N. L. Kentish, and that the same be referred to the Select Committee now sitting to inquire into this matter.
Question put and passed.

VOTES No. 15. THURSDAY, 18 OCTOBER, 1860.

1. * * * * *
Papers:—Mr. Robertson laid upon the Table the undermentioned Papers:—
(1.) * * * * *
(2.) Return to Address in reference to Mr. N. L. Kentish, adopted, on motion of Mr. Lord, on the 2nd instant.

VOTES No. 17. TUESDAY, 23 OCTOBER, 1860.

1. * * * * *
Papers:—
1. Mr. Robertson laid upon the Table the undermentioned Papers:—
(1.) Further Return to Address in reference to Mr. N. L. Kentish, adopted, on motion of Mr. Lord, on the 2nd instant.

* * * * *

[Further Proceedings stopped by Provoation, 9 November, 1860.]

1861.

1861.

 VOTES No. 8. WEDNESDAY, 23 JANUARY, 1861.

12. Mr. N. L. Kentish :—

(1.) Mr. Dick moved, pursuant to *amended* notice,—

(1.) That a Select Committee, with power to send for persons and papers, be appointed to inquire into, and report upon the Petition of Mr. N. L. Kentish, presented to the Legislative Assembly on the 3rd May, 1860, and that the Papers in reference thereto, laid upon the Table on the 18th and 23rd October, 1860, be referred to the said Committee.

(2.) That such Committee consist of Mr. Daniel, Mr. Lord, Mr. Parkes, Mr. Weekes, Mr. Hay, Mr. Macleay, Mr. Stewart, Mr. Markham, Mr. Walsh, and the Mover.

Question put and passed.

(2.) Mr. Dick moved, pursuant to notice, That the proceedings of, and Minutes of Evidence taken before the Select Committee of the last Session of the late Parliament, appointed to inquire into, and report upon the Petition of Mr. N. L. Kentish, be laid upon the Table of this House, with a view to being referred to the Committee this day appointed for a similar purpose.

Question put and passed.

And the Clerk of Select Committees having presented the same at the Bar of the House,—

Mr. Dick moved, That the said Proceedings and Minutes of Evidence be referred to the Select Committee now appointed.

Question put and passed.

 VOTES No. 56. FRIDAY, 19 APRIL, 1861.

3. Mr. N. L. Kentish :—Mr. Dick, as Chairman, brought up the Report from, and laid upon the Table the Minutes of Proceedings of, and Evidence taken before, the Select Committee for whose consideration and report the Petition of Mr. N. L. Kentish was referred on the 23rd January, 1861.

Ordered to be printed.

1861.

 PETITION OF MR. N. L. KENTISH.

 REPORT.

THE SELECT COMMITTEE of the Legislative Assembly, appointed on the 23rd January last, "to inquire into and report upon the Petition of Mr. N. L. Kentish, presented to the Legislative Assembly on the 3rd May, 1860," "with power to send for persons and papers,"— and to whom at the same time were severally referred,—

- (1.) "The papers in reference thereto, laid upon the Table on the 18th and 23rd October, 1860,—
- (2.) "The Proceedings of, and Minutes of Evidence taken before, the Select Committee of the last Session of the late Parliament,"—

have agreed to the following Report:—

It appears that Mr. N. L. Kentish, being appointed Clerk of Petty Sessions at Condobolin, arranged with Mr. R. B. Mitchell, then Clerk of Petty Sessions at Molong, for an exchange; that they subsequently had some disagreement, which led to Mr. Kentish preferring a charge against Mr. Mitchell at the Molong Police Office, for an assault.

Mr. Kentish then made certain charges against Mr. Mitchell, in a letter dated the 2nd September, 1859, addressed to the Colonial Secretary, who thereupon referred the same to the Bench of Magistrates at Molong for their report.

That investigation took place on the 11th October, 1859, and four of the Magistrates reported, "that they had made a full inquiry, and had examined six witnesses, who had directly and positively contradicted the whole of the charges;" the other Magistrate, Mr. Barton, dissenting.

They also reported that they considered the charges against Mr. Mitchell were "malicious and mendacious."

Mr. Kentish was thereupon dismissed from his office as Clerk of Petty Sessions; but, at his urgent request, and with a view to the vindication of his character, Captain Battye was directed by the Colonial Secretary to make a full inquiry into the matter, and to furnish a Report.

Mr. Kentish, who had left Molong and returned to Sydney, was unable to attend this inquiry; Captain Battye so reported, and did not proceed further.

The Petition, together with a most voluminous correspondence which has passed between Mr. Kentish and the Government, having been maturely considered by your Committee, they consider that Mr. Kentish

was

was rash and hasty in making charges until he was prepared with sufficient evidence to substantiate them in the event of an investigation taking place; and that the language used by Mr. Kentish, in his letter to the Colonial Secretary, was very intemperate and unwarrantable.

It is not the province of your Committee now to inquire into those charges a second time, the more particularly in the absence of Mr. Mitchell, who has not been examined before your Committee; but even had they been well founded, your Committee consider they are only called upon to inquire whether they were proved at the time of the investigation by the Magistrates.

Your Committee are of opinion that, although Mr. Mitchell may have been guilty of some irregularities, and, indeed, appears to have been very disrespectful in his demeanour to the Bench of Magistrates at Molong, yet that the evidence produced by Mr. Kentish *at the inquiry* into Mr. Mitchell's conduct did not bear out the charges contained in the letter referred to.

Your Committee are further of opinion that, although Mr. Kentish failed to prove his charges, there was nothing to justify the Magistrates in reporting that they were "malicious and mendacious."

The investigation appears to have been conducted in a highly irregular and indcorous manner, and it is to be regretted that the Magistrates did not deem it necessary to make a fuller inquiry than it appears to your Committee they have done, and that no public record of the proceedings was made.

The evidence taken before your Committee discloses a practice, viz.—the cutting of leaves out of the Record Book of the Court at Molong, which your Committee cannot refrain from noticing, and feel bound to condemn in the very strongest terms. It is proved that some leaves were cut out by the direction of the Magistrates, and others by Mr. Kentish himself; and your Committee regard such tampering with the records of a public office, either by the clerks or Magistrates, or with their sanction, as being highly reprehensible, and calculated to be subversive of the ends of justice.

Your Committee are of opinion that there is no doubt Mr. Kentish's conduct is not altogether free from blame, and, perhaps, to a certain extent, deserving of censure, and that he has used very intemperate and uncalled-for language in the documents brought under the consideration of your Committee; yet your Committee, taking into consideration the fact that the charges made by Mr. Kentish were not altogether groundless, and his many years' of public service, are disposed to recommend a lenient course of proceeding with reference to his case, and to suggest that his dismissal from his appointment be rescinded, or otherwise modified.

ALEXANDER DICK,
Chairman.

*Legislative Assembly Chamber,
Sydney, 16 April, 1861.*

PROCEEDINGS OF THE COMMITTEE.

1860.

WEDNESDAY, 3 OCTOBER, 1860.

MEMBERS PRESENT:—

Mr. Daniel, | Mr. Kemp,
Rev. Dr. Lang.

In attendance—

Mr. N. L. Kentish, *Petitioner*.

Committee met pursuant to summons.

On motion of the Rev. Dr. Lang, C. Kemp, Esq., called to the Chair.

Order of the House appointing the Committee on the 27th ultimo,—read.

Concerning the course of procedure, the Chairman intimated that, pending a fuller attendance of the Committee, it might be well to ascertain the opportunity or willingness of the Molong Bench to be represented and examined, by one or more of their number, before them; and in the absence of all parties from town, to address a letter to the collective Bench, inviting such arrangements as will meet their convenience in the week following next; in the meantime deferring to take the evidence of the Petitioner till this day week.

Committee resolved accordingly.

And Petitioner informed.

[Adjourned till Wednesday, 10th instant, at 11 o'clock.]

WEDNESDAY, 10 OCTOBER, 1860.

MEMBERS PRESENT:—

C. Kemp, Esq., in the Chair.

Mr. Lord, | Rev. Dr. Lang,
Mr. Parkes.

In attendance—

Mr. N. L. Kentish, *Petitioner*.

Committee having met,—

Mr. N. L. Kentish (*late C. P. S. at Molong, Petitioner*) called in and examined.

And witness being furnished with a collection of private papers, purporting to be copies of originals in the Colonial Secretary's Office, similar to those about to come before the Committee through the House,—

And retiring, at the instance of the Chairman,—

The Chairman submitted whether the Committee would feel at liberty to accept the contents of such papers in evidence of Petitioner's case, or whether it would be necessary to examine personally into the particulars.

Committee Resolved,—That the several facts be elicited by *viva voce* evidence.

Witness recalled and further examined,—

And in course of examination the witness being allowed to answer questions, by quoting from the private papers above referred to,—

Objection taken.

And witness having withdrawn,—

Committee deliberated upon the propriety of permitting Mr. Kentish to answer, by means of quotations, or incorporation of extracts into his evidence; having regard to the usual practice which places separately, all matter admissible, other than *oral* testimony, as an Appendix to the particular evidence.

It was Resolved,—That the answers of the witness be confined to original replies, exclusive of further reference to written documents.

Witness recalled and further examined.

And during the further examination, two Members of the Committee, viz., the Rev. Dr. Lang and Mr. Parkes, having successively retired from the room,—

Proceedings temporarily suspended, for want of a quorum.

And Mr. Parkes shortly returning,—

Committee resumed.

Further examination of Mr. Kentish resumed, and concluded.

Witness withdrew.

[Committee adjourned.]

FRIDAY,

FRIDAY, 9 NOVEMBER, 1860.

MEMBERS PRESENT :—

C. Kemp, Esq., in the Chair.		
Mr. Black,	|	Rev. Dr. Lang,
Mr. Daniel,	|	Mr. Lord,
Mr. Parkes.		

In attendance—

Mr. N. L. Kentish, *Petitioner*.

L. H. Sibthorpe, Esq., J.P.

Committee met pursuant to summons.

Original papers, consisting of a Return and further Return to Address, ordered on the 2nd October, severally laid upon the the Table on the 18th and 23rd ultimo, in accordance with the Order of the House on the aforesaid 2nd October, referred to this Committee.

A letter having been despatched, by direction of the Chairman, to L. H. Sibthorpe, Esq., on behalf of the Bench of Magistrates, Molong, as suggested in their reply to letter written under the provisional direction of Committee on 3rd ultimo, requesting the attendance of that gentleman as a witness,—

L. H. Sibthorpe, Esq., J.P., C. C. L., *Molong*, attending accordingly, admitted.

Mr. N. L. Kentish, *Petitioner*, also admitted.

L. H. Sibthorpe, Esq., examined.

During Mr. Sibthorpe's examination, the Chairman, at the request of Mr. Kentish, proposed several questions to the witness.

Witness having produced a paper relating to the present subject, intitled "Kentish v. Mitchell.—Memoranda of Evidence given at a Magisterial Inquiry held at Molong, on "Tuesday, the 11th October, 1859," bearing the certificate of Joseph Morris, as a verbatim copy of the Evidence taken by him at the investigation of the case,—

The said "Memoranda," as directed, read by Clerk.

The same subsequently handed in, and ordered to be appended to the Evidence.

(*Vide Appendix A.*)

Examination resumed and concluded.

Witness withdrew.

Mr. N. L. Kentish, *Petitioner*, present, then further examined.

Witness withdrew.

Evidence of witnesses this day not to be transmitted for revision.

The Chairman produced a letter from the Petitioner, under date of the 2nd instant, soliciting the Committee to hold another meeting before "the impending dissolution of Parliament," with a view to a Final or Progress Report being brought up in relief of his grievance.

Committee deliberated upon the Evidence taken, and upon the prospects of the case.

[*Proceedings stopped by Prorogation, 9 November, 1860.*]

1861.

FRIDAY, 25 JANUARY, 1861.

MEMBERS PRESENT :—

Mr. Daniel,	|	Mr. Markham,
Mr. Dick,	|	Mr. Parkes,
Mr. Macleay,	|	Mr. Stewart.

In attendance—

Mr. N. L. Kentish, *Petitioner*.

R. J. Barton, Esq., J.P.

On motion of Mr. Macleay, Alexander Dick, Esq., called to the Chair.

Papers in reference to the Petition of Mr. N. L. Kentish, together with the Proceedings of, and Minutes of Evidence taken before, the similar Committee of last Session,—laid before Committee, pursuant to Orders of the House, dated 23rd instant.

Committee deliberated, preparatory to the examination of R. J. Barton, Esq., J.P., of Molong, a witness at present in Sydney, but departing hence in the course of a few days, and to whom the Chairman had therefore directed the issue of a summons requesting his attendance *this day*.

R. J. Barton, Esq., J.P., *Molong*, attending accordingly, admitted.

Mr. N. L. Kentish, *Petitioner*, also admitted, and informed that the Committee will permit him, through the Chairman, to ask the witness such questions as may be necessary.

Committee then proceeded to take Mr. Barton's evidence.

At the close of the examination, Petitioner, through the Chairman, addressed several questions to the witness.

Witness, having concluded the giving of his evidence, withdrew.

Directions given for summoning John Smith, Esq., J.P., of Molong (now in Sydney), Mr. W. Petherbridge, and Mr. R. Tulloh, to give evidence at the next sitting.

[*Adjourned till Tuesday, 29th instant, at 11 o'clock.*]

TUESDAY,

TUESDAY, 29 JANUARY, 1861.

MEMBERS PRESENT :—

A. Dick, Esq., in the Chair.

Mr. Daniel,	|	Mr. Parkes,
Mr. Markham,	|	Mr. Stewart,
		Mr. Walsh.

In attendance—

Mr. N. L. Kentish, *Petitioner*.
J. Smith, Esq., J.P.
Mr. R. Tulloh.

Mr. Smith and Mr. Kentish admitted.
J. Smith, Esq., J.P., *Molong*, examined.

And at the close of the examination, witness requesting to be furnished with a copy of the Evidence taken in reference to the Petition of Mr. Kentish,—
And Committee desiring to deliberate,—
Parties requested to withdraw.

It was Resolved :—

That the Committee are unable to comply with the request of Mr. Smith, but that gentleman is at liberty to propose the names of any further witnesses, whose evidence will affect the charges involved in the case of Mr. Kentish.

Parties re-admitted.

When it appearing that Mr. Smith had left the precincts,—
Resolution ordered to be communicated by letter.

Mr. R. Tulloh, called in and examined (Mr. Kentish present.)

Witness produced and *handed in* a written placard, certified as having been removed from near the Court House, Molong, by Mr. J. Liscombe, 13th July, 1858.

Same read, pursuant to direction.

Examination concluded.

Mr. Petherbridge, a witness summoned *this day*, not in attendance.

And parties having withdrawn,—

Committee deliberated, requiring the Evidence to be printed.

[Adjourned.]

THURSDAY, 7 FEBRUARY, 1861.

MEMBERS PRESENT :—

A. Dick, Esq., in the Chair.

Mr. Daniel,	|	Mr. Markham,
Mr. Lord,	|	Mr. Parkes,
Mr. Macleay,	|	Mr. Stewart.

In attendance—

Mr. N. L. Kentish, *Petitioner*.
J. Smith, Esq., J.P.
F. Smith, Esq.

Committee met pursuant to summons.

Printed Evidence before the Committee.

Mr. Kentish and Mr. F. Smith admitted.

F. Smith, Esq., examined.

Witness withdrew.

J. Smith, Esq., J.P., *Molong*, called in and further examined ;—

And witness, while giving evidence, proceeding to comment upon certain portions of the Correspondence referred to the Committee,

Mr. Daniel submitted a question as to the regularity of the course adopted.

Parties requested to withdraw.

Committee deliberated, and *Resolved :—*

That the witness be informed by the Chairman, that it is neither regular nor expedient to receive in evidence a series of comments referring to printed papers.

Parties re-admitted.—Mr. Smith apprised.

Examination resumed, and concluded.

Mr. W. Petherbridge, again summoned as a witness, *this day*, not in attendance.

Parties withdrew.

Committee deliberated respecting the materials for report as presented in the evidence.

[Adjourned.]

TUESDAY,

TUESDAY, 26 FEBRUARY, 1861.

MEMBERS PRESENT :—

A. Dick, Esq., in the Chair.

Mr. Lord, | Mr. Macleay,
Mr. Stewart.

In attendance—

Mr. N. L. Kentish, *Petitioner*.

E. M. Battye, Esq., J. P.

Mr. G. Boulton.

Mr. T. Boulton.

Committee met pursuant to summons.

Further printed Evidence (complete) before the Committee.

The Chairman stated the names of witnesses in attendance, the same having been summoned, *this day*,—by his direction, at the instance of the parties,—in the event of a decision to take further evidence.

Committee deliberated.

It was Resolved :—

That the Committee are already possessed of sufficient evidence upon the points comprised in the inquiry.

And parties ordered to be informed accordingly.

The Chairman submitted two letters, respectively addressed from Molong, under date the 14th instant, by Mr. E. J. Finch and Mr. W. Finch, in relation to the present case.

Corrected evidence of L. H. Sibthorpe, Esq., a witness examined, 9 November, 1860, with Addendum by that gentleman—Chairman laid before Committee.—To appear. (*Vide* page 10.)

Corrections in second evidence of Mr. Kentish, also examined, 9 November, 1860. (*Vide* page 11.)

Committee then deliberated in reference to the terms of the Order of Appointment and of the Petition, with a view to further determining the bounds of inquiry and proposed Report.

Chairman requested to prepare a Draft.

[Adjourned till Tuesday, 5 March, at 12 o'clock.]

TUESDAY, 5 MARCH, 1861.

MEMBERS PRESENT :—

None.

In the absence of a Quorum, or any Member attending in the Committee Room, the Meeting called for *this day* lapsed.

FRIDAY, 5 APRIL, 1861.

MEMBERS PRESENT :—

A. Dick, Esq., in the Chair.

Mr. Daniel, | Mr. Markham,
Mr. Parkes.

Committee met pursuant to summons, in order to consider Draft Report.

The Chairman submitted Draft accordingly.

Which having been read,—

Committee deliberated.

The Chairman—having then received a note addressed to the Committee by the Petitioner (Mr. Kentish), brought under consideration his request therein for permission to address Committee prior to agreement to a Report.

And the same considered.

Resolved :—

That being fully possessed of the facts in connection with the subject of Mr. Kentish's petition, both by means of the Correspondence referred from the House, and the Evidence taken during the former and present Session,—the Committee decline to hear Mr. Kentish.

And Petitioner being admitted,—

So acquainted by Chairman.

Petitioner having retired,—

Deliberation on Draft Report resumed.

Draft to be remodelled, and further considered at the next Meeting.

[Adjourned till Thursday, 11th instant, at Eleven o'clock.]

THURSDAY,

THURSDAY, 11 APRIL, 1861.

MEMBERS PRESENT:—

A. Dick, Esq., in the Chair.
Mr. Daniel, | Mr. Hay,
Mr. Markham.

Committee met to further consider Draft Report.
Same, as amended, brought up by Chairman.
Committee deliberated.

Draft read, further amended, and copies ordered to be distributed during the interval of adjournment.

[Adjourned till Tuesday, 16th instant, at Eleven o'clock.]

TUESDAY, 16 APRIL, 1861.

MEMBERS PRESENT:—

A. Dick, Esquire, in the Chair.
Mr. Daniel, | Mr. Macleay,
Mr. Markham.

Committee met for the final consideration of Draft Report.
Printed copies having been circulated yesterday, pursuant to order, on 11th instant,—
Proposed Report again read.
On motion of Mr. Macleay, same, as read, agreed to.
And Chairman requested to report.

LIST OF WITNESSES.

	PAGE.
<i>Wednesday, 10 October, 1860.</i>	
Mr. N. L. Kentish, <i>Petitioner</i>	1
<i>Friday, 9 November, 1860.</i>	
L. H. Sibthorpe, Esq., <i>J.P., C.C.L., Molong</i>	5
Mr. N. L. Kentish, <i>Petitioner</i> (further)	10
<i>Friday, 25 January, 1861.</i>	
R. J. Barton, Esq., <i>J.P., Molong</i>	11
<i>Tuesday, 29 January, 1861.</i>	
J. Smith, Esq., <i>J.P., Molong</i>	14
Mr. R. Tulloh	21
<i>Thursday, 7 February, 1861.</i>	
F. Smith, Esq.	23
J. Smith, Esq., <i>J.P., Molong</i> (further)	24

LIST OF APPENDIX.

	PAGE.
<i>To Evidence given by L. H. Sibthorpe, Esq., 9 November, 1860.)</i>	
A.	
Kentish v. Mitchell, Memoranda (Mr. J. Morris), of Evidence at Magisterial Inquiry, Molong, 11 October, 1859	8
B.	
Certain Magistrates, Molong Bench, to R. J. Barton, Esq., J.P., 9 October, 1860	9
C.	
R. J. Barton, Esq., J.P., to certain Magistrates, Molong Bench, 11 October, 1860	9
Addendum	10
<i>(To Evidence given by Mr. N. L. Kentish, 9 November, 1860.)</i>	
Note of corrections on revision	11
<i>(To Evidence given by J. Smith, Esq., 29 January, 1861.)</i>	
A.	
Court Record—Kentish v. Mitchell—Evidence in case of Assault, 30 August, 1859	20
B.	
Court Record, containing, <i>inter alia</i> , letter from Mr. N. L. Kentish to Mr. R. B. Mitchell, 24 August, 1859	20

1861.

Legislative Assembly.

NEW SOUTH WALES.

MINUTES OF EVIDENCE

TAKEN BEFORE

THE SELECT COMMITTEE

ON THE

PETITION OF MR. N. L. KENTISH.

WEDNESDAY, 10 OCTOBER, 1860.

Present:—

MR. KEMP,
DR. LANG,

MR. LORD,
MR. PARKES.

CHARLES KEMP, Esq., IN THE CHAIR.

Mr. Nathaniel Lipscomb Kentish called in and examined:—

1. *By the Chairman:* You presented a petition to the Legislative Assembly in May last? I did, through your kindness.
2. The substance of that petition was a complaint against certain Magistrates at Molong? That is the case.
3. You had previously made some complaint of language used by a Mr. Mitchell? I had done so incidentally, not formally.
4. And the Government had directed the inquiry? Yes.
5. The result of that inquiry was that the Magistrates reported that you had not proved your case? Four of them reported that my charges or allegations were malicious and mendacious, and that the evidence taken contradicted them distinctly and positively.
6. And it is of that report you complain? It is.
7. Were the Magistrates sitting as a Bench, or in what way? They were sitting as a Bench of Magistrates, having been summoned for the occasion. It was an ordinary Court day, but the case being of some importance, circulars had been sent to all the Magistrates in the district, in order that all, or as many as could conveniently, might assemble.
8. And you assert that the evidence proved the matters spoken to by you? Distinctly. The evidence having been forwarded to the Government, I presume it will be laid before the Committee with the other papers.
9. You give in your petition extracts from the evidence given by several of the witnesses? I do.
10. Where did you get those extracts? They are taken literally from the evidence as entered in the record of the proceedings, and by me forwarded to the Colonial Secretary.
11. Were they taken down at the time? They were not. It having the appearance of indelicacy, and being also somewhat unusual for me to act as prosecutor and at the same time as Clerk to take down the evidence; and moreover, feeling a little agitated, some violence having been used towards me by Mr. Mitchell just before the opening of the Court, it was proposed that one of the Magistrates, Mr. Smith, should take down the evidence, but that arrangement was not carried out. However, the greater part of my own evidence being in writing, I have copied that literally, and the rest I wrote out from recollection; and to shew that it is correct, I shewed it to the Chief Constable and he said it was all correct, except that in one place I had used the word poker, in his evidence, whereas he had

Mr. N. L. Kentish.
10 Oct., 1860.

Mr. N. L.
Kentish.

10 Oct., 1860.

said fire iron—alluding to Mr. Mitchell's having on one occasion been driven out of his house with a fire iron, by a young woman with whom he had attempted to take liberties.

12. Did you enter the proceedings in a book? Certainly, at the time of the occurrence taking place.

13. Is that the ordinary practice at country Benches, such as Molong? Yes.

14. *By Mr. Lord*: There was no evidence taken on oath? No, it was objected to by Mr. Sibthorpe that the evidence should be taken on oath.

15. *By the Chairman*: This is a copy of the record of the proceedings? This is a literal copy.

16. Will you just read the heading of it? (*The witness read as follows*):—"Molong Police Office, Tuesday, October 11, 1859. Present: Robt. J. Barton, Esq., Chairman; John Smith, Esq., J.P.; L. H. Sibthorpe, Esq., J.P.; Edwd. John Finch, Esq., J.P.; William Finch, Esq., J.P. Proceedings of Commission appointed by the Honorable the Colonial Secretary to report upon the letter of Mr. N. L. Kentish, of the 2nd ult., reflecting on the character of his predecessor, as C.P.S. of Molong, Mr. Richard Blunt Mitchell."

17. Then it was not in the ordinary course of magisterial duty that this investigation was undertaken? They were specially appointed by letter addressed officially to the Bench.

18. *By Mr. Lord*: That was in consequence of a letter written by you making charges against Mr. Mitchell? It was perhaps wrong to say charges, because it was merely incidentally, in vindication of myself, that I alluded to Mr. Mitchell being that which I imputed to him.

19. Will you read the concluding paragraph of Mr. Elyard's letter? (*The witness read as follows*):—"If Mr. Mitchell's character be as reported he is unfit for his appointment, and if he be innocent, Mr. Kentish ought to be punished for charging him unjustly with such a character."

20. *By the Chairman*: That was the real issue to be tried? It was.

21. Will you be kind enough to state what evidence was given that you consider justified you in the assertions you have made respecting Mr. Mitchell? Here is the evidence *verbatim* which was read over, as I have before stated, by the Chief Constable.

22. *By Mr. Lord*: Was that taken down at the time the witnesses were examined? No, but it was written out the same evening—the rough copy—and copied into the record book the next day.

23. *By the Chairman*: What time in the day did the inquiry take place? From about one o'clock to three in the afternoon, or from twelve to two or half-past two.

24. When did you write out these minutes of the evidence? I made the rough copy the same evening.

25. Did you take any notes at all? None whatever. The greater part, as you will perceive, of my own evidence was in writing; for not expecting to be examined *viva voce*, I prepared beforehand all that I thought it necessary to say. The evidence of the five witnesses was so brief that I am perfectly certain it is as nearly literal as if it had been taken down at the moment; and that I dare say each of them will admit.

26. Was any other report of the evidence, in any shape, taken? Yes, there was a person in Court of the name of Morris, who had been a constable, and who was then the bailiff of the Court; he communicates with the *Empire*, and he sent, some week or two afterwards, an account of the transaction, which cannot be called a report of the proceedings, but he certainly sent his statement soon after, which statement appearing in a public print like the *Empire*, instead of at Bathurst, as I think might have been expected, no doubt public attention was called to it.

27. What shape did the proceedings at the Inquiry take? In the commencement of the proceedings Mr. Sibthorpe acted as Chairman, Mr. Barton not arriving until just before the evidence was being taken. Mr. Sibthorpe said that he deemed it unnecessary that the witnesses should be sworn, but should give affirmation on honor; and it was supposed that the evidence would have been taken down by Mr. Smith, but he did not. I was called upon, being viewed in the light of prosecutor, to commence by stating what I had to say respecting Mitchell. I said, that conceiving my own conduct as well as Mitchell's was the subject of the then present inquiry, I felt that there would be an indelicacy in my remaining in the room; and therefore, having that very morning written down everything I thought it necessary to say, I proposed to withdraw, leaving it with these gentlemen; but they suggested that I should read it, and I accordingly did so.

28. *By Mr. Parkes*: Is that statement among the papers in the Colonial Secretary's Office? Yes.

29. And when those papers are laid on the Table it will come into the possession of the Committee? No doubt.

30. *By the Chairman*: Did you call any witnesses after your statement was handed in? I did not summon any witnesses to attend—not one; but it being suggested by Mr. Sibthorpe that if I looked round the Court I should probably see those who would be my witnesses, I named Dr. Ross and himself, Mr. Sibthorpe. And when the witnesses were severally called, as is related in the proceedings taken down—it being as I supposed my chief duty to establish the three things stated, viz., blasphemy, sottishness, and brawling—I first asked the simple question, have you ever seen Mr. Mitchell drunk? and if that were replied to in the negative I felt it was of no use to ask any further questions, as the answer shewed an evident leaning towards Mr. Mitchell—it being matter of notoriety that he was very seldom seen sober.

31. How many witnesses were called? Six; of whom one gentleman, Mr. Francis Smith, was called by me in mistake for another person.

32. How did they get before the Bench—were they summoned? They had come to the Court

Court as spectators; Dr. Ross had come in company with Mr. Sibthorpe, they being associated intimately.

Mr. N. L. Kentish.

33. *By Mr. Parkes:* They consented to give evidence? They consented to give evidence.

10 Oct., 1860.

34. Who were the witnesses in fact called? Mr. Sibthorpe was the first, Dr. Ross, Mr. Moon—he was called by Mr. Mitchell.

35. *By Mr. Lord:* Did you not call him in Court? Mr. Mitchell called him, but when he was there he said, "Now, Mr. Kentish, ask any question you like of Mr. Moon."

36. He appears on the proceedings as one of your witnesses? It would appear so, but I never summoned a single soul. Mr. Betts was called by Mr. Mitchell to prove that I remained in the room some little time after this language was made use of by Mr. Mitchell.

37. *By the Chairman:* Who called Mr. Davis, the Chief Constable? Mr. Mitchell did, to prove that he had not seen him drunk.

38. Were these all the witnesses examined? Those were the whole.

39. What did these witnesses prove—beginning with Mr. Sibthorpe, did he prove anything in support of your charge? Mr. Sibthorpe proved the violence of Mitchell, he having insulted him on the Bench, and for that outrage he had made him give a written apology; he shewed me that apology himself.

40. Did Dr. Ross prove anything? He proved Mr. Mitchell's having sent to him a letter containing his favorite sentiment.

41. He proved his having sent to him a letter concluding with what words? "Wishing you eternal damnation."

42. Mr. Moon, what did he prove—he was the innkeeper? Yes, he stated that he had never seen Mitchell drunk.

43. Mr. Mitchell resided with him some months? Yes.

44. What did Mr. Betts prove? He proved that Mr. Mitchell proposed this toast which led to the conflict between us, at which I was very indignant, and remonstrated.

45. What was the toast proposed? His statement was that Mr. Mitchell said, "I must now give you my toast, here is eternal damnation to your souls"; at which I, not unnaturally I think, expressed some resentment.

46. *By Mr. Parkes:* Your conflict followed that? It did.

47. *By the Chairman:* At what time in the evening was this? Nearly nine, I think; we did not sit down till late.

48. Did you leave the room then? To explain the circumstance, I may say, that Mitchell drowned my voice by his very loud recitation, for that is his common practice when a little primed, as it is called; and, not wishing to quarrel with him, I did not interrupt him then; he rushed off into something of a totally different kind, for he began to recite "The Deserted Village," saying, "Oh, if you want something else I can give you something pious."

49. The next witness was the Chief Constable, Mr. John Davis? Yes, I asked of him but one question, if he had seen Mr. Mitchell drunk, and he said, no. I asked him nothing further, but he made a statement in reply to the Bench, about some young woman of whom some report was buzzed abroad.

50. After these five witnesses were examined, what course did the Magistrates then pursue? They called upon Mr. Mitchell to reply, or to make any observations for his defence, which he entered upon, and the substance of which is given in the proceedings which were forwarded to the Government.

51. *By Mr. Parkes:* Is your case wholly stated in the papers in the hands of the Colonial Secretary? Entirely.

52. As fully stated as you can now state it? Perfectly so.

53. Then if the Committee is possessed of these papers they will be in possession of your version of the whole case? Entirely so, and of everything I believe relating to it. There is nothing new that I could add to the case whatever.

54. These papers, in one form or other, your own letters for instance, contain all the facts of the case, and all those facts fully stated? Yes.

55. Has anything occurred since to modify your opinion with respect to the matter? Nothing whatever.

56. Has anything occurred to you to give a new complexion to those facts in your own mind, or to shew that you were deceived in any circumstance? Nothing whatever.

57. *By the Chairman:* Mr. Mitchell made a statement to the Bench? He did.

58. Did you make a general reply afterwards? I did.

59. Did the Magistrates retire to consider their decision? The Court was cleared, no one remaining but the Chief Constable. They debated about one hour or upwards, and on the Court being opened, it was stated by the Chairman, Mr. Barton, that his colleagues on the Bench, four in number, had agreed to a certain report from which he entirely dissented; and he expressed his total disagreement therewith in very warm language.

60. The Magistrates' report was that you had not proved your case? They reported that my charges had been disproved, "distinctly and positively contradicted"; those were the words of Mr. Sibthorpe in writing the report, which the other three gentlemen, constituting the majority, also signed.

61. And that the charges are malicious and mendacious? Yes.

62. That report was sent down to the Colonial Secretary? Yes. Perhaps I should state that these proceedings were entered by me in the record book of the office, and from that I sent a *verbatim* copy to the Colonial Secretary; but afterwards, in consequence of Mr. Sibthorpe having cut certain papers out of the book and ordered them to be burnt by a constable, fearing the whole would share the same fate, I cut them out myself and sent them to the Colonial Secretary.

Mr. N. L.
Kentish.
10 Oct., 1860.

63. *By Mr. Lord*: You charge Mr. Sibthorpe with having cut certain papers out of the record book, and ordered them to be destroyed? He did, in open Court.
64. It was not then agreed that these things should be cut out and burnt? It was then and there done: I was out of office at the time, and therefore I never opened my lips.
65. *By the Chairman*: In consequence of your representation to Mr. Forster, the then Colonial Secretary, Captain Battye was directed to hold a further inquiry? He was.
66. You were notified of that? I was.
67. Will you state the reason why you did not attend? I had not the means of defraying the expense of the journey, estimated at at least £20; I had just come up from Molong to Sydney, a distance of two hundred miles, and I was literally without the means of returning. Had I been in a position to apply for a loan, I would not have scrupled to ask my friends for assistance; but when a man does not see a prospect of being able to repay the obligation, he should have, and I trust I have, too scrupulous a sense of honor to incur it. Besides, I knew that all the evidence that I could produce would be before Captain Battye, notwithstanding that he should proceed with the inquiry in my absence; and, when the opinion of one or two friends whom I consulted coincided with my own, that it was of no use my going there under the circumstances, I wrote, explanatorily, to Captain Battye a letter which you will find with the others. Captain Battye, doubtless, was glad to be relieved of the duty, and sent my letter to the Colonial Secretary, upon which the Commission was cancelled.
68. Captain Battye did not go into the matter at all? He did not.
69. *By Mr. Lord*: You are not aware whether Mr. Mitchell was in attendance on that occasion? I know nothing of it whatever.
70. You have another charge, have you not, against Mr. Mitchell? At first I made no charge whatever.
71. Something arising out of it? Afterwards finding that this had been treated as a malicious proceeding on my part, while I can truthfully assert that it was quite the contrary, I then made specific charges, each of which I am too well able to establish, but which have not been taken any notice of.
72. The same evening that this toast was given by Mr. Mitchell, you shook hands with him at parting, did you not? Quite the contrary; you will find from Mr. Betts' testimony that I did not say good night to Mr. Mitchell, but left the room, what is called, moodily.
73. I believe Mr. Mitchell had been, prior to this, giving a lecture on poetry? So I heard him say.
74. Did you not charge Mr. Mitchell before the Bench with an assault? He was tried for an assault, and fined £1.
75. Did not that arise out of the letter you sent him? Yes.
76. He threw that letter in your face, did not that constitute the assault? No, he rushed at me with the greatest violence, as if he would have eaten me; but after all, he concluded by saying "You cannot say, sir, that I have so much as touched your person;" and I replied, "No, I really believe you have not."
77. You did bring Mr. Mitchell before the Bench for an assault, and he was fined a pound? Yes, and he was further bound over to keep the peace, as he had something like renewed the assault just before the opening of the Court.
78. *By the Chairman*: When Captain Battye's letter was received in Sydney you were immediately removed from office? No, I had been so before, on the report of the Magistrates.
79. When was that? On the 31st October, 1859. My successor was gazetted on that day, but I did not receive the letter announcing my removal till afterwards.
80. How long have you been out of pay? As a Government *employé*, twelve months the 31st of this month; *i. e.*, as C.P.S. of Molong; but, in accordance with the desire of the Bench, I continued in attendance at the Police Office, daily, to perform the duties of C.P.S. and of Registrar of the District Court, until the arrival of my successor from Murrurundi, which being so great a distance (on the Upper Hunter River, some 400 miles I believe) did not take place till the 11th of December. As the substitute of Mr. J. J. Davies, and acting for that gentleman, by his request—with whom a correspondence took place, by post—I received pay to that date; as the Chairman of the Bench—I mean, R. J. Barton, Esq.—protested against a pay abstract being signed in favor of my successor until his arrival at Molong; or of it being made out in any other name than that of the officer performing the duty.

FRIDAY, 9 NOVEMBER, 1860.

Present:—

MR. BLACK,	|	DR. LANG,
MR. DANIEL,	|	MR. LORD,
MR. PARKES.		

C. KEMP, ESQ., IN THE CHAIR.

Luke Homan Sibthorpe, Esq., J.P., called in and examined:—

81. *By the Chairman*: You are one of the Magistrates of the Molong Bench, I believe? I am.

82. Were you also in October of last year? Yes.

83. Mr. Kentish was at that time Clerk of Petty Sessions? Yes.

84. You were requested by the Colonial Secretary to inquire into a letter Mr. Kentish had written regarding Mr. Mitchell? The Bench were.

85. You did inquire? We did.

86. I have before me a letter, signed by yourself and three other Magistrates, dated 11th October, in which you say, "we therefore feel it incumbent to state we consider the charges malicious and mendacious." Do you remember that letter? Yes; I penned that letter myself. When I say I penned it, I mean that I did so at the request of the Bench, because Mr. Kentish was not in the Court, and the Bench asked me would I write it. It was submitted for their approval, and Mr. Barton was the only dissentient. He said, "if you will take out the words 'malicious and mendacious' I will sign it."

87. Mr. Barton dissented from those two words? Yes; but he coincided in our opinion that the charges were not proven.

88. You have seen Mr. Kentish's petition, I presume? Yes.

89. Mr. Kentish complains that the decision was contrary to the evidence; you examined some witnesses? Six, I think.

90. Was their evidence taken down? No, it was not written down.

91. *By Mr. Parkes*: Did any of the Magistrates take notes of the evidence? No.

92. You did not? No; one of the gentlemen on the Bench proposed that the evidence should be taken down in writing—that was Mr. John Smith; Mr. Barton was of the same opinion; but the other Magistrates said it was not necessary.

93. *By Mr. Lord*: I believe Mr. Smith offered to take it down? Yes.

94. *By the Chairman*: The charge against Mr. Mitchell appears to have been for "blasphemy, brawling, and sottishness"? Yes.

95. And you found that all the charges were distinctly contradicted by the witnesses? Yes, myself included; I was one of the witnesses.

96. You were the first witness, I believe? I believe so.

97. Were the witnesses sworn? No.

98. Did you declare before the Bench that, in July, Mr. Mitchell had insulted the Bench? No, that he had insulted me.

99. Insulted you on the Bench? Not on the Bench; I did not say on the Bench.

100. That he had apologised on your threatening to report him? No; he apologised without any threat on my part whatever. I was not sitting on the Bench when the young man forgot himself, and certainly I was but too happy to receive an apology, and to do as he required—forgive him.

101. The next witness appears to have been Mr. Andrew Ross? Dr. Ross.

102. Did he admit having received a letter from Mr. Mitchell, concluding with the words, "wishing you eternal damnation"? No, he contradicted it.

103. From Mr. Kentish's report to the Colonial Secretary, it appears that Andrew Ross, Esq., M.D., said, "I admit having received from Mr. Mitchell a letter in his handwriting, wishing me eternal damnation"? Dr. Ross denied having received such a letter.

104. Then the statement of Kentish in reporting the evidence is not true? It is not true.

105. *By Mr. Parkes*: Has not Mr. Mitchell himself acknowledged that he gave utterance to a sentiment of this kind? I believe so.

106. *By the Chairman*: You are quite clear that Dr. Ross denied it before the Bench? I am positive I never heard the young man. I have been in his house, he has been in mine, and I have met him at inns, and I never saw the sign of liquor on him, and never heard him make use of such an expression.

107. Do you recollect Mr. Betts being examined? Yes.

108. Is he a very respectable man? Yes, very. He was the only evidence Mr. Mitchell called, and he gave evidence in favor of Mr. Kentish.

109. He declared that Mr. Mitchell had proposed as a toast "Eternal damnation to our souls"? No, he did not; what he said was:—I believe Mr. Mitchell gave a lecture on poetry—I was not in the district at the time—and Mr. Kentish, as I am given to understand, was partaking of Mr. Mitchell's hospitality. I further understand that Mr. Kentish was at this lecture, and after the lecture they adjourned to enjoy themselves, and, I believe, they were drinking some wine. Mr. Kentish, in a complimentary manner, spoke to Mr. Mitchell on his versatile talent, and said, "Come now, let us have a toast before we go to bed," and the foolish young man then made use of these expressions, as I am given to understand; but this was not taken notice of by Mr. Kentish until ———

110. However, Mr. Betts did declare before the Bench that Mr. Mitchell did propose this toast? Not in those words: "Eternal damnation to all of us" was what Mr. Betts said.

111.

L. H.
Sibthorpe,
Esq., J.P.

9 Nov., 1860.

L. H.
Sibthorpe,
Esq., J.P.

9 Nov., 1860.

111. Does not that strike you as being blasphemous? Well, if a young man like him were in the habit of blaspheming I would say it was—no one can question in fact that it is blasphemous—but I certainly would not condemn a man as a blasphemer from knowing that he uttered such an expression once.

112. You have no doubt as to the expression itself being blasphemous according to your ideas? No doubt it is.

113. The chief constable was examined I think? Yes.

114. He appears to have given no evidence from his personal knowledge, but only from what he had heard from his wife, I see from from Mr. Kentish's note? He contradicts what Mr. Kentish has asserted.

115. Do you recollect what he declared before the Bench? Mr. Kentish wished to adduce from him that Mr. Mitchell attempted to take improper liberties with Mr. Davis' servant girl, that he wanted to kiss her, and that she struck him with a flat-iron; and Mr. Davis denied it *in toto*. He said Mr. Mitchell had been to his house, and, as he said, in his usual joking way, spoke to the girl as he was going out, but that "had he said or done anything improper I am sure my mistress would have told me of it, and the girl never made any assertion of the kind."

116. *By Mr. Lord*: Then Mr. Kentish's statement with reference to that matter is also untrue? Yes, undoubtedly.

117. *By the Chairman*: Do I understand you to say that your impression now of what Mr. Davis said is the contrary of that? I sent it down the country the other day with his own signature to it. (*The witness produced a paper.*) There is a man who is the correspondent of the *Empire* who was in Court during the whole proceedings, and who took down the evidence as it was given. When I thought it was probable I was coming here I asked him had he kept a copy, and he said he had, and he let me have it. Each of the witnesses who were examined have signed their names, with the exception of Mr. Betts, who is somewhere up the Maneroo country.

118. *By Mr. Black*: Is that substantially consistent with the evidence given before the Bench of Magistrates? It is.

119. But it was written some time after? It was taken down at the time.

120. When did he prepare the report? At the time the evidence was given he was in Court, and he kept his notes.

121. *By Mr. Parkes*: Do you hand that in to be appended to your evidence? If you please. (*The witness handed in the same. Vide Appendix A.*)

122. The evidence of John Davis, according to this, seems to confirm the statement that Mr. Mitchell attempted to take liberties with this young girl, if this is a substantially correct report of what he said before the Bench. He said, "I was told by my wife that Mr. Mitchell came to my house and said he would kiss a young girl who is living with me, but she told him, if he touched her, she would brand him with a hot iron she had in her hand?" That is true. Pardon me, there is in that no relevancy to the charges brought against Mr. Mitchell. If you had had the misfortune to have sat in the Court you would have seen the very irregular manner in which the examination was carried on, and that subjects were broached that had no connection whatever with the charges Mr. Kentish was bringing against this young man. Therefore we culled what had relevance from what had not, and that was our decision.

123. True, but I understood from you that this witness, Mr. Davis, denied that any thing of the kind had taken place? (*The shorthand writer was directed to read the previous evidence of the witness.*) If I said so I made a great mistake; he said he was told so by his wife.

124. *By the Chairman*: Do you recollect the evidence given by Mr. Francis Smith? I made one error in speaking of Mr. Davis' evidence, which I think was caused by Mr. Davis speaking to me afterwards, as to how the young man behaved there. I think that is how I was led into the error; but that is the best evidence I can adduce, as each of the witnesses have signed it.

125. The point to which I now wish to draw your attention is Mr. Francis Smith's evidence—do you happen to recollect, of your own recollection, at this time, Mr. Smith saying that he was in company with Mr. Kentish and Mr. Mitchell? He said so.

126. Do you know Mr. Francis Smith's signature? Yes. I saw him sign that paper; I saw each of these names signed.

127. That document you believe, so far as you know, to be a fair statement of what took place? Yes.

128. *By Mr. Parkes*: You saw all the signatures affixed? Yes. I can verify all the signatures there. (*The Chairman read a letter from Mr. Barton, dated 18th November, 1859.*)

129. Do you know Mr. Barton's handwriting? Yes.

130. Do you know that to be Mr. Barton's signature (*handing the letter to the witness*)? Yes.

131. With reference to that letter did the Bench address any communication to Mr. Barton? Yes.

132. Have you that letter with you? Yes.

133. Will you be good enough to read it? (*The witness read the same. Vide Appendix B.*)

134. Do you know that to be a correct copy of the letter you sent to Mr. Barton? This is my handwriting.

135. And it is correct? It is correct.

136. In that letter you refer to a letter published in the *Sydney Morning Herald*? Yes.

137. Can you state whether the letter I have just now read is the same as that to which this letter refers? With the exception of one sentence.

138. Can you point out that portion? "There is an old saying that when the old gentleman wants to do a fellow a private injury he claps a pen in his fist."

L. H.
Sibthorpe,
Esq., J.P.

9 Nov., 1860.

139. That was not in the printed copy? No.
140. In other respects you think it is a copy? Yes.
141. Did Mr. Barton make any reply to the letter received from the Bench? Yes.
142. Have you that reply? I have.
143. The original? Yes.
144. Will you be good enough to read that? (*The witness read the same. Vide Appendix C.*)
145. *By Mr. Parkes*: Have you any objection to state whether you were in an excited state, and whether you did abuse Mr. Kentish, as this letter states? Mr. Kentish is at perfect liberty to make any addenda to his evidence.—Perhaps you will permit me to state that it was unanimously resolved by the four delinquents, that they would not write to Mr. Barton till the Committee had closed its sittings.
146. With regard to Mr. Barton's letter—Mr. Barton states that he found you in an excited state abusing Mr. Kentish? Yes, that is what he states, and that I was Chairman on the Bench, which was not true.
147. You were not Chairman? I was not.
148. Do you recollect whether you used any words which could be construed into abuse of Mr. Kentish? No.
149. You were not in an excited state? I was not; I was much cooler than I am now.
150. Is it true what Mr. Barton alleges, that the records of the Court have been cut out? With his cognizance.
151. *By the Chairman*: Will you state the circumstances? I believe what Mr. Kentish has relied on is this evidence which he had written down some days after the investigation, and that he has cut that out himself, as well as the record of two cases.
152. *By Mr. Black*: How could Mr. Kentish get access to the books? He was Clerk of Petty Sessions, and had the custody of the books.
153. *By the Chairman*: Some days after this inquiry you found that Mr. Kentish had written in the record book what purported to be a record of the proceedings? Yes.
154. What action took place on that? There was also a very prolix correspondence in the letter book.
155. Stick first to the minute book of the Court? They are both connected, if you will allow me to refer to them both. I said, "This is a very unusual mode of procedure—in a letter book belonging to the Bench the clerk should not write any of his private letters." Mr. Barton so far coincided with me on that occasion, that with the concurrence of the Bench I cut the letters out of the letter book. I said the same fate should befall the record book. "No," said Mr. Barton, "let that remain;" and it did remain at that time. Subsequently I found that Mr. Kentish had taken out the record, or rather some pages from the record book, for we do not consider anything entered in it a record until the Magistrate signs it.
156. When you say that he took it, do you mean that you saw him take it? No, I did not; but I know it was in his custody.
157. Then the Magistrates cut out the correspondence relating to this affair in the letter book, and afterwards these minutes written by Mr. Kentish were, as you believe, taken by him out of the record book? I believe so.
158. *By Dr. Lang*: Does not Mr. Barton say, in his letter to you, that you were acting as Chairman during his absence from the Court? Yes.
159. Was that the case? No; I think there had been two cases of summary jurisdiction tried before entering on the business of the day, but I was not the Chairman.
160. Did Mr. Kentish take out of the correspondence or record book anything that bore the character of a record of the court, or merely his own correspondence? He did—pardon me for saying he did—it is gone; it is cut out.
161. *By Mr. Parkes*: It disappeared, and the book was in his sole custody? Yes, and it had some bearing on this case.
162. *By the Chairman*: Did it refer to a case of assault that arose out of this letter? Yes.
163. *By Mr. Parkes*: As a Magistrate, do you consider that a Clerk of a Bench has any right to interfere with the book—to deface it in any way? Most unquestionably not.
164. Did you ever hear the Clerk of the Bench in this case have permission from any Magistrate to do so? I never heard that he had; but I would be sorry to throw any onus upon Mr. Kentish for taking out his evidence.
165. Do I understand you that he had entered something that did not properly belong to the record book, and that he then cut it out as being improper and extra official. I could not tell his object in cutting it out.
166. *By Mr. Black*: You have stated that you did not consider anything entered in that book to be a record of the Court unless signed by a Magistrate? Yes.
167. You have alluded to the record of two cases as having disappeared from this book? Yes.
168. Were either of these signed by the Magistrates? Yes; both of them must have been, for in summary jurisdiction the case must be entered in the record. Where we expect there will be a case for the Quarter Sessions, or Supreme Court, it is taken on folio; but where it is a summary jurisdiction case it is taken in the record book.
169. So that, in your opinion, the papers which were cut out in both cases were, in your sense of the words, records of the Court? Unquestionably they were.
170. *By Mr. Parkes*: They disappeared while the book was in the exclusive charge of Mr. Kentish, he being at the time Clerk of the Bench? Yes. It was in the presence of Mr. Kentish, and of the whole Court, that I took my knife and cut out these letters; therefore I did not act in any way surreptitiously about it.
171. How long have you resided at Molong? I went there in April twelve months.
172. Do you reside in the township? No, a short distance from it.
173. Are you there frequently? About three times a week.

L. H.
Sibthorpe,
Esq., J.P.

9 Nov., 1860.

174. Did you happen to be there when Mr. Kentish arrived? No; I met Mr. Kentish on my journey from Fort Bourke.
175. You had no personal knowledge of the quarrel between Mr. Kentish and Mr. Mitchell that led to this inquiry? No.
176. I want to elicit this: whether you saw any of the things complained of? No.
177. *By the Chairman*: Mr. Barton has been Chairman of this Bench for some years, I believe? No; I do not consider him Chairman.
178. *By Mr. Daniel*: Did any other members of the Bench consider him as Chairman? No; generally, on country Benches, those who first come are considered the Chairmen.
179. *By the Chairman*: That was Mr. Barton's case, was it not? No.
180. On this particular occasion some summary cases had been tried? Yes, two.
181. Who presided? I cannot say, there were four Magistrates present.
182. Is it not usual for one to take the lead? It had been submitted on my appointment there as a Government officer that I should preside, but I declined to have such an honor thrust on me, as I found there had been some ill-feeling between my predecessor and Mr. Barton.
183. *By Mr. Daniel*: Do you know whether Mr. Barton, prior to your living at Molong, was acknowledged by the Bench as their Chairman? Really I am not aware; I never inquired.
184. You do not know, and are not aware of the fact? I would make a comment upon one part of his letter, where he refers to a disgraceful proceeding that had no relevance to the case of Mr. Kentish, but was a piece of brawl between himself and Mr. John Smith.
185. Was that on the same day? No; on the following Court day.
186. Are you still of opinion that the Bench arrived at a just decision in that matter? I cannot doubt it. I would be sorry to injure Mr. Kentish or any one else, but from the evidence given that day the Bench could not have come to any other conclusion.
187. *By Mr. Parkes*: Have you any reason to suppose that any members of the Bench had any personal knowledge of Mr. Kentish before his arrival? I do not think they had ever seen him. He partook of my hospitality when he arrived there.
188. *By the Chairman*: It having been proved that Mr. Mitchell—never mind under what circumstances—used this particular expression, do you think it was right to say that it was mendacious on the part of Mr. Kentish to make the charge of blasphemy? I think his mendacity appeared in the fact that he termed the man a blasphemer.
189. You think the using of that expression only once did not justify the application of that term? Yes, that he ought not to be reprobated for using one expression.
190. *By Mr. Lord*: Do you consider the reply of Mr. Barton true or false? False, and by our letter we prove it so.

APPENDIX A.

KENTISH *versus* MITCHELL.

MEMORANDUM of Evidence given at a Magisterial Inquiry held at Molong, on Tuesday, the 11th October, 1859. The Evidence was *viva voce*, not written, but taken for the Press by Joseph Morris, who was present at and took notes of the proceedings.

Luke Honan Sibthorpe examined by Mr. Kentish:—I am Commissioner of Crown Lands. I reside at Molong. I was in company with you and Mr. Mitchell several times. I never heard Mr. Mitchell say that he had drunk twelve glasses of brandy before dinner, either in your company or any other. I do not deem Mr. Mitchell an intemperate person.

Did Mr. Mitchell ever insult you in Court? I decline to answer the question.

Did Mr. Mitchell make an apology to you? I decline to answer that question; for whatever occurred betwixt I and Mr. Mitchell was only a private affair between two gentlemen.

Did you ever see Mr. Mitchell drunk? I never did. I have seen him leave his glass half drunk on the table.

L. H. SIBTHORPE.

Francis Smith examined by Mr. Kentish:—I am a grazier residing at Molong. I remember being in company with you and Mr. Mitchell at Mr. Moon's inn. I never heard Mr. Mitchell say that he (Mr. Mitchell) had drunk twelve glasses of brandy before dinner.

By the Bench:—I have seen Mr. Mitchell daily for twelve months. I never saw Mr. Mitchell drunk. Mr. Mitchell has been a guest at my house frequently. I would not ask Mr. Mitchell to visit my house if I thought he was a brawler or a sot. I repeat that I never heard Mr. Mitchell say that he had drunk twelve glasses of brandy before dinner. If he had done so I should have known. The distance from Mr. Mitchell's residence to mine is a stonethrow.

FRANCIS SMITH.

Andrew Ross, M.D., examined by Mr. Kentish:—I reside at Molong. I have known Mr. Mitchell ever since he has been in Molong. I consider him a temperate person. I think he does not drink. I do not consider him a man of intemperate habits. He has never quarrelled with me. I never received a note from him concluding with the words, "Eternal damnation to your soul."

By the Bench:—I never attended on Mr. Mitchell in a professional manner. I never said that I saw Mr. Mitchell in a state of *delirium tremens*. I say that I never told Mr. Barton that Mr. Mitchell was suffering from *delirium tremens*, but that I said he was drinking cloves. *Delirium tremens* would last three or four days, and would be known to all with whom he came in contact.

ANDREW ROSS, M.D.

John

SELECT COMMITTEE ON THE PETITION OF MR. N. L. KENTISH.

John Davis examined :—I am the Chief Constable of Molong. I have known Mr. Mitchell ever since he came to Molong. I never saw him in liquor in my life, nor a brawler, nor a sot, nor in *delirium tremens*.

L. H. Sibthorpe, Esq., J.P.

By Mr. Barton :—I was told by my wife, that Mr. Mitchell came to my house and said he would kiss a young girl who is living with me, but she told him if he touched her, she would brand him with a hot iron she had in her hand. I believe he did not touch her.

9 Nov., 1860.

JOHN DAVIS.

For the defence Mr. Mitchell called Henry M. Betts, who stated :—I reside at Gamboola with Mr. John Smith. I was in company with Mr. Mitchell and Mr. Kentish at Moon's inn. Mr. Kentish remained in the room half an hour or more after Mr. Mitchell said the words eternal damnation to everybody. Mr. Kentish said, let us have something better.

By the Bench :—The last I heard was something about Mr. Kentish's toilette for their breakfasting together.

By Mr. Mitchell :—I do not remember you and him shaking hands at parting.

Edward Wright Moon examined :—I am an innkeeper, residing at Molong. Mr. Mitchell has been lodging at my house since the 12th of May last. I never saw him drunk. I never saw him quarrelsome.

EDWARD WRIGHT MOON.

I certify the above is a *verbatim* copy of the Evidence taken by me, at the investigation into the truth of N. L. Kentish's charges against H. B. Mitchell, before the Bench of Magistrates at Molong.

JOSEPH MORRIS.

APPENDIX B.

Molony, 9 October, 1860.

Sir,

We beg to call your attention to a letter published in the *S. M. Herald* of the 1st instant, purporting to have been addressed by you to Mr. Kentish, on the 18th November last, reflecting on our conduct as Justices of the Peace, and to ask you if this letter is genuine?

We are unwilling to believe that you could have written such a letter against the public reputation of your brother Magistrates containing as it does gross mis-statements.

You conducted the inquiry alluded to as Chairman of the Bench, and at the close of the evidence cleared the Court for deliberation; and although you declined to sign the Report adopted by the majority, you entered no protest against it. Nor did you once during the investigation "protest against the proceedings." In fact the matter was conducted on the part of the Bench most amicably, the only difference being that Mr. Smith maintained that the proceedings should be taken down in writing, which was overruled by you and the other members of the Bench as unnecessary.

The matter is now prominently before the public, and we are called upon to repel such gross and unfounded charges.

We have retained a copy of this, and on receipt of your reply, we shall send the correspondence to the Chairman of the Committee of the Legislative Assembly now sitting in this matter.

We repeat we cannot believe you could have written such a letter.

We have, &c.,

EDWD. JNO. FINCH, J.P.
L. H. SIBTHORPE, J.P.
JOHN SMITH, J.P.
WM. FINCH, J.P.

Robert J. Barton, Esq., J.P.

APPENDIX C.

Boree Nyranq, October 11, 1860.

Gentlemen,

In acknowledging the receipt of your letter of the 9th instant, I beg to state that the letter published in the *Morning Herald* of the 1st instant (and purporting to have been written by me in reply to a letter addressed to me by N. L. Kentish, Esq.) is genuine so far as it goes; and as to its containing, as you say, gross mis-statements, I look upon that as another instance of gross audacity on your parts.

I never said that I had entered a written protest against the finding of the majority of the Bench; but I maintain that I objected and protested against the proceedings of the majority, from the time I entered the Court and found Mr. Sibthorpe abusing Mr. Kentish (the former gentleman acting as Chairman in my absence and being then in a highly excited state) for bringing these charges against Mr. Mitchell until after the Court was cleared, when Mr. Edward Finch said, "Let us get rid of him,"—meaning Kentish—"the Government gave him a thousand pounds the other day to get him out of the country; but he only got as far as New Zealand, when he came back again;" and that feeling of "Let us get rid of him" was but too evident throughout the Court.

As to my opposing and overruling Mr. Smith, that is like all your other statements. I was taken by surprise when I came into Court and found no preparation made to take the evidence in writing, and Mr. Smith was the only Magistrate who voted with me on that occasion. I informed three of your number months ago, when asked by Mr. W. Finch, "That I had written in reply to a letter to the effect that I considered the whole affair a mockery of justice," and consequently there was little use in your saying, "We are unwilling to believe that you could have written such a letter."

I remain, &c.,

ROBT. J. BARTON.

To Messrs. L. H. Sibthorpe, W. and Edward Finch, and John Smith, Esquires.

P.S.—On looking over the books at the Court House, Molong, the other day, I found that all the records that would have supported Mr. Kentish's charges against Mr. Mitchell have been cut out.—R. J. B.

L. H.
Sibthorpe,
Esq., J.P.

ADDENDUM.

(To Evidence given by L. H. Sibthorpe, Esq., 9 November, 1860.)

Corrections by Witness (Mr. Sibthorpe) on revision. (Evidence previously printed.)

9 Nov., 1860. Answer No. 109. At the end, add "the next morning."
" 174. Omit "from Fort Bourke"; insert "to Fort Bourke at Mr. Ross's station, Delga."

In my examination by Doctor Lang I am under the impression that I corrected my evidence as to the expressions of Mr. Mitchell being blasphemous; I think I rectified it by saying I considered them irreligious.

In other respects I believe the evidence to be correctly reported. Had I been served with a copy in Sydney, I could be more certain; but now, three months having elapsed, I cannot recollect any discrepancy.

L. H. SIBTHORPE.

Molong, 13th February, 1861.

Mr. N. L. Kentish again called in and further examined:—

Mr. N. L.
Kentish.

9 Nov., 1860.

191. *By the Chairman*: After having heard Mr. Sibthorpe's evidence and the documents he has produced, do you wish to make any further statement? Yes, with permission; I feel it to be due to myself, however painful, to state, that I believe the whole of these documents have been what is commonly called "cooked."

192. You do not mean to say the whole—you do not include Mr. Barton's letter? No; I mean those documents which profess to be the statements made in the Court. I have my own opinion as to the mode in which they have been got together; they are deliberately untrue, and if evidence were taken—for instance, Mr. Petherbridge, who is now in Sydney—

193. Do not these documents bear the autographs of the parties? No doubt; yet I not only assert, but am quite sure, that if a searching investigation take place, I will prove what I have said. (*The witness referred to Appendix.*) Francis Smith could not say that he heard this, for he said he never was present with Mr. Sibthorpe, Mr. Mitchell, and myself. I imagined he was one of the three persons present when Mr. Mitchell boasted that he had drunk twelve glasses of brandy-and-water before sitting down to dinner. I was mistaken when I said that. It was either Mr. Liscombe or Mr. Petherbridge, who are about the same height.

194. *By Mr. Black*: When you say this evidence is cooked, do you mean to call in question the genuineness of the signatures? No; at least I do not imagine they are forgeries.

195. Mr. Sibthorpe said he saw them all signed; can you recognize any of the signatures? Yes; that (*pointing to the signature*) is Mr. Davis', and that is Dr. Ross's. No doubt about the genuineness of the signatures. It is a painful thing to say of any man, but there is great perjury in this case. If a man writes, that he had stated what he had not stated, that is directly the opposite of truth, and I do not know what is perjury if that is not.

196. *By the Chairman*: Do not say perjury? What Dr. Ross has stated is directly the opposite of truth. He certainly made a rambling attempt to justify Mr. Mitchell's for having written the letter. He had said that he was not only a disgrace to the Government but to the neighbourhood, and that he would not have anything to do with such a young profligate.

197. *By Mr. Lord*: He denied that? He stated to Mr. Barton that Mr. Mitchell had been suffering under *delirium tremens*, and was taking cloves. With respect to the evidence here given by Mr. Sibthorpe (*referring to Appendix*), I can only say that it is a deliberate falsehood, and utterly untrue.

198. *By the Chairman*: When you say untrue, do you mean untrue in fact, or untrue as a report of what took place? It is untrue in fact.

199. *By Mr. Black*: You do not dispute that this is substantially a correct report of what he stated? It is untrue that he stated anything of the kind. He stated then and there that Mr. Mitchell had insulted him and made an apology, and that he insisted upon that apology being in writing. He stated that in Court; and as there were thirty or forty persons in Court at the time, I suppose some of them could be produced who would prove what he said. Mr. Mitchell wrote one apology and that did not give him satisfaction, and then he wrote another. Mr. Francis Smith says here (*referring to Appendix*)—"I remember being in company with you and Mr. Mitchell at Mr. Moon's inn. "I never heard Mr. Mitchell say that he had drunk twelve glasses of brandy "before dinner." He distinctly stated that he did not remember being in our company" in his life. That evidence which I have just read is perfectly untrue. Dr. Ross (*referring to Appendix*) stated a good deal to this effect, in the way of apologising for him—"That he did not consider him a drinking person." I dare say that may be right enough; but he admitted having received a letter concluding with the words "wishing you eternal damnation"; he showed me the letter, and proffered to produce it whether he were subpoenaed or not—I did not subpoena him.

200. *By Mr. Lord*: You say you did not call these witnesses? When they were in Court I called them.

201. They were your witnesses? They might be deemed to be so I suppose. Mr. Sibthorpe was sitting as Chairman; he presided till Mr. Barton came into Court; if he did not act as Chairman he could state who did; no other person took the Chair. Dr. Ross states here—"I never told Mr. Barton that Mr. Mitchell was suffering from *delirium tremens*." Mr. Barton stated on the Bench that he had told him so.

202. *By the Chairman*: Did Dr. Ross state so before the Bench? No; before the Bench he denied it; he stated that he was drinking clove syrup, a kind of drink persons take when they are suffering from the effects of alcoholic drinks. With reference to the evidence of Mr.

Mr. Davis, it is a curious thing that the circumstances relative to this young woman were elicited by the Bench. I knew nothing about it myself.

203. *By Mr. Daniel*: Is the statement of Davis substantially correct? That is not the statement he made in Court at all. Davis being the only officer of the Court—in fact, the only person officially connected with the Court—I read the ¹⁰statement over to him, before I sent it to town, and he said it was correct. I remember distinctly that I made one correction—I used the term “poker” when he said a fire-iron, as I thought he meant one of the things for poking the fire, and I altered that to “fire-iron.”

204. *By the Chairman*: Should you not infer from the evidence of Mr. Davis that Mr. Mitchell merely meant a joke—perhaps not a very delicate one—in saying that he would kiss this young woman, and that she, in reply, said, “I will burn you if you do”? I should think it was mere badinage.

205. *By Mr. Lord*: You have characterized Mr. Betts’ statement as untrue? It is very incorrect; it is not what he stated in Court.—“Mr. Kentish said, let us have something better.” I never said anything of the kind. That is a forced interpretation; I can see the intention of that—“Give us something stronger.” When I reprobated the young man on the spot I only regret that I did not throw the glass of wine in his face. Then Mr. Sibthorpe stated a good deal about my having enjoyed his hospitality, but I did so only on the first day of my arrival; after that I never set foot in Mitchell’s house for two months.¹¹

Mr. N. L.
Kentish.

9 Nov., 1860.

NOTE OF CORRECTIONS BY WITNESS ON REVISION.

1	Answer No. 193.	Omit “said he never was”; insert “declared to the Bench at Molong that he had never been.”
2	“	After “myself,” insert “at Moon’s Inn.”
3	“ 195.	After “stated,” insert “in Court.”
4	“	After “stated,” insert “but the contrary.”
5	“ 196.	Omit “for having written the letter”; insert “as not being a drunkard.”
6	“	Omit “said”; insert “repeatedly told me.”
7	“	Omit “that he would not have anything”; insert “urged upon me to have nothing.”
8	“ 199.	After “stated,” insert “in Court.”
9	“	After “Company,” insert “at Moon’s Inn.”
10	“ 203.	Omit “statement”; insert “whole of the evidence.”
11	“ 205.	At the end, add “I mean up to the time of our dining together at the inn, on the evening of the 23rd of August, when he proposed the infamous toast which I resented.”

FRIDAY, 25 JANUARY, 1861.

Present:—

MR. DANIEL,	|	MR. MARKHAM,
MR. MACLEAY,	|	MR. PARKES,
MR. STEWART.		

ALEXANDER DICK, ESQ., IN THE CHAIR.

Robert Johnstone Barton, Esq., called in and examined:—

206. *By Mr. Daniel*: You were one of the Justices of the Bench of Magistrates at Molong? Yes; I reside in the district, and am a Magistrate there. R. J. Barton, Esq.

207. You have acted as Chairman of that Bench? I have.

208. Did you act in that capacity during the time Mr. Kentish was Clerk of Petty Sessions there? Yes. 25 Jan., 1861.

209. Will you state to the Committee anything you know relative to a charge made by the previous Clerk of Petty Sessions, Mr. Kentish, against Mr. Mitchell? I recollect there was a letter written by Mr. Kentish to the Colonial Secretary, which was returned for the opinion of the Bench, in which Mr. Kentish charged Mr. Mitchell with being “a brawler, a sot, and a blasphemer.” That was the substance of the contents of the letter, I think.

210. Was a Board of Inquiry held relative to this case? The Bench met, and sat upon the case.

211. Do you recollect what was the result of the inquiry? I think the majority of the Bench caused a letter to be addressed to the Colonial Secretary, reporting that Mr. Kentish’s accusations against Mr. Mitchell were mendacious and malicious.

212. *By Mr. Parkes*: I do not think that is what Mr. Daniel means. Do you recollect upon what conditions the inquiry was to be conducted—whether any specific instructions were given by the Colonial Secretary—whether the witnesses were to be sworn—or whether the inquiry was to be conducted in any particular manner? I do not think there were any directions as to how the inquiry was to be conducted, as far as my recollection serves.

213. The evidence was taken not on oath, I believe? Not on oath.

214. You were present? I was present; but the majority of the Bench overruled the proposal that the evidence should be taken on oath.

215. Were you in favour of the evidence being taken on oath? Decidedly. It was stated by some of the members of the Bench that we could not examine on oath on the subject; that was the ostensible reason for not doing so.

216. Was the evidence taken down? The evidence was not taken down in writing.

217.

- R. J. Barton, Esq.
25 Jan., 1861.
217. Do you know anything of a report which was drawn up by some gentleman who communicated, I believe, with the newspaper, and which was adopted by the parties examined. Of this report, in fact—(*handing witness the report appended to Mr. Sibthorpe's evidence*)—will you turn over the pages and see whether you know the signatures attached to the several statements? (*The witness examined the paper.*) I see the signatures of John Davis, and of Dr. Ross, and of Mr. Sibthorpe, and I believe they are all genuine.
218. You do not know anything of that document yourself? No; I never saw it before.
219. Do you recollect a letter being addressed to you by the Molong Bench, and signed by Messrs. Finch, Sibthorpe, Smith, and Wm. Finch, dated 9th September? I recollect receiving a letter, but I do not remember the date.
220. Calling attention to a letter published in the *Sydney Morning Herald*? Yes.
221. Written by Mr. Kentish, I suppose? I presume so.
222. Do you know this letter (*handing witness a letter appended to Mr. Sibthorpe's evidence*)? That is my handwriting.
223. Is that your reply to the letter from the Magistrates of the Molong Bench? It is.
224. Will you have the goodness to read it? (*The witness read the same.*)
225. Do you see any cause to modify the opinion expressed in that letter? Not the slightest.
226. Then your opinion of the inquiry is that it was a mock inquiry, so far as Mr. Kentish was concerned? Yes.
227. You dissented from the report? Entirely.
228. Were you present when the report was agreed upon? I was.
229. And you openly dissented from it? Yes.
230. Are the facts out of which this inquiry arose fairly stated in Mr. Kentish's own letter? I think Mr. Kentish was right—I do not exactly understand what you mean.
231. So far as the mere statement of the facts of the dispute with Mr. Mitchell is concerned, and, so far as your knowledge goes, was Mr. Kentish's statement correct? I believe so.
232. You have seen nothing in his statement at variance with the facts, so far as they have come under your own knowledge? No; I have seen nothing at variance with the facts, although I have found fault with Mr. Kentish's mode of writing and enlarging upon these things.
233. I think you applied to him words to this effect, that when "the devil wants to ruin a man he puts a pen into his hand"? Yes; his writing has been a great source of loss to him—I was very sorry he did write, and I told him so in Court, for the Bench had succeeded in getting rid of Mr. Mitchell, and he had brought a great deal of trouble upon us by raking up the subject again.
234. *By the Chairman*: Do you think the investigation was conducted in such a manner as to allow Mr. Kentish a fair opportunity of proving his statement? I certainly think not; for instance, Mr. Sibthorpe refused to answer a question put to him, and the majority of the Bench bore him out in his refusal.
235. Then Mr. Kentish wished to examine Mr. Sibthorpe as a witness, and he declined to give evidence? He declined to answer a question from myself.
236. You have been a Magistrate on that Bench a long time? Since I have been in the country—twenty years.
237. *By Mr. Parkes*: You are the oldest Magistrate, I presume? Yes.
238. Mr. Sibthorpe was appointed only a year or two ago? He was appointed immediately before this. Not a year.
239. Mr. Smith is not an old Magistrate? He is not; I think Mr. Smith is about six or seven years' standing.
240. Have you had an opportunity of observing the conduct of Mr. Mitchell? I have.
241. From your personal knowledge, do you think the statement that he was a brawler and a sot was correct? Yes.
242. Were you present when this dispute arose between Mr. Kentish and Mr. Mitchell? I was not; but there was a case brought before the Court by Mr. Kentish against Mr. Mitchell, for which Mr. Mitchell was fined one pound.
243. You are aware that Mr. Kentish applied the terms brawler and sot to Mr. Mitchell? Only in writing.
244. You are of opinion from what you have seen of Mr. Mitchell's conduct on other occasions, though you did not see his conduct on that particular occasion, that the terms were not misapplied? I am.
245. *By the Chairman*: Were you present at any time when Mr. Mitchell was publicly convicted of drunkenness? Mr. Mitchell was, a short time after he came to Molong, brought before the Bench, under the Vagrant Act, for making use of blasphemous language, and the Bench found the language proven, but as it did not quite come under the Act, having been used in a public-house, and not, as they considered, in a public place, they dismissed the case, though they at the same time directed me to reprove Mr. Mitchell, which I did.
246. Have you ever seen Mr. Mitchell suffering from *delirium tremens*? I have not.
247. Has Mr. Mitchell's conduct to the Bench been respectful? Highly disrespectful; highly violent and insubordinate on many occasions.
248. Was it not so on the occasion referred to when this investigation took place? Very violent; he called me a brawler myself when I was on the Bench. He was supported by a party in the Court, among whom it was very difficult to keep order; they were rubbing with their feet, and were highly excited.
249. Have you ever heard Mr. Sibthorpe remark upon the insolence and insubordination of Mr. Mitchell? I have, strongly. There was an investigation into Mr. Mitchell's conduct by six Magistrates, and on that occasion Mr. Sibthorpe gave evidence to the effect that Mr. Mitchell had often told him, Mr. Sibthorpe, of his acts of insult and effrontery to me when
on

on the Bench—that he had boasted of it. On that occasion the six Magistrates came to the conclusion that if Mr. Mitchell could exchange well and good; but if not his conduct must be reported to the Colonial Secretary. R. J. Barton,
Esq.

250. Is Mr. Sibthorpe paid Police Magistrate? No, he is a Crown Land Commissioner residing in the neighbourhood, and acts very frequently as a Magistrate. 25 Jan., 1861.

251. On one occasion did Mr. Mitchell challenge you to fight outside the Court? The Court was not sitting at the time, but there were two or three Magistrates in the Court, and Mr. Mitchell came in to hand over the papers and property connected with the District Court, which he did in the most insolent manner. On my speaking to him, he pointed to the platform, which he intended should be a sort of ring where we should settle our dispute. The Magistrates ordered him away, and I do not think I have seen him since.

252. It was from this conduct you set him down as a brawler? Yes, and from his having actually gone out to fight with fisticuffs, with a second of low character. He has been mixed up with brawls and assaults.

253. From the investigation that took place—the evidence given—did you arrive at a different conclusion from that of the rest of the Bench? Certainly, and from my own knowledge of the facts.

254. I beg particularly to ask whether you arrived at the conclusion from the evidence given? From questions not having been answered which I put from the chair—which were not allowed by my brother Magistrates—I cannot say I came to that conclusion entirely from what I heard in Court.

255. Did you ever hear Mr. Mitchell make use of blasphemous language? Not personally.

256. Be kind enough to read “The evidence from memory and subject to correction,” in page 9 of the correspondence in reference to Mr. Kentish, printed by order of the House last Session, and state whether, from your recollection of what took place, that is substantially correct? (*The witness read the same.*) I think it is.

257. *By Mr. Parkes:* Mr. Mitchell, I believe, has publicly admitted that he drank this blasphemous toast? He was found guilty of it on oath—it was sworn to.

258. He has publicly admitted it, has he not? I am not aware, but Bernard Francis Hughes stated that Mr. Mitchell treated seven or eight men in the bar to nobblers round, and drank the toast with himself afterward; and when he was asked in what light he regarded that oath, said that he was so constantly in the habit of giving the toast that he thought nothing of it, but regarded it merely as a joke.

259. *By the Chairman:* Then you personally believe that Mr. Kentish was discharging a duty when he represented this conduct to the Government? I do not go so far as that, but I say I believe what he stated was the truth.

260. Had you always acted and been recognized as the Chairman of the Bench of Magistrates up to the time of Mr. Sibthorpe’s arrival? Yes.

261. (*Mr. Daniel handed to witness Appendix A to the evidence of Mr. Sibthorpe. The witness read the same.*) There appears to be an erasure in the evidence of John Davis? There has been something scratched out.

262. Do you think you could make it out? I think it might be made out with a magnifying-glass; I cannot read it without.

263. Having read that paper, which is described as being notes of the evidence taken by a reporter, and, as you state, no evidence having been taken down in writing at the time, can you say whether that is substantially correct? Decidedly it is not; and I can only say that that reporter never reported fairly anything that took place at that Bench. His reports were always one-sided and untrue.

264. *By Mr. Parkes:* There are factions at Molong, then? Yes.

265. *By the Chairman:* Did you take any notes yourself? I did not take any notes at the time. It was too great a bear-garden for the Court to act with any degree of propriety, and I ought to have left the Court at once.

266. Did Mr. Smith offer to take down the evidence in writing? There was some movement of that kind which came to nothing.

267. *By Mr. Parkes:* Are you aware whether Mr. Smith is in town? I have seen him; I believe he is in town.

268. *By the Chairman:* Do you recollect whether Dr. Ross produced any letter in Court? I think he did.

269. Did he admit that he had received a letter from Mr. Mitchell, ending with the words, “Eternal damnation to your soul”? He did; and I can only say, as far as Dr. Ross’s statement before the Bench is concerned, that he made a totally different statement to me a few days previously. He said that he had had frequent rows with Mr. Mitchell, and that Mitchell was then drinking cloves because he got frightened of an attack of delirium. It was in that way the word “cloves” was used.

270. Is that Dr. Ross’s signature (*referring to Appendix A to Mr. Sibthorpe’s evidence*)? It is, I think. I told Dr. Ross in Court that his statement was totally different from what he had made to me a day or two before.

271. Did you see Mr. Morris taking any notes upon that occasion? I do not recollect.

272. The person with whom Mr. Mitchell resided said he never saw him the worse for liquor—I understood you to say that you knew of your own personal knowledge that he has been drunk? He is not a man to stagger or roll, or perform any of those drunken antics; many men do, but I think drink maddens him; and that his outrageous acts in Court have arisen from drink—particularly when he challenged me to the platform.

TUESDAY, 29 JANUARY, 1861.

Present:—

Mr. DANIEL,	|	Mr. PARKES,
Mr. MARKHAM,	|	Mr. STEWART,
Mr. WALSH.		

ALEXANDER DICK, Esq., IN THE CHAIR.

John Smith, Esq., called in and examined:—

- John Smith, Esq.
29 Jan., 1861.
273. *By the Chairman:* You are a Magistrate, and usually sit on the Molong Bench? Yes.
274. How long have you been a Magistrate? Since 1851.
275. Do you know Mr. Mitchell, who was formerly Clerk of the Bench, and Mr. Kentish? Yes.
276. Do you remember the investigation of some charges brought by Mr. Kentish against Mr. Mitchell? There was a letter sent from the Colonial Secretary to the Bench, desiring an investigation to be made. Mr. Barton and myself were on the Bench, and called a full meeting of the Magistrates for that day fortnight, when all the Magistrates of the district attended.
277. What was done on that occasion? An investigation was held. Mr. Kentish at the time was Clerk of Petty Sessions—he had taken Mr. Mitchell's place—and I wished the evidence to be taken down in writing. Mr. Kentish said he would write down the whole after the investigation was concluded. There was a clerk in the Court, and I desired to hire him to take down the evidence, but the other Magistrates disagreed with me, and thought it unnecessary.
278. What other Magistrates? Both Mr. Sibthorpe and Mr. Barton spoke. Mr. Sibthorpe said he had been at two similar investigations at the Hunter River, and in neither case was the evidence taken down in writing. Mr. Barton also said he thought it was unnecessary. Mr. Kentish immediately remarked that he had an excellent memory, and would undertake to write it down after the investigation was over.
279. You took evidence on that occasion? Mr. Kentish was requested to call in witnesses, which he did. The first witness was Mr. Sibthorpe, Commissioner of Crown Lands. Mr. Kentish put several questions to him, the principal of which was as to whether he had heard Mr. Mitchell acknowledge that he had drunk sixteen glasses of brandy, on a previous occasion, before breakfast. Mr. Sibthorpe denied having heard him say so. I think that was the principal question.
280. Did Mr. Sibthorpe refuse to be examined on other matters? I remember Mr. Kentish asking him whether Mr. Mitchell had not snatched a paper from his hand, and he said "that has nothing to do with this question." I think, also, he said something about a misunderstanding in the Court-house; but Mr. Sibthorpe said Mr. Mitchell had tendered him an apology.
281. The question I put was whether Mr. Sibthorpe refused to give answer to a question put by Mr. Kentish on that occasion? I think he said, "that has nothing to do with this case." Mr. Mitchell had tendered an apology on that occasion.
282. What other witnesses were examined—do you remember? Yes, I remember them all. The next witness was Dr. Ross, to whom Mr. Kentish put certain questions touching the receipt of a letter, having some infamous expressions in it, which Dr. Ross denied having received.
283. Be kind enough to look at page 9 of the printed paper before you, and read the middle paragraph (*Mr. Kentish's report of the investigation*)? (*The witness read the same.*)
284. Is that substantially correct? Dr. Ross did not say that he had received that letter; unless my memory is mistaken, Dr. Ross denied having received such a letter.
285. Will you state what part of that statement you think is not correct? My impression is that he said he had not received such a letter. I can state that Dr. Ross said a great deal more than that; I put a question to him which I remember well; it was whether it was possible for Mr. Mitchell to have suffered from *delirium tremens* without his knowing it; he said it was not—that he was his medical attendant, and was in the habit of seeing him three or four times a week, as he was constantly going into the village, and that he could not possibly have been suffering from *delirium tremens* without his knowing it.
286. To the best of your recollection did Dr. Ross produce a letter? He did not produce a letter; I think not—I do not remember seeing any letter.
287. Do you know Mr. Mitchell? Yes.
288. Have you had opportunities of observing his habits? Not much; he was at my house but twice, I think—three times at the utmost. I was never on intimate terms with him.
289. You know nothing of his general character? No further than from seeing him on Court days, and from what I heard from others; he was a constant visitor at my brother's house.
290. Was he respectful in his conduct to the Bench? Mr. Mitchell was hasty tempered; I have known him to be insolent to Mr. Barton.
291. Mr. Barton is the senior Magistrate of the district, is he not? Yes.
292. Were you present when Mr. Liscombe prosecuted Mr. Mitchell for blasphemy? Yes; I was on the Bench at the time.
293. How long ago was that? It was a short time after Mr. Mitchell arrived.
294. What became of the case? It was dismissed; he was prosecuted under the Vagrant Act, and as the words were used at the bar of a public-house, it was held that that was not a public place within the meaning of the Act.

295. Was the fact of using the language established? Yes; and he was lectured on the occasion. John Smith,
Esq.
296. Do you recollect what the language was? "Here is eternal damnation to us." It appeared that he was about to ride out with some parties, and he stood glasses round, and then gave this as a toast, "Here is eternal damnation to us." 29 Jan., 1861.
297. The charge was established, but he got off because the Bench did not think the case came within the Vagrant Act? Yes.
298. Were you on the Bench when the charge was brought against Mr. Mitchell by Mr. Sibthorpe, of having insulted him on the Bench? No; I remember there was some difference between them, and Mr. Mitchell wrote an apology to Mr. Sibthorpe; but I was not on the Bench when they had any angry words.
299. Were not complaints frequently made as to Mr. Mitchell's conduct during the time he was Clerk of the Bench? No, I do not remember; except by Mr. Barton.
300. By Mr. Petherbridge and the chief constable? When I was present Mr. Petherbridge never brought any complaint, nor did the chief constable; they had a bit of a fracas, Mr. Mitchell and Mr. Petherbridge, but he apologized to Mr. Petherbridge, and the case was never brought before the Bench. That was when Mr. Mitchell snatched the paper out of Mr. Sibthorpe's hand.
301. Do you know what the paper was? It was something stuck upon the Court about a public meeting, but I do not remember the words.
302. Did you see the paper? Yes, I read it; it was to the effect—there had been a meeting called to consider the state of the roads—and there was a request, not in very polite language; that the parties attending the meeting would not touch the papers of the Court. "Jackasses," or "donkeys," or something to that effect, was the term used. It appears that Mr. Petherbridge having attended the meeting had taken the paper down, and as I was walking a little in advance of Mr. Sibthorpe and Mr. Mitchell, Mr. Petherbridge came up to me and handed me this paper, and I read it and then handed it to Mr. Sibthorpe. That was the paper which Mr. Mitchell snatched out of Mr. Sibthorpe's hands, but both Mr. Sibthorpe and Mr. Petherbridge told me they had received an apology.
303. I believe all the Bench had come to the determination that it was better that Mr. Mitchell should leave Molong? I do not think there was any objection to it. An application had been made by Mr. Mitchell to the Colonial Secretary to be removed to Stoney Creek or one of the gold diggings, a letter was written along with it, signed by Mr. Sibthorpe and myself, begging to recommend Mr. Mitchell's application to the favourable consideration of the Colonial Secretary; no other application was made for his removal. The reply was not only that this application was refused, but that every other would be until a matter verbally brought by Mr. Barton before the Colonial Secretary had been inquired into. That Mr. Barton when in Sydney had made a verbal complaint, which he had promised to reduce into a formal charge in writing. On Mr. Barton's return from Sydney an investigation took place into Mr. Mitchell's conduct, and a proposition was made to him that if he would consent to exchange with Mr. Kentish, Mr. Barton would consent to withdraw the charges, which after a great deal of grumbling was consented to by Mr. Mitchell.
304. The Bench were anxious to get rid of him? I could not say they were.
305. *By Mr. Parkes:* Were the Bench perfectly satisfied with Mr. Mitchell as Clerk of Petty Sessions? I could not say they were. There was a memorandum in the record book that he had disobeyed the orders of the Bench.
306. Could you not say what was the state of feeling as regarded Mr. Mitchell? I believe the Bench were not very favourably disposed to Mr. Mitchell. I believe this investigation to have been most fairly conducted; Mr. Kentish had every justice done him by the Court of Inquiry.
307. Had the Bench confidence in Mr. Mitchell as their officer? I believe they had confidence in him; but he was of a hasty disposition.
308. Had they confidence in his judgment? I thought you referred to confidence in him as the agent of the Court—as the receiver of moneys.
309. I mean confidence as to his fitness for the performance of his duties—had he the requisite coolness of temper? He was of an irritable disposition, but I believe he always apologized.
310. I want to know what was the feeling of the Bench? I know my own feeling was that he would have been better somewhere else; but he was a gentleman, and he thought himself deserving of a better position, from the position his father had held in the Colony. I believe Mr. Barton had a strong feeling against him; and he being senior Magistrate, Mr. Mitchell wished to get away. He was not on very friendly terms with any of the Magistrates; but I never saw anything in Mr. Mitchell that would lead me to make the assertion that they wished to get rid of him.
311. Have you not personally rebuked him for his conduct to the Bench? I have called him to order.
312. *By the Chairman:* More than once? Possibly I did on two occasions. I was dissatisfied with him individually on account of his conduct as Collector for Intestate Estates.
313. Have you seen him disrespectful to Mr. Barton? Yes.
314. To other members of the Bench? No; except in the case I have referred to—to Mr. Sibthorpe.
315. Do I understand that he was especially disrespectful to Mr. Barton? I heard that Mr. Barton had lectured him freely, and there was no friendly feeling between them afterwards.
316. I ask you if he was especially insulting to Mr. Barton? He was insulting at this investigation.

John Smith,
Esq.
29 Jan., 1861.

317. *By Mr. Walsh*: Did you not say that you were at Sydney during this investigation? No. When the meeting was held to investigate the charges preferred against him by Mr. Barton Mr. Mitchell was very insulting. He told Mr. Barton he was better born and educated than he was.

318. *By the Chairman*: Did you ever hear him challenge Mr. Barton out to fight? No; but I was in the Court shortly before Mr. Mitchell left, when angry words arose as to Mr. Mitchell's conduct as Registrar of the District Court. Mr. Barton put some question to him, which he declined to answer, and said that the Magistrates had nothing to do with him as Registrar of the District Court—that he was amenable to the Judge of that Court. Mr. Barton said he was responsible to the Bench, and called him to order. Mr. Mitchell said, "You are not on the Bench now" (Mr. Barton was standing at the table). Mr. Barton replied, "The Court is sitting," pointing to the Magistrates on the Bench, "Do you wish to see me off the Bench?" Mr. Mitchell said "Yes." "Where do you wish to see me?" said Mr. Barton. "On the platform," he replied. "What do you call the platform?" "Outside." That is what passed—and Mr. Mitchell was not then Clerk of Petty Sessions.

319. *By Mr. Daniel*: He gave Mr. Barton an invitation to fight? I cannot say it was an invitation to fight; I do not suppose he intended to fight.

320. *By the Chairman*: Was Mr. Mitchell ever committed for contempt of Court? No.

321. *By Mr. Stewart*: You stated that Mr. Mitchell was rather hasty. When you made that statement did you refer to his answers to the Bench, and to his calling on the Magistrate to fight with him on the platform—would you call that irritability of temper? Yes, he was irritated—there was a strong feeling between the two. He was not Clerk of Petty Sessions at that time; Mr. Kentish had re-placed him.

322. You could scarcely expect a good feeling to exist between the Bench and a clerk who conducted himself in this way? Perhaps not.

323. *By the Chairman*: Was Mr. Mitchell's conduct ever officially complained of by the Bench to the Government? I think not.

324. Were you present at Mr. Whitty's auction? Yes.

325. Did you see Mr. Mitchell there? I did.

326. Was he under the influence of liquor? I think not.

327. Was he noisy or quarrelsome? He was assaulted by Mr. Tulloh; Mr. Tulloh rushed at him with a horsewhip—a scuffle ensued, and they both went to the ground.

328. He and Mr. Tulloh had a fight? They had a scuffle; Mr. Tulloh attacked him with a horsewhip—Mr. Mitchell appeared surprised—a scuffle ensued—they closed, and fell to the ground, and a crowd gathered round.

329. Do you know whether they had a pitched battle? I do not know. I had purchased some things at Mr. Whitty's sale, and on going down to take delivery on the following day I found them fighting—I went down and separated them; but how the quarrel commenced I cannot say, for I was not present.

330. Do you remember a meeting being called about a road you were fencing off? Not a road I was fencing off, a road I was straitening.

331. Who convened the meeting? I think Mr. Petherbridge was one of the parties, and Mr. Liscombe another.

332. Were you present at the meeting? Yes.

333. Did Mr. Mitchell address the meeting? He did.

334. Did he speak offensively of you and Mr. Sibthorpe? More offensively of me, I think, about straightening the road without first consulting the feeling of the villagers; I do not remember his alluding to Mr. Sibthorpe.

335. Do you know whether Mr. Mitchell caused insulting placards to be put up with reference to Mr. Whitty or Mr. Tulloh? I do not know.

336. Did you see any? No.

337. Do you know what led to the fight? I was informed it was in consequence of some placards, but I never saw the placards.

338. Did you ever speak to Mr. Mitchell on the subject? No.

339. When you saw the fight between Mr. Mitchell and Mr. Tulloh, did you interpose in your magisterial capacity? Do you mean on the first or on the second day?

340. On the first day? Yes, I made them promise no ulterior steps should be taken.

341. On the second occasion what did you do? I gave each in charge of a constable, with instructions not to put them in the lock-up, but to see that they should not meet again that evening. Mr. Tulloh I sent into his own house, Mr. Whitty's; and Mr. Mitchell I sent off home.

342. You dispersed them? Yes.

343. Were any proceedings taken about that matter afterwards in the Court? Not that I am aware of.

344. Do you remember a charge being brought by Mr. Kentish against Mr. Mitchell for assault? Yes; I was on the Bench.

345. Did you take down the evidence on that occasion? I did.

346. Is that it? (*Handing a paper to witness. Vide Appendix A.*) Yes.

347. Will you have the goodness to read pages 50 and 51—(*handing a paper to witness. Vide Appendix B.*)—Is that substantially correct? It is substantially correct to the end of Mr. Kentish's letter. This was a charge of assault, brought after the former had been decided, which was disproved by evidence brought by Mr. Kentish himself. I said that I could not see any reason for calling upon Mr. Mitchell to enter into recognizance. Mr. Barton differing from me, I left the Bench, and Mr. Barton took his verbal promise merely.

348. *By Mr. Walsh*: Is that memorandum as to the taking recognizances in Mr. Barton's handwriting? No; in Mr. Kentish's.

349. *By the Chairman*: Do I understand you to say that you know the charge was made, and that you differed from the Bench? Yes; I disagreed with Mr. Barton. John Smith,
Esq.
350. *By Mr. Markham*: Was no recognizance taken except that? I will explain why it was not taken. Mr. Kentish was to have written it out; he failed to do it to Mr. Barton's satisfaction, and the end of it was that it was not written again. Mr. Barton waited about half an hour, during which time a singular scene was enacted; Mr. Barton, I believe, was disgusted, and went away.* I do not see the evidence of Mr. Mitchell's servant, which contradicted Mr. Kentish. He swore that there had been no assault, and that Mr. Mitchell was not within a considerable distance of Mr. Kentish. 29 Jan., 1861.
351. *By the Chairman*: Do you know whether Mr. Sibthorpe cut any leaves out of the record book? There were several pages occupied with Mr. Kentish's letters, which he had written to various parties, and the whole lot, not having the Magistrate's signature, were ordered to be expunged, and were cut out by one of the Magistrates—I think by Mr. Sibthorpe.
352. *By Mr. Markham*: Was that out of the Court record book? Yes; they were not Bench letters.
353. *By the Chairman*: Were you on the Bench at the time? Yes.
354. Did you assent to their being cut out? Yes.
355. What became of the letters? I do not know; they were torn up, I believe.
356. Do you know whether Mr. Sibthorpe ordered the constable to burn them? Very possibly he might.
357. *By Mr. Parkes*: In this book is there any mark made to shew where the authorized cutting stops? These letters which were cut out were not written by the Bench but by Mr. Kentish.
358. It appears, if you have no mark to shew where the cutting ends, that if you cut out ten pages, some one else may cut out two others, and you have no means of discovering it—how is it shewn where the cutting stops? There was no mark, but it seems that some other pages were cut out afterwards.
359. *By Mr. Markham*: Additional pages were cut out? Additional pages were cut out without any authority of the Bench.
360. *By Mr. Walsh*: To whom were those letters, which were cut out, addressed? To the Colonial Secretary and Attorney General, I believe.
361. Letters addressed to the Colonial Secretary and Attorney General, entered by the Clerk? Written by the Clerk among the Bench correspondence.
362. *By the Chairman*: Could they not have been cancelled without being cut out? Yes.
363. *By Mr. Walsh*: Can you say whether there were any other entries of official correspondence between the Clerk of the Bench and the Government? No; we looked over the book, but could not find any.
364. When Mr. Mitchell, or any other gentleman, was Clerk of the Bench, was it usual for the Clerk to enter his correspondence in the book? Not without it bore the signature of one of the Magistrates.
365. Was it the general letter book of the office? The Clerk is also land agent, and he has a book for that purpose; but in the Bench books all the letters should be signed by a Magistrate.
366. *By Mr. Daniel*: That is not the question asked by Mr. Walsh. Was there only one book belonging to the police office? This was the letter book of the Bench.
367. You had not two books for the purpose of containing letters? Possibly there might have been other letters with only the signature of the Clerk. The particular reason for cutting out these was that the letters contained untruths—palpable untruths—and, not being verified by a Magistrate's signature, we objected to allow it to remain among the correspondence.
368. *By Mr. Walsh*: Then you cut out the letters because you did not agree with the correspondence? Yes. Mr. Barton himself said that in his opinion it should be cut out—that the letters were improperly inserted there.
369. *By Mr. Daniel*: Have you read them all? I glanced at them—I read some of them.
370. *By Mr. Parkes*: These were copies of letters, which he of his own motion had addressed to persons in authority? Yes; I think if I recollect right one was addressed to the *Herald* newspaper office—it was very voluminous.
371. *By the Chairman*: It was with reference to the subject of some of these letters that this investigation was held? No; the letter on which the investigation was held was not cut out; the letters cut out were written subsequent to the investigation. On the day when the first assault was adjudicated upon, it appears, from the letter sent to the Bench afterwards, that Mr. Kentish was dissatisfied with the decision of the Bench, and addressed the Colonial Secretary on the subject. This letter was sent subsequently to be reported upon. It contained charges against Mr. Mitchell, and the Bench were requested to investigate the charges. Then a full Bench were called together.
372. I ask if the Bench were not engaged in investigating some of the charges contained in this letter? Not in this letter.
373. Are there any other matters you wish to state to the Committee? I would wish to state what was the evidence given, in order to shew that Mr. Kentish had justice done to him, and that the charges against the Bench, embodied in the petition, were uncalled for. The charge against Mr. Mitchell was that he was a sot and brawler, and that he had suffered from *delirium tremens*. I have already stated that Mr. Kentish was called upon to prove his charges,

* NOTE (corrected by witness, on revision, thus):—Mr. Barton, I believe, got impatient, and took his verbal promise only, and went home.

John Smith, Esq.
29 Jan., 1861.

charges, and that he called Mr. Sibthorpe. The second witness called was Dr. Ross, or Mr. Frank Smith; I think Dr. Ross. He was examined touching a letter said to have been sent to him by Mr. Mitchell. Dr. Ross, in reply to the questions of the Bench, stated that he had never seen Mr. Mitchell the worse for liquor; that he could not possibly have been suffering from *delirium tremens* without his knowing it, as he was his medical attendant, and was in the village three or four times a week, and, as he then generally saw Mr. Mitchell, had he been suffering from *delirium tremens* he must have detected it. I may state that Mr. Barton put a question to Dr. Ross touching what had been said by him at the breakfast table of Mr. Barton, at Boree. Mr. Barton stated that Dr. Ross had then said Mr. Mitchell had been suffering from *delirium tremens*. Dr. Ross said he had not said so, that he had stated Mr. Mitchell had been drinking cordials, but not that he had been suffering from *delirium tremens*. The next witness called was Mr. Frank Smith, who stated that he lived about a hundred yards from Mr. Mitchell, on the opposite side of the creek; that he was in the habit of seeing him two or three times a day, and that he had never seen him the worse for liquor; that Mr. Mitchell was a constant visitor at his house; that he, Mr. Smith, was a family man, and that had Mr. Mitchell been such a character as had been represented he would not have been admitted to his house; that, generally, brandy was on the table during his visits, and that never on any one occasion had he known Mr. Mitchell to take a full glass; that he invariably left part of the spirits in his glass. The next witness, I think, was Mr. Betts, touching this blasphemous toast, which he confirmed, but knew nothing further. Mr. Moon, innkeeper at Molong, was then called by Mr. Kentish, and a question was put by Mr. Kentish to this effect, whether Mr. Mitchell had not been drunk in his house whilst lodging there, which he denied. Mr. Kentish then asked Mr. Moon what Mr. Mitchell had paid him—what his account amounted to when he left. This question was disallowed by the Bench. Mr. Moon said he had never seen Mr. Mitchell the worse for liquor. Mr. Kentish stated that he had no more witnesses to call, and the Bench then called the Chief Constable, who stated that he was in the habit of seeing Mr. Mitchell almost daily, and that he could not have been drunk without his knowing it, as he was the Clerk of the Bench, and that he had never seen him the worse for liquor. I think he added that he was quarrelsome. Mr. Barton put a question to Mr. Davis, whether Mr. Mitchell had not assaulted his servant girl, and Mr. Davis stated that he had only heard so, that he was not present, but that on his return home one day he was informed such was the case. This girl, perhaps I might as well state, was not a very good character—poor thing, she is dead now—she was delivered of an illegitimate child, and is now dead, and her child too. Mr. Davis stated that on that occasion he had been told that the girl had chased Mr. Mitchell with a poker, or fire-iron in her hand out of the house. Then Mr. Barton, as the presiding Magistrate, cleared the Court for deliberation. Mr. Sibthorpe drew up a report, which I thought too brief. I added a few words stating the number of witnesses examined, and we were deliberating how it should be concluded. One of the Magistrates—one of the Finches, I think—said he would sign the words used by Mr. Sibthorpe in his draft report, which were, that the statement was malicious and mendacious. These words were then written by Mr. Sibthorpe under my amendment, and signed by all the Magistrates excepting Mr. Barton, who dissented, and said he would not sign those words.

374. *By the Chairman*: May I ask what is your definition of a brawler? A quarrelsome man; I suppose a man who would go and kick up a great row was a brawler.

375. I think you said Mr. Mitchell was very quarrelsome? I have not said so, I think; he was irritable in disposition, and was sometimes impertinent to the Magistrates.

376. What is your definition of the word "sot"? I should think it might apply to eating as well as to drinking; I should fancy it meant a man too fond of drinking.

377. Can you tell me any portion of the evidence that, in the words of the report, "directly and positively contradicted those charges"? I have given the evidence, those are the words of the report.

378. In the report signed by yourself you state that the charges were directly and positively contradicted—my question is: What witnesses contradicted those charges, that Mr. Mitchell was a brawler and sot, according to your definition? By Mr. Sibthorpe first, by Mr. Frank Smith, by the Chief Constable, and by Mr. Moon, the innkeeper where he was stopping.

379. I think, if I understood you, the evidence was more of a negative than of a contradictory character? It was, that Mr. Mitchell could not have been drunk without Mr. Moon seeing him, and Dr. Ross said he could not have had *delirium tremens* without his knowing it.

380. *By Mr. Daniel*: Did you ever give Mr. Mitchell advice relative to his behaviour, or did you expostulate with him at all? With reference to the subject of the collection of the assets in an intestate estate, I did.

381. On his general conduct? I do not remember; I think not; there was an intestate estate the assets of which he declined to collect, and I stated I should report him if he did not do so.

382. *By Mr. Markham*: Do you consider that Mr. Mitchell's conduct was generally respectful to the Bench? Yes.

383. Did you observe on any occasion a disposition on the part of the Bench to gloss over his conduct on account of his position, or of his connections? I think not.

384. Then it was not on account of his position that the Bench submitted to insult from him on more than one occasion? No, in consequence of his apology.

385. At the time he was brought before the Bench under the Vagrant Act, he was dismissed in consequence of the language having been used in a public-house, which the Bench did not consider to be a public place within the meaning of the Act? It was not a public place contemplated by the Act.

386. That was the opinion of the Bench on that occasion? Yes. There were only two Magistrates present, Mr. Barton and myself.

387. There was no doubt as to the language having been used? No doubt, but we thought the charge was maliciously brought by the party.
388. Are the Bench still under the impression that a public-house is not a public place within the meaning of the Vagrant Act—was any application made to the Crown Law Officers respecting it? Mr. Kentish said he had written to the Attorney General upon the subject, and I told him he would get no reply from that officer.
389. *By Mr. Walsh*: If I recollect rightly, the words of the Act are “on any public street, thoroughfare, or place, or within the view or hearing of any person passing therein?” No evidence was given that it was within hearing of persons on the highway, but one of the witnesses, Michael Conway, swore that he never heard the words uttered.
390. I understood you to say that Mr. Mitchell on that occasion had ordered glasses round? His horse was at the door, and he called for glasses round.
391. Did it appear who the parties were who were present? Mr. Hughes, the innkeeper, Mr. Liscombe, the prosecutor, and this person, Michael Conway, who swore he never heard the words. Whether there were any others I do not remember.
392. Mr. Mitchell was before the Bench on that charge? Yes.
393. He was also before the Bench on the charge of assault? Mr. Kentish preferred a charge of assault against him.
394. How near to the occasions on which he was brought before the Bench under the Vagrant Act, and on this other charge was it that he called upon Mr. Barton to go on the platform? The charge preferred under the Vagrant Act was within six months of his first filling this situation.
395. Did he call out Mr. Barton before or after Mr. Kentish preferred the charge of assault against him? After, it was the last time he was in the Court House.
396. Was this after Mr. Barton had differed from you? Yes.
397. How long? It could not have been much less than two months.
398. *By the Chairman*: Are you on friendly terms with Mr. Barton? I am; at least I am not unfriendly—I am on friendly terms with respect to everything but Bench business; and there we differ. We are on visiting terms, but we generally differ on the Bench. We differ on almost every question that comes before the Bench in reference to this inquiry.
399. *By Mr. Markham*: Do you know how many times Mr. Mitchell has apologized to the Bench or to any member of the Bench? Only to Mr. Sibthorpe, I think.
400. I think you said he apologized to Mr. Barton? I was not then present—I was then in Sydney.
401. There was never any report of his conduct made to the Government? There was by Mr. Barton. Mr. Cowper, the then Colonial Secretary, wrote to the Bench to that effect, and the case was to have been investigated on Mr. Barton's return to Molong.
402. There was no official report of Mr. Mitchell's conduct made and entered upon the records? The case which I allude to was this. He had been directed by Mr. Sibthorpe to write a letter to Wellington, which he had not written, and Mr. Sibthorpe entered a minute in the book that he had disobeyed the order.
403. Then that was merely disobedience of orders? Mr. Mitchell pleaded that he had been busy, and had forgotten it; he did not refuse to do it.
404. *By the Chairman*: The question of Mr. Markham was, how many times has Mr. Mitchell apologized to the Bench in any form? I am aware of only these two instances, one of my own knowledge, and the other of which I was informed. I was present when he apologized to Mr. Sibthorpe; he made the apology in writing.
405. *By Mr. Stewart*: Was there no apology made for not having written these letters? He made some excuse.
406. *By the Chairman*: I understood you to say he also apologized to you on one occasion? I do not remember his doing so.
407. Did he apologize to you when you rebuked him? No, he wrote to the Curator of Intestate Estates—I had better explain that. There had been an estate remaining over for some years, in which I was interested. A man of mine had been drowned in the Nepean River, and his property had been squandered; upon this estate I had claims, but it had been neglected by Mr. Sealy, and by the predecessor of Mr. Sealy, and when Mr. Mitchell succeeded I spoke to him about it. He said he had nothing whatever to do with it, as it had occurred in the time of his predecessor. I said, “If you do not collect the estate I shall have to report it.” There was another man who had died in my service, and I said if he did not collect the amount in the first estate I would not hand him the money I held of the other intestate, but would report Mr. Mitchell to the Curator. Mr. Mitchell then wrote to the Curator, saying I would not hand over this money. I complained of his having done so without stating the whole of the facts. Mr. Mackechnie wrote a letter to me stating that unless this money were paid over disagreeable steps might be taken. I then sent a cheque and a letter to Mr. Mackechnie, stating the grounds of my previous refusal to pay Mr. Mitchell.
408. *By Mr. Markham*: Did you consider his conduct excusable in having adopted the measure he did? I was dissatisfied with him.
409. Then you did not approve of the course he adopted? No, but I never called for any explanation, nor did he tender any apology. I brought the matter under the notice of the Bench, and they declined to hear it.
410. *By the Chairman*: I asked you some time ago whether you did not rebuke him for using insulting language to the Bench—is not that correct? I did rebuke him for his language to Mr. Barton.
411. *By Mr. Walsh*: Was Mr. Mitchell received into the houses of all the Magistrates as a visitor? Yes.

John Smith,
Esq.

29 Jan., 1861.

- John Smith, Esq. 412. And treated as one in the same social position? Yes; and also by other gentlemen who were not Magistrates; he was admitted into the best society.
413. Was Mr. Kentish received into the same society? He was at first; he was a guest in my own house for some time.
- 29 Jan., 1861. 414. Up to the time of this controversy was he admitted into the same circle? Yes; and people were even more favourably disposed towards him, and, from being an old Government officer, he was treated with much respect.
415. *By Mr. Parkes*: How long did Mr. Kentish occupy this position? I think some where about three or four months—I cannot speak positively; he was there some considerable time before he took charge of the Court of Petty Sessions. I think it was in June he first came to me, as the nearest Magistrate, to sign his returns; he was there also some time after his successor, Mr. Davis, was appointed. Mr. Kentish performed his duties until his arrival.
416. *By Mr. Daniel*: During the investigation which took place into the conduct of Mr. Mitchell, did you take any notes yourself? No; there was a reporter present who took notes, Mr. Morris. I was suffering from ophthalmia at the time, but was very averse to act upon oral testimony, and I said I would rather write with only one eye than that the evidence should not be taken down. However, the other Magistrates thought it unnecessary.

APPENDIX.

A.

TUESDAY, 30 AUGUST, 1859.

PRESENT:—

R. J. BARTON, ESQ., J.P.
JOHN SMITH, ESQ., J.P.

Mr. Richard Blunt Mitchell appeared under summons to answer the complaint of Nathaniel Lipscomb Kentish, for assault.

Nathaniel Lipscomb Kentish, Clerk of Petty Sessions, Molong, maketh oath and saith:—I am Clerk of Petty Sessions at Molong; that on Wednesday evening, the twenty-fourth day of August instant, he (this deponent) was assaulted by Richard Blunt Mitchell, Esq., the defendant now present. I was sitting alone in one of the rooms of Mr. Moon's Inn, in this township, about half-past five in the evening, when the defendant rushed at me with a stick in his hand, in a menacing attitude, holding it over my shoulder, telling me he would chastise me, and compel me to give him an explanation of what I meant by blackguardism. I then left the room, calling on Mr. Moon for protection, and was followed into the bar by defendant, when defendant repeated the violence, and threw a letter into my face which I had previously written him. He again rushed at me, demanding the letter which I had put into my pocket, saying he would take it from me by force, and pound my sallow-faced head to mortar, if I had not been an old man. This was repeated four or five times. When I appealed to Mr. Moon for protection he declined interfering, saying he did not see or know anything about it.

By Defendant:—I admit having written a letter to you, in which I used the term blackguardism. Sworn before us this 30th day of }
August, 1859, at Molong. }

N. L. KENTISH.

ROBT. J. BARTON, J.P.
JOHN SMITH, J.P.

And the deponent, *E. W. Moon*, on oath, saith as follows:—I am an innkeeper, residing at Molong. I was present in my bar on Wednesday evening last. I saw Mr. Mitchell throw a letter in Mr. Kentish's face, saying, there is your letter, sir. I did not see Mr. Mitchell rush at Mr. Kentish with a stick. Mr. Kentish came to me behind the bar, claiming my protection. Mr. Mitchell followed, but did not approach within two yards.

By Defendant: I did not see Mr. Mitchell threaten to strike Mr. Kentish.

E. W. MOON.

ROBT. J. BARTON, J.P.
JOHN SMITH, J.P.

FOR THE DEFENCE.

And this deponent, *Mr. Henry M. Betts*, on oath, saith as follows:—I was present on—

And this deponent, *John Davis*, on oath, saith as follows:—I am chief constable at Molong. I produce the letter received by me from complainant on Wednesday last. It has not been out of my possession since.

Sworn before us this 30th day }
of August, 1859. }

JOHN DAVIS.

ROBT. J. BARTON, J.P.
JOHN SMITH, J.P.

Adjudged to pay a fine of One Pound, and Four Shillings and Eight Pence costs.

ROBT. J. BARTON, J.P.
JOHN SMITH, J.P.

B.

The Defendant, though pleading "not guilty" to the charge of assault, contended that the assault of which he is convicted by the Bench, was fully justified by the letter addressed to him by the Plaintiff, which he admitted having thrown in his face, and is that produced by the chief constable, which, at defendant's request, was read to the Court from the Bench, and ordered to be attached to these proceedings; but was handed, inadvertently, to the defendant as he was leaving the Court, by John Smith, Esq., J.P., of which letter the following is a verbatim copy:—

"Mr. Robt. B. Mitchell,—

"Sir,

"In justice to myself, I feel it necessary to remove a possible misapprehension entering your mind with respect to an incident in our somewhat convivial sitting last evening, by addressing you with the distinctness and sincerity which I feel that the occasion demands of me as a gentleman, a Christian, and the parent of children older than yourself. Of course, it is the *precious wast*, giving

"utterance

"utterance to the most horrid blasphemy and most atrocious insult that words can express, to which I refer, and which you appear to glory in—I suppose in consequence of its *superlative atrocity*. I do most bitterly reproach myself for having remained in your company one instant after such *blasphemous blackguardism* escaped your lips, and wonder at myself that I did not indignantly resent such gross outrage on the instant, as I ought to have done, instead of expostulating merely, and assuring you, which I now repeat, that I fail to perceive the slightest wit or humour in the 'sentiment,' or anything but shocking blasphemy and vulgarity, which even the lowest and most depraved could hardly admire. It was, I think, from your rapid transition from recitation and narrative of your figuring in the dock at the Police Office on the charge of uttering this blasphemous imprecation, which you had the audacity to boast of and to reiterate for Mr. Betts' edification and mine, in a conversational manner, in illustration of a charming sentiment proposed as acceptable to your company, that I was guilty of remaining in the room with an individual who could make a boast of being so great a reprobatc. For this my conscience and my sense of propriety smite me sadly, and I therefore make to you and to the only gentleman who was present this unequivocal expression of my sentiments.

"The late Marquis of Waterford, in his youth, shewed such a depraved taste for wanton mischief, as would subject a schoolboy to the birch, and a man, not being a *privileged Noblemen*, to the stocks; and, without admiring 'devilment,' being no sanctimonious pretender to purity, I can make great allowance for the follies and frivolity of *young men*, who are too commonly libertines, relishing jokes less remarkable for their elegance than *smuttiness*; but happening to be a *believer* in the Bible, I warn you, O young man, *who profess yourself to be*, as I also am, a *Protestant Christian*, that, for every vain and wicked word—for every breach of the 3rd Commandment—'God will bring you into judgment.' *What*, then, for daring to invoke 'eternal damnation' on your own soul, and on those who have the deep misfortune to be in company with such a blasphemous reprobate, emulous, it would seem, of the *ill fame* of the atheistical and atrocious Earl of Rochester, whose life, and death, I earnestly commend to your attentive perusal.

"Hoping that you may both repent and amend before it is too late, and thus avert the fatal consequences which I perceive to be at present threatening your dissipated life and conversation, namely, your own ruin of mind, body, and soul, disgrace to your family, and the bringing down the grey hairs of your widowed mother with sorrow to the grave.

"I remain, Sir,

"With resolve to eschew the slightest further acquaintance,

"Your sincere Well-wisher,

"N. L. KENTISH."

"Moon's Hotel, Molong,

"Wednesday Morning, August 24, 1859."

The above-named defendant, after payment of the fine of £1, and costs 4s. 5d., was bound over to keep the peace to the above-named plaintiff, and to all Her Majesty's subjects, for three months, in his own bond of £25, on application made to the Bench by the plaintiff, supported by affidavit as follows, viz.:—"Nathaniel Lipscomb Kentish maketh oath and saith, that he is in bodily fear of violence from Richard Blunt Mitchell, by whom he has been both assaulted and insulted this very day, Tuesday, August 30th, 1859.

"N. L. KENTISH."

The recognizance was taken by Robert J. Barton, Esq., J.P.

Mr. Robert Tulloh called in and examined:—

417. *By the Chairman*: Did you act as Commissioner of Crown Lands at Molong, and reside with the Commissioner? I was residing with the Commissioner of Crown Lands at Molong, Mr. Whitty.

Mr. R. Tulloh.

29 Jan., 1861.

418. Did you know Mr. R. B. Mitchell, then Clerk of the Bench? I did.

419. Did you see him frequently? Very seldom.

420. Had you any differences with him, and subsequently a fight? On one occasion.

421. Have you any objection to state to the Committee the reasons of it? I received the summons of the Committee only yesterday. Out of respect to the gentlemen assembled here, I have attended; but I have very great reasons indeed to object to state the circumstances of my quarrel with Mr. Mitchell, for they were of a very blackguard description indeed; and if I give evidence on the subject I must introduce myself as a party concerned in the matter. I never gave Mr. Mitchell any cause for the gross insults he offered Mr. Whitty and myself; and it was on account of the insult he offered me particularly that I horse-whipped him. If the Committee wish I will tell them the reason why I did so, and leave them to decide whether I was justified. I never had the slightest encounter with Mr. Mitchell until I received the grossest provocation. This is a placard that Mr. Mitchell posted, or caused to be posted, on various posts or trees—this in particular was opposite the Court House. (*The witness produced the same.*)

422. *By Mr. Parkes*: Is that a copy only, or is that one of the placards? This is one of the placards.

423. Did you take it down yourself? I did not. It is authenticated by the party who took it down, and whose signature I can swear to.

424. Will you hand it in? (*The witness handed in the same.*) That was previous to the day of sale of Mr. Whitty's property, when the Commissioner of Crown Lands for the Wellington District was done away with.

425. Do you know whether that is Mr. Mitchell's handwriting? I do not know—it is written in a disguised hand; but after his horse-whipping Mr. Mitchell confessed that he had written it. (*The Clerk read the same.*) There is a certificate on the back—"Taken from two trees in front of the Court House, Molong, by Mr. Liscombe, on the 13th July, 1858. John Liscombe."

426. *By Mr. Daniel*: He is Postmaster at Molong? Yes.

427. *By Mr. Parkes*: Did this placard lead to a quarrel between you and Mr. Mitchell? It did.

428. Have you reason to suppose this placard was posted by Mr. Mitchell? I have; he either posted it, or caused it to be posted.

Mr. R. Tulloh. 429. Does it refer to yourself? There was no other gentleman living with Mr. Whitty but myself.

29 Jan., 1861. 430. Was it in any way proved to refer to you? He stated himself that he meant me.

431. What took place after the publication of that placard? Mr. Whitty's sale took place, and at the termination of the sale of the other property there was a sale of horses in the paddock. I took this placard in my hand, went to Mr. Mitchell, and said, "Mr. Mitchell, I have been informed by the best authority that this is your handiwork—is it so, or is it not?" He said, "I do not see that I have any right to answer you." I said, "I consider that you have every right to answer me." He said, "Suppose it was me." I said "You are an insolent puppy, and take that for your pains," and I horse-whipped him. He then challenged me to fight a duel, and said he did write the placard, and would write something worse.

432. When was that? The end of the second day's sale; I think the 15th July, 1858.

433. *By Mr. Daniel*: Was he Clerk of Petty Sessions at Molong at that time? Yes. Mr. John Smith, Justice of the Peace, is perfectly conversant with this matter, for he was present at the time, and confined me to the house. He afterwards liberated me, having received my word of honor that I would not fight a duel, and would avoid coming in contact with Mr. Mitchell that night.

434. *By the Chairman*: Was Mr. Mitchell sober on that occasion? I do not think he was tipsy—in fact, I did not see that he was tipsy, I was so thoroughly annoyed and excited from the insult received; but he might have been.

435. Did you ever see him the worse for liquor? The following morning I think I did.

436. In what state was he then? I consider that he was very tipsy then.

437. Very drunk? I will not say very drunk; he was either very tipsy, or he pretended to be so.

438. Do you know anything about his character? Not personally; only from hearsay. I always kept aloof from him, in every sense of the word.

439. *By Mr. Stewart*: From personal communication you had not an opportunity of saying whether he was in the habit of drinking to excess? No; I was generally engaged in my Crown Land duties.

440. *By Mr. Daniel*: After the first affray, was there a second fight? There was.

441. Will you be pleased to state the origin of that? The next morning he made his appearance at the Crown Lands Office, at Mr. Whitty's parlour, and was so outrageous to Mr. Francis Smith and Mr. Liscombe, the auctioneer, that he was several times ordered out. He said he would not go without I came out and fought him; that he had challenged me the previous evening to a duel, and I would not fight, but had promised that if he waived fighting with pistols I would fight him with fists, and that now he would receive the thrashing that I had promised to give him. After a little time I went into the paddock, and we fought; but he was so tipsy, or pretended to be, that he could not, or would not, stand upon his legs. Mr. John Smith was present during two or three rounds, and then the constables came and separated us.

442. *By Mr. Stewart*: That was the occasion when he was very tipsy? He was either very tipsy or he pretended to be so, for whenever I made a blow at him he fell, and his behaviour to Mr. Frank Smith was most outrageous.

443. What do you mean by his behaviour? Both his language and accent; so much so that Mr. Frank Smith threatened to turn him out of the place.

444. Do you mean that he swore? He used the most awful language.

445. *By Mr. Parkes*: Is Mr. Frank Smith a Magistrate? I do not think he is; but Mr. John Smith, his brother, of Gamboola, is.

446. What was his language? I cannot remember, but it was outrageous.

447. In point of indecency? I do not think it was so indecent as insulting and violent.

448. Swearing? I could not repeat it.

449. Would you call "damn" swearing? I would.

450. Or "damnation?" He did not use his usual toast; he had nothing to drink there.

451. You say his usual toast—is it within your knowledge that he ever gave that toast? It was within the knowledge of every body nearly in Molong.

452. Can you repeat it? Really I do not see any reason to repeat it—you must have heard it—"Eternal damnation to our souls," or "to your souls."

453. Did he often give that toast in Molong? I am speaking now more from hearsay. I heard that his general toast, whether drinking with bullock drivers, or with stock-keepers; whether in the bar or in the parlour of a public-house, was that.

454. Did he ever drink with bullock drivers? I really do not know from personal knowledge; I have heard so.

455. Did you ever see Mr. Mitchell intoxicated? I never did, except on the morning to which I have referred, when from his outrageous conduct I concluded he was so. I do not think any one could have conducted himself so unless he had been very tipsy or perfectly mad. I am sure you could have heard his voice a quarter of a mile from the paddock when the constables took him away.

456. You do not know anything about the dispute between Mr. Kentish and Mr. Mitchell? Not in any way whatever.

457. *By the Chairman*: From what you have seen of Mr. Mitchell should you say he is a very quarrelsome man? I can only speak of what came before myself? I am sure that I never gave him any cause, and that Mr. Whitty never gave him any cause for enmity. Mr. Whitty had invited him to his house, and did not wish to renew the acquaintance. Mr. Mitchell wrote three or four very scurrilous articles in the *Bathurst Times* respecting Mr.

Mr. Whitty. The following day I left Molong; three days afterwards I read a scurrilous article he had written against myself. I never had any communication with Mr. Mitchell, and when the placard was put into my hand, and I was told it was posted all over the town of Molong, I was surprised; and I said to Mr. Mitchell that he had acted in a very cowardly manner to a man who had never harmed him in any way whatever.

Mr. R. Talloh.
29 Jan., 1861.

THURSDAY, 7 FEBRUARY, 1861.

Present:—

Mr. DANIEL,	Mr. MARKHAM,
Mr. LORD,	Mr. PARKES,
Mr. MACLEAY,	Mr. STEWART.

ALEXANDER DICK, ESQ., IN THE CHAIR.

Francis Smith, Esq., called in and examined:—

458. *By Mr. Lord:* You were examined before the Bench at Molong, in the case of Kentish versus Mitchell? Yes.
459. And you gave evidence on that occasion. I did.
460. By whom were you called as a witness? By Mr. Kentish.
461. The evidence was not taken down at the time? I heard not.
462. Have you seen what purports to be a report of the evidence given? The evidence was taken down, but not by the Clerk of the Court, and I believe the evidence, as taken down, was correct, so far as I am capable of judging.
463. Will you look at that evidence (*handing witness the report appended to Mr. Sibthorpe's evidence*)? That is a correct report of my evidence.
464. Can you speak as to the correctness of the report of any other person's evidence—did you hear any of the other parties examined? I heard Mr. Moon's examination, I recollect.
465. Edward Wright Moon? Yes, I recollect hearing him examined.
466. Will you look over that evidence, and see whether it is correctly given? (*The witness read the evidence.*) I recollect hearing him say that he never saw Mr. Mitchell drunk.
467. Have you known Mr. Mitchell as Clerk of the Bench at Molong for some time? I knew him intimately all the time he was there.
468. You never knew him to be a drunkard? I never saw him drunk in my life.
469. You have stated that in your evidence? Yes, and I can state further, that I never saw him what you would term the worse for liquor.
470. *By the Chairman:* Who took the notes of the evidence on the occasion referred to? I think Mr. Morris, who is now bailiff for the District Court.
471. You signed a copy of his notes, did you not? I did.
472. Did you ever see Mr. Mitchell behave disrespectfully to the Bench? I have heard of Mr. Mitchell and Mr. Barton. I have heard something about them, that they did not agree.
473. You never saw Mr. Mitchell behave disrespectfully to the Bench? No; I very seldom attend the Court.
474. *By Mr. Lord:* You were never in the Court at any time when he did so? No.
475. Do you remember Mr. Kentish wishing to examine Mr. Sibthorpe as a witness, on the day of this investigation? I really cannot say much about that, whether he wished to examine Mr. Sibthorpe or not. I believe, so far as I recollect, Mr. Sibthorpe asked him if he intended to call him as evidence, and said if he did he would leave the Court, or leave the Bench; and, to the best of my recollection, Mr. Kentish said, No, he would not require him.
476. Were you in Court the whole time? No, being a witness I was sent out of Court until I was examined, but after I was examined I sat in Court.
477. You say you knew Mr. Mitchell intimately? I knew him so far that I frequently invited him to my house, and saw him every day.
478. Did you ever hear him make use of blasphemous language or toasts? I have heard of the toast, but I do not know that I have heard it directly from him.
479. *By Mr. Lord:* You have not heard him use it yourself? No, I never heard him use it myself, to my present recollection.
480. *By the Chairman:* Did you ever see any indecent placards which he had caused to be put up in Molong? I did see a placard which was an indecent one, but I could not say positively that Mr. Mitchell put it up; I know he was accused of it.
481. You say you never saw Mr. Mitchell the worse for liquor? Never, to the best of my recollection.
482. Do you know anything about the investigation into his conduct by the Bench of Magistrates at Molong? Yes, the investigation I have just alluded to when I was examined.
483. I am now speaking of the investigation with reference to Mr. Mitchell, not with reference to Mr. Kentish? I do not know anything of that.
484. I think your brother is a Magistrate, but you are not? I am not a Magistrate, my brother is.
485. *By Mr. Markham:* Did Mr. Mitchell ever use violent language to yourself? No, when he came to our house he behaved quite the gentleman.
486. *By Mr. Lord:* Do you recollect by whom Mr. Moon was called as a witness? By Mr. Kentish, I believe, I will not say positively.

F. Smith,
Esq.
7 Feb., 1861.

John Smith, Esq., again called in and further examined:—

John Smith, Esq.
7 Feb., 1861.

487. *By Mr. Lord:* The Committee understand that you wish to make some statement to them? Since I was last examined I have procured a copy of the correspondence printed by order of the Assembly, and I perceive that there are some misstatements, or possibly mistakes, at all events inaccuracies, which I wish to correct.

488. *By Mr. Parkes:* What correspondence is that? The correspondence moved for by Mr. Lord.

489. *By the Chairman:* Is it correspondence attached to the petition? I am not aware. I perceive by Mr. Barton's letter, published here, at page 22, that he found the Bench already at work on his arrival at the Court. That must be a mistake. We might have been discussing the object of the meeting, but no proceedings were commenced until Mr. Barton arrived at the Court.

Mr. Daniel inquired whether it was regular to allow a witness to comment on a printed document which was not in evidence before the Committee.

(Strangers were ordered to withdraw. The Committee deliberated. The witness was again called in.)

490. *By the Chairman:* The Committee will hear you if you wish to offer any further evidence, or to explain any portion of the evidence you have already given, but do not think it right to allow you to comment upon documents before the Committee? Perhaps the Committee will allow me to give evidence on a letter of Mr. Kentish, published by him, and which I have now seen for the first time. I would also wish to explain a portion of my previous evidence. I think I stated that Mr. Barton said there was no necessity for taking down the evidence in writing; upon reconsideration I think that statement is incorrect; he wished to have it taken down but opposed my application for a clerk to be employed. I was asked on what grounds the Bench founded the Report they sent down, and I stated, on the evidence given; that was touching the charge against Mr. Mitchell that he was a brawler and a sot—but with regard to the statement that the charge was malicious, it was founded on Mr. Kentish's own conduct, and the language used by him in his opening address, which to my mind, and I believe to the minds of three or four other members of the Bench, was conclusive as to the existence of malice. The two Messrs. Finch were quite electrified at the style and spirit of his address, and left the Bench, but again resumed their seats. I twice called Mr. Kentish to order.

491. Upon what occasion was this? At the investigation. If you will allow me to read one passage from Mr. Kentish's address it will, I think, bear out my assertion: "Nor may I be guilty of the affectation of pretending to feel any compunction at appearing to be the instrument of bringing to condign punishment the most thorough monster of depravity I ever met with in all my experience, even among thousands of convicts, the great majority of whom, in the road gangs formerly under my supervision, would have been disgusted with such a companion, and would have reported his blasphemy to me, or probably kicked him out of their hut, as too vile for their society." The whole of the address was couched in such language as to leave in our minds no doubt of malice. With respect to the assault, of which so much has been made here, it was simply the throwing of this letter, Enclosure No. 1, at Mr. Kentish, when he would not afford Mr. Mitchell any explanation, and the Bench, Mr. Barton, and myself, reserved judgment till we heard the second charge of assault. After hearing the second charge, Mr. Barton expressed his desire to bind over Mr. Mitchell to keep the peace, and I left the Bench. I said I would give way as to the amount of fine, respecting which there had been a difference of opinion. I had suggested a shilling fine, and Mr. Barton a fine of a pound. I then left the Bench, observing that I could see no necessity for requiring Mr. Mitchell to enter into sureties of the peace; and Mr. Barton took the verbal promise of Mr. Mitchell to keep the peace towards Mr. Kentish. It has also been complained of that the witnesses were not examined on oath, when we could not have so examined them, as we had no commission for that purpose.

492. *By Mr. Lord:* Have you read the printed correspondence? I have.

493. Is that correspondence substantially correct? It is not. Mr. Kentish's letters are not correct, and do not represent the real state of the case. If you will allow me, I will point out the inaccuracies and gross misstatements contained in them. At page 10 he states that the Bench dissented from a certain definition of the word "sot,"—I deny that *in toto*. No such matter was discussed. He says, "It was also laid down by Mr. Sibthorpe, and assented to by three of his brother Magistrates, that however much liquor any person might imbibe, he could not be a 'sot' if never seen drunk or unable to walk and attend to his business." I deny that I ever assented to any such proposition as that, because I maintain that a man may be a great sot without ever being drunk. At page 12, he states that all six witnesses were summoned by the defendant. The witnesses were all summoned by Mr. Kentish, except the chief constable, who was called by the Bench, and one who I believe was called by Mr. Mitchell; but Mr. Sibthorpe, my brother, Dr. Ross, and Mr. Moon were called by Mr. Kentish. At page 17, he says he had no opportunity of establishing his charges. Now it will appear by the letter from Mr. Barton to the Colonial Secretary, page 5, that when the letter was received from the Colonial Secretary a fortnight's notice was given to all the Magistrates of this case coming on. At page 16, Mr. Kentish states that Dr. Ross was a most inveterate enemy to Mr. Mitchell, and yet in page 22 we find Dr. Ross subscribing a letter, setting forth that Mr. Kentish was suffering from monomania. Dr. Ross is a doctor of medicine, M.R.C.S., and holds a diploma from the Medical Board of New South Wales. I am quite certain that there was no prejudice against Mr. Kentish on my part. I advised him to put up at a different hotel from Mr. Mitchell, because as he had come to succeed Mr. Mitchell in his office, it was not likely he would regard him very favourably.*

494. You state, as one of the Magistrates who sat on the Bench, that the evidence you received justified you in coming to the conclusion stated in the report? Yes; we could arrive at no other.

NOTE (corrected by witness, on revision, thus):—As he had succeeded in displacing Mr. Mitchell, it was not likely the latter would regard him very favourably.

1861.

Legislative Assembly.
NEW SOUTH WALES.

FREDERICK BEER.
(PETITION FROM BRAIDWOOD IN REFERENCE TO.)

Ordered by the Legislative Assembly to be Printed, 24 April, 1861.

To the Honorable the Legislative Assembly of New South Wales.

The humble Petition of the undersigned Inhabitants of the District of Braidwood,—

RESPECTFULLY SHEWETH :—

1. That your Petitioners are Residents of the Town and District of Braidwood.
2. That Frederick Beer was, in the month of April, 1856, convicted at Sydney, and sentenced to ten years imprisonment on a charge of having illegally administered Belladonna to one Phyllis Brown.
3. That in the month of April last the said Frederick Beer obtained from the Crown a Ticket-of-leave for the District of Braidwood aforesaid.
4. That the said Frederick Beer has since that date resided in Braidwood aforesaid, and has been and still is in extensive practice as a Physician and Surgeon.
5. That in the practice of such profession the said Frederick Beer must necessarily be intrusted with the confidence and the very lives of a large number of the Inhabitants of the said Town and District.
6. That, from circumstances which have transpired since the said conviction, your Petitioners have good reason to believe that the said Frederick Beer was not guilty of the offence for which he was so convicted; and that evidence which was not forthcoming at the trial of the said Frederick Beer, and which could not have then been obtained, but which can now be produced, will prove that he was not guilty of such offence, and that he was therefore, wrongfully convicted.

Your Petitioners, therefore, humbly pray that, for the security of your Petitioners and the other Inhabitants of this District, and in justice to the said Frederick Beer, a full and minute inquiry into, and investigation of, all the circumstances connected with the case of the said Frederick Beer may be instituted.

And your Petitioners will ever pray.

[Here follow 1,564 Signatures.]

1861.

Legislative Assembly.

NEW SOUTH WALES.

COURT HOUSE AT BLACK CREEK.
(PETITION FOR.)

Ordered by the Legislative Assembly to be Printed, 6 May, 1861.

To the Honorable House of Legislative Assembly, New South Wales, in Parliament assembled.

The humble Petition of the Inhabitants of Black Creek, in the Police District of Maitland,—

SHewETH:—

That your Petitioners presume to present themselves to the notice of your Honorable House, and to state it is their humble opinion that if a Court House was established at Black Creek it would be a great convenience and accommodation to the Town and neighbourhood, and would very much further and facilitate the ends of justice in every respect, and avoid the necessity of parties going to appear either at Maitland or Singleton—the distance from each town being fifteen miles.

Your Petitioners, therefore, humbly pray that your Honorable House will be pleased to take the premises into your favourable consideration.

And your Petitioners, as in duty bound, will ever pray, &c., &c., &c.

[Here follow 70 Signatures.]

1861.

Legislative Assembly.

NEW SOUTH WALES.

PETTY SESSIONS, CONDOBOLIN.

(RETURN IN REFERENCE TO.)

Ordered by the Legislative Assembly to be Printed, 9 May, 1861.

RETURN to an *Address* of the Honorable the Legislative Assembly of New South Wales, dated 7 February, 1861, praying that His Excellency the Administrator of the Government would be pleased to cause to be laid upon the Table of this House,—

“ Papers shewing when Petty Sessions were established at
 “ Condobolin, Lachlan River ; the expenses attending making
 “ that a place for holding Petty Sessions, distinguishing what
 “ the various amounts are paid for ; at the same time shewing
 “ the number of cases adjudicated, and what they were ; also,
 “ the number of Constables there are stationed at that place ;
 “ the distance of Country over which they are expected to do
 “ duty, and what duty they have done since their appointment.”

*(Mr. Shepherd.)***SCHEDULE.**

NO.	PAGE.
1. Copy of Notice, dated 12 April, 1859, published in the <i>Government Gazette</i> , appointing Condobolin to be a place for the holding of Courts of Petty Sessions. 12 April, 1859. ..	2
2. Inspector General of Police to The Under Secretary, containing information respecting the Police Establishment at Condobolin. 18 March, 1861.	2
3. Ditto ditto to ditto, with detailed statement of the Annual Expenditure of the Police Establishment at Condobolin. 1 May, 1861.	2

PETTY SESSIONS, CONDOBOLIN.

No. 1.

*Colonial Secretary's Office,
Sydney, 12 April, 1859.*

PETTY SESSIONS.

HIS Excellency the Governor General has been pleased to appoint CONDOBOLIN to be a place for the holding of Courts of Petty Sessions under the Act of the Colonial Legislature, 3 William 4, No. 3.

CHARLES COWPER.

No. 2.

INSPECTOR GENERAL OF POLICE to THE UNDER SECRETARY.

*Office of Inspector General of Police,
Sydney, 13 March, 1861.*

SIR,

In compliance with the request conveyed in your letter of the 13th of February last, desiring certain particulars with respect to the establishment of a Court of Petty Sessions at Condobolin, I do myself the honor to state, for the information of the Chief Secretary, that the annual expense of the Police Establishment there is £719. The number of cases adjudicated by that Court since the 1st January, 1860, is eight, described as under:—

Drunkenness, 13 Vict., No. 29.....	1
Vagrancy, 15 Vict., No. 4	4
Larceny, 14 Vict., No. 2	2
Assaults, 19 Vict., No. 24	1

The strength of the Police Establishment at Condobolin consists of—One second class Chief Constable and three Ordinary Constables.

This force patrols the Lachlan River into the Yass District, as far as Wollingragong, sixty miles from head quarters, on the one hand, and beyond the limits of the Molong District into that of the Lower Darling on the other. It has afforded valuable assistance in the suppression of cattle stealing, as may be instanced in the capture of "Black Sims" (a noted marauder) by the District Constable in 1859.

I have, &c.,
JNO. M'LERIE,
Inspector General of Police.

THE PRINCIPAL
UNDER SECRETARY.

No. 3.

INSPECTOR GENERAL OF POLICE to THE UNDER SECRETARY.

*Police Department of New South Wales,
Account Branch,
Sydney, 1 May, 1861.*

MEMO.

Detailed Annual Expenditure of Police Establishment at Condobolin:—

	£	s.	d.
Constables Salary	441	2	6
Clerk of Petty Sessions Salary	175	0	0
Constables' Forage Allowance	40	0	0
Night Allowance	31	4	0
Clothing Do.	21	5	10
Contingencies	10	7	8
	<hr/>		
	£719	0	0

JNO. M'LERIE,
Inspector General of Police.

THE PRINCIPAL
UNDER SECRETARY.

1861.

Legislative Assembly.

NEW SOUTH WALES.

DISTRICT COURTS ACT OF 1858.

(RETURNS UNDER THE 103RD CLAUSE OF.)

*Ordered by the Legislative Assembly to be Printed, 8 May, 1861.**RETURNS under the 103rd Clause of the District Courts Act of 1858.*

METROPOLITAN DISTRICT.

REGISTRAR—SYDNEY.

CUMBERLAND AND COAST DISTRICT.

REGISTRAR—PARRAMATTA.
 " WINDSOR.
 " BRAIDWOOD.
 " PENRITH.
 " WOLLONGONG.
 " BERRIMA.
 " BOMBALA.

REGISTRAR—CAMDEN.
 " PICTON.
 " CAMPBELLTOWN.
 " LIVERPOOL.
 " COOMA.
 " EDEN.
 " KIAMA.

SOUTHERN DISTRICT.

REGISTRAR—GOULBURN.
 " ALBURY.
 " GUNDAGAI.
 " QUEANBEYAN.

REGISTRAR—TUMUT.
 " WAGGA WAGGA.
 " YASS.

WESTERN DISTRICT.

REGISTRAR—BATHURST.
 " CARCOAR.
 " DUBBO.
 " HARTLEY.

REGISTRAR—MOLONG.
 " MUDGEE.
 " ORANGE.
 " WELLINGTON.

NORTHERN DISTRICT.

REGISTRAR—ARMIDALE.
 " GRAFTON.
 " EAST MAITLAND.
 " WEST MAITLAND.
 " MUSWELLBROOK.
 " MURRURUNDI.

REGISTRAR—SCONE.
 " PATERSON.
 " PORT MACQUARIE.
 " TAMWORTH.
 " NEWCASTLE.
 " SINGLETON.

OF 1858.—(Section 103.)

particulars required by the said Act, from the 1st day of March, 1860, to the 28th day of February, inclusive.

NUMBER OF SUITS COMMENCED.			RESULT.		NUMBER OF CASES LEFT IN ARREAR.	NUMBER OF CASES TRIED BY JURY.	NUMBER OF CASES TRIED WITHOUT JURY.	NUMBER OF CASES SETTLED BY ARBITRATION.
Commenced.	Settled without hearing.	TRIED.	In favor of Plaintiff.	In favor of Defendant.				
The number of Suits, Five thousand six hundred and one (5601). Exclusive of twenty-nine Interpleader cases, which are not issued on original plaints.	2248	3340	3003	337	2 Two cases referred to Parramatta Court for hearing, and no decision yet given.	78	3262	11
TOTAL AMOUNT SUED FOR.	NUMBER OF MOTIONS FOR NEW TRIALS.	NUMBER OF NEW TRIALS GRANTED.	THE GROUNDS UPON WHICH SUCH NEW TRIALS WERE GRANTED.		NUMBER OF APPEALS.			
Sixty-eight thousand seven hundred and thirty-one pounds eleven shillings and three-pence— £68,731 11s. 3d.	57	33	1 Judge not satisfied with 1st. verdict. 2 Surprise. 3 Perverse verdict. 4 Affidavits of merit. 3 Absence of defendant's attorney. 9 Absence of defendant. 3 Absence of defendant's witnesses. 1 Insufficiency of evidence. 1 Against evidence. 2 Against weight of evidence. 1 Absence of plaintiff. 2 Discovery of fresh evidence. 1 Contrary to law.		Six appeals, one of which was dismissed, the remaining five are still pending.			
			83					

by the said Act, so far as we are able to set forth the same.—Dated at Sydney, this twenty-eighth day

ALEXR. C. MAXWELL, } Registrars.
GEO. S. YARNTON, }

DISTRICT COURTS ACT OF 1858.--(SECTION 103.)

A RETURN of the Number of Suits commenced in the District Court of PARRAMATTA, during the Twelve Months preceding the first day of March, 1861, and the other particulars required by the said Act.

THE NATURE OF THE CAUSES UNDER DISTINCT HEADS, VIZ.:-	THE NUMBER OF SUITS COMMENCED IN THIS COURT DURING THE TWELVE MONTHS PRECEDING.		THE RESULTS OF THE TRIALS, WHETHER IN FAVOR OF PLAINTIFF OR DEFENDANT.		THE COSTS OF THE SUITS.		THE NUMBER			THE DATE, PLACE, AND DURATION OF THE SITTINGS OF EACH COURT, THE DURATION TO BE SPECIFIED IN DAYS AND HOURS.			NUMBER OF CASES.		THE NUMBER		THE GROUNDS ON WHICH SUCH NEW TRIALS WERE GRANTED.		
	Com-menced without hearing	Settled without hearing	Plain-tiff.	Defen-dant.	£	s.	d.	Of Appeals	Of Judge's orders or orders affirmed.	Of Cases left in arrears.	Place.	Date.	Days.	Hours.	By Jury.	Tried Without Jury.		Settled by arbitration.	Of New Trials granted.
Goods sold	24	6	13	1	11	19	0	..	..	..	..	7 May	1	6	1	1	..	..
Promissory Notes	16	2	12	2	5	11	3	..	..	..	..	8 "	1	6	1	2	..	..
Rent	2	1	1	..	0	12	0	..	..	..	..	9 "	1	6	1	15	..	..
Board and Lodging	..	..	..	..	..	..	..	..	..	..	..	30 July	1	6	1	1	..	..
Trespass on Land	..	..	..	..	..	..	..	..	..	..	..	31 "	1	6	1	1	..	..
Trespass on Person	..	..	..	..	..	..	..	..	..	..	..	1 Aug.	1	6	1	1	..	..
Illegal Distraint	..	..	..	..	..	..	..	..	..	..	..	29 Oct.	1	6	1	1	..	..
Trover	..	..	..	..	..	..	..	..	..	..	..	30 "	1	6	1	1	..	..
Breach of Contract	..	..	..	..	..	..	..	..	..	..	..	1861.	1	6	1	1	..	..
Wages, Work, and Labor	..	..	..	..	..	..	..	..	..	..	..	31 Jan.	1	6	1	1	..	..
Libel, Slander, or Defamation	..	..	..	..	..	..	..	..	..	..	..	1 Feb.	1	6	1	1	..	..
Commission on Agency	..	..	..	..	..	..	..	..	..	..	..	6 "	1	6	1	1	..	..
Sales of Live Stock	..	..	..	..	..	..	..	..	..	..	..	..	..	8	1	1	..	..
Money Lent	..	..	..	..	..	..	..	..	..	..	..	..	..	8	1	1	..	..
Partnership	..	..	..	..	..	..	..	..	..	..	..	..	..	8	1	1	..	..
Interpleader	..	..	..	..	..	..	..	..	..	..	..	..	..	8	1	1	..	..
Intestacy	..	..	..	..	..	..	..	..	..	..	..	..	..	8	1	1	..	..
Legacy	..	..	..	..	..	..	..	..	..	..	..	..	..	8	1	1	..	..
Possession of Tenements	..	..	..	..	..	..	..	..	..	..	..	..	..	8	1	1	..	..
Replevin	..	..	..	..	..	..	..	..	..	..	..	..	..	8	1	1	..	..
Consent Jurisdiction	..	..	..	..	..	..	..	..	..	..	..	..	..	8	1	1	..	..
Causes of action not specified above	10	1	6	3	13	16	0	..	..	..	..	..	..	8	167	2	..	..
Damages	290	104	149	26	123	12	0	..	..	11	..	..	..	8	167	2	..	..

I hereby certify that the above is a full and complete Return of the particulars required by the aforesaid Act.
 GEORGE LANGLEY,
 Registrar, District Court.

DISTRICT COURTS ACT OF 1858.—(SECTION 103.)

A RETURN of the Number of Suits commenced in the District Court of BRAIDWOOD, during the Twelve Months preceding the first day of March, 1861, and the other particulars required by the said Act.

THE NATURE OF THE CAUSES UNDER DISTINCT HEADS, VIZ.—	THE NUMBER OF SUITS COMMENCED IN THIS COURT DURING THE TWELVE MONTHS PRECEDING.		THE RESULT OF THE TRIALS, WHETHER IN FAVOR OF PLAINTIFF OR DEFENDANT.		THE COSTS OF THE SUITS.		THE NUMBER OF APPEALS, REVERSED, & AFFIRMED.			THE DATE, PLACE, AND DURATION OF THE SITTINGS OF EACH COURT, THE DURATION TO BE SPECIFIED IN DAYS AND HOURS.			NUMBER OF CASES.		THE NUMBER OF NEW TRIALS GRANTED.	THE GROUNDS ON WHICH SUCH NEW TRIALS WERE GRANTED.			
	Com- menced.	Settled without hearing.	Trials.	Plain- tiff.	Defen- dant.	£	s.	d.	Of Judge- ments or Orders affirmed.	Reversed.	Of Cases left in arrears.	Place.	Date.	Dys. Hours.			By Jury.	Without Jury.	Settled by trial.
Goods sold	42	21	13	10	3	35	4	4	8	Braidwood	5 & 6 June, 1860.	4		
Promissory Notes	18	11	7	6	1	20	11	9	..	..	1						
Rent	4	1	..	..	..	0	8	0	..	..	..					
Board and Lodging	2	1	1	1	..	2	10	3	..	..	..					
Trespass on Land	1	..	..	..	..	1	2	6	..	..	..					
Trespass on Person .....	..	..	..	..	..	..	..	..	..	..	..
Illegal Distraint .....	..	..	..	..	..	..	..	..	..	..	..
Trover	8	1	7	4	3	5	10	9	..	..	..					
Breach of Contract	10	5	5	4	1	11	0	6	..	..	..					
Wages, Work, and Labor	9	5	3	3	..	7	4	9	..	..	..					
Libel, Slander, or Defamation	2	1	1	..	..	1	18	0	..	..	..					
Commission on Agency .....	..	..	..	..	..	..	..	..	..	..	..
Sales of Live Stock .....	..	..	..	..	..	..	..	..	..	..	..
Money Lent	2	1	1	1	..	2	13	3	..	..	..					
Partnership	1	..	1	1	..	0	1	0	..	..	..					
Intestacy .....	..	..	..	..	..	..	..	..	..	..	..
Legacy .....	..	..	..	..	..	..	..	..	..	..	..
Possession of Tenements .....	..	..	..	..	..	..	..	..	..	..	..
Replevin .....	..	..	..	..	..	..	..	..	..	..	..
Consent Jurisdiction .....	..	..	..	..	..	..	..	..	..	..	..
Causes of action not speci- fied above	3	2	1	1	..	1	3	6	..	..	..					

I hereby certify that the above is a full and complete Return of the particulars required by the aforesaid Act.
 JOHN GURNEY,
 Registrar, District Court.

DISTRICT COURTS ACT OF 1858.—(SECTION 103.)

A RETURN of the Number of Suits commenced in the District Court of PENRITH, during the Twelve Months preceding the first day of March, 1861, and the other particulars required by the said Act.

THE NATURE OF THE CAUSES UNDER DISTINCT HEADS, VIZ. :-	THE NUMBER OF SUITS COMMENCED IN THIS COURT DURING THE TWELVE MONTHS PRECEDING.		THE RESULT OF THE TRIALS.		THE COSTS OF THE SUITS.		THE NUMBER			THE DATE, PLACE, AND DURATION OF THE SITTINGS OF EACH COURT, THE DURATION TO BE SPECIFIED IN DAYS AND HOURS.				THE NUMBER OF NEW TRIALS GRANTED.	THE CHARGES ON WHICH EACH NEW TRIAL WAS GRANTED.			
	Com- menced.	Settled without hearing.	Plain- tiff.	Defen- dant.	£	s.	Of Appeals.	Of Judg- ments or Orders affirmed.	Of Cases left in arrears.	Place.	Date.	Duration.				Tried.	Settled by arbi- tration.	Of New Trials granted.
												Days.	Hours.						By jury.	Without jury.
Goods sold	93	84	48	8	24	17	3	..	..	..	..	..	..	..	..	..	..
Promissory Notes	27	17	16	1	10	9	9	..	..	..	..	..	..	..	..	..	..
Rent	9	1	7	..	4	8	6	..	..	..	..	..	..	..	..	..	..
Board and Lodging	3	1	2	..	1	13	6	..	..	..	..	..	..	..	..	..	..
Trespass on Land	3	1	1	..	2	6	3	..	..	..	..	..	..	..	..	..	..
Trespass on Person .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Illegal Distraint .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Trover	6	6	1	..	2	9	0	..	..	..	..	..	..	..	..	..	..
Breach of Contract	7	7	4	..	3	17	9	..	..	..	..	..	..	..	..	..	..
Wages, Work, and Labor	42	15	20	6	15	5	6	..	..	..	..	..	..	..	..	..	..
Libel, Slander, or Defamation	1	..	..	..	1	1	9	..	..	..	..	..	..	..	..	..	..
Commission on Agency .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Sales of Live Stock	6	1	5	..	3	1	0	..	..	..	..	..	..	..	..	..	..
Money Lent	3	..	3	..	1	13	9	..	..	..	..	..	..	..	..	..	..
Partnership .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Interpleader	2	..	2	..	0	1	6	..	..	..	..	..	..	..	..	..	..
Intestacy .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Legacy .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Possession of Tenements .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Replevin .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Consent Jurisdiction .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Causes of action not specified above	1	..	1	..	0	10	3	..	..	..	..	..	..	..	..	..	..
GRAND TOTALS	203	62	134	24	71	14	9	..	7	..	..	..	5	191	..	..	..

I hereby certify that the above is a full and complete Return of the particulars required by the aforesaid Act.
RICHARD BROOKS,
 Registrar, District Court.

A RETURN of the Number of Suits commenced in the District Court of BOMBAYA, during the Twelve Months preceding the first day of March, 1861, and the other particulars required by the said Act.

THE NATURE OF THE CAUSES UNDER DISTINCT HEADS, viz.---	THE NUMBER OF SUITS COMMENCED IN THIS COURT DURING THE TWELVE MONTHS PRECEDING.		THE RESULT OF THE TRIALS, WHETHER IN FAVOR OF PLAINTIFF OR DEFENDANT.		THE COSTS OF THE SUITS.		THE NUMBER OF APPEALS OR REVERSALS.		THE NUMBER OF JUDGMENTS OR ORDERS AFFIRMED.		THE NUMBER OF CASES REVERSED, LEFT IN ARREAR.		THE DATE, PLACE, AND DURATION OF THE SITTINGS OF EACH COURT, THE DURATION TO BE SPECIFIED IN DAYS AND HOURS.			THE NUMBER OF MOTIONS TRIED FOR NEW TRIALS.		THE GROUNDS ON WHICH SUCH NEW TRIALS WERE GRANTED.	
	Commenced.	Settled without Hearing.	Trials.	Defendant.	Plaintiff.	£	s.	d.	Of Appeals.	Of Judgments or Orders affirmed.	Reversed.	Left in Arrear.	Place.	Date.	Days.	Hours.	By Jury.		Without Jury.
Goods sold	8	5	3	3	3	6	2	0	..	..	..	..	March Sittings, 1860.				8	..	
Promissory Notes	1	..	1	..	1	1	0	6	..	..	..	..	Bombala Court House,				1	..	
Rent	1	1	..	..	..	0	5	6	..	..	..	..	March 6, 1860.				..	..
Board and Lodging	6	..	4	2	2	17	16	10	..	..	..	..	Duration, from 10				..	..
Trespass on Land .....	..	..	..	..	..	6	0	6	..	..	..	..	A.M. to 4 P.M.—6				..	..
Illegal Distraint	9	..	9	4	5	1	0	6	..	..	..	..	hours .....				..	..
Trover	1	..	1	1	1	0	8	0	..	..	..	..	September Sittings.				..	..
Breach of Contract	1	..	1	..	..	9	11	10	..	..	..	..	September 6, 1860.				..	..
Wages, Work, and Labor	1	..	1	..	..	0	8	0	..	..	..	..	Duration, from 10				..	..
Libel, Slander, or Defamation	1	..	1	1	1	..	..	..	..	..	..	..	A.M. to 4 P.M. on				..	..
Commission on Agency	1	..	1	..	..	..	..	..	..	..	..	..	the 6th, and 10				..	..
Sales of Live Stock	1	..	1	..	..	..	..	..	..	..	..	..	A.M. to 12 noon on				..	..
Money Lent	1	1	..	..	..	0	8	0	..	..	..	..	the 7th—8 hours				..	..
Partnership .....	..	..	..	..	..	..	..	..	..	..	..	..	Total both sittings, 14				..	..
Interpleader .....	..	..	..	..	..	..	..	..	..	..	..	..	hours.				..	..
Intestacy .....	..	..	..	..	..	..	..	..	..	..	..	..					..	..
Legacy .....	..	..	..	..	..	..	..	..	..	..	..	..					..	..
Possession of Tenements .....	..	..	..	..	..	..	..	..	..	..	..	..					..	..
Replevin .....	..	..	..	..	..	..	..	..	..	..	..	..					..	..
Consent Jurisdiction .....	..	..	..	..	..	..	..	..	..	..	..	..					..	..
Causes of Action not specified above	6	2	4	2	2	19	12	6	..	..	..	..					1	3	
TOTALS	35	9	24	14	10	62	6	2	..	..	..	..					7	17	

I hereby certify that the above is a full and complete Return of the particulars required by the aforesaid Act.
 THOMAS FOX,
 Registrar, District Court.

DISTRICT COURTS ACT OF 1858.—(SECTION 103.)

A RETURN of the Number of Suits commenced in the District Court of Picton, during the Twelve Months preceding the first day of March, 1861, and the other particulars required by the said Act.

THE NATURE OF THE CAUSES UNDER DISTINCT HEADS, VIZ.:-	THE NUMBER OF SUITS COMMENCED IN THIS COURT DURING THE TWELVE MONTHS PRECEDING.		THE RESULT OF THE TRIALS, WHETHER IN FAVOR OF PLAINTIFF OR DEFENDANT.		THE COSTS OF THE SUITS.		THE NUMBER			THE DATES, PLACE, AND DURATION OF THE SITTINGS OF EACH COURT, TO BE SPECIFIED IN DAYS AND HOURS.			NUMBER OF CASES.		THE NUMBER OF NEW TRIALS GRANTED.	THE GROUNDS ON WHICH SUCH NEW TRIALS WERE GRANTED.		
	Com- menced without hearing	Settled hearing	Plain- tiff.	Defen- dant.	£	s.	d.	Of Appeals affirmed.	Of Judgments or Orders affirmed.	Of Cases reversed.	Of Cases left in arrest.	Place.	Date.	Days.			Hours.	By Jury.	Settled by arbitration.
Goods sold	57	33	22	4	17	18	3											
Promissory Notes	3	1	2	2	1	9	0											
Rent	1	1	1	1	1	10	0											
Board and Lodging	1	1	1	1	1	0	6											
Trespass on Land .....	..	..	..	..	..	..	..				
Trespass on Person .....	..	..	..	..	..	..	..				
Illegal Distraint .....	..	..	..	..	..	..	..				
Trover	5	3	2	2	15	17	9											
Breach of Contract	10	6	5	2	3	10	3											
Wages, Work, and Labor	1 & 1 continued from previous sittings	..	2	1	12	3	0											
Label, Slander, or Defamation .....	..	..	..	..	..	..	..				
Commission on Agency .....	..	..	..	..	..	..	..				
Sales of Live Stock	3	3	..	..	1	14	0											
Money Lent .....	..	..	..	..	..	..	..				
Partnership .....	..	..	..	..	..	..	..				
Interpleader .....	..	..	..	..	..	..	..				
Intestacy .....	..	..	..	..	..	..	..				
Legacy .....	..	..	..	..	..	..	..				
Possession of Tenements .....	..	..	..	..	..	..	..				
Replevin .....	..	..	..	..	..	..	..				
Consent Jurisdiction .....	..	..	..	..	..	..	..				
Causes of action not specified above	4	..	3	1	1	11	6											

I hereby certify that the above is a full and complete Return of the particulars required by the aforesaid Act.
 J. B. MARTIN,
 Registrar, District Court.

DISTRICT COURTS ACT OF 1858.—(SECTION 103.)

A RETURN of the Number of Suits commenced in the District Court of CAMPBELLTOWN, during the Twelve Months preceding the first day of March, 1861, and the other particulars required by the said Act.

THE NAMES OF THE CAUSES UNDER DISTINCT HEADS, VIZ.:-	THE NUMBER OF SUITS COMMENCED IN THIS COURT DURING THE TWELVE MONTHS PRECEDING.		THE RESULT OF THE TRIALS, WHETHER IN FAVOR OF PLAINTIFF OR DEFENDANT.		THE COSTS OF THE SUITS.		THE NUMBER			THE DATE, PLACE, AND DURATION OF THE SITTINGS OF EACH COURT, THE DURATION TO BE SPECIFIED IN DAYS AND HOURS.			NUMBER OF CASES.		THE NUMBER		THE GROUNDS ON WHICH SUCH NEW TRIALS WERE GRANTED.		
	Com- menced.	Settled without hearing.	Tri- ed.	Plain- tiff.	Defen- dant.	Of Appeals	Of Judge marks or Orders set aside.	Reversed.	Of Cases left in arrest.	Place.	Date.	Days. Hours.	Tried.		Of New Trials granted.				
													By Jury.	Settled by arbi- tration.					
Goods sold	75	37	36	34	2	..	..	..	1	Campbell- town.	1860. 17 May 18 " 9 Aug. 8 Nov. 9 " 7 Feb.	4 2 5 1/2 2 1 3 1/2	36	..	..	..
Promissory Notes	13	3	10	9	1	..	..	..	..				10	..	..	..	..	..	..
Rent	4	1	3	2	1	..	..	..	..				1	..	..	..	..	..	..
Board and Lodging	1	..	1	1	..	..	..	..	..				..	..	..	..	..	..	..
Trespass on Land .....	..	..	..	..	..	..	..	..	..				..	..	..	..	..	..	..
Trespass on Person .....	..	..	..	..	..	..	..	..	..				..	..	..	..	..	..	..
Illegal Distraint .....	..	..	..	..	..	..	..	..	..				..	..	..	..	..	..	..
Trover	4	1	3	1	2	..	..	..	..				..	..	..	..	..	..	..
Breach of Contract	2	1	1	1	1	..	..	..	..				..	..	..	..	..	..	..
Wages, Work, and Labor	25	15	10	10	..	..	..	..	1				..	..	..	..	..	..	..
Libel, Slander, or Defamation .....	..	..	..	..	..	..	..	..	..				..	..	..	..	..	..	..
Commission on Agency	7	2	5	3	2	..	..	..	..				..	..	..	..	..	..	..
Sales of Live Stock	4	3	1	1	..	..	..	..	..				..	..	..	..	..	..	..
Money Lent .....	..	..	..	..	..	..	..	..	..				..	..	..	..	..	..	..
Partnership .....	..	..	..	..	..	..	..	..	..				..	..	..	..	..	..	..
Interpleader .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Intestacy .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Legacy .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Possession of Tenements .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Replevin .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Consent Jurisdiction .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Causes of action not speci- fied above	1	1	1	1	1	..	..	..	..	..	..	..	..	..	..	..
Hire of Filly	2	1	1	..	..	..	..	..	..	..	..	..	..	..	..	..
Damages .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
TOTALS	138	64	72	62	10	..	..	..	2	..	..	..	18	2	70	..			

I hereby certify that the above is a full and complete Return of the particulars required by the aforesaid Act.
 GEORGE WHITE,
 Registrar, District Court.

DISTRICT COURTS ACT OF 1858.—(SECTION 103.)

A RETURN of the Number of Suits commenced in the District Court of Eden, during the Twelve Months preceding the first day of March, 1861, and the other particulars required by the said Act.

THE NATURE OF THE CAUSES UNDER DISTINCT HEADS, VIZ. :—	THE NUMBER OF SUITS COMMENCED IN THIS COURT DURING THE TWELVE MONTHS PRECEDING.		THE RESULT OF THE TRIALS, WHETHER IN FAVOR OF PLAINTIFF OR DEFENDANT.		THE COSTS OF THE SUITS.		THE NUMBER			THE DATE, PLACE, AND DURATION OF THE SITTINGS OF EACH COURT, THE DURATION TO BE SPECIFIED IN DAYS AND HOURS.			NUMBER OF CASES.	THE NUMBER OF Motions for New Trials granted.	THE GROUNDS ON WHICH SUCH NEW TRIALS WERE GRANTED.	
	Com-menced.	Settled without hearing.	Tried.	Plaintiff.	Defen-dant.	Of Appeals.	Of Judg-ments or Orders affirmed.	Of Cases reversed.	Of Cases left in arrear.	Date.	Duration.	Tried.				Settled by arbi-tration.
Goods sold	14	10	4	4	..	9	16	4								
Promissory Notes	5	4	1	1	..	3	5	6								
Rent .....	..	..	..	..	..	..	..	..
Board and Lodging .....	..	..	..	..	..	..	..	..
Trespass on Land .....	..	..	..	..	..	..	..	..
Trespass on Person .....	..	..	..	..	..	..	..	..
Illegal Distraint .....	..	..	..	..	..	..	..	..
Trover	3	2	1	..	1	..	2	9	6							
Breach of Contract	7	1	6	..	..	4	9	3								
Wages, Work, and Labor .....	..	..	..	..	..	..	..	..
Libel, Slander, or Defamation .....	..	..	..	..	..	..	..	..
Commission on Agency .....	..	..	..	..	..	..	..	..
Sales of Live Stock .....	..	..	..	..	..	..	..	..
Money Lent .....	..	..	..	..	..	..	..	..
Partnership .....	..	..	..	..	..	..	..	..
Intrepreader .....	..	..	..	..	..	..	..	..
Intestacy .....	..	..	..	..	..	..	..	..
Legacy .....	..	..	..	..	..	..	..	..
Possession of Tenements .....	..	..	..	..	..	..	..	..
Replevin .....	..	..	..	..	..	..	..	..
Consent Jurisdiction .....	..	..	..	..	..	..	..	..
Causes of action not specified above	3	..	3	1	2	2	9	0								

I hereby certify that the above is a full and complete Return of the particulars required by the aforesaid Act.
 P. J. MURRAY,
 Registrar, District Court.

DISTRICT COURTS ACT OF 1858.—(SECTION 103.)

A RETURN of the Number of Suits commenced in the District Court of KIAMA, during the Twelve Months preceding the first day of March, 1861, and the other particulars required by the said Act.

THE NATURE OF THE CAUSES UNDER DISTINCT HEADS, VIZ.:-	THE NUMBER OF SUITS COMMENCED IN THIS COURT DURING THE TWELVE MONTHS PRECEDING.		THE RESULT OF THE TRIALS, WHETHER IN FAVOR OF PLAINTIFF OR DEFENDANT.		THE COSTS OF THE SUITS. £ s. d.	THE NUMBER			THE DATE, PLACE, AND DURATION OF THE SITTINGS OF EACH COURT, THE DURATION TO BE SPECIFIED IN DAYS AND HOURS.			NUMBER OF CASES.		THE GROUNDS ON WHICH SUCH NEW TRIALS WERE GRANTED.	
	Com- menced.	Settled without hearing.	Plain- tiff.	Defen- dant.		Of Appeals.	Of Judg- ments or Orders affirmed.	Reversed.	Of Cases set in arrear.	Place.	Date.	Duration. Days. Hours.	Tried. By Jury.		Settled by arbitrators.	Of New Trials granted.
Goods sold	16	6	10	10								1	9	1	
Promissory Notes	87	36	47	4	85	18	10					51	1	1	
Rent	2	2	2	2	239	12	4					2	2	2	
Board and Lodging .....	..	..	..	..	18	8	3					..	..	..
Trespass on Land .....	..	..	..	..	..	..	..					..	..	..
Trespass on Person	1	..	..	..	..	..	..					..	..	..
Illegal Distraint	1	..	1	1	5	16	6					..	..	..
Trover	1	..	1	1	2	2	0					..	..	..
Breach of Contract	2	1	1	1	18	3	8					..	..	..
Wages, Work, and Labor	7	2	5	4	49	14	11			1860.	2	11	1	3	1
Libel, Slander, or Defamation	2	2	2	1	29	9	11			23 April ..	2	11	1	1	1
Commission on Agency .....	..	..	..	..	..	..	..			16 July ..	2	3 1/2	1	1	..
Sales of Live Stock	1	..	1	1	9	10	6			15 Oct. ..	1	5	..	..	..
Money Lent .....	..	..	..	..	..	..	..			1861.	1	..	..	..	..
Partnership .....	..	..	..	..	..	..	..			21 Jan. ..	1	..	..	..	..
Interpleader .....	..	..	..	..	..	..	..			..	..	..	..	..	..
Intestacy .....	..	..	..	..	..	..	..			..	..	..	..	..	..
Legacy .....	..	..	..	..	..	..	..			..	..	..	..	..	..
Possession of Tenements	1	1	..	..	1	3	0			..	..	..	..	..	..
Replevin .....	..	..	..	..	..	..	..			..	..	..	..	..	..
Consent Jurisdiction .....	..	..	..	..	..	..	..			..	..	..	..	..	..
Causes of action not specified above	14	7	7	6	47	15	10			..	..	..	7	..	..

I hereby certify that the above is a full and complete Return of the particulars required by the aforesaid Act.
W. D. MEARES,
Registrar, District Court.

DISTRICT COURTS ACT OF 1853.—(SECTION 103.)

A RETURN of the Number of Suits commenced in the District Court of GOULBURN, during the Twelve Months preceding the first day of March, 1861, and, the other particulars required by the said Act.

THE NATURE OF THE CAUSES UNDER DISTINCT HEADS, VIZ.:-	THE NUMBER OF SUITS COMMENCED IN THIS COURT DURING THE TWELVE MONTHS PRECEDING.				THE COSTS OF THE SUITS.		THE NUMBER OF JUDGMENTS OR ORDERS GRANTED.	THE NUMBER OF APPEALS.	OF CASES REVERSED.	OF CASES LEFT IN ARREAR.	THE DATE, PLACE, AND DURATION OF THE SITTINGS OF EACH COURT, THE DURATION TO BE SPECIFIED IN DAYS AND HOURS.		NUMBER OF CASES.		THE NUMBER OF NEW TRIALS GRANTED.	THE GROUNDS ON WHICH SUCH NEW TRIALS WERE GRANTED.					
	Com- menced.	Settled without hearing.	Tried.	Plaid- till.	Debit- ed.	In 21 cases, above £10 and under £30 .. £71 0					In 11 cases, above £30 .. 61 0	Of Appeals.	Of Judg- ments or Orders granted.	Date.			Place.	Days. Hours.	By Jury.	Without Jury.	Settled by arbi- tration.
Goods sold	78	38	40	39	1																
Promissory Notes	23	9	14	13	1																
Rent	6	2	4	3	1																
Board and Lodging	6	6	4	4	..																
Trespass on Land	1	1	1	1	..																
Trespass on Person	1	1	1	1	..																
Illegal Distraint	1	1	..	..	..													
Trover	7	1	5	5	..																
Breach of Contract	20	7	12	12	..																
Wages, Work, and Labor .....	..	..	..	..	..											
Libel, Slander, or Defamation	1	1	..	..	..													
Commission on Agency .....	..	..	..	..	..											
Sales of Live Stock	9	3	6	6	..																
Money Lent .....	..	..	..	..	..											
Partnership .....	..	..	..	..	..											
Interpleader .....	..	..	..	..	..											
Infestacy .....	..	..	..	..	..											
Legacy .....	..	..	..	..	..											
Possession of Tenements .....	..	..	..	..	..											
Replevin .....	..	..	..	..	..											
Consent Jurisdiction .....	..	..	..	..	..											
Causes of Action not specified above	4	3	1	..	1																
TOTALS	161	71	87	83	4							10	51	7	80	3					

I hereby certify that the above is a full and complete Return of the particulars required by the aforesaid Act.
 TEMPLE S. NATHAN
 Registrar, District Court.

DISTRICT COURTS ACT OF 1858.—(SECTION 103.)

A RETURN of the Number of Suits commenced in the District Court of ALBURY, during the Twelve Months preceding the first day of March, 1861, and the other particulars required by the said Act.

THE NATURE OF THE CAUSES UNDER DISTINCT HEADS, VIZ.:-	THE NUMBER OF SUITS COMMENCED IN THIS COURT DURING THE TWELVE MONTHS PRECEDING.		THE RESULT OF THE TRIALS, WHETHER IN FAVOR OF PLAINTIFF OR DEFENDANT.		THE COSTS OF THE SUITS.		THE NUMBER OF THE SUITS.			THE DATE, PLACE, AND DURATION OF THE SETTINGS OF EACH COURT, THE DURATION TO BE SPECIFIED IN DAYS AND HOURS.			NUMBER OF CASES.		THE NUMBER		THE GROUNDS ON WHICH SUCH NEW TRIALS WERE GRANTED.		
	Commenced.	Settled without hearing.	Plaintiff.	Defendant.	£	s.	d.	Of Appeals affirmed.	Of Judgments or Orders affirmed.	Of Cases reversed, left in arrears.	Vices.	Date.	Duration. Days. Hours.	By Jury.	Without Jury.	Settled by arbitration.		Of Motions for New Trials.	Of New Trials granted.
Goods sold	14	6	8	8											8	1			
Promissory Notes	19	10	9	9											9	1			
Bent	2	..	2	2											2	..			
Board and Lodging	..	..	..	..											..	..
Trespass on Land	..	..	..	..											..	..
Trespass on Person	3	1	2	2											2	..			
Illegal Distraint	..	..	..	..											..	..
Trover	5	1	4	3							1860.	8	..	1	3	..			
Breach of Contract	6	2	4	3							8 March.	8	..	1	4	..			
Wages, Work, and Labor	26	10	16	15							9 "	10	..	2	14	..			
Libel, Slander, or Defamation	2	1	1	1							10 "	7	..	..	1	..		
Commission on Agency	..	..	..	..							5 Sept.	7	..	..	..	..
Sales of Live Stock	..	..	..	..							6 "	8	..	..	..	..
Money Lent	10	8	2	1	300	0	0				7 "	5	..	..	..	..
Partnership	..	..	..	..							8 "	8	..	..	..	..
Intestacy	..	..	..	..							20 Dec.	8	..	..	..	..
Legacy	..	..	..	..							21 "	9	..	..	..	..
Possession of Tenements	..	..	..	..							22 "	9	..	..	..	..
Replevin	..	..	..	..							24 "	5	..	..	..	..
Consent Jurisdiction.	..	..	..	..											..	..
Causes of Action not specified above	25	9	16	13											1	15			

I hereby certify that the above is a full and complete Return of the particulars required by the aforesaid Act.

H. S. ELLIOTT,
Registrar, District Court.

DISTRICT COURTS ACT OF 1858.—(SECTION 103.)

A RETURN of the Number of Suits commenced in the District Court of GUNDAKAR, during the Twelve Months preceding the first day of March, 1861, and the other particulars required by the said Act.

THE NATURE OF THE CAUSES UNDER DISTINCT HEADS, VIZ.:-	THE NUMBER OF SUITS COMMENCED IN THIS COURT DURING THE TWELVE MONTHS PRECEDING.		THE RESULT OF THE TRIALS, WHETHER IN FAVOR OF PLAINTIFF OR DEFENDANT.		THE COSTS OF THE SUITS.		THE NUMBER			THE DATE, PLACE, AND DURATION OF THE SITTINGS OF EACH COURT, THE DURATION TO BE SPECIFIED IN DAYS AND HOURS.			NUMBER OF CASES.		THE NUMBER OF NEW TRIALS GRANTED.	THE GROUNDS ON WHICH SUCH NEW TRIALS WERE GRANTED.				
	Com- menced.	Settled without hearing.	Tried.	Plaintiff.	Defen- dant.	£	s.	d.	Of Appeals.	Of Judge- ments or Orders affirmed.	Of Cases reversed.	Of Cases left in arrest.	Place.	Date.			Days.	Hours.	Tried.	Settled by arbitration.
Goods sold	36	9	27	26	1	47	2	1	..	..	..	..	..	..	..	..	..	..	..
Promissory Notes	5	1	4	4	..	19	19	2	..	..	..	..	..	..	..	..	..	..	..
Rent	5	2	3	..	3	21	1	0	..	..	..	..	..	..	..	..	..	..	..
Board and Lodging	4	..	..	..	..	2	13	0	..	..	..	..	..	..	..	..	..	..	..
Trespass on Land	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Trespass on Person	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Illegal Distraint	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Trover	6	3	2	2	..	11	6	7	..	..	..	..	..	..	..	..	..	..	..
Breach of Contract	2	..	2	2	..	16	12	8	..	..	..	..	..	..	..	..	..	..	..
Wages, Work, and Labor	11	3	7	7	..	26	6	0	..	..	..	..	..	..	..	..	..	..	..
Libel, Slander, or Detraction	4	3	1	..	1	17	0	6	..	..	..	..	..	..	..	..	..	..	..
Commission on Agency	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Sales of Live Stock	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Money Lent	2	1	1	1	..	3	10	0	..	..	..	..	..	..	..	..	..	..	..
Partnership	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Interpleader	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Intestacy	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Legacy	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Possession of Tenements	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Replevin	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Consent Jurisdiction	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Causes of action not specified above	4	1	3	..	3	14	8	0	..	..	..	..	..	..	..	..	..	..	..

I hereby certify that the above is a full and complete Return of the particulars required by the aforesaid Act.
 A. C. S. ROSE,
 Registrar, District Court.

1860.
 20 March... 1 or 11
 20 Sept... 2 or 18
 7 Dec... 3
 1861.
 26 & 27 Feb. 2 1/2 or 30
 Gun-
 dagal ..

DISTRICT COURTS ACT OF 1858.---(SECTION 103.)

A RETURN of the Number of Suits commenced in the District Court of QUEANBEYAN, during the Twelve Months preceding the first day of March, 1861, and the other particulars required by the said Act.

THE NATURE OF THE CAUSES UNDER DISTINCT HEADS, VIZ. :-	THE NUMBER OF SUITS COMMENCED IN THIS COURT DURING THE TWELVE MONTHS PRECEDING.		THE RESULT OF THE TRIALS, WHETHER IN FAVOR OF PLAINTIFF OR DEFENDANT.		THE COSTS OF THE SUITS.	THE NUMBER			THE DATE, PLACE, AND DURATION OF THE SITTINGS OF EACH COURT, THE DURATION TO BE SPECIFIED IN DAYS AND HOURS.			NUMBER OF CASES.		THE NUMBER		THE GROUNDS ON WHICH SUCH NEW TRIALS WERE GRANTED.			
	Commenced.	Settled without hearing.	Plain-tiff.	Defendant.		Of Appeals.	Of Judge-Orders affirmed.	Of Cases reversed.	Of Cases left in arrears.	Place.	Date.	Days.	Hours.	Tried.	Settled by arbitration.		Of Motions for New Trials.	Of New Trials granted.	
					£ s. d.								By July.	Without July.					
Goods sold	53	30	21	..	114 18 5														
Promissory Notes																			
Rent																			
Board and Lodging																			
Trespass on Land																			
Trespass on Person																			
Illegal Distraint																			
Trover																			
Breach of Contract																			
Wages, Work, and Labor																			
Libel, Slander, or Defamation																			
Commission on Agency																			
Sales of Live Stock																			
Money Lent																			
Partnership																			
Interpleader																			
Intestacy																			
Legacy																			
Possession of Tenements																			
Replevin																			
Consent Jurisdiction																			
Causes of action not specified above																			
	41																		

I hereby certify that the above is a full and complete Return of the particulars required by the aforesaid Act.
 CH. E. NEWCOMBE,
 Registrar, District Court.

DISTRICT COURTS ACT OF 1858.—(SECTION 103.)

A RETURN of the Number of Suits commenced in the District Court of TUNNUT, during the Twelve Months preceding the first day of March, 1861, and the other particulars required by the said Act.

THE NATURE OF THE CAUSES UNDER DISTINCT HEADS, VIZ.:	THE NUMBER OF SUITS COMMENCED IN THIS COURT DURING THE TWELVE MONTHS PRECEDING.		THE RESULT OF THE TRIALS, WHETHER IN FAVOR OF PLAINTIFF OR DEFENDANT.		THE COSTS OF THE SUITS.		THE NUMBER OF APPEALS.		THE NUMBER OF JUDGMENTS OR ORDERS AFFIRMED.		THE NUMBER OF CASES LEFT IN ARREAR.		THE DATE, PLACE, AND DURATION OF THE SITTINGS OF EACH COURT, THE PERIOD TO BE RECEIVED IN DAYS AND HOURS.			THE NUMBER OF CASES.		THE NUMBER OF NEW TRIALS GRANTED.		THE GROUNDS ON WHICH SUCH NEW TRIALS WERE GRANTED.
	Com- menced.	Settled without hearing.	Tried.	Plain- tiff.	Defen- dant.	£	s.	d.	Of Appeals.	Of Judg- ments or Orders affirmed.	Of Cases left in arrear.	Placed.	Date.	Days.	Hours.	Tried. By Jury.	Settled by arbitration.	Of New Trials granted.		
Goods sold	71	41	30	27	2	45	8	9								30	1*			
Promissory Notes	18	10	8	8	..	10	13	3								8	..			
Rent	3	1	2	2	..	1	16	6								2	..			
Board and Lodging	4	..	4	4	..	1	18	0								4	..			
Trespass on Land .....	..	..	..	..	..	..	..	..								..	..
Trespass on Person .....	..	..	..	..	..	..	..	..								..	..
Illegal Distraint .....	..	..	..	..	..	..	..	..								..	..
Trover .....	..	..	..	..	..	..	..	..								..	..
Breach of Contract	7	2	5	3	2	10	13	6				1860.	16 Mar.	1	4	..	..	
Wages, Work, and Labor	8	3	5	4	1	5	6	6				17 "	..	..	..	..	..
Libel, Slander, or Defamation	1	1	1	..	..	1	5	6				15 Sept.	1	5	..	..	..
Commission on Agency .....	..	..	..	..	..	1	1	5	6			17 "	..	..	..	..	..
Sales of Live Stock .....	..	..	..	..	..	..	..	..				10 Dec.	1	4	..	..	..
Money Lent	4	1	3	3	..	2	6	6				11 "	..	..	..	..	..
Partnership	1	..	1	..	..	1	2	9				Tunnut.	..	..	..	..	..
Intercaster .....	..	..	..	..	..	..	..	..				1861.	27 Feb.	..	..	..	..	..
Intestacy .....	..	..	..	..	..	..	..	..				28 "	..	..	..	..	..	..
Legacy .....	..	..	..	..	..	..	..	..				1 Mar.	1	6	..	..	..	..
Possession of Tenements .....	..	..	..	..	..	..	..	..				..	..	..	..	..	..	..
Replevin .....	..	..	..	..	..	..	..	..				..	..	..	..	..	..	..
Consent Jurisdiction .....	..	..	..	..	..	..	..	..				..	..	..	..	..	..	..
Causes of action not speci- fied above	2	..	2	1	1	1	6	6				..	..	..	..	..	..	..

* Included in cases tried.

I hereby certify that the above is a full and complete Return of the particulars required by the aforesaid Act.
 EDWARD BROWN,
 Registrar, District Court.

DISTRICT COURTS ACT OF 1858.—(SECTION 103.)

A RETURN of the Number of Suits commenced in the District Court of Yass, during the Twelve Months preceding the first day of March, 1861, and the other particulars required by the said Act.

THE NATURE OF THE CAUSES UNDER DISTINCT HEADS, VIZ. —	THE NUMBER OF SUITS COMMENCED IN THIS COURT DURING THE TWELVE MONTHS PRECEDING.			THE RESULT OF THE TRIALS, HEARD IN FAVOR OF PLAINTIFF OR DEFENDANT.			THE COSTS OF THE SUITS.		THE NUMBER			THE DATE, PLACE, AND DURATION OF THE SITTINGS OF EACH COURT, THE DURATION TO BE SPECIFIED IN DAYS AND HOURS.			NUMBER OF CASES.		THE NUMBER		THE GROUNDS ON WHICH SUCH NEW TRIALS WERE GRANTED.	
	Com- menced.	Settled without hearing.	Tried.	Plain- tiff.	Defen- dant.	£	s.	d.	Of Judg- ments or Orders reformed.	Reversal.	Of Cases left in arrear.	Place.	Date.	Days.	Hours.	By Jury.	Tried. Without Jury.	Settled by arbi- tration.		Of New Trials granted.
Goods sold	48																			
Promissory Notes	21																			
Rent	2																			
Board and Lodging	1																			
Trespass on Land	17																			
Trespass on Person	1																			
Illegal Distraint	1																			
Trover	8																			
Breach of Contract	5																			
Wages, Work, and Labor	12																			
Libel, Slander, or Defamation	1																			
Commission on Agency	1																			
Sales of Live Stock	6																			
Money Lent	1																			
Partnership	1																			
Interpleader	1																			
Intestacy	1																			
Legacy	1																			
Possession of Tenements	1																			
Replevin	1																			
Consent Jurisdiction	1																			
Causes of action not specified above	1																			
Malicious Prosecution	1																			
TOTALS	122	30	64	60	4	133	19	6	..	..	1			14	..	8	56	3	2	1

I hereby certify that the above is a full and complete Return of the particulars required by the aforesaid Act.
 J. STILLES,
 Registrar, District Court.

For the ends of substantial justice.

DISTRICT COURTS ACT OF 1858.—(SECTION 103.)

A RETURN of the Number of Suits commenced in the District Court of Bathurst, during the Twelve Months preceding the first day of March, 1861, and the other particulars required by the said Act.

THE NATURE OF THE CAUSES UNDER DISTINCT HEADS, VIZ.—	THE NUMBER OF SUITS COMMENCED IN THIS COURT DURING THE TWELVE MONTHS PRECEDING.		THE RESULT OF THE TRIALS, WHETHER IN FAVOR OF PLAINTIFF OR DEFENDANT.		THE COSTS OF THE SUITS.		THE NUMBER OF APPEALS OR ORDERS AFFIRMED.		THE NUMBER OF CASES REVERSED OR LEFT IN ARREAR.		THE DATE, PLACE, AND DURATION OF THE SITTINGS OF EACH COURT, THE DURATION TO BE SPECIFIED IN DAYS AND HOURS.			NUMBER OF CASES.		THE NUMBER OF NEW TRIALS GRANTED.		THE GROUNDS ON WHICH SUCH NEW TRIALS WERE GRANTED.		
	Com- menced.	Settled without hearing.	Tried.	Plain- tiff.	Defen- dant.	£	s.	d.	Of Appeals.	Of Judg- ments or Orders affirmed.	Reversed.	Left in arrear.	Place.	Date.	Duration. Days. Hours.	Tried. By Jury.	Without Jury.		Settled by arbitrators for New Trials.	Of New Trials granted.
Goods sold	209																			
Promissory Notes	75																			
Rent	15																			
Board and Lodging	7																			
Trespass on Land	16																			
Trespass on Person																				
Illegal Distrainment																				
Trover	5																			
Breach of Contract	16																			
Wages, Work, and Labor	69																			
Libel, Slander, or Defamation	2																			
Commission on Agency																				
Sales of Live Stock	10																			
Money Lent	26																			
Partnership																				
Interpleader																				
Intestacy																				
Legacy																				
Possession of Tenements																				
Replevin																				
Consent Jurisdiction																				
Causes of Action not specified above	22																			
	472		210	247	224	23	484	19	11	..	..	15	Bathurst..	1860. 14 May .. 7 31 20 Aug. ... 11 42 19 Nov. ... 8 52	5	242	5	4	1	No. 219 of 1860— Absence of Defendant.

I hereby certify that the above is a full and complete Return of the particulars required by the aforesaid Act.

T. CHARLES GORE,
Registrar, District Court.

N.B.—During the above period there have been 131 cases tried in the Court of Requests, under 10 Vic. No. 10.

DISTRICT COURTS ACT OF 1858.—(SECTION 103.)

A RETURN of the Number of Suits commenced in the District Court of CARBOR, during the Twelve Months preceding the first day of March, 1861, and the other particulars required by the said Act.

THE NATURE OF THE CAUSES UNDER DISTINCT HEADS, VIZ.:-	THE NUMBER OF SUITS COMMENCED IN THIS COURT DURING THE TWELVE MONTHS PRECEDING.		THE RESULT OF THE TRIALS, WHETHER IN FAVOR OF PLAINTIFF OR DEFENDANT.		THE COSTS OF THE SUITS.	THE NUMBER OF THE SUITS.			THE DATE, PLACE, AND DURATION OF THE SITTINGS OF EACH COURT, THE DURATION TO BE SPECIFIED IN DAYS AND HOURS.			NUMBER OF CASES.		THE NUMBER OF NEW TRIALS GRANTED.		
	Com- menced.	Settled without hearing.	Plaintiff.	Defen- dant.		£	s.	d.	Of Appeals.	Of Judg- ments or Orders affirmed.	Of Cases set- tled, not in arrear.	Place.	Date.		Duration.	Tried.	Settled by arbi- tration.
												Days.	Hours.	By Jury.	Without Jury.	Of New Trials.
Goods sold	11	4	7	6	1	10	9	9						1		
Promissory Notes	4	2	2	2	..	2	8	6						..		
Rent	1	..	1	1	..	9	16	6						..		
Board and Lodging .....	..	..	..	..	..	..	..	..						..
Trespass on Land	1	1	..	..	..	..	..	..						..
Trespass on Person .....	..	..	..	..	..	..	..	..						..
Illegal Distraint .....	..	..	..	..	..	..	..	..						..
Trover	1	..	1	1	..	0	16	0			1860			..		
Breach of Contract	8	2	6	4	2	9	12	6			27 April..	14		..		
Wages, Work, and Labor .....	..	..	..	..	..	..	..	..			27 July ..	7		..		
Libel, Slander, or Defamation .....	..	..	..	..	..	..	..	..			28 ..	4		..		
Commission on Agency	1	1	..	..	..	..	..	..			26 Oct. ..	3 1/2		..		
Sales of Live Stock	1	..	1	1	..	2	18	6			1861.			..		
Money Lent	1	..	1	1	..	..	..	..			25 Jan. ...	1 1/2		..		
Partnership .....	..	..	..	..	..	..	..	..						..
Interpleader .....	..	..	..	..	..	..	..	..						..
Intestacy .....	..	..	..	..	..	..	..	..						..
Legacy .....	..	..	..	..	..	..	..	..						..
Possession of Tenements .....	..	..	..	..	..	..	..	..						..
Replevin .....	..	..	..	..	..	..	..	..						..
Consent Jurisdiction .....	..	..	..	..	..	..	..	..						..
Causes of action not specified above	5	1	4	..	4	13	12	6						..		

I hereby certify that the above is a full and complete Return of the particulars required by the aforesaid Act.
 OWEN C. BEARDMORE,
 Registrar, District Court.

DISTRICT COURTS ACT OF 1858.—(SECTION 103.)

A RETURN of the Number of Suits commenced in the District Court of Dubbo, during the Twelve Months preceding the first day of March, 1861, and the other particulars required by the said Act.

THE NATURE OF THE CAUSES UNDER DISTINCT HEADS, VIZ.:-	THE NUMBER OF SUITS COMMENCED IN THIS COURT DURING THE TWELVE MONTHS PRECEDING.		THE RESULT OF THE TRIALS, WHETHER IN FAVOR OF PLAINTIFF OR DEFENDANT.		THE COSTS OF THE SUITS.		THE NUMBER			THE DATE, PLACE, AND DURATION OF THE SITTINGS OF EACH COURT, THE DURATION TO BE SPECIFIED IN DAYS AND HOURS.			NUMBER OF CASES.		THE NUMBER		THE GROUNDS ON WHICH SUCH NEW TRIALS WERE GRANTED.		
	Com- menced.	Settled without hearing.	Plain- tiff.	Defen- dant.	£	s.	d.	Of Appeals	Of Judg- ments or Orders affirmed.	Of Cases reversed, left in arrest.	Place.	Date.	Duration.	Tried.	Settled by arbi- tration.	Of New Trials granted.			
													Days.	Hours.	By Jury.	Without Jury.			
Goods sold	17	14	3	1	13	5	0	..	..	..	Dubbo, } 1860. 12 April... 12 July... 11 Oct.... 1861. 10 Jan....	5	..	2	4	..	..
Promissory Notes	6	4	1	1	3	13	0		3 1/2	2	
Rent	4	1	2	4	0		1 1/2	
Board and Lodging
Trespass on Land
Trespass on Person
Illegal Distraint
Trover	2	..	1	1	42	9	11	1	
Breach of Contract	6	1	3	2	81	10	6
Wages, Work, and Labor	1	..	1	..	2	16	6
Libel, Slander, or Defamation
Commission on Agency
Money Lent	1	1	..	..	..	..	..	..	..	1	..	..	..	..	..	..	..	..
Partnership .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Interpleader .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Intestacy .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Legacy .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Possession of Tenements .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Replevin .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Consent Jurisdiction	1	..	1	..	20	6	0	..	..	..	..	..	..	..	..	..	..	..
Causes of action not speci- fied above.....	1	1	..	1	0	1	0	..	..	..	..	..	..	..	..	..	..	..
Illegal Seizure	1	1	..	1	0	15	0	..	..	..	..	..	..	..	..	..	..	..

I hereby certify that the above is a full and complete Return of the particulars required by the aforesaid Act.
 FREDERICK W. POTTINGER,
 Registrar, District Court.

DISTRICT COURTS ACT OF 1858.—(SECTION 103.)

A RETURN of the Number of Suits commenced in the District Court of HARTLEY, during the Twelve Months preceding the first day of March, 1861, and the other particulars required by the said Act.

THE NATURE OF THE CAUSES UNDER DISTINCT HEADS, VIZ.:-	THE NUMBER OF SUITS COMMENCED IN THE COURT DURING THE TWELVE MONTHS PRECEDING.		THE RESULT OF THE SUITS, WHETHER IN FAVOR OF PLAINTIFF OR DEFENDANT.		THE COSTS OF THE SUITS.		THE NUMBER			THE DATE, PLACE, AND DURATION OF THE SITTINGS OF EACH COURT, THE DURATION TO BE SPECIFIED IN DAYS AND HOURS.			NUMBER OF CASES.		THE NUMBER		THE GROUNDS ON WHICH SUCH NEW TRIALS WERE GRANTED.				
	Com- menced.	Settled without hearing.	Tried.	Plain- tiff.	Defen- dant.	£	s	d.	Of Appeals.	Of Judg- ments or Orders affirmed.	Of Cases reversed.	Of Cases left in arrears.	Place.	Date.	Days.	Hours.		Tried. By Jury.	Without Jury.	Settled by arbi- tration.	Of New Trials granted.
Goods sold	15	6	8	6	2																
Promissory Notes	8	4	4	4	..	12	0	0													
Rent	4	15	0													
Board and Lodging													
Trespass on Land													
Trespass on Person													
Illegal Distraint													
Trover													
Breach of Contract													
Wages, Work, and Labor	1	1	..	..	..	0	8	0													
Libel, Slander, or Defamation	1	1	..	..	..	1	0	0													
Commission on Agency													
Sales of Live Stock													
Money Lent													
Partnership													
Interpleader													
Intestacy													
Legacy													
Possession of Tenements													
Replevin													
Consent Jurisdiction													
Causes of action not speci- fied above													

I hereby certify that the above is a full and complete Return of the particulars required by the aforesaid Act.
 THOMAS BROWN,
 Registrar, District Court.

A RETURN of the Number of Suits commenced in the District Court of MUDGEES, during the Twelve Months preceding the first day of March, 1861, and the other particulars required by the said Act.

THE NATURE OF THE CAUSES UNDER DISTINCT HEADS, VIZ. :-	THE NUMBER OF SUITS COMMENCED IN THIS COURT DURING THE TWELVE MONTHS PRECEDING.		THE RESULT OF THE TRIALS, WHETHER IN FAVOR OF PLAINTIFF OR DEFENDANT.		THE COSTS OF THE SUITS.		THE NUMBER			THE DATE, PLACE AND DURATION OF THE SITTINGS OF EACH COURT, THE DURATION TO BE SPECIFIED IN DAYS AND HOURS.				THE NUMBER OF CASES,		THE NUMBER		THE GROUNDS ON WHICH SUCH NEW TRIALS WERE GRANTED.	
	Com- menced.	Settled without hearing.	Plain- tiff.	Defen- dant.	£	s.	d.	Of Appeals.	Of Judge- ments or Orders affirmed.	Reversed.	Of Cases left in arrest.	Place.	Date.	Days.	Hours.	Tried.	Settled by arbitr. without trial.		Of New Trials granted.
Goods sold	49																		
Promissory Notes	16																		
Rent																			
Board and Lodging	5																		
Trespass on Land	2																		
Illegal Distraint	8																		
Trover	13																		
Breach of Contract	10																		
Wages, Work, and Labor	9																		
Libel, Slander, or Defamation	3																		
Commission on Agency	6																		
Sales of Live Stock	1																		
Money Lent	1																		
Partnership	1																		
Interpleader																			
Intestacy																			
Legacy																			
Possession of Tenements																			
Replevin																			
Consent Jurisdiction																			
Causes of Action not specified above	2																		
Livery	3																		
Action of Tort																			
	122																		

I heroby certify that the above is a full and complete Return of the particulars required by the aforesaid Act.
 GEO. WARBURTON,
 Registrar, District Court.

DISTRICT COURTS ACT OF 1858.—(SECTION 103.)

A RETURN of the Number of Suits commenced in the District Court of ORANGE, during the Twelve Months preceding the first day of March, 1861, and the other particulars required by the said Act.

THE NATURE OF THE CAUSES UNDER DISTINCT HEADS, VIZ. :-	THE NUMBER OF SUITS COMMENCED IN THIS COURT DURING THE TWELVE MONTHS PRECEDING.		THE RESULT OF THE TRIALS, WHETHER IN FAVOR OF PLAINTIFF OR DEFENDANT.		THE COSTS OF THE SUITS.		THE NUMBER			THE DATE, PLACE, AND DURATION OF THE SITTINGS OF EACH COURT, THE DURATION TO BE SPECIFIED IN DAYS AND HOURS.			NUMBER OF CASES.		THE NUMBER		THE GROUNDS ON WHICH SUCH NEW TRIALS WERE GRANTED.				
	Com- menced.	Settled without hearing.	Tri- ed.	Plain- tiff.	Defen- dant.	£	s.	d.	Of Appeals.	Of Judg- ments or Orders affirmed.	Rever- sed.	Of Cases left in arrears.	Place.	Date.	Days.	Hours.		By Jul- y.	Settled by arbi- tration Jul- y.	Of Motions for New Trials.	Of New Trials granted.
Goods sold	24	15	9	9	..	30	4	3	..	..	..	..	Orange	1860.	1	5 1/2	..	9	..	..	..
Promissory Notes	12	11	9	2	..	13	10	9	..	..	..	..	Orange	23 April ..	..	4	..	2	..	..	..
Rent .....	..	..	..	..	..	..	..	..	..	..	..	..	Orange	23 July ..	1	..	..	..	..	..	..
Board and Lodging	1	..	1	1	..	0	11	0	..	..	..	..	Orange	22 Oct. ..	..	5	..	1	..	..	..
Trespass on Land	1	1	..	..	..	0	8	0	..	..	..	..	Orange	1861.	1	..	..	..	..	..	..
Trespass on Person .....	..	..	..	..	..	..	..	..	..	..	..	..	Orange	21 Jan. ..	..	..	..	..	..	..	..
Illegal Distraint .....	..	..	..	..	..	..	..	..	..	..	..	..	Orange	..	..	..	..	..	..	..	..
Trover .....	..	..	..	..	..	..	..	..	..	..	..	..	Orange	..	..	..	..	..	..	..	..
Breach of Contract	2	1	1	1	..	3	5	6	..	..	..	..	Orange	..	..	..	..	..	..	..	..
Wages, Work, and Labor	1	..	1	1	..	6	14	0	..	..	..	..	Orange	..	..	..	..	..	..	..	..
Libel, Slander, or Defamation .....	..	..	..	..	..	..	..	..	..	..	..	..	Orange	..	..	..	..	..	..	..	..
Commission on Agency	4	3	1	1	..	8	8	0	..	..	..	..	Orange	..	..	..	..	..	..	..	..
Sales of Live Stock	3	2	1	1	..	9	4	6	..	..	..	..	Orange	..	..	..	..	..	..	..	..
Money Lent .....	..	..	..	..	..	..	..	..	..	..	..	..	Orange	..	..	..	..	..	..	..	..
Partnership .....	..	..	..	..	..	..	..	..	..	..	..	..	Orange	..	..	..	..	..	..	..	..
Interpleader .....	..	..	..	..	..	..	..	..	..	..	..	..	Orange	..	..	..	..	..	..	..	..
Intestacy .....	..	..	..	..	..	..	..	..	..	..	..	..	Orange	..	..	..	..	..	..	..	..
Legacy .....	..	..	..	..	..	..	..	..	..	..	..	..	Orange	..	..	..	..	..	..	..	..
Possession of Tenements .....	..	..	..	..	..	..	..	..	..	..	..	..	Orange	..	..	..	..	..	..	..	..
Replevin .....	..	..	..	..	..	..	..	..	..	..	..	..	Orange	..	..	..	..	..	..	..	..
Consent Jurisdiction .....	..	..	..	..	..	..	..	..	..	..	..	..	Orange	..	..	..	..	..	..	..	..
Causes of action not specified above	5	3	2	2	..	3	0	9	..	..	..	..	Orange	..	..	..	..	..	..	..	..
TOTALS	53	51	33	18	18	70	6	9	..	..	..	..	Orange	..	..	..	..	..	..	..	..

* Cases postponed.

I hereby certify that the above is a full and complete Return of the particulars required by the aforesaid Act.
 W. T. EVANS,
 Registrar, District Court.

A RETURN of the Number of Suits commenced in the District Court of WELLINGTON, during the Twelve Months preceding the first day of March, 1861, and the other particulars required by the said Act.

THE NATURE OF THE CAUSES UNDER DISTRICT HEADS, VIZ:—	THE NUMBER OF SUITS COMMENCED IN THIS COURT DURING THE TWELVE MONTHS PRECEDING.		THE RESULT OF THE TRIALS, WHETHER IN FAVOR OF PLAINTIFF OR DEFENDANT.		THE COSTS OF THE SUITS.		THE NUMBER		THE DATE, PLACE, AND DURATION OF THE SITTINGS OF SAID COURT, THE DURATION TO BE SPECIFIED IN DAYS AND HOURS.			NUMBER OF CASES.		THE NUMBER OF NEW TRIALS GRANTED.	THE GROUNDS ON WHICH SUCH NEW TRIALS WERE GRANTED.				
	Com- menced.	Settled without hearing.	Plain- tiff.	Defen- dant.	£	s.	d.	Of Appeals.	Of Judge- ments or Orders affirmed.	Reversed.	Of Cases left in Arrest.	Place.	Date.			Days.	Hours.	Tried.	Settled by writ for New Trials.
Goods sold	13	8	4	1	6	4	1	1	5	..	..	..	..	..	..	..	..	..
Promissory Notes	9	9	9	..	4	16	3	..	9	..	..	..	..	..	..	..	..	..
Rent	2	2	2	..	0	15	0	..	2	..	..	..	..	..	..	..	..	..
Board and Lodging .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Trespass on Land .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Trespass on Person .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Illegal Distraint	1	1	1	..	0	12	3	..	1	..	..	..	..	..	..	..	..	..
Trover	1	1	1	..	3	11	6	..	1	..	..	..	..	..	..	..	..	..
Breach of Contract	1	1	1	..	2	2	10½	..	2	..	..	..	..	..	..	..	..	..
Wages, Work, and Labor	3	1	2	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Label, Slander, or Defamation .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Commission on Agency	1	1	1	..	1	1	6	..	1	..	..	..	..	..	..	..	..	..
Sales of Live Stock	1	1	1	..	1	1	6	..	1	..	..	..	..	..	..	..	..	..
Money Lent	1	1	1	..	0	8	6	..	1	..	..	..	..	..	..	..	..	..
Partnership .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Interpleader .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Intestacy .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Legacy .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Possession of Tenements .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Reply in .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Consent Jurisdiction .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Causes of Action not specified above .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Money illegally received and retained	1	1	1	..	0	5	6	..	..	..	..	..	..	..	..	..	..	..

I hereby certify that the above is a full and complete Return of the particulars required by the aforesaid Act.
 A. A. DAVIS,
 Registrar, District Court.

DISTRICT COURTS ACT OF 1858.—(SECTION 103.)

A RETURN of the Number of Suits commenced in the District Court of GRAFTON, during the Twelve Months preceding the first day of March, 1861, and the other particulars required by the said Act.

THE NATURE OF THE CAUSES UNDER DISTRICT HEADS, VIZ.:-	THE NUMBER OF SUITS COMMENCED IN THIS COURT DURING THE TWELVE MONTHS PRECEDING.		THE RESULT OF THE TRIALS, WHETHER IN FAVOR OF PLAINTIFF OR DEFENDANT.		THE COSTS OF THE SUITS.	THE NUMBER			THE DATE, PLACE, AND DURATION OF THE SITTINGS OF EACH COURT, THE DURATION TO BE SPECIFIED IN DAYS AND HOURS.			THE NUMBER OF NEW TRIALS GRANTED.	THE GROUNDS ON WHICH SUCH NEW TRIALS WERE GRANTED.			
	Com- menced.	Settled without hearing.	Tried.	Plaintiff.		Defendant.	Of Appeals.	Of Judgments or Orders affirmed.	Reversed.	Of Cases left in arrears.	Place.			Date.	NUMBER OF CASES.	
															By Jury.	Without Jury.	Settled by arbitration.	Of New Trials granted.
Goods sold	55	19	20	28	1	..	..	..	7	Court House, Grafton.	1860.	29	..	..
Promissory Notes	15	2	9	9	..	..	..	4	..	..	..	9	..	..
Rent	4	..	3	2	..	..	..	1	..	..	..	3	..	..
Board and Lodging	4	1	1	1	..	..	..	2	..	..	..	1	..	..
Trespass on Land	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Trespass on Person	1	..	1	1	..	..	..	..	..	..	..	1	..	..
Illegal Distraint	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Trover	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Breach of Contract	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Wages, Work, and Labor	6	1	2	2	..	..	..	3	..	..	..	2	..	..
Libel, Slander, or Detamation	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Commission on Agency	2	..	..	..	..	..	..	..	..	..	..	..	..	..
Sales of Live Stock	5	1	3	2	1	..	..	..	..	School of Arts, Grafton.	16 Oct.	3	..	..
Money Lent	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Partnership	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Interpleader	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Intestacy	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Legacy	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Possession of Tenements	1	..	..	..	..	..	..	..	..	..	..	..	..	..
Replevin	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Consent Jurisdiction	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Causes of action not specified above	1	..	..	..	..	..	..	..	1	..	..	..	..	..
Injuries sustained by an exposed cutting	1	..	1	1	..	..	..	..	..	..	..	1	..	..
Goodwill of a Public House	1	..	1	..	..	..	..	..	..	..	..	..	..	..
Overcharge in levy	1	..	1	..	..	..	..	..	..	..	..	..	..	..

I hereby certify that the above is a full and complete Return of the particulars required by the aforesaid Act.
 JAMES PAGE,
 Registrar, District Court.

DISTRICT COURTS ACT OF 1858.—(SECTION 103.)

A RETURN of the Number of Suits commenced in the District Court of EAST MIDDLESEX, during the Twelve Months preceding the first day of March, 1861, and the other particulars required by the said Act.

THE NATURE OF THE CAUSES UNDER DISTINCT HEADS, VIZ:—	THE NUMBER OF SUITS COMMENCED IN THIS COURT DURING THE TWELVE MONTHS PRECEDING.			THE RESULT OF THE TRIALS, WHETHER IN FAVOR OF PLAINTIFF OR DEFENDANT.		THE COSTS OF THE SUITS.	THE NUMBER OF APPEALS.	OF JUDGES OR ORDERS AFFIRMED.	OF CHAOS REVERSED, LEFT IN APPREAR.	THE DATE, PLACE, AND DURATION OF THE SITTINGS OF EACH COURT, TO BE SPECIFIED IN DAYS AND HOURS.		THE NUMBER OF CASES.		THE NUMBER OF NEW TRIALS GRANTED.
	Com. without hearing	Tried.	Plaintiff.	Defendant.	By Jury.					Without Jury.	By Jury.	Without Jury.	Days.		Hours.	Settled by arbitration.	Of Motions for New Trials granted.
Goods sold	122	60	47	12	574	6	1	..	..	11 May ..	4	25	..	
Promissory Notes										10 Aug. ..	3	20		
Rent										9 Nov. ...	4	21		
Board and Lodging										11 Feb. ...	3	18		
Trespass on Land														
Trespass on Person														
Illegal Distrain														
Trover														
Breach of Contract														
Wages, Work, and Labor														
Libel, Slander, or Defamation														
Commission on Agency														
Sales of Live Stock														
Money Lent														
Partnership														
Interspreader														
Intestacy														
Legacy														
Possession of Tenements														
Replevin														
Consent Jurisdiction														
Causes of Action not specified above														

I hereby certify that the above is a full and complete Return of the particulars required by the aforesaid Act.
 AUG. CARTER,
 Registrar, District Court.

A RETURN of the Number of Suits commenced in the District Court of West Maitland, during the Twelve Months preceding the first day of March, 1861, and the other particulars required by the said Act.

THE NATURE OF THE CAUSES UNDER DISTINCT HEADS, VIZ :—	THE NUMBER OF SUITS COMMENCED IN THIS COURT DURING THE TWELVE MONTHS PRECEDING.		THE RESULT OF THE TRIALS, WHETHER IN FAVOR OF PLAINTIFF OR DEFENDANT.		THE COSTS OF THE SUITS.		THE NUMBER			THE DATE, PLACE, AND DURATION OF THE SITTINGS OF EACH COURT, THE DURATION TO BE SPECIFIED IN DAYS AND HOURS.				NUMBER OF CASES.		THE NUMBER		THE GROUNDS ON WHICH SUCH NEW TRIALS WERE GRANTED.				
	Commenced.	Settled without hearing.	Tried.	Plain-tiff.	Defen-dant.	£	s.	d.	Of Appeals allowed.	Of Judg-ments or Orders affirmed.	Retraded.	Of Cases left in Arrear.	Place.	Date.	Days.	Hours.	Tried. By Jury.		Without Jury.	Settled by arbitration.	Of Motions for New Trials granted.	Of New Trials granted.
Goods sold	91																					
Promissory Notes	60																					
Rent	5																					
Board and Lodging	3																					
Trespass on Land	1																					
Trespass on Person	6																					
Illegal Distraint	1																					
Trover	1																					
Breach of Contract	7																					
Wages, Work, and Labor	22																					
Libel, Slander, or Defamation	1																					
Commission on Agency	1																					
Sales of Live Stock	1																					
Money Lent	3																					
Partnership																						
Interpleader	1																					
Intestacy																						
Legacy																						
Possession of Tenements																						
Replevin																						
Consent Jurisdiction	1																					
Causes of Action not specified above	6																					
		209	66	118	110	8	663	11	3	1	.....	..	West Maitland...	{ 21 May.. 6 38 20 Aug.. 6 36 19 Nov.. 2 11 18 Feb.. 5 30 }			118	..	..	6	1	Production of further Evidence on part of Defendant.

I hereby certify that the above is a full and complete Return of the particulars required by the aforesaid Act.
 AUG. CARTER,
 Registrar, District Court.

DISTRICT COURTS ACT OF 1858.—(SECTION 103.)

A RETURN of the Number of Suits commenced in the District Court of PATERSON, during the Twelve Months preceding the first day of March, 1861, and the other particulars required by the said Act.

THE NATURE OF THE CAUSES UNDER DISTINCT HEADS, VIZ. :—	THE NUMBER OF SUITS COMMENCED IN THIS COURT DURING THE TWELVE MONTHS PRECEDING.		THE RESULT OF THE TRIALS, WHETHER IN FAVOR OF PLAINTIFF OR DEFENDANT.		THE COSTS OF THE SUITS.		THE NUMBER			THE DATE, PLACE, AND DURATION OF THE SITTINGS OF EACH COURT, THE DURATION TO BE SPECIFIED IN DAYS AND HOURS.			NUMBERS OF CASES.		THE NUMBER OF NEW TRIALS WHICH SUCH NEW TRIALS WERE GRANTED.			
	Com- menced.	Settled without hearing.	Plain- tiff.	Defen- dant.	£	s.	d.	Of Appeals.	Of Judge- ments or Orders affirmed.	Of Cases Reversed, left in abeyance, or set aside.	Place.	Date.	Days.	Hours.		Tried by Jury.	Settled by arbitration, or otherwise.	Of Motions for New Trials, granted.
Goods sold	16	2	13	1	13			1	1						13			
Promissory Notes	10	3	6	5	6			1	1						6			
Rent	2	..	2	2	2			..	..						2		
Board and Lodging	2	..	2	2	2			..	..						2		
Trespass on Land .....	..	..	..	..	..			..	..						..
Trespass on Person .....	..	..	..	..	..			..	..						..
Illegal Distraint .....	..	..	..	..	..			..	..						..
Trover .....	..	..	..	..	..			..	..						..
Breach of Contract .....	..	..	..	..	..			..	..						..
Wages, Work, and Labor .....	..	..	..	..	..			..	..						..
Libel, Slander, or Defamation .....	..	..	..	..	..			..	..						..
Commission on Agency	1	1	..	..	..			..	..						..
Sales of Live Stock	1	1	..	..	..	20	18	9	..						..
Money Lent	1	1	..	..	..			..	..						..
Partnership	1	..	1	..	..			..	..						..
Interpleader	1	..	1	1	..			..	..						..
Infestacy .....	..	..	..	..	..			..	..						..
Legacy .....	..	..	..	..	..			..	..						..
Possession of Tenements .....	..	..	..	..	..			..	..						..
Replevin .....	..	..	..	..	..			..	..						..
Consent Jurisdiction	1	1	..	..	..			..	..						1		
Causes of action not speci- fied above—	1	..	1	..	..			..	..						..
Attorneys Costs	1	..	..	..	..			..	..						..
Medical Advice	1	..	..	..	..			..	..						..
TOTALS	35	8	25	20	5			..	25	2					25			

I hereby certify that the above is a full and complete Return of the particulars required by the aforesaid Act.
 R. STUDDERT,
 Registrar, District Court.

DISTRICT COURTS ACT OF 1858.—(SECTION 103.)

A RETURN of the Number of Suits commenced in the District Court of Port Macquarie, during the Twelve Months preceding the first day of March, 1861, and the other particulars required by the said Act.

THE NATURE OF THE CAUSES UNDER DISTINCT HEADS, VIZ :—	THE NUMBER OF SUITS COMMENCED IN THIS COURT DURING THE TWELVE MONTHS PRECEDING.		THE RESULT OF THE TRIALS, WHETHER IN FAVOR OF PLAINTIFF OR DEFENDANT.		THE COSTS OF THE SUITS.		THE NUMBER			THE DATE, PLACE, AND DURATION OF THE SITTINGS OF EACH COURT, TO BE DESCRIBED IN DAYS AND HOURS.			THE NUMBER OF NEW TRIALS		THE GROUNDS ON WHICH SUCH NEW TRIALS WERE GRANTED.			
	Com- menced.	Settled without hearing.	Trials.	Plain- tiff.	Defen- dant.	£	s.	d.	Of Appeals	Of Judg- ments or Orders affirmed.	Reversed.	Of Cases left in Arrear.	Place.	Date.		Duration. Days.	NUMBERS OF CASES.	
																	Tried.	Settled by arbitration. Without Jury.	Of New Trials granted.
Goods sold	20	5	14	11	3	33	14	2	..	..	..	1	..	..	1	13	1	..
Promissory Notes	12	3	12	9	3	10	12	5	..	..	..	..	..	..	..	..	..	..
Rent	2	..	2	1	1	0	13	6	..	..	..	..	..	..	..	..	..	..
Board and Lodging	1	1	..	..	..	0	5	6	..	..	..	..	..	..	..	..	..	..
Trespass on Land .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Trespass on Person .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Illegal Distraint .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Trover .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Breach of Contract	1	1	..	..	..	2	12	11	..	..	..	..	..	..	..	..	..	..
Wages, Work, and Labor	4	2	2	..	..	7	17	3	..	..	..	..	..	..	..	..	..	..
Libel, Slander, or Defamation	1	1	..	..	..	2	12	10	..	..	..	..	..	..	..	..	..	..
Commission on Agency .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Sales of Live Stock .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Money Lent .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Partnership .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Intercapital .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Intestacy .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Legacy .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Possession of Tenements .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Replevin .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Consent Jurisdiction .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Causes of Action not specified above	6	4	1	1	8	4	10	0	..	..	..	1	..	..	..	..	..	..

I hereby certify that the above is a full and complete Return of the particulars required by the aforesaid Act.
 F. BECKE,
 Registrar, District Court.

A RETURN of the Number of Suits commenced in the District Court of TAMWORTH, during the Twelve Months preceding the first day of March, 1861, and the other particulars required by the said Act.

DISTRICT COURTS ACT OF 1858.—(SECTION 103.)

THE NATURE OF THE CASES UNDER DISTINCT HEADS, VIZ.:-	THE NUMBER OF SUITS COMMENCED IN THIS COURT DURING THE TWELVE MONTHS PRECEDING.		THE RESULT OF THE TRIALS, WHETHER IN FAVOR OF PLAINTIFF OR DEFENDANT.		THE COSTS OF THE SUITS.		THE NUMBER OF APPEALS.			THE DATE, PLACE, AND DURATION OF THE SITTINGS OF EACH COURT, TO BE SPECIFIED IN DAYS AND HOURS.			THE NUMBER OF NEW TRIALS GRANTED.		THE GROUNDS ON WHICH SUCH NEW TRIALS WERE GRANTED.	
	Com- menced.	Settled without hearing.	Plain- tiff.	Defen- dant.	£	s.	d.	Of Judg- ments or Orders affirmed.	Of Cases Reversed.	Of Cases left in arrears.	Places.	Date.	Days.	Hours.		Tried by Jury.	Settled by arbitration.
Goods sold	18	11	7	7	..	..	..	..	..	..
Promissory Notes	2	..	2	2	..	..	..	..	..	..
Rent	3	1	1	1	1	..	..	..	..	..	
Board and Lodging	2	..	2	2	..	..	..	..	..	..
Trespass on Land .....	..	2	..	..	..	..	..	..	..	..
Trespass on Person	3	..	1	..	..	..	..	..	..	..
Illegal Distraint .....	..	..	2	..	..	..	..	..	..	..
Trover	2	..	..	..	..	..	..	..	..	..
Breach of Contract	1	1	..	..	..	..	..	..	..	..
Wages, Work, and Labor	8	2	5	5	..	..	..	..	..	..
Libel, Slander, or Defamation .....	..	..	..	..	..	..	..	..	..	..
Commission on Agency	1	1	..	..	..	..	..	..	..	..
Sales of Live Stock	1	1	..	..	..	..	..	..	..	..
Money Lent .....	..	..	..	..	..	..	..	..	..	..
Partnership .....	..	..	..	..	..	..	..	..	..	..
Interpleader .....	..	..	..	..	..	..	..	..	..	..
Intestacy .....	..	..	..	..	..	..	..	..	..	..
Legacy .....	..	..	..	..	..	..	..	..	..	..
Possession of Tenements .....	..	..	..	..	..	..	..	..	..	..
Replevin .....	..	..	..	..	..	..	..	..	..	..
Consent Jurisdiction .....	..	..	..	..	..	..	..	..	..	..
Causes of Action not specified above .....	..	..	..	..	..	..	..	..	..	..
					339	3	2				Tamworth.	1860. 18 June 17 Dec.	2	19		

I hereby certify that the above is a full and complete Return of the particulars required by the aforesaid Act.
JNO. McDONALD,
Registrar, District Court.

DISTRICT COURTS ACT OF 1858.—(SECTION 103.)

A RETURN of the Number of Suits commenced in the District Court of NEWCASTLE, during the Twelve Months preceding the first day of March, 1861, and the other particulars required by the said Act.

THE NATURE OF THE CAUSES UNDER DEFINITE HEADS, viz. :—	THE NUMBER OF SUITS COMMENCED IN THIS COURT DURING THE TWELVE MONTHS PRECEDING.		THE RESULT OF THE TRIALS, WHENEVER IN FAVOR OF PLAINTIFF OR DEFENDANT.		THE COSTS OF THE SUITS.		THE NUMBER			THE DATE, PLACE, AND DURATION OF THE SITTINGS OF EACH COURT, THE DURATION TO BE SPECIFIED IN DAYS AND HOURS.			NUMBER OF CASES.		THE NUMBER		THE GROUNDS ON WHICH SUCH NEW TRIALS WERE GRANTED.		
	Com- menced.	Settled without hearing.	Tri- ed.	Plain- tiff.	Defen- dant.	£.	s.	d.	Of Judg- ments or Orders set aside.	Reversed.	Of Cases left in arrears.	Place.	Date.	Days.	Hours.	Tried. By.		Settled by arbitra- tion.	Of New Trials granted.
Goods sold	15	4	11	10	1	56	3	5	..	..	..	..	..	..	..	11	..	..	..
Promissory Notes	11	1	9	9	..	62	1	3	..	..	..	..	..	..	..	9	..	..	..
Rent	8	1	1	1	..	1	8	6	..	..	..	..	..	..	..	1	..	..	..
Board and Lodging	2	1	1	1	..	7	18	0	..	..	..	..	..	..	..	..	..	..	..
Trespass on Land .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Trespass on Person .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Illegal Distraint .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Trover	1	1	1	1	..	24	18	2	..	..	..	..	..	..	..	1	..	..	..
Breach of Contract	4	4	4	2	2 non-suit.	43	5	7	..	..	..	..	..	..	..	4	..	..	..
Wages, Work, and Labor	4	3	3	2	1	23	4	8	..	..	..	..	..	..	..	3	1 sent to trial.	..	..
Libel, Slander, or Defamation	3	2	1	..	Non-suit.	1	14	0	..	..	..	New- castle ..	30 to 31 July, and 1 August	2	..	1	..	..	..
Commission on Agency .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Sales of Live Stock	2	2	2	2	..	19	5	6	..	..	..	..	..	..	..	..	..	..	..
Money Lent	2	1	1	..	..	1	8	6	..	..	..	..	..	..	..	..	..	..	..
Partnership .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Interpleader .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Intestacy .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Legacy .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Possession of Tenements .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Replevin .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Convent Jurisdiction .....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..
Causes of action not speci- fied above	25	17	16	15	1	116	8	2	..	..	..	..	..	..	..	2	2 sent to trial.	1	..

I hereby certify that the above is a full and complete Return of the particulars required by the aforesaid Act.
 HEN. BAKER,
 Registrar, District Court.

Judgment on motion for new trial given in Newcastle in my absence.

A RETURN of the Number of Suits commenced in the District Court of SINGLETON, during the Twelve Months preceding the first day of March, 1861, and the other particulars required by the said Act.

THE NATURE OF THE CAUSES UNDER DISTINCT HEADS, VIZ. —	THE NUMBER OF SUITS COMMENCED IN THIS COURT DURING THE TWELVE MONTHS PRECEDING.		THE RESULT OF THE TRIALS, WHETHER IN FAVOR OF PLAINTIFF OR DEFENDANT.		THE COSTS OF THE SUITS.		THE NUMBER			THE DATE, PLACE, AND DURATION OF THE SITTINGS OF EACH COURT, THE DURATION TO BE SPECIFIED IN DAYS AND HOURS.		NUMBER OF CASES.		THE GROUNDS ON WHICH SUCH NEW TRIALS WERE GRANTED.			
	Com- menced.	Settled without hearing.	Plain- tiff.	Defen- dant.	£	s.	d.	Of Appeals.	Of Judge- ments or orders affirmed.	Of Cases reversed, left in arrears.	Place.	Date.	Days.		Hours.	Tri- ed.	Settled by arbitration.	Of New Trials granted.
Goods sold	24	10	14	2	10	7	6	Court House, at Singleton	1860.	1	4	14
Promissory Notes	9	2	7	..	4	15	0	..	..	..				
Rent	8	1	1	1	1	4	0	..	..	..				
Board and Lodging	1	..	..	..	0	3	0	..	..	..				
Trespass on Land	1	..	..	..	1	12	6	..	..	..				
Trespass on Person	1	..	1	..	1	0	6	..	..	..				
Illegal Distrain .....	..	..	..	..	..	..	..	..	..	..
Trover .....	..	..	..	..	..	..	..	..	..	..
Breach of Contract	3	..	2	1	4	3	6	..	..	..				
Wages, Work, and Labor	3	..	2	..	3	10	3	..	..	..				
Libel, Slander, or Defamation	1	..	1	..	2	6	6	..	..	..				
Commission on Agency .....	..	..	..	..	..	..	..	..	..	..
Sales of Live Stock .....	..	..	..	..	..	..	..	..	..	..
Money Lent	2	..	2	..	0	11	0	..	..	..				
Partnership .....	..	..	..	..	..	..	..	..	..	..
Interpleader .....	..	..	..	..	..	..	..	..	..	..
Intestacy .....	..	..	..	..	..	..	..	..	..	..
Legacy .....	..	..	..	..	..	..	..	..	..	..
Possession of Tenements .....	..	..	..	..	..	..	..	..	..	..
Replevin .....	..	..	..	..	..	..	..	..	..	..
Consent Jurisdiction .....	..	..	..	..	..	..	..	..	..	..
Causes of action not speci- fied above .....	..	..	..	..	..	..	..	..	..	..
Illegally detaining Deeds and Papers	2	1	..	1	2	4	6	..	..	..				
Dishonored Cheque	1	..	..	..	1	7	6	..	..	..				

I hereby certify that the above is a full and complete Return of the particulars required by the aforesaid Act.
 WM. DUDDING,
 Registrar, District Court.

1861.

Legislative Assembly.

NEW SOUTH WALES.

PUBLIC PRISONS IN SYDNEY AND CUMBERLAND.

REPORT FROM THE SELECT COMMITTEE

ON THE

PUBLIC PRISONS IN SYDNEY AND
CUMBERLAND;

TOGETHER WITH THE

PROCEEDINGS OF THE COMMITTEE,

MINUTES OF EVIDENCE
(COMPRISING STATEMENTS OF PRISONERS),

AND

APPENDIX.

ORDERED BY THE LEGISLATIVE ASSEMBLY TO BE PRINTED,
10 *May*, 1861.

SYDNEY :

THOMAS RICHARDS, GOVERNMENT PRINTER,
PHILLIP-STREET.

1861.

CONTENTS.

	PAGE.
Extracts from the Votes and Proceedings	3
Report	5
Proceedings of the Committee	12
(Schedule of "Expenses incurred on Visits of Inspection")	27)
List of Witnesses	27
Do. Prisoners	28
Do. Visits of Inspection (Index to Notices)	30
Do. Appendix	31
Do. <i>Separate</i> Appendix	33
Do. Plans	33
Do. Errata	33
Minutes of Evidence (comprising Statements of Prisoners)	1
<i>Separate</i> Appendix, Part I. (Separate "Statements.")	235
Do. Part II.	248
Plans .. .. .	.. follow 250

1861.

EXTRACTS FROM THE VOTES AND PROCEEDINGS OF
THE LEGISLATIVE ASSEMBLY.

VOTES, No. 8. WEDNESDAY, 23 JANUARY, 1861.

13. Public Prisons in Sydney and Cumberland :—Mr. Parkes moved, pursuant to notice,—
(1.) That a Select Committee be appointed, with authority to send for persons and papers, to inquire into and report upon the state and management of the Public Prisons in the City of Sydney and County of Cumberland.
(2.) That such Committee consist of Mr. Cowper, Mr. Hart, Mr. Morris, Mr. Wilson, Mr. Windeyer, Mr. Lucas, Mr. Walsh, Mr. Sutherland, Mr. Mate, and the Mover.
Question put and passed.

VOTES, No. 10. SATURDAY, 26 JANUARY, 1861, A.M.

7. Public Prisons in Sydney and Cumberland :—Mr. Parkes moved, pursuant to notice,—
(1.) That the Select Committee appointed to inquire into the State and Management of Public Prisons be authorised to make visits of inspection to any Gaol or Penal Establishment in the City of Sydney or County of Cumberland.
(2.) That the said Committee be authorised to require the services of a short-hand writer in such visits of inspection, and to receive the statement of any prisoner or prisoners which a majority of any meeting of the Committee may deem necessary to their inquiry.
Question put and passed.

VOTES, No. 24. THURSDAY, 21 FEBRUARY, 1861, A.M.

10. Public Prisons in Sydney and Cumberland :—Mr. Parkes moved, pursuant to notice,—
That the Petition of Thomas Harrison, presented by him on the 19th February, be printed and referred to the Committee now sitting to inquire into the state of the Prisons in Sydney and Cumberland.
Question put and passed.

* * * * *

VOTES, No. 54. TUESDAY, 16 APRIL, 1861.

29. Public Prisons in Sydney and Cumberland :—Mr. Parkes moved, pursuant to notice,
That leave be granted to the Select Committee on the State and Management of Public Prisons in the City of Sydney and County of Cumberland to sit on Saturdays and Mondays.

Question put and passed.

* * * * *

30. Member of Legislative Council as Witness :—Mr. Wilson moved, That the following Message be carried to the Legislative Council :—

MR. PRESIDENT,

The Legislative Assembly having appointed a Select Committee "to inquire into and report upon the State and Management of the Public Prisons in the City of Sydney and County of Cumberland," and that Committee being desirous to examine the Honorable Edward Deas Thomson, Esquire, C.B., Member of the Legislative Council, in reference thereto, requests that the Legislative Council will give leave to its said Member to attend accordingly, on such day and days as shall be arranged between him and the said Committee.

*Legislative Assembly Chamber,
Sydney, 16 April, 1861.*

Speaker.

Question put and passed.

* * * * *

46. Member of the Legislative Council as Witness:—The Speaker reported the following Message from the Legislative Council:—

MR. SPEAKER,

In answer to the Message from the Legislative Assembly, dated the 16th instant, requesting leave for the Honorable Edward Deas Thomson, C.B., a Member of the Legislative Council, to attend and be examined before a Select Committee of the Legislative Assembly on the State and Management of Public Prisons in the City of Sydney and the County of Cumberland, the Council acquaints the Assembly that leave has been granted to its said Member to attend and be examined by the said Committee, if he think fit.

*Legislative Council Chamber,
Sydney, 16 April, 1861.*

W. W. BURTON,
President.

VOTES, No. 69. FRIDAY, 10 MAY, 1861.

10. Public Prisons in Sydney and Cumberland:—Mr. Parkes, as Chairman, brought up a Report from, and laid upon the Table the Minutes of the Proceedings of, and Evidence (with Appendix) taken before the Select Committee, for whose consideration and report the State of Public Prisons in Sydney and Cumberland was referred on 23rd January, 1861.
Ordered to be printed.

1861.

PUBLIC PRISONS IN SYDNEY AND CUMBERLAND.

REPORT.

THE SELECT COMMITTEE of the Legislative Assembly appointed on the 23rd January last, "with authority to send for persons and papers, to inquire into and report upon the state and management of the Public Prisons in the City of Sydney and County of Cumberland;" severally "authorised," on the 26th following, "to make visits of inspection to any Gaol or Penal Establishment in the City of Sydney or County of Cumberland," "to require the services of a short-hand writer in such visits of inspection, and to receive the statement of any prisoner or prisoners which a majority of any meeting of the Committee may deem necessary to their inquiry;" to whom was referred, on the 21st February, "the Petition of Thomas Harrison" (presented on the 19th); and to whom, on the 16th ultimo, leave was granted "to sit on Saturdays and Mondays," have agreed to the following Report:—

The inquiry intrusted to your Committee has demanded more time and attention for its satisfactory conclusion than they have been enabled to devote to it during the Session about to close; but it has been deemed desirable to report upon the evidence they have taken, and the results of their visits to the principal penal establishments, and to submit for the consideration of your Honorable House such reflections and recommendations as their examination of the general subject has suggested, though it may be expedient to continue their labours in the next Session of Parliament.

2. The Committee have held twenty-two meetings, and have taken the evidence of a large number of persons, including many inmates of the several prisons. They have paid three visits of inspection to the Penal Establishment of Cockatoo Island, two to Darlinghurst Gaol, one to Parramatta Gaol, and one to the proclaimed Gaol at Penrith. They have also visited, during the night-time, when it was considered such places could be best inspected, all the watch-houses in the City of Sydney.

3. Many of these meetings have extended over five or six hours, and in other respects have imposed severe labour upon the Committee. The list of witnesses examined, includes the present Colonial Secretary, the
Chief

Chief Justice, The Honorable Edward Deas Thomson, (formerly Colonial Secretary,) the Inspector General of Police, the Principal Gaolers, and other persons whose official acquaintance with the question of criminal management, as well as their superior intelligence, entitle their evidence to the most attentive consideration.

4. Several written statements have been received from prisoners undergoing sentence, which embody various complaints of the unequal working of the penal system now in force, and allege other facts of a serious nature in relation to their general treatment; and while the Committee regard these statements in some cases with distrust, and in all with a feeling of caution, they have considered them of sufficient importance to be appended to the evidence presented to your Honorable House. It appears to the Committee necessary especially to notice the revolting character of some of the evidence received; its very enormity is submitted in justification of its publication, as the ends of truth in disclosing the actual state of our prison establishments must suffer by its being suppressed or modified.

5. Their Report is accompanied by carefully prepared Plans of Cockatoo Island and the Gaols at Darlinghurst and Parramatta, which the Committee have considered necessary for the purposes of the inquiry ordered by your Honorable House.

6. On the occasion of your Committee's first visit to Cockatoo Island, on the 1st of February, there were 167 prisoners in that establishment, 63 of whom on the previous night had been confined in one dormitory. The men engaged in productive labour on the day in question were only 68 out of the whole number, and 10 of these were set down as overseers; they were employed on the works of the Fitz Roy Dock. The buildings assigned for the prisoners, especially for their confinement at night, are of a deplorable description. There are in all five dormitories, which have been built with very imperfect means of ventilation; on either side of each there are double tiers of transverse sleeping berths, with coffin-like apertures opening upon a narrow central passage. In this passage are placed night-tubs for the common use of the men during the twelve hours they are locked up. Two of the dormitories contain 88 berths each, two contain 52 each, and one contains 48; in all there are 328 berths of the character described. But as many as 500 prisoners have been upon the island at one time, though nothing like so large a number appear to have been confined there latterly. While the physical suffering from this inadequate night accommodation must aggravate the sentence of the law to many men to an extent beyond all calculation, the moral results of such a state of existence are, as might have been expected, of the very worst description. Your Committee would direct particular attention in this respect to the evidence of the Chaplains of the Island and Mr. Inspector Lane. The latter witness, who has been in charge of the police force on the island for the last thirteen months, says he has paid much attention to the condition of the prisoners at night; he has often seen them at the iron gratings gasping for fresh air from without, and he "wonders how they live." The brutalising effect upon the prisoners is admitted by all, and it is described
by

by some as terrible in depravity. Practices grossly obscene are common, and, on evidence possessing the consistency of truth, and which your Committee do not feel warranted in doubting, unnatural crimes of the deepest dye are committed. The clergymen in attendance complain that as the men are never alone for a single hour during the whole time of their sentence, they literally have no opportunity for the exercises of religion, even if they are so disposed; and similar complaints are made by the men themselves. It is almost unnecessary to add that there is no attempt at classification of prisoners in this establishment.

7. The heaviest grievance of which the men on Cockatoo Island complain is the inequality of treatment to which they are subject in carrying out their sentences. Formerly a system prevailed by which the prisoners received marks for labour and good conduct which were placed to their credit in partial remission of their sentences. On the 1st of June, 1858, new regulations were issued by the Government abolishing this system of indulgence, which was done principally in consequence of the abuses of the system previously existing, and, as stated in evidence by the Colonial Secretary, as a temporary expedient. The sentences of the Courts passed upon prisoners since then, except in cases where special circumstances in mitigation have come to light, are being carried out to the letter in point of time. Thus, there are at Cockatoo Island, prisoners working side by side, some of whom, having been tried previous to the 1st of June, 1858, are enabled to make eight and nine days a week to count off their sentences, while others who have received their sentences since that date, though they work as hard, and behave as well, can only make the six days. It could not be hoped that men, in the fallen condition of these prisoners, would regard the operation of the new regulations, especially while the old were still partially in force, in a spirit of submission; and we find that, on the 14th of August, 1860, the Church of England chaplain reported to the late Governor General, in proof of the feeling of insubordination engendered, that there had been eleven attempts at escape within the preceding few months, and three open combinations to resist the authorities. The more formidable acts of insubordination that occurred in January last are mainly attributable to the alleged grievance arising out of the two sets of regulations.

8. The prison discipline on Cockatoo Island, in the opinion of your Committee, is very imperfect, and in no way determined by any of the moral axioms of the present age which have been established by philosophical investigations of the subject. Indeed, the principles of criminal treatment laid down by Lord Brougham, Mr. Recorder Hill, M. De Metz, and similar authorities, appear to be unknown to the persons in charge of the criminal population of this Colony, and much improvement is loudly called for in all the establishments your Committee have visited. On the laxity and indiscriminating treatment that prevail at Cockatoo Island, your Committee refer to the evidence of Mr. Inspector Lane, and other witnesses.

9. The gaol at Darlinghurst possesses more adequate accommodation for the proper management of prisoners than any other establishment in the

the Colony, and, if the buildings were completed according to the original plan, with suitable workshops in addition, it would be a commodious and well-arranged prison. But your Committee regret that they are compelled to represent a state of things in that establishment, at the time of their first visit on the 8th of February, so far as it affects the personal superintendence, exceedingly unsatisfactory and censurable. The design of the prison buildings embraces seven stone-built three-storied wings, radiating from a central tower that would command the whole; but only four of these wings have been completed, and nothing has been done towards the erection of the tower. The plan prepared by the instruction of your Committee represents the prison as it now actually exists. The prison cells are roomy and well ventilated, and the greater number are intended each for three inmates. The workshops are merely temporary sheds, and do not appear to be conveniently arranged.

10. Very little has been done towards classification at Darlinghurst, and the discipline appears to have principally consisted of unlocking and locking up, setting to work in an unskilful manner, and victualing at fixed hours. It is certain that no regulation has existed for a long time past to enforce personal cleanliness among the prisoners. Captain Webster, it appears, mustered the prisoners every Sunday morning, and required them to expose their limbs and bosoms to see that they were clean; but after that officer's death, the practice was abandoned, and it is stated that latterly, if a man allowed his skin to remain unwashed for six months, he would not be interfered with, unless through the complaints of his fellow prisoners. Complaints were made of want of cleanliness in the cells, and in the bed clothing; some of the blankets, it was asserted, had not been washed for twelve months, and their dirty appearance would warrant the truth of the assertion. Your Committee observed vermin in many of the cells, in the female cells, particularly, the common house bug was in masses of hundreds, forming dark patches on the walls.

11. Your Committee are of opinion that the labour of the prisoners at Darlinghurst might be turned to more profitable account. With the exception of the stone-cutting and wood work required for the extension of the prison buildings, the work at present appears to be confined to trifling jobs, for which little remuneration is received, and the whole is conducted without much regularity or method.

12. The subordinate officers do not appear to have been selected with much judgment as to their fitness for their duties, and your Committee on examining one of the warders, who was on duty in the "exercise yard" at the time of the escape of the seventeen prisoners in February, could not help noticing his apparent unsuitableness for such a post.

13. The prison at Parramatta, in its buildings and means of regulation and safe custody, may be classed second to that of Sydney, and your Committee are of opinion that the discipline in this gaol is more rigid and uniform than in the establishments already noticed. If the complaints of some of the prisoners may be trusted, the error would appear to be undue severity,

severity, as it is stated that physical coercion is sometimes resorted to on slight and unnecessary grounds. Gross irregularities were stated to exist, but the prisoners making these statements did not appear to your Committee deserving of much credit, as, by their own acknowledgments, they were among the most refractory and turbulent. The prison exhibited marks of general cleanliness.

14. The arrangements for directing prison labour at Parramatta evince more business aptitude than at Darlinghurst, and the work performed is of greater variety and more useful character. The plan accompanying this Report will shew the state of the gaol at the present time.

15. The gaol at Penrith is a strong wooden building, of four apartments, chiefly used for the confinement of prisoners *in transitu*; and as only a few persons are confined there for a longer period than forty-eight hours, and none for more than seven days, it seems sufficient for the present. In the Court House adjacent, there are several close cells which, both for want of room and ventilation, are unfit for the confinement of prisoners. A new brick-built lock-up is in course of erection in this town, which your Committee consider is constructed on about the worst possible plan that could be devised; and it is stated in evidence by the Colonial Architect, that several others of precisely the same design have been erected in different parts of the country. The central room is intended for the lock-up keeper and his family, at the back of which is a small sleeping apartment, while on both sides of this living-room, with doors opening into it, are cells for the confinement of prisoners. The building itself is small, and not calculated to meet any want not already provided for.

16. Your Committee visited the watch-houses in the City of Sydney between the hours of four and six o'clock in the morning, that being the time when these places were most likely to be found occupied by persons in the custody of the Police. The principal receiving watch-house attached to the Central Police Court is, in the opinion of your Committee, unfit for its present purposes; the smaller cells are close and unwholesome, and the larger ones are destitute of the means of common decency. The building itself is fast falling into a state of dilapidation.

17. The other watch-houses are mostly strong buildings of recent erection. A want of cleanliness was observable, more or less, in all of them, with one exception, that of D division, near the gaol at Darlinghurst. The state in which these places were found is described in detail in the Proceedings of the Committee.

18. It is gratifying to be enabled to report, among so many causes of complaint, that, so far as could be ascertained by the careful examinations of your Committee, the food supplied in all the gaols is good and wholesome, sufficient in quantity but not in variety. The hospitals in the gaols at Darlinghurst and Parramatta and at Cockatoo Island also appear adequate to the wants of those establishments.

19. Your Committee have arrived at the conclusion, that great improvement in the whole prison system of the Colony is urgently demanded, and that any step short of its complete revision would be ineffectual.

ineffectual. Nor would it be sufficient merely to establish regulations, however carefully framed and excellent in principle they might be. The administration must be under the responsible inspection of a competent officer, whose time and attention would not be divided with other duties; and whose education, knowledge of mankind, and habits of life, would enable him to secure efficiency in subordinate appointments, as well as to exercise a just discrimination in criminal treatment. Additional gaol accommodation is indispensable, if the important ends of classification and industrial training are to be secured.

20. If time were allowed for a fuller consideration of the subject, your Committee would be disposed to offer suggestions that seem to arise out of their inquiry, for the establishment of a great central prison, with all the requisites in cellular dormitories and properly arranged workshops, to secure the reformatory treatment of the prisoners, and the economical division and profitable employment of their labour. Such a change, however, could only be effected by a very large expenditure, and ought not to be proposed without a closer examination of primary principles than is possible within the limits of this inquiry. An interesting appendix to the evidence of Mr. Edward Bell, the City Engineer, and which is founded on a calculation by Sir William Denison, suggests the establishment of a prison at Prospect, for the purpose of quarrying and preparing road metal, by convict labour. In this locality, a very short distance from the Western Railway, stone of the hardest description, such as is used for metalling the streets of Sydney, is found in almost inexhaustible quantities. It is calculated, that it could be delivered in Sydney at about half the cost of the metal obtained at Pennant Hills, even if a railway should be constructed from the latter quarry to the Parramatta River; and at the reduced price the City of Sydney would consume 50,000 tons annually. It is also supposed that large quantities of the stone would be taken by the suburban municipalities, and for other roads. While this plan would give profitable employment to the prisoners, and supply, at a cheap rate, an article of great necessity, it is not conceived that it would, in any objectionable manner, bring prison labour into competition with the free workman; and it would have an economical advantage in affording a valuable and permanent traffic to the Western Railway. Such an establishment, it is submitted, would not involve a serious expense in erection, and would be very beneficial in increasing the means of convict classification.

21. Your Committee conclude with the following recommendations, calculated, as they believe, with the least delay and the least cost, to alleviate the worst features of the existing state of things:—

- 1st. In carrying out the sentences of the Courts, good conduct should be taken into account by the Executive, so as to encourage the prisoner to accomplish his own redemption by a reformed course of life.
- 2nd. An Inspector of Prisons should be appointed at a salary that would secure the services of a man of ability and high character,

- character, and this officer should be intrusted with the entire supervision and direction of the prison system of the Colony.
- 3rd. Classes for secular instruction should be established in all the gaols, a better description of books should be provided for the prisoners, and greater facilities for religious teaching should be afforded.
 - 4th. The prisoners should be employed with a discriminating consideration of their capabilities, and with a strict regard to making their labour contribute to their support, and, at the same time, fitting them for an honest course in after life.
 - 5th. Sufficient pecuniary recompense should be allowed for their labour, to enable them, at least, to leave prison at the expiration of their sentences decently clothed.
 - 6th. The warders in the principal gaols should wear uniform and some badge of authority.
 - 7th. Either the central tower originally designed or an elevated platform should be erected in Darlinghurst Gaol, to enable the officers in charge to command a fuller view of the prisoners.
 - 8th. Better sanitary provision should be adopted, to carry off the sewage of this establishment, which now is a serious matter of complaint to residents in the neighbourhood.
 - 9th. More commodious and better arranged dormitories should be at once provided for the prisoners on Cockatoo Island.
 - 10th. Suitable buildings should be erected for the performance of Divine service by the Chaplains.

HENRY PARKES,

Chairman.

*Legislative Assembly Chamber,
Sydney, 9 May, 1861.*

PROCEEDINGS OF THE COMMITTEE.

WEDNESDAY, 30 JANUARY, 1861.

MEMBERS PRESENT:—

Mr. Cowper,		Mr. Parkes,
Mr. Hart,		Mr. Sutherland,
Mr. Mate,		Mr. Walsh,
Mr. Morris,		Mr. Wilson,
Mr. Windeyer.		

On motion of Mr. Cowper, H. Parkes, Esq., called to the Chair.

Votes No. 8, 23rd instant, Entry 13, authorising inquiry into the state and management of Public Prisons in the County of Cumberland; and Votes No. 10, 26th instant, Entry 7, specially empowering the Committee—upon the Table.

Committee deliberated upon the plan to be adopted in prosecuting the investigation, especially with a view to ascertain the existing state of the Prison management.

It was Resolved:—

That the Committee proceed to inspect certain of the Public Prisons, subsequently taking the evidence of the authorities of those establishments, and examining further witnesses upon the general question of penal discipline.

Committee further deliberated, and

Ordered, That the meetings of the Committee, for the purpose of making Visits of Inspection to the gaols, be convened by the Chairman on such days as he shall think fit.

[Adjourned.]

VISIT OF INSPECTION, COCKATOO ISLAND (FIRST).

[Report, authorising insertion, 8 March.]

FRIDAY, 1 FEBRUARY, 1861.

MEMBERS PRESENT:—

H. Parkes, Esq., Chairman.		
Mr. Cowper,		Mr. Morris,
Mr. Lucas,		Mr. Sutherland,
Mr. Mate,		Mr. Walsh,
Mr. Wilson.		

The Committee having assembled at Cockatoo Island, proceeded to inspect the Mess Room [also used as a chapel], the Dormitories, Hospital, and Cells.

The Short-hand Writer (Mr. Palmer), in attendance.

The Chairman directed Wm. Dwyer, a confine in one of the solitary cells, to be brought before the Committee.

William Dwyer examined.

Mr. Byron, *Principal Warder*, examined.

William Dwyer further examined.

A Member of the Committee (Mr. Lucas) then inquired of Mr. Ferris respecting the prisoner Dwyer.

The Committee left the cells and returned to the dormitories, where they examined the bars of Nos. 4 and 5 [which had recently been strengthened in consequence of an attempt having been made to saw them through].

The Committee then proceeded to the Exempt Ground.

Mr. Byron stated that there were then 27 men exempt.

One of the exempt men came forward and inquired whether the Committee would hear complaints from any of the men.

The Chairman replied that they would do so if the prisoners obtained permission from their officers to make them.

The Statements of John Page,

- (2.) John Watson (written),
- (3.) Joseph O'Halloran,
- (4.) Hugh Montgomery Bland,
- (5.) Michael Cantwell,
- (6.) William Johnson,
- (7.) Michael Frayne,
- (8.) William Washington,
- (9.) Charles Nixon,
- (10.) John Hawkins,
- (11.) Alexander Douglass (written),
- (12.) Charles Wagner (written),
- (13.) David Jobson,

- (14.) Michael Doran,
- (15.) Robert Banks,
- (16.) Frederick Somerville,
- (17.) Frederick William Scrimmes,
- (18.) Daniel Sullivan,
- (19.) Michael Crofton,
- (20.) John M'Spadden,
- (21.) Francis Moran,
- (22.) William Thompson,
- (23.) John Hassett,
- (24.) John Smith, and
- (25.) Louis Breton, then severally

received. (*Vide Nos. 1 to 25, Separate Appendix I.*)

Question

Question asked upon the Statement of J. Watson (No. 2).

The Committee visited the yard in the rear of the Police Barracks, and inspected a boat [which had been built by one of the prisoners (Landells), and concealed by him in the roof of the Carpenter's Shop].

Having entered the Police Barracks, the Chairman took the Chair.

Mr. Byron, *Principal Warder*, called in and further examined.

Mr. W. A. Cahill, *Principal Foreman of Works*, called in and examined.

Statements from the following prisoners then severally received, viz. :—

(26.) William Head,	(30.) Thomas Fitzgerald,
(27.) James Edward Carnegie,	(31.) Richard Hanson,
(28.) Richard Hart,	(32.) William Craig, and
(29.) James McLaren,	(33.) Michael Cantwell.

(*Vide Nos. 26 to 33, Separate Appendix I.*)

The Visit terminated.

FRIDAY, 8 FEBRUARY, 1861.

MEMBERS PRESENT :—

H. Parkes, Esq., Chairman.

Mr. Hart,	Mr. Morris,
Mr. Lucas,	Mr. Sutherland,
Mr. Mate,	Mr. Wilson,

Mr. Windeyer.

Committee met pursuant to summons.

And proceeded to Darlinghurst Gaol.

The Short-hand Writer, in attendance.

VISIT OF INSPECTION, DARLINGHURST GAOL (FIRST).

[*Report, authorising insertion, 8 March.*]

Having intimated to Mr. Beverley, the Principal Gaoler, the object of their visit,—
The Committee were conducted by that gentleman with Mr. Harrison, the Assistant Gaoler, to the Joiner's Department.

Mr. W. Macpherson, *Overseer of Carpenters*, examined.

Of prisoners working in the shop :—

James Thompson,
Thomas Hampton,
George Drew,
Edward Geogehan, and
James Frazer, severally examined.

A Member of the Committee (Mr. Hart) called attention to the fact, that when the Committee entered the Joiners' Shed, there was no one in charge of the men.

Of remaining prisoners working as above,—

Henry M'Carthy,
George Barrett, and
William Evans, severally examined.

The Committee left the Main Joiners' Workshop, and entered a smaller one, where three prisoners, viz. :—

William Morton,
John M'Mahon, and
Martin M'Mahon, severally examined.

The Committee next visited the Blacksmiths' Shop.

Mr. S. Howarth, *Overseer of Blacksmiths*, examined.

Of prisoners working in the shop,—

Francis Trindall,
James Smith,
James Cotton, and
James Daly, severally examined.

The Committee next visited a small Blacksmiths' Shop adjoining, in which three prisoners, viz. :—

John Carroll,
Edward Farlington, and
John Hall, severally examined.

The

The Committee having left the Blacksmiths' Shops, proceeded to the Cooking House.
The Cook examined.
 Matthias Nolan, the prisoners' delegate for approving the provisions, examined.
 The Committee having examined the bread, &c., proceeded to the Labour Wing, entering the ward of which, they passed to the Labour Yard.
 Of the prisoners there,—
 John Lynch, and
 John Galahan, having expressed a wish to be heard, severally examined.
 Of the other prisoners in the yard,—
 George Williams, and
 William Collins, severally examined.
 The Committee re-entered the Labor Ward.
 Thomas Harvey, prisoner, examined.
 The Committee next visited the Solitary Cells occupied by insubordinate prisoners from Cockatoo Island, and remarked upon the defective ventilation of the corridor.
 William Henry, prisoner, examined.
 The Statement of Robert Alexander, then received. (*Vide No. 34, Separate Appendix I.*)
 The Committee proceeded to the Trial Wing.
 George Swan, there confined, examined.
 The Statements of certain prisoners, severally received, viz. :—
 (35.) George Taylor,
 (36.) John O'Brien, and
 (37.) Hugh Craddock. (*Vide Nos. 35 to 37, Separate Appendix I.*)
 Question asked upon the Statement of G. Taylor (No. 35.)
 From Cell No. 7 in the same wing,—
 Alfred Young,
 Edward Chalk,
 George Tagg, and
 John Mulholland, *alias* "The Cadger," severally brought up and examined.
 The several Statements of
 Charles Oxburgh, and
 James Binney, received. (*Vide Nos. 38 and 39, Separate Appendix I.*)
 Of other prisoners in the Trial Wing,—
 James Wade,
 John English,
 Thomas Brown, *alias* Laniger, and
 Louis Sims, severally examined.
 The Statement of George Davis received. (*Vide No. 40, Separate Appendix I.*)
 Certain inquiries made in reference thereto.
 The Committee next inspected the wall in rear of the Blacksmiths' Sheds, and then proceeded to the Lumber Room.
 Having also visited the room occupied by the shoemakers and tailors, they crossed the yard to the Hospital.
 One of the patients,—
 Charles Rogers, at his own desire, examined.
 Statement from Patrick Murray, also a patient, received. (*Vide No. 41, Separate Appendix I.*)
 Questions put thereupon.
 Question No. 864, also put to Murray.
 The Committee next visited the Women's Ward.
 Mrs. M. Cullen, *Principal Female Turnkey*, examined.
 Of prisoners in the Female Ward,—
 Mary Bellamy,
 Christina Watson, and
 Sarah Neal, severally examined.
 During the examination of M. Bellamy, the attending turnkey interposed a remark.
 Committee received the Statement of Ann McIntyre. (*Vide No. 42, Separate Appendix I.*)
 Question No. 897, also put to her.
 Of remaining prisoners in this ward,—
 Sarah Johnson,
 Mary Riley,
 Mary Ann Richards, and
 Hannah Nunn, severally examined.
 After the examination of M. A. Richards, the attending turnkey interposed further remarks.
 The Committee proceeded to a Cell in which were three females, one of whom, Mary Ann Rutter afforded information (following 933, page 24).
 Mary Ann Mulhern examined.
 The Committee having left the Women's Ward, proceeded to inspect Cell No. 24.
 Question asked of the attending turnkey.
 As the Committee were leaving the gaol, Statement of Barnett Levi handed to the Chairman. (*Vide No. 43, Separate Appendix I.*)
 The Visit terminated.

THURSDAY, 14 FEBRUARY, 1861.

MEMBERS PRESENT:—

H. Parkes, Esq., in the Chair.

Mr. Hart,		Mr. Sutherland,
Mr. Lucas,		Mr. Walsh,
Mr. Mate,		Mr. Wilson,
Mr. Morris,		Mr. Windeyer.

Committee met pursuant to summons.

H. C. Beverley, Esq., *Principal Gaoler, Darlinghurst*, called in and examined.

Witness withdrew.

Messrs. Macpherson and Howarth, *Overseers*, and Mrs. Cullen, *Principal Female Turnkey, Darlinghurst Gaol*, summoned, and attending, this day—examinations severally postponed.

[Adjourned.]

VISIT OF INSPECTION, PARRAMATTA GAOL.

[Report, authorising insertion, 8 March.]

FRIDAY, 15 FEBRUARY, 1861.

MEMBERS PRESENT:—

H. Parkes, Esq., Chairman.

Mr. Hart,		Mr. Sutherland,
Mr. Lucas,		Mr. Walsh,
Mr. Mate,		Mr. Wilson,
Mr. Morris,		Mr. Windeyer.

The Committee met at 6.45 A.M. at the Railway Station, Sydney.
The Short-hand Writer, in attendance.

It was Resolved:—

That for the purposes of the inquiry among the prisoners, whenever a majority of the Committee are present, it shall be considered that a majority have determined to take evidence, unless any one of the Members present shall dissent.

The Committee proceeded to Parramatta, and thence to the Gaol, where they arrived as a gang of twenty-one men, who had been employed outside the prison, entered the gate.

Mr. T. Harrison, engaged in searching the prisoners, examined.

Mr. P. M'Cormick, examined.

The Committee visited the Stone-cutting Yard, and afterwards Wing No. 1.

The Committee inspected the several Cells.

Inquiry made of prisoner in No. 9. (preceding 1475, page 41).

John Wilkes, examined.

John Driscoll, having expressed a wish to make a statement, examined.

The Committee then proceeded with Mr. M'Cormick and other Turnkeys to Cell

No. 1.

Mr. P. M'Cormick further examined.

Cell No. 19 visited.

Thomas Chew examined.

James Collins, having stated that he wished to make a complaint, examined.

James Pearec brought forward and examined.

William Williams, having said he wished to make a statement, examined.

Statement received from Martin Kenny. (*Vide No. 44, Separate Appendix I.*)

The Committee inspected a cell in the first story.

Camille Valenti, brought in and examined.

Inquiry made of turnkey, in attendance.

James Taylor, requesting permission to make a statement, examined.

Thomas Nagle examined.

Patrick O'Heir, having requested to be heard, examined.

The Committee next visited the Cook-house.

John Passmore, *Cook*, examined.

The Committee then proceeded to the Female Yard.

Mrs. Freeman, *Principal Female Turnkey*, examined.

Prisoners, Elizabeth Parker, and

Mary Ann Perry, severally examined.

In the course of the former examination, remark interposed by Mr. Allen, the Gaoler.

The Committee next inspected the Female Cells, on the first floor.

Mrs. E. Freeman, *Principal Female Turnkey*, further examined.

The Committee then proceeded to the Solitary Cells, beneath the Women's Wing.

Caleb George, a prisoner in the cells, examined.

Edward

Edward Power examined.

John Connor, having complained of his treatment when on Cockatoo Island, examined.

The Committee next visited the Yard where the Joiners' and Blacksmiths' Shops are situated.

Mr. R. Godson, *Overseer of Carpenters*, examined.

John Kelly, a prisoner working in the Blacksmiths' Shop, examined.

Members of the Committee having stated that it had been intimated to them by various prisoners that they had complaints to make, but were afraid to do so in the presence of their turnkeys,—

It was Resolved :—

That it is necessary for the satisfactory prosecution of these inquiries, that in certain cases, the Committee receive Statements from the Prisoners in the absence of the Prison Authorities.

On the motion of Mr. Lucas, the Committee then examined the following prisoners, in succession, viz :—

Alfred Baker,
Matthew Britton,
Nicholas Burns,
Hugh Downing, and
John Rowan.

The Visit terminated.

FRIDAY, 22 FEBRUARY, 1861.

MEMBERS PRESENT :—

H. Parkes, Esq., in the Chair.

Mr. Cowper,	Mr. Morris,
Mr. Lucas,	Mr. Walsh,
Mr. Mate,	Mr. Windeyer.

Committee met pursuant to summons.

Votes, No. 24, 21st instant, Entry 10, referring the Petition of Thomas Harrison—before Committee.

Original Petition produced.

Mr. T. Harrison (*late Principal Turnkey, Darlinghurst*), *Petitioner*, called in and examined.

Witness withdrew.

Mr. F. Pegg (*formerly Turnkey, Darlinghurst*), called in and examined.

Witness withdrew.

[Adjourned.]

THURSDAY, 23 FEBRUARY, 1861.

MEMBERS PRESENT :—

H. Parkes, Esq., in the Chair.

Mr. Hart,	Mr. Sutherland,
Mr. Lucas,	Mr. Walsh,
Mr. Mate,	Mr. Wilson,
Mr. Morris,	Mr. Windeyer.

Committee met pursuant to summons.

Reports of certain Visits of Inspection (3) by the Short-hand Writer attending same (Mr. Palmer),—laid before the Committee.

On the motion of Mr. Hart, *It was Resolved* :—

That the Evidence, together with the accompanying Statements of Prisoners, and other contents of the MSS., be printed.

Committee deliberated relative to the ticket-of-leave system, as exemplified in the case of certain prisoners on Cockatoo Island.

Mr. S. Whiddon (*late Turnkey, Darlinghurst*), called in and examined.

Witness withdrew.

Mr. W. Olson called in and examined.

Witness withdrew.

Mr. W. Macpherson, *Overseer of Carpenters, Darlinghurst*, called in and further examined.

Witness withdrew.

Mr. S. Howarth, *Overseer of Blacksmiths, Darlinghurst*, called in and further examined.

Witness withdrew.

Mrs.

Mrs. M. Cullen, *Principal Female Turnkey*, called in and examined.
 Witness withdrew.
 Committee deliberated.

[Adjourned.]

VISIT OF INSPECTION, DARLINGHURST GAOL (SECOND).

[*Report, authorising insertion, 8 March.*]

FRIDAY, 1 MARCH, 1861.

MEMBERS PRESENT:—

H. Parkes, Esq., Chairman.

Mr. Hart,	Mr. Sutherland,
Mr. Lucas,	Mr. Walsh,
Mr. Mate,	Mr. Wilson,
Mr. Morris,	Mr. Windeyer.

The above Members of the Committee having assembled at Darlinghurst at 6.15 A.M., proceeded to the Gaol Gate, which having been opened by the Gatekeeper, they, in company with Mr. Inspector Read, Acting Principal Gaoler, visited the Hard Labour and Confine Wings and Yards.

The Short-hand Writer, in attendance.

While the Committee were in the Hard Labour Yard,—

The Statement of George Singleton received. (*Vide No. 45, Separate Appendix I.*)
 Prisoner questioned thereon.

The Committee inspected the Stockade, Exercise Ground, and wall in rear of the Hospital [whence the seventeen prisoners recently escaped].

They then returned to the Gaoler's house, on their way, tasting the bread which had just been brought in by the contractor.

The Committee having entered the Office, the Chairman took the Chair.

Mr. J. C. Read, *Inspector of Police and Acting Principal Gaoler*, examined.

Mr. James Callaghan, *Turnkey*, called in and examined.

Mr. A. Elliott, *Turnkey*, examined.

The Committee removed from the Office to the Stockade Yard.

John Williams, having desired to make a statement, examined.

The Acting Gaoler informed the Committee that the Cockatoo Island prisoners had chosen two of their number, James Arnott and Henry Clarke, as delegates to represent their alleged grievances.

It was resolved to hear their statements.

James Arnott and Henry Clarke successively brought from their cells and examined.

In examining the latter, the Chairman retired a short distance, and having spoken to the Acting Gaoler, returned and resumed.

Examination concluded.

Edward Power, having wished to speak, brought from his cell and further examined.

The Committee next proceeded to the Hospital, and examined the windows [whence, as stated by Mr. Whiddon and Mr. Olson, communication had been carried on with the prisoners in the Exercise Yard].

It having been stated to the Committee that some of the prisoners desired to give information of a very serious character,—

They proceeded to the Lower Hospital.

Frederick McGregor, *alias* Lawry, called in and examined.

Also, George Jones,

James Scope, *alias* Williams, and

William Thomas McGregor, severally examined.

The Visit terminated.

FRIDAY, 8 MARCH, 1861.

MEMBERS PRESENT:—

H. Parkes, Esq., in the Chair.

Mr. Hart,	Mr. Morris,
Mr. Mate,	Mr. Walsh,
Mr. Wilson.	

Committee met pursuant to summons.

And deliberated.

The Chairman reported that upon the 1st instant he had addressed a letter to the Honorable the Secretary for Lands, applying on behalf of Committee for the temporary assistance of a competent Draftsman to prepare plans of Cockatoo Island, Darlinghurst, and Parramatta Gaols.

Letter of the 6th instant, in reply, stating that the expense to be incurred did not appear legitimately chargeable to the Lands Department, no sum being available for the purpose, but that there might be in the "Parliamentary Contingencies, under the Honorable the Speaker"; and concluding with an offer of such Plans as the Government possess—read.

Having

Having deliberated upon communicating with the Honorable the Speaker,
Draft of letter by the Chairman read, viz. :—

“ Legislative Assembly,

“ No. 3 Committee Room,

“ 8 March, 1861.

“ Sir,

“ As Chairman of the Select Committee on Public Prisons, I am instructed
“ to apply to you for the assistance of a competent Draftsman to prepare plans of the prisons
“ they have visited, which are considered to be necessary for the purposes of their inquiry.

“ On behalf of the Committee, I have already applied to the Department of Lands
“ for this assistance, and have been referred to you, on the ground that the necessary expense
“ would more properly come under the head of ‘ Parliamentary Contingencies.’

“ To the Honorable

“ I have, &c.,

“ The Speaker

“ Of the Legislative Assembly.

“ Chairman.”

Same agreed to.

Committee then deliberated in reference to a formal authentication of the general records of the several Visits of Inspection, prepared by the Short-hand Writer, and advertg to the Resolution agreed to on the 28th ultimo, as regards the printing, considered the order in which the contents should be arranged, with a view to the ultimate form of Report to the House.

On motion of Mr. Morris, *It was Resolved* :—

That every Visit of Inspection made by this Committee to any Gaol or Penal Establishment, be reported *pro forma*, by the Chairman, at the next meeting thereafter.

On motion of Mr. Wilson, *It was Resolved* :—

That from the Record furnished by the Short-hand Writer, comprising the Proceedings of, and Evidence taken before the Committee, Statements received from prisoners, and general observations of the state of the establishments, the Clerk be authorised to extract entire the Proceedings of the Committee, and the (separate) Statements received from prisoners; the former for insertion under the proper head, and the latter to form a Separate Appendix to the Report.

The several Visits of Inspection made by the Committee, reported by the Chairman, viz. :—

To Cockatoo Island, on the 1st February;

Darlinghurst Gaol, on the 8th;

Parramatta Gaol, on the 15th; and

Darlinghurst Gaol (second time), on the 1st instant,—

The Statement of Richard Ainsworth, a prisoner in Darlinghurst, under date 5th instant (forwarded through the authorities)—before the Committee.

The Chairman stated, that having had the opportunity of speaking with Capt. McLerie, the Inspector General of Police, it would appear, that the prisoner's account should be received with certain reservations; as his “Police History,” which would be forwarded by Capt. McLerie, represented his career less favourably.

Statement read, and ordered to be appended, on motion of Mr. Mate. (*Vide No. 46, Separate Appendix I.*)

The Chairman produced a letter, forwarded by the Acting Principal Gaoler, Darlinghurst, addressed by prisoner wardsman Mackie, to that officer, on the 1st instant, relative to the accessibility of further information from certain prisoners on the subject of unnatural offences at Cockatoo Island.

Same read, and ordered to be appended. (*Vide Separate Appendix II. A.*)

Mr. John Callaghan, *Turnkey, Darlinghurst*, called in and examined.

Witness withdrew.

Mr. W. Walsh, *Dispenser, Darlinghurst*, called in and examined.

Witness withdrew.

Mr. J. O'N. Brennan, *Sheriff*, a witness summoned this day, not attending,—explained per note, as in consequence of indisposition.

[Adjourned.]

VISIT OF INSPECTION, SYDNEY WATCH-HOUSES.

[*Report, authorising insertion, 19 March.*]

TUESDAY, 12 MARCH, 1861.

MEMBERS PRESENT :—

H. Parkes, Esq., in the Chair.

Mr. Hart,

Mr. Lucas,

Mr. Mate,

Mr. Morris,

Mr. Sutherland,

Mr. Walsh,

Mr. Wilson.

The above Members of the Committee met at 3:45 A.M., at the Royal Hotel (Sydney).

The Short-hand Writer, in attendance.

It was Resolved :—

That the Committee proceed to visit the several Watch-houses in the City.

The

The Committee then visited the Water Police Watch-house, Circular Quay, the gate of which was opened by Lewis Griffiths.

Mr. L. Griffiths, *Constable*, examined.

The Committee entered the cell in which the only prisoner was confined.

Mr. S. Haggerty, *Constable*, having relieved Griffiths, examined.

The Committee then entered a second cell.

Mr. E. Cowell, *Inspector*, having joined the Committee, examined.

Mr. P. F. Little, *Constable*, coming forward, examined.

Mr. E. Cowell, *Inspector*, further examined.

The Committee next visited the Solitary Cell.

Examination continued.

Mr. L. Griffiths, *Constable*, further examined.

Mr. E. Cowell, *Inspector*, further examined.

The Committee left the Watch-house, and proceeded to the Police Station in Cumberland-street.

Mr. Lec, *Sergeant*, having admitted the Committee, examined.

The Committee visited a cell.

Mr. P. Sweeny, *Constable*, examined.

Examination being continued,

The Committee entered other two cells—

And examination concluded.

Having then proceeded to the Female Watch-house, Erskine-street—

Mr. Levy, *Constable*, examined.

Mrs. M. Levy, having been summoned, conducted the Committee to the cell in which the only prisoners (2) were confined.

Examination of Constable Levy concluded.

Mrs. M. Levy, examined.

The Committee next visited the Central Watch-house.

Mr. M. McClure, *Constable*, examined.

A loud rapping being heard on the door of one of the cells,—

The Chairman directed the cell, whence the sound proceeded, to be opened, and entered it with the Committee.

Ann Flynn, the prisoner therein, examined.

The Committee inspected the cell for male prisoners and also a smaller cell.

Mr. M. McClure, *Constable*, further examined.

The Committee next visited the Watch-house, Darlinghurst.

Mr. W. Cook, *Constable*, examined.

The Committee inspected two cells.

Examination continued.

Mr. N. Ryan, *Sergeant*, examined.

Mr. W. Cook, *Constable*, further examined.

The Committee then proceeded to the Watch-house, Parramatta-street, and visited the cells ordinarily occupied by prisoners.

A Member (Mr. Lucas) called attention to the offensive smell arising whilst the first cell was being washed.

Mr. Allan McDiarmid, *Sergeant*, in charge, examined.

The Visit terminated.

TUESDAY, 19 MARCH, 1861.

MEMBERS PRESENT :—

H. Parkes, Esq., in the Chair.

Mr. Hart,

Mr. Mate,

Mr. Morris,

Mr. Sutherland.

Mr. Wilson.

Committee met pursuant to summons.

J. O'Neill Brenan, Esq. (Sheriff), attended, pursuant to a further summons since the 8th instant.

Mr. Brenan, by leave, informed the Chairman, that, prior to being examined, he wished to draw attention to the circumstance of his official suspension; and, although quite prepared to submit himself to the Committee, to request a consideration of the desirableness of postponing the examination until after the Government had decided upon his case.

Mr. Brenan withdrew.

Consideration deferred.

In accordance with the Resolution arrived at upon the 8th instant,—

The Chairman reported the following Visits of Inspection to the several Watch-houses in Sydney, on the morning of Tuesday, the 12th instant, viz. :—

Watch-house, Water Police Court,

Do. Cumberland-street,

Do. (Women's) Erskine-street,

Do. Central Police Court,

Do. Darlinghurst,

Do. George and Pitt Streets (South).

The Chairman having caused a communication to be addressed to the Honorable the Secretary for Lands, dated the 12th, requesting that the Committee might be furnished with the Plans tendered in the last paragraph of letter before Committee on the 8th instant,—now produced a reply from the Lands Department promising attention, of date the 13th.

Same read.

The "Police History" of prisoner Ainsworth, forwarded by the Inspector General of Police, whose Statement had been received on the 8th instant,—before the Committee.

Ainsworth's "History" read.

Ordered to be appended, on motion of Mr. Wilson. (*Vide Separate Appendix II B.*)

Letter received through Mr. Lucas, a Member of the Committee, being the statement of Charles Rogers, a prisoner in Darlinghurst, under date 13th instant,—read.

Ordered to be appended, on motion of Mr. Morris. (*Vide No. 47, Separate Appendix I*)

Statement of Henry Carroll, a prisoner in Darlinghurst, under date 22nd February last,—read.

Ordered to be appended, on motion of Mr. Mate. (*Vide No. 48, Separate Appendix I*)

Statement signed by John Holland and Henry Carroll (prisoners)—read.

Ordered to be appended, on motion of Mr. Mate. (*Vide No. 49, Separate Appendix I*)

Statement of George Walter Rowe, a prisoner in Darlinghurst, under date 21st February last,—read.

Ordered to be appended, on motion of Mr. Sutherland. (*Vide No. 50, Separate Appendix I*)

Statement of Laurence Powell, a prisoner in Darlinghurst, under date 21st February last,—read.

Ordered to be appended, on motion of Mr. Wilson. (*Vide No. 51, Separate Appendix I*)

The Chairman produced a letter addressed to him by Mr. C. Rispen, with reference to his removal from the office of Turnkey, at Darlinghurst, under date 9th instant.

Letter read.

Ordered, on motion of Mr. Wilson,—

That Mr. Christopher Rispen be examined at a future sitting of the Committee.

The Chairman brought under notice, a letter from Mrs. M. Cullen, accompanying the return of Evidence given on the 23th ultimo, requesting the omission of certain answers relating to private circumstances, and the allowance of certain alterations in the Evidence as written.

Committee deliberated.

Ordered, That the Evidence stand as taken by the Short-hand Writer, but that the corrections desired by witness, be shewn by notes, extracted from the letter.

Memorandum (furnished as an Appendix to his Evidence) shewing the successive employments as Turnkey, since 1851, of Mr. John Callaghan, examined on the 8th instant—before Committee. (*Vide Appendix A.*)

Committee deliberated in reference to taking the evidence of J. Page, recently a prisoner on Cockatoo Island.

Ordered, on motion of Mr. Mate,—

That Mr. John Page be examined to-morrow.

Referring to the Statements made by certain prisoners from Cockatoo Island, patients in the Hospital at Darlinghurst, when visited by the Committee upon the 1st instant, touching the occurrence of unnatural practices in the Penal Establishment.

Committee considered the nature of such evidence, and the expediency of further investigating the matter.

It was Resolved:—

That, for the purpose of pursuing the inquiry as regards unnatural conduct among the prisoners, the Committee hold a special Visit upon the Island at an early opportunity.

Letter addressed to the Honorable the Speaker on the 8th instant, with Minute thereon, conveying Mr. Speaker's reply—to the effect, that the expense of a Draftsman's services might be borne by the Department, under the 47th Standing Order,—before the Committee.

In reference thereto, the Chairman sought an opinion respecting the employment of a Surveyor to prepare plans in furtherance of the general object.

Committee deliberated.

On motion of Mr. Morris, *It was Resolved:—*

That the Chairman be authorised to engage the services of a competent Surveyor, to furnish plans of the Darlinghurst and Parramatta Gaols.

The Short-hand Writer (Mr. Palmer) having applied to the Committee, in respect of his responsibility for the accuracy of the descriptions and remarks, on the condition of the different buildings visited by the Committee, inserted in the Evidence;—it being explained that, in recording them at the instance of the Committee,—in the midst of other duty and frequent interruption, he was sometimes guided so unauthoritatively as perhaps to mistake their views,—

It was Resolved:—

That the Committee will subsequently adopt the several notices in which they concur.

Committee

Committee then (recalling the subject of, taking his Evidence) deliberated whether to examine Mr. Brennan, having regard to the immediate circumstances of that gentleman's official position.

It was Resolved :—

That Mr. J. O'N. Brennan, Sheriff of the Colony, be not examined, pending the action of the Executive Council in regard to his suspension from office.

Mr. Brennan called in and informed accordingly.

[Adjourned till to-morrow, 20th instant, at *half-past One* (P.M.) o'clock.]

WEDNESDAY, 20 MARCH, 1861.

MEMBERS PRESENT :—

H. Parkes, Esq., in the Chair.

Mr. Lucas,
Mr. Mate,

Mr. Morris,
Mr. Sutherland,

Mr. Wilson.

Mr. J. Page called in and examined.

Witness withdrew.

Committee deliberated.

[Adjourned.]

VISIT OF INSPECTION, COCKATOO ISLAND (SECOND).

[*Report, authorising insertion, 12 April.*]

THURSDAY, 11 APRIL, 1861.

MEMBERS PRESENT :—

H. Parkes, Esq., Chairman.

Mr. Hart,
Mr. Lucas,
Mr. Mate,

Mr. Morris,
Mr. Sutherland,
Mr. Windeyer.

The above Members of the Committee having met at the Circular Quay, at 6.30 A.M., proceeded to Cockatoo Island, and assembled in the Office of the Superintendent.

The Short-hand Writer, in attendance.

The Chairman stated, that in consequence of the absence of Mr. Cowper from the last several meetings of the Committee, he had explained to him, as a Member of the Committee, the nature of the evidence taken from the men in the Hospital at Darlinghurst Gaol, on the subject of immoral practices at Cockatoo Island, and had put in Mr. Cowper's possession the transcript of the evidence. That he (the Chairman) was subsequently visited by the Police Magistrate, Capt. Scott, who stated that he had come from Mr. Cowper, to obtain the Chairman's concurrence in an investigation to be conducted by him (Capt. Scott) into these charges. That he (the Chairman) replied,—he could not express the feeling of the Committee, and could do nothing without consulting them; but that his own impression was, that the course proposed would seriously interfere with the investigation of the Committee,—and asked Capt. Scott particularly to request Mr. Cowper to do nothing, until the Committee had concluded their inquiry into this branch of the matter. That, yesterday, to the surprise of him, the Chairman, Mr. Cowper placed in his hands, a copy of depositions taken by Capt. Scott on the island, relative to the subject. The copy of the depositions he now laid before the Committee.

On motion of Mr. Lucas, the depositions read.

On motion of Mr. Windeyer, *It was Resolved :—*

That the course taken by Mr. Cowper, in making use of the evidence, was inconsistent with his duty as a Member of the Committee, and calculated to interfere with the prosecution of the inquiry intrusted to them.

Prisoner, Frederick M'Gregor called in and further examined.

Prisoners, Henry Carroll, *alias* James Hogan,
James Neal, and

Gilbert Isaacs, severally called in and examined.

Prisoner, Edward Power called in and further examined.

Prisoners, Michael Doran,
John Mason, and

John Smith, severally called in and examined.

G. K. Mann, Esq., Capt., R.E., *Superintendent, Penal Establishment*, called in and examined.

Mr. W. A. Cahill, *Principal Foreman of Works*, called in and further examined.

The Visit terminated.

FRIDAY,

FRIDAY, 12 APRIL, 1861.

MEMBERS PRESENT :—

H. Parkes, Esq., in the Chair.

Mr. Mate,
Mr. Morris,

Mr. Sutherland,
Mr. Wilson.

Committee met pursuant to summons.

In accordance with the Resolution agreed to on the 8th March,—

The Chairman reported a second Visit to Cockatoo Island, yesterday, seven Members being present, when the Committee had specially investigated the crime alleged to be practised; the examinations being confined to prisoners, with the exception of the Superintendent and Principal Foreman of Works.

Letter received through Mr. Lucas, a Member of the Committee; being Statement signed by James Arnott and George Thurston, prisoners in Darlinghurst, under date 19th January last,—read.

Ordered to be appended, on motion of Mr. Sutherland. (*Vide No. 52, Separate Appendix I.*)

The Chairman informed Committee that he had caused a communication (dated the 10th) to be addressed to Sir A. Stephen, C. J., in order to ascertain the earliest day on which His Honor might be able to attend the Committee.

His Honor's letter (10th instant), in reply,—read.

Ordered to be appended. (*Vide Separate Appendix II. C.*)

Committee deliberated in reference to extra sitting days.

Ordered, on motion of Mr. Morris,—

That the Chairman be requested to move in the House, for leave to sit on Saturdays and Mondays.

Letter from Turnkeys, Darlinghurst Gaol, of date the 2nd instant, applying for Committee's consideration of their position and several duties, as set forth in List annexed thereto,—read.

Ordered to be appended. (*Vide Separate Appendix II. D.*)

Committee deliberated upon taking the evidence of the Colonial Secretary (Mr. Cowper.)

It was Resolved :—

That the Honorable C. Cowper, Esq., be examined at the next meeting.

The Chairman laid upon the Table the Statements of certain prisoners on Cockatoo Island, forwarded this morning by Capt. Mann, the Superintendent.

When, Committee deliberating on the expediency of a further Visit to that establishment, with a view especially to afford any prisoner an opportunity of submitting such matters of penal discipline as might be conceived oppressive,—

It was Resolved :—

That the Committee will again visit the establishment at Cockatoo Island, and for such objects as shall be previously expressed, through the Superintendent, to the prisoners.

The Chairman requested to prepare a letter for the purpose—to be considered by Committee before dispatch.

Of the documents from Cockatoo Island abovementioned,—

Statements of Henry Carroll and Barnett Levy (latter dated 24th ultimo) severally read and considered.

Statement of Patrick Byrne, under date, 24th ultimo,—read.

Ordered to be appended, on motion of Mr. Wilson. (*Vide No. 53, Separate Appendix I.*)

Statement of William Smith, under date 10 February last, read and considered.

Further letter from the Lands Department, dated yesterday, forwarding plans (to be returned) of the Gaols at Darlinghurst, Parramatta, and Cockatoo Island,—with the same, before the Committee.

Committee inspected the plans.

Deliberation then, as to the other Gaols in the County of Cumberland, and the prospect of visiting those at Windsor and other places.

Mr. T. Harrison (*late Principal Turnkey, Darlinghurst Gaol*), *Petitioner*, called in and further examined.

Witness withdrew.

Mr. C. Rispen (*late Turnkey, Darlinghurst Gaol*), called in and examined.

Witness withdrew.

Mr. J. M. May to be examined at the next meeting.

[Adjourned till Tuesday, 16th instant, at Eleven o'clock.]

TUESDAY, 16 APRIL, 1861.

MEMBERS PRESENT :—

H. Parkes, Esq., in the Chair.

Mr. Cowper,
Mr. Mate,

Mr. Morris,
Mr. Wilson.

The Honorable C. Cowper, Esq., *Colonial Secretary*, a Member of the Committee, examined in his place.

J. M. May, Esq., *Superintendent, Destitute Children's Asylum, Randwick*, called in and examined.

Witness withdrew.

Committee deliberated.

Motion to be made in the House for Message to the Legislative Council, requesting leave for the Honorable E. Deas Thomson, C.B., to attend and be examined.

The Acting Principal Gaoler, Darlinghurst, and the Inspector General of Police to be examined.

[Adjourned till Thursday, 18th instant, at *Eleven o'clock*.]

THURSDAY, 18 APRIL, 1861.

By reason of the adjournment of the House until to-morrow, the Meeting called this day, lapsed.

Witnesses attended.

[To be convened to-morrow, 19th instant, at *Eleven o'clock*.]

FRIDAY, 19 APRIL, 1861.

MEMBERS PRESENT :—

H. Parkes, Esq., in the Chair.

Mr. Hart,
Mr. Mate,

Mr. Windeyer.

Mr. Morris,
Mr. Wilson,

Committee met pursuant to summons.

Votes No. 54, 16th instant, Entry 29, granting leave to sit on Saturdays and Mondays—before the Committee.

In reference to the further visit to Cockatoo Island, when prisoners might have a special opportunity of representing any matter which they may regard as grievances, with a view to their consideration,—

The Chairman's draft of Letter to the Superintendent (Capt. Mann), authorised on the 12th instant, read, viz. :—

Legislative Assembly Chamber,
19 April, 1861.

" Sir,

" I am requested by the Committee of the Legislative Assembly on Prisons, to inform you that, in order to afford the prisoners on Cockatoo Island the fullest opportunity for any well-founded complaints they may have to make, the Committee will visit that Island specially to receive such complaints, on Monday, the 22nd instant, at 9 a.m.

" This communication is addressed to you, that the prisoners may be informed beforehand of the Committee's intended visit; and the Committee desire that you will make it known to them accordingly. It will be well, however, to let it be clearly understood, that the Committee cannot enter upon any consideration relating to the sentences of the Courts, and that all complaints must be confined to the prison accommodation and food, and to the treatment and discipline of the establishment.

" I have, &c.,

" Chairman."

" Gother K. Mann, Esq.,
" Superintendent of the Penal Establishment,
" Cockatoo Island.

Same agreed to.

The Honorable E. Deas Thomson, Esq., C.B., M.L.C., attending by permission of the Legislative Council, called in and examined.

Witness withdrew.

T. Allen, Esq., *Gaoler, Parramatta Gaol*, called in and examined.

Witness withdrew.

Committee deliberated, referring to the Gaols at Campbelltown, Penrith and Windsor, as yet unvisited.

[Adjourned till to-morrow, 20th instant, at *Ten o'clock*.]

SATURDAY, 20 APRIL, 1861.

MEMBERS PRESENT :—

H. Parkes, Esq., in the Chair.

Mr. Mate,
Mr. Morris,

Mr. Windeyer.

Mr. Sutherland,
Mr. Wilson,

Committee sat pursuant to leave granted by the House on the 16th instant.

The Honorable Sir A. Stephen, Knight, *Chief Justice*, called in and examined.

His Honor withdrew.

Committee

Committee deliberated generally, on the possible adaptation of Country Gaols to purposes of penal discipline.

Subsequently, *It was Resolved* :—

That it is desirable to visit the Gaols at Penrith, Windsor, and Campbelltown. Certain witnesses then named for future examination.

[Adjourned till Thursday, 25th instant, at Ten o'clock.]

VISIT OF INSPECTION, COCKATOO ISLAND (THIRD).

[Report, authorising insertion, 25 April.]

MONDAY, 22 APRIL, 1861.

MEMBERS PRESENT :—

Mr. Mate,	|	Mr. Sutherland,
Mr. Morris,	|	Mr. Wilson.

The above Members of the Committee met at 8:30 A.M., on the Circular Quay, whence they proceeded to Cockatoo Island, and assembled at the Office of the Superintendent. The Short-hand Writer, in attendance.

In the absence of the Chairman, J. B. Wilson, Esq., called to the Chair, *pro tempore*. G. K. Mann, Esq., Capt. R.E., *Superintendent, Penal Establishment*, called in and further examined.

A list containing the names of about ninety prisoners who desired to see the Committee, having been handed to the Chairman,—
Committee deliberated.

And the men having been assembled in the yard according to their respective wards,—

The Chairman, attended by the Committee, proceeded thither and addressed them to the following effect :—That the Committee had received a list of ninety-six men who desired to be examined; that it would be utterly impossible for the whole of them to be heard by the Committee, and that if the occupants of each dormitory selected two men as their delegates they would be heard. That the new regulations were receiving the full consideration of the Committee, who were anxious to do something during the present Session of Parliament, which must close in two or three weeks,—and that the Committee would be willing to receive any evidence on the subject of general treatment, food, and accommodation.

The Committee then returned to the Superintendent's Office.

Prisoners, Henry Clarke, and

James Arnott, delegates from Ward No. 1, severally called in and examined.

Prisoners, Frank Somerville, and

Edward Power, delegates from Ward No. 2, severally called in.

The latter examined.

Question asked of the former.

Prisoners, Gilbert Isaacs, delegate from Ward No. 3;

William Simpson, and

Henry Carroll, delegates from Ward No. 4;

William Thomas M Gregor, and

Lawrence Cowan, delegates from Ward No. 5, severally called in.

G. Isaacs, and

W. Simpson severally examined.

L. Cowan, and

W. Simpson made statements respectively.

The latter further examined.

L. Cowan made a further statement, and examined thereafter.

W. T. M'Gregor made a statement, and examined thereafter.

The Visit terminated.

THURSDAY, 25 APRIL, 1861.

MEMBERS PRESENT :—

H. Parkes, Esq., in the Chair.

Mr. Mate,	|	Mr. Sutherland,
Mr. Morris,	|	Mr. Wilson.

Committee met pursuant to summons.

In accordance with the Resolution agreed to on the 8th March,—

Mr. Wilson, as Chairman upon the occasion, reported a third Visit of Inspection to Cockatoo Island, on the 22nd instant, when ten prisoners, as delegates from the five wards, were examined respecting the general treatment, food, and accommodation upon the Island.

The Chairman submitted a memorandum forwarded by His Honor Sir A. Stephen, in reference to the evidence given by His Honor, on the 20th instant.

Ordered to be attached thereto. (*Vide Appendix A*)

J. M'Leir, Esq., *Inspector General of Police*, called in and examined.

Witness undertook to furnish an Appendix relating to the improvement of prison discipline and buildings. (*Not furnished*)*

J.

* MEMO (*Appended to M.S. Evidence*):—The suggestions relating to the erection of a prison will be sent as soon as my other duties will allow me sufficient time to do so.

J. C. Read, Esq., *Principal Gaoler, Darlinghurst*, called in and examined.
 Witness withdrew.
 H. Parkes, Esq., being about to leave the Chair for the remainder of the sitting,—
 J. B. Wilson, Esq., called thereto, *pro tempore*.
 G. K. Mann, Esq., Capt. R.E., *Superintendent, Penal Establishment, Cockatoo Island, &c.*, called in and further examined.
 Witness withdrew.

[Adjourned.]

VISIT OF INSPECTION, PENRITH GAOL.

[*Report, authorising insertion, 3 May.*]

SATURDAY, 27 APRIL, 1861.

MEMBERS PRESENT :—

H. Parkes, Esq., Chairman.

Mr. Lucas,	|	Mr. Mate,
	|	Mr. Sutherland.

The above Members of the Committee having assembled at Penrith, proceeded to the building used as a Court House and Gaol.

The Short-hand Writer, in attendance.

After inspecting the prison accommodation,—

Mr. H. Tubman, *Acting Gaoler*, examined.

The Committee visited the new gaol in course of erection.

Examination continued.

The Committee crossed over to the Court House, and inspected the cells referred to by the witness.

Examination concluded.

The Visit terminated.

FRIDAY, 3 MAY, 1861.

MEMBERS PRESENT :—

H. Parkes, Esq., in the Chair.

Mr. Mate,	|	Mrs. Walsh,
Mr. Morris,	|	Mr. Wilson,
Mr. Sutherland,	|	Mr. Windeyer.

Committee met pursuant to summons.

And Mr. Brennan (*Ex-Sheriff*) being in attendance for the purpose of being examined,—

Committee deliberated upon the expediency of restricting the examination within the limits of the general inquiry.

In accordance with the Resolution agreed to on the 8th March,—

The Chairman reported that on the 27th instant, a Visit of Inspection to the Gaol at Penrith had been made by a Quorum of the Committee; their intention to visit the similar establishments at Windsor and Campbelltown, respectively on the 29th and 30th, having been interfered with by the inclemency of the weather.

Plan of Cockatoo Island, furnished by Capt. Mann, the Superintendent (*Vide Evidence, 4477*)—produced.

Colored lithographs required.

J. O'N. Brennan, Esq., *late Sheriff*, called in and examined.

The Colonial Architect also attending pursuant to summons, and public duties urging his early attendance elsewhere,—

Mr. Brennan, by request, retired.

A. Dawson, Esq., *Colonial Architect*, called in and examined.

H. Parkes, Esq., temporarily vacating the Chair,—

J. B. Wilson, Esq., called thereto, *pro tempore*.

Witness withdrew.

Mr. Parkes returned and resumed the Chair.

J. O'N. Brennan, Esq., called in and further examined.

Witness withdrew.

Messrs. Cahill, Fitzgerald, and (Inspector) Lane attending as witnesses—not examined.

To be called on Tuesday.

[Adjourned till Tuesday, 7th instant, at Eleven o'clock.]

TUESDAY,

TUESDAY, 7 MAY, 1861.

MEMBERS PRESENT :—

H. Parkes, Esq., in the Chair.

Mr. Hart,		Mr. Sutherland,
Mr. Mate,	|	Mr. Wilson,
Mr. Morris,		Mr. Windeyer.

Pending the attendance of the witnesses summoned this day,—
Committee deliberated as to an early Report upon the Evidence.

It was Resolved :—

1. That the Chairman be requested to prepare draft of a General Report, embracing only the broader features exhibited in the Evidence.
2. That such draft be first handed to the Printer, in order to its reader consideration in proof at the following Meeting.

Mr. W. A. Cahill, *Principal Foreman of Works, Cockatoo Island*, called in and further examined.

Witness withdrew.

Mr. H. Fitzgerald, *Foreman of Works, Cockatoo Island*, called in and examined.

Witness withdrew.

Mr. Lane, *Inspector of Police, Cockatoo Island*, called in and examined.

Memorandum from Mr. Fitzgerald, the previous witness, respecting certain answers—allowed as an addendum to his Evidence.

Witness (Mr. Lane) withdrew.

E. Bell, Esq., M.I.C.E., *City Engineer*, called in and examined.

Witness withdrew.

The Rev. P. P. Agnew, *Chaplain, Darlinghurst Gaol and Cockatoo Island*, called in and examined.

Witness withdrew.

The Rev. S. A. Sheehy, O.S.B. (*formerly Chaplain, Darlinghurst Gaol and Cockatoo Island*), called in and examined.

Witness withdrew.

[Adjourned till Thursday, 9th instant, at Eleven o'clock.]

THURSDAY, 9 MAY, 1861.

MEMBERS PRESENT :—

H. Parkes, Esq., in the Chair.

Mr. Cowper,		Mr. Morris,
Mr. Hart,	|	Mr. Sutherland,
Mr. Mate,		Mr. Walsh,

Mr. Wilson.

Committee met to consider Draft Report.

Copies (in proof) upon the Table.

Proposed Report read 1^o.

Read 2^o, paragraph by paragraph.

Paragraphs 1 to 7 severally read and agreed to, with or without *verbal* amendment.

Paragraph 8 read.

Amended, line 7, after "indulgence," by *omitting* "and"; and *inserting* "which was done principally in consequence of the abuses of the system previously existing, and, as stated in evidence by the Colonial Secretary, as a temporary expedient."

Then agreed to.

Paragraphs 9 to 22 (first part) severally read and agreed to, with or without *verbal* amendment.

Recommendation 1, read, viz. :—

"The regulations of the 1st June, 1858, should be revoked, as they are at variance with an admitted principle in sound criminal treatment—that the prisoner should be encouraged to good conduct and should not be shut out from the prospect of self-redemption."

Amended by *substituting* the following, viz. :—

"In carrying out the sentences of the Courts, good conduct should be taken into account by the Executive, so as to encourage the prisoner to accomplish his own redemption by a reformed course of life."

Then agreed to.

Recommendation 2 read, *verbally* amended, and agreed to.

Recommendation 3 read.

Amended, line 2, after "gaols," by *omitting* "and."

Further, line 3, after "prisoners," by *adding* "and greater facilities for religious teaching should be afforded."

Then agreed to.

Recommendations 5 to 9 severally read and agreed to, with or without *verbal* amendment.

New

New recommendation (10) read and agreed to without amendment.
The Chairman submitted the following Schedule:—

EXPENSES incurred on Visits of Inspection.

DATE.	ON WHAT VISIT.	NAME OF PARTY.	PROFESSION OR CONDITION.	PARTICULARS OF SERVICE RENDERED.	TOTAL EXPENSES ALLOWED.
1861. Feb. 8...	Darlinghurst Gaol	James Curtis	Cab proprietor, &c.	3 carriages, 5½ hours, at 25s.	£ s. d. 3 15 0
Feb. 15	Parramatta Gaol	James Hugh Palmer..	Shorthand-writer to Legislative Assembly.....	Travelling Expenses, Sydney to Parramatta, and back	1 7 0
Feb. 16	Parramatta Gaol .....	.....		Omnibus hire from Parramatta Station, and back	1 5 0
	Sydney Watch-houses, viz:—				
Mar. 11	Water Police Court	William Hudson.....	Hotel-keeper.....	7 beds, at 4s.; refreshment, 16s....	2 4 0
Mar. 12	Cumberland-street	Timothy Shaughnessy	Cab proprietor	2 carriages, 4½ hours, say at 16s....	8 10 0
	Erskine-street (Women's) Central Police Court				
	Darlinghurst George and Pitt Streets				
Apl. 27	Fearth Gaol	J. Williams	Hotel-keeper	(5 Members) Refreshment, &c....	1 0 0
Apl. 27		J. Williams	Hotel-keeper	Tolls, 5s.; sundry services, 9s.	14 0
Apl. 30				(5 Members) Refreshment, &c....	2 3 0
					15 18 0

MEMO.*—No account received from Mr. Surveyor Weaver.

On motion of Mr. Morris, the several sums therein set forth—agreed to.

Payments awarded.

Referring then to the Resolution which the Committee came to upon the 19 March, in regard to the adoption of the remarks and notices contained in the Evidence, respecting the condition of the different Gaols, &c.,—

On motion of Mr. Wilson, *It was Resolved:—*

That the Committee adopt, as agreeing with their own observations, the several Notes, descriptive of the construction, accommodation, cleanliness and general appearance of the Prison Buildings,—interspersed with the Evidence taken upon the Visits of Inspection.

Committee resumed the consideration of the Report.

On motion of Mr. Morris, Draft Report, as amended, agreed to.

Ordered, to report, with the Proceedings of the Committee, Minutes of Evidence, Appendix, and Plans.

LIST OF WITNESSES.

(And others, whose Remarks or Answers are inserted in brackets.)

	PAGE.
Agnew, The Rev. Philip Peters	229
Allen, Thomas Esq.	48, 156
Bell, Edward, Esq., M.I.C.E.	227
Beverley, Henry Clements, Esq.	24
Brenan, John O'Neill, Esq.	194, 200
Byron, Mr.	1, 3
Cahill, Mr. William Augustine	6, 132, 219
Callaghan, Mr. James	93
Callaghan, Mr. John	101
Cook, Mr. William	116
Cowell, Mr. Edward	111, 112
Cowper, the Hon. Charles, Esq., M. P.	141
Cullen, Mrs. Margaret	22, 86
Dawson, Alexander, Esq.	197
Elliott, Mr. Alexander	94
Ferris, Mr.	3
Fitzgerald, Mr. Henry	220
Freeman, Mrs. Ellen	47, 48
Godson, Mr. Richard	52
Griffiths, Mr. Lewis	111, 112
Haggerty, Mr. Samuel	111
Harrison, Mr. Thomas (Turnkey, Parramatta Gaol)	40
Harrison, Mr. Thomas (Late Principal Turnkey, Darlinghurst Gaol)	56, 132
Howarth, Mr. Shepherd	11, 83
Lane, Mr. John Francis	222
Lee, Mr. (Sergeant)	113

Levy,

* Accounts subsequently received:—

1. Thomas Weaver, Licensed Surveyor—For Plans of Darlinghurst and Parramatta Gaols	£35 0 0
2. Commissioner for Railways—Fares to Parramatta (16 February)	1 13 6
3. Mrs. Bird—4 days Carriage hire (27 to 30 April)	8 8 0

	PAGE.
Levy, Mr. (Constable)	114, 115
Levy, Mrs. Margaret	115
Little, Mr. Prince Francis	111, 112
Macpherson, Mr. William	7, 81
Mann, Gother Kerr, Esq., Capt. R.E.	130, 165, 181
May, Mr. John Matthews	147
McClure, Mr. Matthew	115, 116
McCormick, Mr. Patrick	40, 42
McDiarmid, Mr. Allan (<i>Vide Errata, Question 4026</i>)	117
McLerie, John, Esq.	174
Olson, Mr. William	80
Page, Mr. John	117
Pegg, Mr. Frederick	66
Read, John Cecil, Esq.	89, 94, 178
Rispen, Mr. Christopher	137
Ryan, Mr. Nicholas	116
Sheehy, The Rev. Samuel Austin, O.S.B.	232
Stephen, The Hon. Sir Alfred, Knt.	153
Sweeny, Mr. Philip	113
Thomson, The Hon. Edward Deas, Esq., C.B., M.L.C.	149
Tubman, Mr. Henry	192
Turnkey, The (Darlinghurst Gaol)	22, 23, 24
Turnkey, The (Parramatta Gaol)	45
Walsh, William, Esq.	107
Whiddon, Mr. Samuel	73

LIST OF PRISONERS.

(*Whose Statements appear in the Minutes or Separate Appendix I.*)

	PAGE.
Ainsworth, Richard	241
Alexander, Robert	239
Arnott, James	95, 167, 246
Baker, Alfred	52
Banks, Robert	238
Barrett, George	9
Bellamy, Mary	22
Binney, James	240
Bland, Hugh Montgomery	235
Bretton, Louis	239
Britton, Matthew	53
Brown, <i>alias</i> Laniger, Thomas	21
Burns, Nicholas	65
Byrne, Patrick	248
"Cadger, The" (John Mullolland)	20
Cantwell, Michael	236, 239
Carnegie, James Edward	239
Carroll, Henry, <i>alias</i> James Hogan	122, 244
Carroll, John	14, 15
Chalk, Edward	20
Chew, Thomas	42
Clarke, Henry	95, 166
Collins, James	42
Collins, William	17
Cook, The (Darlinghurst Gaol)	16
Corner, John	61
Cotton, James	13
Cowan, Laurence	172
Craddock, Hugh	240
Craig, William	239
Crofton, Michael	238
Daly, James	13
Davis, George	240
Doran, Michael	127, 238
Douglass, Alexander	236
Downing, Hugh	55
Drew, George	8
Driscoll, John	41
Dwyer, William	1, 2
English, John	20
Evans, William	9
Fitzgerald, Thomas	239
Flynn, Ann	115
Frayne, Michael	236
Frazer, James	8
Galahan, John	17
Geoghan, Edward	8
George, Caleb	49
Hall, John	15
Hampton, Thomas	8
Hanson, Richard	239
Hart, Richard	239
Harvey, Thomas	17
Hassett, John	238
	Hawkins,

	PAGE.
Hawkins, John	236
Head, William.. .. .	239
Henry, William	18
Hogan, James, <i>alias</i> Henry Carroll	122, 244
Holland, John	244
Isaacs, Gilbert	125, 169
Jobson, David	238
Johnson, Sarah	23
Johnson, William	236
Jones, George.. .. .	98
Kelly, John	52
Kenny, Martin	241
Laniger, <i>alias</i> Brown, Thomas	21
Lawry, <i>alias</i> M'Gregor, Frederick	96, 120
Levi, Barnett	240
Lynch, John	16
Mason, John	129
M'Carthy, Henry	9
M'Gregor, <i>alias</i> Lawry, Frederick	96, 120
M'Gregor, William Thomas	100, 173
M'Intyre, Ann.. .. .	23, 240
M'Laven, James	239
M'Mahon, John	10
M'Mahon, Martin	11
M'Spadden, John	238
Moran, Francis	238
Morton, William	9
Mulhern, Mary Ann	24
Mulholland, John ("The Cadger")	20
Murray, Patrick	22, 240
Nagle, Thomas	45
Neal, James	123
Neal, Sarah	23
Nixon, Charles	236
Nolan, Matthias	16
Nunn, Hannah	23
O'Brien, John	240
O'Halloran, Joseph	235
O'Heir, Patrick	46
Oxburgh, Charles	240
Page, John	(117) 235
Parker, Elizabeth	48
Passmore John	46
Pearce, James	43
Perry, Mary Ann	48
Power Edward.. .. .	50, 96, 127, 168
Powell, Laurence	245
Richards, Mary Ann	23
Riley, Mary	23
Rogers, Charles	21, 243
Rowan John	56
Rowe, George Walter.. .. .	245
Rutter, Mary Ann	24
Scope, <i>alias</i> Williams, James	99
Scrimes, Frederick William	238
Simpson, William	172
Sims, Louis	21
Singleton, George	241
Smith, James	12
Smith, John	129, 239
Somerville, Frank	169
Somerville, Frederick	238
Sullivan, Daniel	238
Swan, George	18
Tagg, George	20
Tarlington, Edward	15
Taylor, George	239
Taylor, James	45
Thompson, James	7, 8
Thompson, William	238
Thurston, George	246
Trindall, Francis	11
Valenti, Camille	44
Wade, James	20
Wagner, Charles	237
Washington, William.. .. .	236
Watson, Christina	22
Watson, John	235
Wilkes, John	41
Williams, George	17
Williams, <i>alias</i> Scope, James	99
Williams, John	94
Williams, William	44
Young, Alfred	19

LIST OF VISITS OF INSPECTION.

[INDEX TO NOTICES.]

DATE.	WHERE.	PREMISES OR BUILDINGS VISITED.	DESCRIPTIONS OR NOTICES OF CONDITION, &c.	
			Page.	No. of Question preceding.
1 February ..	Cockatoo Island	{ Mess-room. Dormitories. Hospital. Solitary cells. Exempt ground. Yard in rear of Police Barracks. Police Barracks.	{ (33 Erra- ta.)	{ (Before) 1, 70.
8 February ..	Darlinghurst Gaol ..	{ Carpenters' workshop Smaller do. adjoining Blacksmiths' workshop..... Smaller do. adjoining Cook-house Labour wing, ward, and yard Solitary cells Trial wing. (Cell No. 7.) Other cells Wall in rear of blacksmiths' sheds. Lumber-room Shoemakers' and tailors' rooms Hospital Female ward, cell Cell No. 24, and those adjoining....	{ (33 Erra- ta.) 9 11 14 16 16 18 (19) 21 21 22 24	{ 282 317 415 547 639 655 713 (732) (827) 839 850 864 938, 949
15 February ..	Parramatta Gaol ..	{ Stone-cutters' yard. Wing No. 1 Several cells (No. 9.) No. 1 cell Cells on the ground floor, (No. 19.).. Cell in the first story Cook-house Female yard Female cells, on first floor. Solitary cells, beneath Women's wing. Yard containing joiners' and black- smiths' shops. The shops.	{ 41 42 42 44 45 46 47	{ 1474 1501 1502 1602 1615 1687 1710
1 March....	Darlinghurst Gaol ..	{ Hard labour and confine wings and yards The office. Stockade yard. Exercise Ground Wall in rear of the Hospital Hospital, lower ditto.	{ 89 (33 Erra- ta.)	{ 3081 3082 3291
12 March	Sydney Watch-houses	{ (Water Police)—Circular Quay. Cell Cell Solitary ditto. (Police Station)—Cumberland-street. Cell Two cells Two front rooms..... (Female Watch-house)—Erskine- street. Cell (Central Police)—George-street. Cell Male cell Smaller cell (Watch-house)—Darlinghurst. Two cells (Watch-house)—George and Parra- matta streets, South. Cells	{ 111 111 113 114 114 114 114 114 114 115 116 116 116 117	{ 3808 3819 3903 3911, 3913 3914 3956 3953 3988 4000 4003 4025
11 April	Cockatoo Island....	Superintendent's office.		
22 April	Cockatoo Island....	{ Superintendent's office. Prisoners' yard.		
27 April	Penrith Gaol	{ Interior of the gaol..... Ditto, the new building..... Court House Cells	{ 192 193 193	{ 5252 5291 5311

LIST OF APPENDIX.

	PAGE.
(To Evidence given by Mr. Byron, 1 February, 1861.)	
State of Cockatoo Island, 1 February, 1861	5
A.	
(To Evidence given by Mr. W. A. Cahill, 1 February, 1861.)	
Plan of Cockatoo Island Prison. Vide First Lithograph following Separate Appendix.	
(To Evidence given by H. C. Beverley, Esq., 14 February, 1861.)	
Darlinghurst Gaol Establishment	39
A.	
List of Books for use of Prisoners in Darlinghurst Gaol	39
B.	
C.	
Darlinghurst Gaol Rations and Allowances	40
(To Evidence given by Mr. T. Harrison, 22 February, 1861.)	
A.	
Nos. 1 to 4, 6, 7, Statements of certain fellow prisoners respecting the treatment of prisoner Polack	65
No. 5, Similar statement, referring also to (Robert) Banks	65
Nos. 8 to 11, Similar statements respecting the history and character of (Robert) Banks	66
(To Evidence given by Mr. F. Pegg, 22 February, 1861.)	
Addendum	72
A.	
H. C. Beverley to F. Pegg, 15 November, 1859	72
(To Evidence given by Mr. S. Whiddon, 28 February, 1861.)	
A.	
S. Whiddon to Acting Gaoler, Darlinghurst Gaol, 27 February, 1861	80
(To Evidence given by Mr. W. Macpherson, 28 February, 1861.)	
A.	
Particulars of Furniture made for private parties in Darlinghurst Gaol since 1 January, 1860..	83
(To Evidence given by Mr. S. Howarth, 28 February, 1861.)	
Addendum to Answer No. 2965	86
(To Evidence given by Mr. J. Callaghan, 8 March, 1861.)	
A.	
Memorandum—Particulars of Mr. Callaghan's services as Turnkey, since 1851	106
(To Evidence given by G. K. Mann, Esq., Capt. R.E., 11 April, 1861.)	
Plan of Cockatoo Island. Vide Second Lithograph following Separate Appendix.	
(To further Evidence given by Mr. T. Harrison, 12 April, 1861.)	
A.	
Diagram showing the rotation of Turnkey's duties	134
B.	
Duties of the Turnkeys—Printed Regulations.. .. .	134
C.	
List of Prisoners locked up for offences committed in the Gaol, Darlinghurst, from 1 January, 1860, to 11½ February, 1861	135
D.	
Affidavit of Visiting Surgeon, Darlinghurst Gaol, respecting prisoner Polack, 5 October, 1854	136
E.	
Rotation of Turnkey's duties, 1 August 1860 to 16 January, 1861	137
(To Evidence given by Mr. C. Rispen, 12 April, 1861.)	
A.	
C. Rispen to Chairman, 9 March, 1861	139
(To Evidence given by the Hon. C. Cowper, Esq., M.P., 16 April, 1861.)	
A.	
Engineer-in-Chief and Superintendent, Cockatoo Island, to Principal (Under) Secretary, 10 September, 1860	144
[Appendix to Foregoing.]	
A. Comparative Return of Punishments of Prisoners, prior and subsequent to Regulations, 1 June, 1858	146
B. Comparative Return of Sentences of Prisoners received, prior and subsequent to Regulations, 1 June, 1858	147
B.	
Numerical Return (number of convictions) of Prisoners on Cockatoo Island, 11 October, 1860	147
(To Evidence given by the Hon. Sir A. Stephen, Knt., 20 April, 1861.)	
A.	
Supplementary Memorandum, 22 April, 1861	164
(To Evidence given by J. M'Levie, Esq., 25 April, 1861.)	
Vide Separate Appendix, II E	250
(To Evidence given by J. C. Read, Esq., 25 April, 1861.)	
A.	
Reporting School established, and correcting Answer No. 5136, 4 May, 1861	180

(To Evidence given by G. K. Mann, Esq., Capt. R.E., 25 April, 1861.)

A.	Code of Regulations relative to Prisoners' Probation, &c.	188
B.	Number of Prisoners discharged under former Regulations, returning on new Conviction or Cancelled Ticket-of-Leave, and serving under present Regulations	189
C.	Return of Comparative Sentences passed upon Prisoners at Cockatoo Island, from 1 June, 1855, to 31 May, 1858	189
D.	Return of Comparative Sentences passed upon Prisoners at Cockatoo Island, from 1 June, 1858, to 24 April, 1861	189
E.	State of Cockatoo Island, 25 April, 1861	190
F.	Numerical Return of Prisoners on Cockatoo Island during March, 1861, shewing employment, work performed, amount of gratuity, and number of credit days obtained	191
(To Evidence given by Mr. H. Tubman, 27 April, 1861.)		
A.	Numerical Return of Prisoners received at Penrith Lock-up from 1 January to 30 April, 1861..	194
(To Evidence given by A. Dawson, Esq., 3 May, 1861.)		
A.	Return shewing the accommodation of the principal Gaols in the Colony.. . . .	199
(To Evidence given by J. O'N. Brennan, Esq., 3 May, 1861.)		
A.	Numerical Return of Prisoners Sentenced to Darlinghurst and Parramatta Gaols respectively, during 1856, 1857, and 1858	206
B.	Memorandum in support of application for supply of knives and forks at meals of Prisoners . .	207
C.	Rules for the Guidance of the Working Overseers, Parramatta Gaol	207
D.	(1.) Introduction to Statement of the Sheriff's Case (Mr. Brenau).. . . .	207
	(2.) Statement	208
	Containing, <i>inter alia</i> :—	
	Return of Prisoners employed otherwise than at Hard Labour in Darlinghurst Gaol, February, 1861	210
	Return of all money earned by Prisoners in Parramatta Gaol from 1856 to (31 July,) 1858	211
	(3.) Appendix to foregoing, viz. :—	
	(1.) Sheriff to Colonial Secretary, 12 February, 1861	213
	(2.) Sheriff to Principal Gaoler, Darlinghurst, 2 July, 1860	214
	(3.) Sheriff to (Colonial Secretary), 16 February, 1861	214
	(4.) Affidavit of Visiting Surgeon, Darlinghurst Gaol, respecting prisoner Polack, 5 October, 1854	215
	(5.) Visiting Surgeon to Governor, Darlinghurst Gaol, 15 February, 1860	215
	Minute of Sheriff	215
	Minute of Principal Gaoler inquiring of Visiting Surgeon	215
	Reply of Visiting Surgeon, 23 February, 1860	215
	(6.) Visiting Surgeon to Colonial Secretary, 19 January, 1861	215
	(7.) Declaration of John Callaghan, <i>Turnkey, Darlinghurst Gaol</i>	215
	(8.) Declaration of T. Lee, <i>Do.</i>	215
	(9.) Statement of D. M'Koy, <i>Do.</i>	216
	(10.) Declaration of T. Harrison, <i>late Principal Do.</i>	216
	(11.) Declaration of C. Rispen, <i>late Turnkey, Do.</i>	216
	(12.) Sheriff to Principal Under Secretary, 1 May, 1860	217
	(13.) Sir J. N. Dickinson (<i>late Acting Chief Justice</i>) to Sheriff, 26 February, 1861	217
	Postscript, 15 March, 1861	218
	(14.) Chief Justice (Sir A. Stephen) to Sheriff, 21 March, 1861	218
E.	Sheriff to Principal Under Secretary, 9 March, 1859	218
(To second further Evidence given by Mr. W. A. Cahill, 7 May, 1861.)		
A.	Quantity of Work performed in New Building (continuation of Workshops) Cockatoo Island . .	220
(To Evidence given by Mr. H. Fitzgerald, 7 May, 1861.)		
	Addendum	221
A.	1. Addendum to Answers Nos. 5474 and 5487	222
	2. Remark on Answer No. 5489	222
(To Evidence given by Mr. J. F. Lane, 7 May, 1861.)		
A.	Remark on Answer No. 5572 (part)	227
B.	Inspector in Charge, Cockatoo Island, to Visiting Magistrate, 2 November, 1860	227
(To Evidence given by E. Bell, Esq., M.I.C.E., 7 May, 1861.)		
A.	City Engineer to Mayor, 28 March, 1859	228
(To Evidence given by the Rev. P. P. Agnew, 7 May, 1861.)		
A.	Chaplain, Cockatoo Island, to Governor General, 14 August, 1860	231

LIST OF SEPARATE APPENDIX.

PART I.

Statements received from Prisoners. *Vide* List of Prisoners, page 28.

PART II.

A.	
1. J. H. Mackie to J. C. Read, Esq., 1 March, 1861	248
2. Minute forwarding same (Mr. Inspector Read), 4 March, 1861	248
B.	
Police History of R. Ainsworth, 8 March, 1861	248
C.	
His Honor the Chief Justice (replying) to Clerk of the Legislative Assembly, 10 April, 1861	249
D.	
1. Turnkeys, Darlinghurst Gaol, to Committee, (2 April, 1861)	249
2. Routine of Turnkey's Duty, Darlinghurst Gaol	250
E.	
<i>(Transferred from Evidence given by J. M'Levie, Esq., 25 April, 1861.)</i>	
Police History of R. Banks, 7 May, 1861	250

LIST OF PLANS.

(Following Separate Appendix.)

- (1.) Cockatoo Island Prison.
- (2.) Cockatoo Island (Sydney Harbour).
- (3.) Darlinghurst Gaol (Sydney).
- (4.) Parramatta Gaol.

LIST OF ERRATA.

- Report, Page 9, Paragraph 17, line 3. *Omit* "D;" *insert* "E" (Division).
 line 4 (margin). *Insert* "*Vide* List of Visits of Inspection, page 30."
- Minutes of Evidence, Page 1. *After* "Minutes of Evidence," *insert* (in parentheses) "comprising Statements of Prisoners."
After Note following "Chairman," *insert* further (within the bracket) "viz.: the Mess-room, also used as a Chapel, the Dormitories, Hospital and Cells."
- Page 3. *After* Note following Question 70, *insert* further (within the bracket) "—The Committee returned to the Dormitories and examined the bars of Nos. 4 and 5, which had recently been strengthened in consequence of an attempt to saw them through.—The Committee having proceeded to the Exempt Ground, Mr. Byron stated that there were then 27 men exempt.—The Committee visited the yard in the rear of the Police Barracks, inspecting a boat which had been built by one of the prisoners (Landells), and concealed by him in the roof of the Carpenters' Shop."
- Page 9. *After* Question 282, *insert* (in brackets) "Mr. Hart called attention to the fact, that when the Committee entered the Joiners' Shed there was no one in charge of the men."
- Page 22, Question 865. *Omit* "Mary," *insert* "Margaret."
 Page 24, Question 950. *After* "Henry," *insert* "Clements."
 Page 40, Question 1459. *Before* "Thomas," *insert* "Mr."
- Page 89. In Note preceding Question 3082, *after* "Committee," *insert* "inspecting the Stockade, Exercise Ground, and wall in rear of the Hospital, whence the seventeen prisoners recently escaped, returned to the Gaoler's House, tasting the bread just supplied by the Contractor, and"
- Page 91, Question 3137. In blank, *insert* "two feet."
- Page 96. *Before* Note following Question 3291, *insert* (within the bracket) "The Committee proceeded to the Hospital, and examined the windows whence, as stated by Mr. Whiddon and Mr. Olson, communication had been carried on with the prisoners in the Exercise Yard"—
- Page 101, Question 3474. *Before* "John," *insert* "Mr."
 Page 112, Question 3866. *Before* "Lewis," *insert* "Constable."
 Page 113, Question 3904. In "Phillip," *omit* second "l."
 Page 117, Question 4026. *Insert* (above) "Sergeant Allan M'Diarmid (in charge) examined:—"
- Page 130. *After* Answer 4477, *insert* (in parentheses) "*Vide* Second lithograph following Separate Appendix."
- Page 165, Answer 4880, last line. *Omit* "nine;" *insert* "six."
- Page 176, Answer 5049. *After* "(Not furnished)," *indicate* the following foot-note, "viz.:—MEMO (*Appended to M.S. Evidence*):—The suggestions relating to the erection of a prison will be sent as soon as my other duties will allow me sufficient time to do so."
- Separate Appendix I, Page 235, lines 4 and 5. *After* "None," *omit* "Examinations &c.;" *insert* "Questions put to certain prisoners in reference to their Statements are included."
- Page 241. *After* the Statement of G. Singleton, *omit* paragraph rescoting Committee (not pertaining to the Appendix.)

1861.

Legislative Assembly.

NEW SOUTH WALES.

MINUTES OF EVIDENCE

TAKEN BEFORE THE

SELECT COMMITTEE

ON THE

PUBLIC PRISONS IN SYDNEY AND
CUMBERLAND.

FRIDAY, 1 FEBRUARY, 1861.

Present:—

MR. COWPER,	|	MR. PARKES,
MR. LUCAS,	|	MR. SUTHERLAND,
MR. MATE,	|	MR. WALSH,
MR. MORRIS,	|	MR. WILSON.

HENRY PARKES, Esq., CHAIRMAN.

[The Committee having assembled on the Circular Quay at 9 o'clock, A.M., proceeded to Cockatoo Island, and inspected various arrangements of the Penal Establishment.]

Cockatoo
Island Prison.
1 Feb., 1861.

William Dwyer, a prisoner confined in the cells, called up and examined:—

1. *By Mr. Cowper*: How long have you been on the island? Two years and eight months.
2. What were you sentenced here for? Five years.
3. For what crime? For a horse.
4. For stealing a horse? That is what I was charged with.
5. What district do you come from? Bathurst.
6. What Judge tried you? Judge Therry.
7. Were you ever convicted before? No.
8. How long have you been in the Colony? Twenty years.
9. What districts of the Colony have you been in? In Sydney part of my time, and I had a good character from many gentlemen.
10. *By the Chairman*: Are you a married or a single man? Single; both my parents are living.
11. *By Mr. Cowper*: You must have come to the Colony very young? Yes; I was eight years old.
12. Have you been punished here before? Yes, once, fourteen days for the same thing.
13. *By Mr. Walsh*: Did you come out with your father? Yes.

W. Dwyer.

Mr. Byron, Principal Warder, examined:—

14. *By the Chairman*: Will you refer to the record book, and state the nature of this man's offence? Mr. Byron.

Mr. Byron referred to the book, and read as follows:—"4th January, 1861.—Insubordinate conduct, refusing to go to work, and disobedience of orders."

15. What was the nature of this man's insubordination? Falling out from the body of men, refusing to go to work when a number of the men also refused.

- Cockatoo Island Prison. 1 Feb., 1861.
- Mr. Byron.
16. At what time in the morning was that? At nine o'clock. I reported the circumstance to the Superintendent, and he ordered the men to be confined.
17. Did they allege any reason for their refusal? Yes; the men who were under the regulations of the old Act, and those who were under the new regulations, were working together. Under the old regulations a man is allowed half a day's remission of sentence for every day he works, but, under the new, each day's work is counted only as one day.
18. *By Mr. Lucas:* That is to say, the work under the old Act is task-work, and according to the old regulations all work over a certain quantity is carried to the credit of the prisoner, and lessens the term of his imprisonment? Yes.

W. Dwyer further examined:—

- W. Dwyer.
19. *By the Chairman:* Let us hear your version of the matter—will you explain the reason of your refusal to work? Because half the men working on our side get half a day for every working day, and we get nothing—no matter how a man behaves he gets the same.
20. *By Mr. Lucas:* You mean some men under the old system who are on task-work? Yes. If we do not get that work done, we are put in the cells.
21. Whatever over-work you do does not reduce the term of your sentence? It does some of the men's, but not ours.
22. What you complain of is, that no matter how well you behave, or what quantity of work you do—? We are treated all the same, we have got to do our time.
23. *By the Chairman:* Can you not explain definitely the circumstances of this refusal to work—how many men were working together. You say the men on one side were working at task-work—what work had these to do as compared with those who were not at task-work? They had got to work as much as the old. The new Act had got to work as well as the old.
24. If a man under the regulations previous to the passing of the new Act performed a certain day's work, it counted as more than one day in the term of his sentence? Yes; a day and a half.
25. You know what it is you have to complain of, will you state it to us as you would to any one else? Because we get no indulgences, no marks, nor nothing.
26. You say "we," whom do you mean? All the new Acts—all who came here since 1858.
27. How many men were working with you when you refused to work? There were a hundred.
28. Working with you? Where I was working—I was working in the lumber yard.
29. How many were there? Sixteen.
30. How many of these were getting more than six days a week? Six.
31. How many were getting only six days? Eight or nine.
32. About eight or nine out of this sixteen came after a certain date and got no indulgence, and about six or seven came before that date and got indulgence? Yes.
33. During the time you have been in that cell how have you fared—what sort of food have you had? A pound and a half of bread a day, nothing else.
34. The whole time? Yes.
35. You have never had anything but bread during the time you have been in the cell? No.
36. Have you been in a good state of health during that time? Yes—only my head.
37. Do you feel the place hot sometimes? Yes.
38. As compared with the place where you usually sleep? A good deal worse, a man's head is always bad here.
39. Would you rather sleep where the other men sleep? Yes.
40. *By Mr. Wilson:* Suppose you had a bed in the cell, would you prefer sleeping there, to sleeping in the dormitory with the other men? I would as soon sleep there as where the men sleep, and sooner.
41. *By the Chairman:* How long have you been on the island? Since June, 1858.
42. During that time you have been punished once? I got fourteen days for the same thing; all the men fell out, and I fell out.
43. When you were sleeping in the common dormitory did you ever notice the occurrence of immorality? No, I never did, for I always kept myself to myself; I never kept company with anybody in the ward or out.
44. Did you hear obscene conversation at night? No.
45. How many persons slept in the dormitory where you were? 70 or 80 in one, and about 58 or 48 in the one I was in before I came here.
46. What have you generally worked at since you have been on the island? In the lumber yard and blacksmith's shop.
47. All the time? No, I was six months in the quarry.
48. And you have had good health all the time? I have never been off my work, only four days.
49. When do you come out of the cell? To-day.
50. Are you going back to work? Yes.
51. *By Mr. Walsh:* You have some books in your cell? Yes.
52. What are they? Novels.
53. What are their names? I do not know the name of the one I have got now, I only took it yesterday.
54. Have you had books all the time you have been there? Yes, any time you asked you would get it.
55. What books have you been reading? Chambers' Journal for a bit, and others.

56. Have you seen any clergyman since you have been there? No, I have seen no person till I saw you this morning.
57. You have not been out to prayers in the chapel? I have never been out of the cell but three times, and that was to come up here to shave.
58. *By Mr. Couper*: What do you suppose you will gain by refusing to work,—do you suppose the Government will give way to you,—do you think that possible? I do not know.
59. You know that you came here under certain regulations then in force which were announced to you by the Judge when he passed your sentence? There are many who have been here before, and before that again, who have got two years less than I have.
60. That has been by the sentence of the Judge? Yes.
61. You do not suppose that it can be left to you to decide upon the sentences of other men? They were sent for the same charge.
62. Of which they have been convicted by a Jury, and for which they have been sentenced by a Judge. You do not suppose it can be left to the men on this island to revise the sentences of the Courts, and to decide whether they are just or not? No.
63. *By Mr. Mate*: How did you plan it that you should all refuse to work at the same time? We did not all strike at the same time—there were two days between.
64. *By Mr. Lucas*: You were all sentenced on the same day? Yes, but there were some men fell out one day and more on another; they fell out on different days.
65. *By Mr. Couper*: Whose horse was it you were charged with stealing? I do not know.
66. Who prosecuted you? No one prosecuted me.
67. Who were the witnesses against you? The witnesses saw me buy the horse, they swore first one thing and then another, because they knew the man I bought the horse of better than they did me, and they wanted to get him out of trouble.
68. *By Mr. Walsh*: The horse was found in your possession? No, it was sold to five or six people.
69. Was it not proved by some person that the horse had been in your possession? Yes, I owned to having had the horse myself.
70. *By Mr. Couper*: Had it been the subject of much discussion among you before you came to the determination to resist these regulations? I never spoke to a man in the yard, but all the men called out, and shouted out to me at different times.

[Mr. Ferris, in answer to a question from Mr. Lucas, stated that Dwyer was [Mr. Ferris; not a badly-behaved man, and that he seldom spoke to any of the men.]

[Committee having entered the Police Barracks, the Chairman took the Chair,—]

Mr. Byron called in and further examined:—

71. *By the Chairman*: What office do you hold on the island? Principal warden. Mr. Byron.
72. What are your duties? To muster the men, and to see that the place is kept clean.
73. Are you responsible for them—are they in your charge during the night? They are in no way under my charge during the night.
74. You merely superintend their muster? Yes, in the day time.
75. Are you responsible for their safe keeping during the day? No, I have merely to muster them at meal times.
76. You were with the Committee when we visited the sleeping apartments? Yes.
77. Did we go through all the apartments? Yes.
78. Of which there are five in number? Yes.
79. Can you state how many berths there are in each? Yes. In Nos. 1 and 2 wards there are 88 in each; in No. 3 ward, 48; Nos. 4 and 5, 52 each; altogether there are 328 sleeping berths.
80. Have you ever had all the berths full? Yes, and have had men sleeping on the top, over the two tiers of berths.
81. Has that occurred often? No.
82. How long have you been on the island? Nine years next month.
83. What is the greatest number of prisoners you have ever had on the island at one time? 490 or near 500.
84. When was that? Shortly after I came here.
85. Can you state how many slept in the dormitories last night? Yes. In No. 2 ward, 63; No. 3, 18; No. 4, 36; No. 5, 29.
86. How many altogether in these wards? 146.
87. Can you state how the 146 who slept in these places last night are disposed of to-day? 67 on the works, 20 in the stockade, 10 tailors and shoemakers, 5 constables, 16 servants, 1 gardener, 5 cooks, 3 confined in cells, 8 in hospital, 3 in attendance on hospital, 27 exempt.
88. Will you supply the Committee with a daily return? I will. (*Vide Appendix A.*)
89. You were present when the Committee examined Dwyer, one of the confines in the cells? I was.
90. About how long has that man been on the island? More than a year.
91. What has been his conduct? Very good till this late affair.
92. Without respect to this act of insubordination? He has been a very quiet, inoffensive man.
93. Was he a man who mixed himself up with the other prisoners? I cannot tell. He is a passionate man, but it is over in a minute.
94. What is the character of the other two men in the cells whom we did not see? Ferris is

- Cockatoo is a man who tried to escape from the island one night, and the other man is named Johnsou, who also tried to escape.
- Island Prison. 1 Feb., 1861. Mr. Byron.
95. Have you ever gone into these dormitories in the dead of night? Never.
96. Have you ever gone to the gate? Yes, when any one has been sick.
97. When the dormitories have been full? Yes, I have been to the gates.
98. Was the atmosphere very oppressive? It was.
99. What kind of utensils have they? Tubs.
100. Do they use those tubs for all purposes? Yes.
101. Is there any system of requiring these men to go to any place for the offices of nature before they go to bed, or are locked up? Yes, there is a closet for that purpose in the yard.
102. Are these tubs ever filthy in the morning? Yes.
103. Do the men smoke inside these places? Yes.
104. Are vermin often found in the berths? Sometimes.
105. How often? We fumigate the wards three times a year, there are 76lbs. of brimstone used.
106. What is the practice adopted in cleansing these places? The tubs are carried out, emptied, and whitewashed, and then the rooms are cleaned out.
107. Are they washed with a broom or besom? They are washed out with a mop, and afterwards the berths are whitewashed.
108. Only that? They are scraped if the whitewash is too thick.
109. Do you frequently go to the gates at night?
110. Do you frequently go to the gates at night? No, it is my duty to go at about ten minutes to eight, to see that the lights are put out.
111. Probably you have gone to the gates at different parts of the night? No, unless a man wants to be sick, and then we let him out.
112. Have you ever noticed obscene conduct or heard obscene language? You mean in the berths? No.
113. *By Mr. Wilson:* Where do the men get tobacco? There is a shop at the North Shore, Mr. Clarke's.
114. Do they send for their tobacco through the Government officers? Yes.
115. *By Mr. Cowper:* They receive some gratuity for extra work, and are allowed to spend it? Yes, in tobacco.
116. *By Mr. Wilson:* Have they the means of washing or bathing themselves every morning? No, they get leave from the superintendent to bathe every Saturday in the dock.
117. What means have they of bathing themselves in fresh water? There are tubs in the barrack square in the yard.
118. Are they found with towels? Yes.
119. *By Mr. Morris:* Have they any means of washing allowed? Not without they go in the docks.
120. *By Mr. Wilson:* They have no means of washing in fresh water? None, except what I have stated.
121. The man Dwyer stated that he had novels in his cell? Yes, there is a general library which is provided by the Rev. Mr. Agnew.
122. Who selects these books? Mr. Balls gives them out.
123. Any book a prisoner pleases? Yes.
124. Is there a Bible in each cell? No, if a man wishes for a Bible or a Prayer Book he can get one by applying for it.
125. *By Mr. Lucas:* You say it is your duty to go to the gates at ten minutes to eight to see that the lights are put out, what lights do you speak of? Candles.
126. Are the men allowed candles in the wards? Yes, till eight o'clock, to read, or to amuse themselves, after that there is a lamp in each ward.
127. *By Mr. Wilson:* Do you insist upon silence after the lights are put out? Yes.
128. *By Mr. Lucas:* How many cells are there on the island? Twelve.
129. *By Mr. Mate:* You say the men can buy tea, sugar, and other luxuries? Yes, tea, sugar, and white bread.
130. Do they get these things at reasonable prices? At Sydney prices; they are served out twice a week.
131. *By Mr. Wilson:* Certain persons are promoted on the island for good conduct? Yes, to what are called sub-overseers or constables.
132. Who promotes them? The superintendent.
133. That is to say the superintendent promotes them on whose recommendation? On the recommendation of the free officers.
134. What are the grounds upon which a man's promotion is generally recommended? Good conduct and short sentence.
135. No previous conviction, is that taken into account? Yes.
136. *By Mr. Cowper:* What do you do with the men in wet weather? We put them inside.
137. Where? In the wards if it is very heavy.
138. Not merely in the dining hall, but in the sleeping wards? Yes.
139. *By Mr. Lucas:* Suppose it rains for two or three days? They are kept in the wards, and brought out at meal times. The mechanics come out in wet weather, the others do not.
140. Do the men who are sentenced to work in irons work with those who have not irons? Yes, so many to each gang.
141. Do the men ever complain of the rations? They do.
142. Is it generally with regard to their quantity or to their quality? To the quality.
143. *By the Chairman:* What is your opinion of the quality of the rations? It is generally very good.

144. Is the bread always as good as that brought in the mess room? Not always.
145. *By Mr. Wilson*: What do you call "good bread"—do you refer to its fineness? Yes; sometimes it is sour, although fresh in the morning before.
146. *By the Chairman*: There is a man named Hawkins on the island, who has had his leg broken? Yes.
147. What is his conduct? His conduct has been generally good.
148. Quiet, respectful, and obedient? Yes.
149. There is another man named M'Spadden? Yes.
150. A murderer? Yes.
151. Have you noticed any signs of insanity in that man? I have. I have seen him when he has been confined in the cell, when he has said they have been going to murder him or to shoot him.
152. During the whole time of his confinement has he evinced signs of insanity? Yes; sometimes he has been very well, and he is a very good working man too.
153. Do you believe him to be insane? I do not know; I am no judge, but from his expressions and his actions I think myself he must be insane.
154. *By Mr. Walsh*: At the times you refer to does he speak of any particular persons who are going to kill him? No; he says half-a-dozen people with bayonets are going to kill him, or to poison him.
155. *By Mr. Cowper*: Is he with the other prisoners? Yes.
156. *By the Chairman*: You have no charges against most of the prisoners? No.
157. How many are here for murder? I do not know.
158. *By Mr. Walsh*: Have you heard M'Spadden complain of any particular class of persons—of persons of any particular religion? No.
159. *By Mr. Lucas*: Do you know a prisoner of the name of Scrimmes? I do.
160. What is his conduct? He is a very well conducted man.
161. Has he ever offended in any way, or been put in the cells for any offence? No.
162. What has been his character—I mean simply since he has been on the island? Very good. There was a man here who for a long time acted as though he was insane, and there were two or three doctors who examined him, but Dr. West found out that he was only malingering.
163. *By the Chairman*: Who were the worst among the insubordinates? I could not say; but I believe there were twelve picked out in Sydney. They were all mixed up together.

Cockatoo
Island Prison.
1 Feb., 1861.

Mr. Byron.

APPENDIX.

A.

STATE of Cockatoo Island, 1 February, 1860.

DETAIL.	Colonial.	Home.	TOTAL.	RELIGIOUS DENOMINATIONS.	
Under Sentence to the Roads	135	6	141	Protestants	84
Ditto Transportation .....	..	..	..	Roman Catholics	69
Ditto to Irons	5	..	5	Presbyterians	5
Ditto as Vagrants .....	..	..	..	Jews	2
Ditto Tickets Cancelled	18	3	21	Pagans	7
Ditto Further Orders .....	..	..	..
	158	9	167		167

NIGHT MUSTER, 31 JANUARY, 1861.		DISTRIBUTION, 1 FEBRUARY, 1861.			
1 Ward	DRY DOCK.	Gateman, 1; Messenger, 1	2	68
2 "	63		Overseers	10	
3 "	15		Labourers	32	
4 "	36		Light hand Carts	2	
5 "	29		Mechanics	21	
Hospital	10		Binding books for Prison Library	1	
Cook House	3	CONVICT ESTABLISHMENT.	Hospital, 10; Attendants, 3	13	
Cells	10		Cells	3	
Passage	1		Cooks, 5; Wardsmen, 10; Servants, 16; Watermen, 4, &c.	35	
	167		Repairing Clothing, Shoes, &c.	6	
			Gardens	1	
			Sweeper and Shedmen	4	
			Washermon	4	
			Exempt by Surgeon	26	
			Signal Staff and Barbers	3	
			Constables	4	
				99	
				167	

Mr.

Cockatoo
Island Prison.
1 Feb., 1861.

Mr. W. A.
Cahill.

Mr. William Augustine Cahill called in and examined :—

164. *By the Chairman* : What office do you hold? I am principal Foreman of Works.
165. How long have you been on the island? Nine years.
166. In the discharge of your duty have you to overlook the prisoners while they are working? The mechanics; in particular the masons, stonecutters, carpenters, and engineers, &c. The erection of all buildings comes under my province.
167. Can you state under what circumstances Hawkins had his leg broken? Yes; in fitting a piece of the machinery—a large wheel—a prop which was put under in a careless manner, which was touched by him, fell, and smashed his thigh.
168. Was the careless manner in which the prop was placed attributable to him or to others? To him and others.
169. Was the leg badly broken? Yes, across the thigh; it was completely broken.
170. What was the character of that man, generally? Very good; he is a very well conducted man.
171. Can he work now? He could until lately. He is a painter by trade. The other day he took up a carpenter's adze, and accidentally cut himself on the ball of the toe, which has again incapacitated him.
172. You were present when the Committee visited the dormitories? Yes.
173. Can you furnish the Committee with the dimensions of those rooms, their length, width, and height; the number of windows in the walls, the number of berths, how they are situated, and their size; also the space occupied by the passages? Yes. (*Vide First lithograph following Separate Appendix.*)
174. Will you state how the two systems operate upon the minds of the men? There were men who had received their sentences previously to the 1st July, 1858, working with those who had been sentenced subsequently to that period, and who, under different regulations, were working side by side.
175. Will you state, distinctly and candidly, what effect this system had upon the minds of the men? This has been the grievance, and the sole cause of the insubordination of the men. One man received half a day in addition to the current day if he performed the task required by the Government, while the other had the same task to do, and received no indulgence of time.
176. What time could the more healthy and industrious men make over-time—those who were under the regulations in force prior to June, 1858? Half a day each day.
177. Then a man who came here prior to June, 1858, could make nine days a week against the other man's six? Yes; and those men who wear blue jackets are entitled to half a day for Sundays.
178. Practically the working of the system may be this—that two men may work together, one of whom may be working off his sentence at the rate of nine days a week, while the other, who stands much higher as to conduct, is working off but six? It may be the case, and frequently is.
179. The man of better character, who came after June, 1858, is making but six days a week, while the other, of bad character, is making nine? Yes; I have known several such cases.
180. What I want to ascertain from you is whether your opinion, from observing the working of these two systems together, is that it creates a general feeling of insubordination? It is.
181. Whether it breaks out or not that is the feeling? There is no mistake that that is the great cause of insubordination.
182. *By Mr. Cooper* : How many men of the old class are there now on the island? About fifty or fifty-one. If these men were kept at work by themselves the others would not feel it so much, but when they see them working by their sides it excites a feeling of insubordination.
183. *By Mr. Lucas* : Are they not paid for any over-work they do? Yes, for all they do over and above their task.
184. How are they paid for stonework? The man who does 12½ feet of stonecutting is entitled to 3d. per day. Some can do more than that; one man did 17 feet.
185. And they get paid extra for that? Yes, they get paid once a fortnight.
186. They get nothing for the task itself? No, they do that for Government.
187. How much per foot are they paid? It is divided into a number of quarters; their task is 7 feet draft work.
188. How are they paid for what they do over 7 feet? If they do 5½ feet over that they are entitled to 3d. a day.
189. In addition to this, under the old regulations, a man could work off nine days a week, so that one who had been sentenced for three years would be set at liberty at the end of two years? Yes, under the old regulations.
190. And was paid 3d. a day also? Yes, so long as he did as much work as entitled him to that above his task. They are only allowed to draw 3d. a day, if they earn more than that it is put into the Savings' Bank.
191. Is that paid to them on the island? Yes, before they leave.
192. When they leave the island what clothing do they get? I believe they are allowed to buy clothing.
193. *By Mr. Wilson* : Suppose a man does nothing more than his task-work, but performs that, is he allowed to calculate seven days a week? He must do more than his task-work for that.
194. *By Mr. Lucas* : Do you know John Mason? Yes, he is a man in the hospital.
195. Do you know anything of him as to his conduct on the island? I do not know much as to his conduct.

196. I believe he was some time in the blacksmith's shop? Yes.
197. Do you know Scrimmes? Yes.
198. What has been his conduct? He is a well-conducted man.
199. Has he been in trouble? I am not aware—he has been in the carpenter's shop.
200. Is he a carpenter? Yes.
201. He is employed at present as a carpenter on the island? Yes.
202. His conduct has always been good? Very good indeed.
203. *By Mr. Couper*: Do you gather from the convicts that they have any other ground of complaint than the alteration of the regulations in June, 1858? I have heard they cannot get their petitions forwarded.
204. *By the Chairman*: You must have a good deal of experience of the island, having been overseer of works so many years? Yes, I should have.
205. Has it not often occurred to you that it would be much better if there were a greater variety of employment according to the strength or adaptability of the prisoners? I think as far as their capability is concerned they are pretty well classified; those who are unable to undertake mechanical employment are generally selected for the camp.
206. What employment is there for weak men? The hand carts, which is considered light work.
207. Drawing hand carts is not light work? It is considered so.
208. *By Mr. Couper*: A good many of the men are employed as servants and attendants? Yes.
209. *By the Chairman*: Does not the want of a sufficient variety of employment lead to the employment of a larger number of the men as servants than is required? I cannot speak to that correctly. The requirements of the camp are considerable; the washing is very heavy, as each of the men have two clean shirts a week.
210. How many persons are employed in cooking to-day? Five.
211. *By Mr. Sutherland*: How much a foot is a man paid for extra work—you say 7 feet a day is the task? 7 feet a day is the task, and they are allowed 3d. a day if they do 12½ feet.
212. How do you do with the carpenters and blacksmiths? When they are upon any fixed work, there is a scale for them in like manner; but they are seldom employed upon fixed work. It is very hard to define the blacksmith's work as it is chiefly jobbing, as tools to be sharpened, some two or three hundred chisels and picks; and there is the current work for the fitting shop, such as making bolts and nuts, so that it is very rare to keep a man constantly at the same work.
213. How do you pay them? They are paid at the same rates, at the recommendation of the foreman, according to their industry.
214. *By Mr. Lucas*: Do you not think it would be desirable to have the best behaved men here? I should be glad to have none but men of the best character here.
215. Suppose twelve or fourteen of the ringleaders were removed? I should take it as a great boon to have them removed.

Cockatoo
Island Prison.
1 Feb., 1861.

Mr. W. A.
Cahill.

FRIDAY, 8 FEBRUARY, 1861.

Present:—

Mr. HART,		Mr. PARKES,
Mr. LUCAS,		Mr. SUTHERLAND,
Mr. MATE,		Mr. WILSON,
Mr. MORRIS,		Mr. WINDEYER.

HENRY PARKES, Esq., CHAIRMAN.

[The Committee having met in No. 1 Committee Room at 10 o'clock, A.M., proceeded to Darlinghurst Gaol.]

Darlinghurst
Gaol.
8 Feb., 1861.

Mr. William Macpherson examined:—

216. *By the Chairman*: You are appointed overseer of the carpentering department here? Yes.
217. How long have you filled that office? Since the 1st of January, 1860.
218. How many men have you generally at work here? From nine to twelve; the average is about nine.
219. Can you state anything about the sentences of the men who are working here? They are generally short sentenced men, from two to six months; except one or two.

Mr. William
Macpherson.

[Of prisoners working in the carpenter's shop,—]

James Thompson examined:—

220. *By the Chairman*: What is your sentence? Two years.
221. Are you a carpenter? Yes.
222. How long have you been working in this prison? Fourteen months, and twelve months at my trade.
223. How have you generally been employed? At all sorts of work.
224. What are you making now? I am making spoons for the men; I was employed in putting the roof on the new hospital—that was the first work I did.
225. What is the work on the bench? It is the frame-work for sofas or seats in the Domain.
226. How long does it take you to make one of those spoons? Two or three minutes.
227. How long does it take you to make a dozen? A couple of hours.

J. Thompson.

Thomas

Darlinghurst

Thomas Hampton examined:—

- 8 Feb., 1861. 228. *By the Chairman*: What is your sentence? Five years.
 229. On what charge? Shooting a bullock at Shoalhaven.
 T. Hampton. 230. Shooting a bullock out of malice? No, I was going through the bush and shot it accidentally.
 231. What was the offence you were tried for? I was found guilty of shooting a bullock with intent to steal it.
 232. What is your age? Seventeen.
 233. How long have you been working in this shop? Four months.
 234. Had you worked at this trade before you came here? No.
 235. Was this the first time you had been before a Court? Yes.
 236. *By Mr. Lucas*: Who was with you at the time? My stepfather, and my father's brother—they both received sentence for five years, and are on Cockatoo.
 237. *By Mr. Windeyer*: Were you sentenced to Darlinghurst Goal? To the public works.
 238. Are you one of those who came from Cockatoo the other day? No.
 J. Thompson. 239. *By Mr. Lucas (to Thompson)*: Is this man getting on pretty fair with his work? Yes.
 T. Hampton. 240. *By Mr. Windeyer (to Hampton)*: How came you to be put to this work? My father taught me to carpenter before I came here.
 J. Thompson. 241. *By the Chairman (to Thompson)*: Do you obtain any extras for working at your trade? No.

George Drew examined:—

- George Drew. 242. How long have you been in Darlinghurst Gaol? About six months.
 243. What was your sentence? Six months.
 244. It will soon expire? Yes.
 245. What was it for? A charge of robbery.
 246. Have you been working at your trade ever since you have been here? Yes.
 247. What do you do generally? I made a lot of these seats for the gardens—these arms are for seats.
 248. Do you make any portable articles such as chairs? No.
 249. Tables? No.
 250. What is the kind of work you have been generally employed upon? For the gaol.
 251. Joiner's work for the additional buildings? Anything that was to be done.
 252. Do you obtain extras for working at your trade? Tea and sugar are allowed.
 253. Do they all get tea and sugar? Some do not get tea; some of the labouring men.
 254. When will your time expire? I shall be out the 2nd of next month.
 255. *By Mr. Hart*: What do you do with your tools when your work is over? Go to the shop with them, and see them locked up.
 256. Who takes them there? Each man takes his own.
 257. *By Mr. Windeyer*: Are you searched before you are locked up? No.
 258. *By the Chairman*: What are the hours of work? Seven in the morning till four in the afternoon.
 259. Out of that you have a dinner hour, I suppose? Yes.
 260. From twelve to one? Yes.

Edward Geogehan examined:—

- E. Geogehan. 261. *By the Chairman*: How long have you been here? Getting on for ten months.
 262. Under what sentence? Two years.
 263. Charged with what? I was brought in for a concern I was not answerable for—my wife's deeds—I was in Goulburn, and a reward of £500 was offered to any one who would give information about the bank robbery, and they gave me a sentence of two years as a compensation.
 264. I do not understand you? If you will understand me I was promised a reward of £500, and I was done out of my reward for fulfilling the ends of justice. I gave information about the bank robbery, and then after I was in prison my wife became loose and was married to another man, and Capt. Scott would not take my evidence; he said I could not prosecute the woman, and I am rewarded with a sentence of two years.
 265. What occupation were you following before you came here? Sawing.
 266. Are you a sawyer? Yes.
 267. Have you worked in this shop all the time you have been here? I was stone-cutting until I had a little saving.
 268. What work are you doing now? Merely rough carpentering—assisting other tradesmen.

James Frazer examined:—

- J. Frazer. 269. *By the Chairman*: How long have you been here? About two weeks.
 270. What is your sentence? Six months.
 271. What is the charge against you? Stealing from Mr. Malcolm, of Darling Point.
 272. Who was the Judge that tried you? Mr. Justice Cheeke.
 273. Are you a cabinet-maker? No.
 274. What trade are you? I have been working at the carpentering trade lately; by profession I am a seaman; I have been master of a vessel in this Colony.
 275. Of what ship were you master? The "Rival" barque. I have also been chief mate of several vessels, but I came to work on shore.
 276. What are you doing now? Carpentering.

277. What are you making at this particular moment? I think it is for a wardrobe. Darlinghurst
278. For whom? I do not know. Gaol.
279. Who gave you orders to make it? There is another man making it; putting it 8 Feb., 1861.
together; I am trying the stuff ready for him. J. Frazer.
280. Which is the man? (*The witness pointed him out to the Committee.*)
281. You have been here only about a fortnight? Yes.
282. What other work have you seen since you have been here? I saw a chest of drawers made.

Henry M'Carthy examined:—

283. *By the Chairman:* How long have you been in Darlinghurst? A fortnight. H. M'Carthy.
284. What was your sentence? Two months.
285. For what? I was charged with a misdemeanour in the public streets—indecent exposure—but it was not in a street at all.
286. What trade are you? A carpenter and joiner.
287. Did you serve a regular apprenticeship to that trade? Yes.
288. Have you been employed in that way since you have been here? Yes.
289. What have you been doing during that time? Making a wardrobe for some person.
290. Is that a wardrobe you are making now? Yes, part of it.
291. Is that the only work you have done? Yes; with the exception of a box, which I believe was for the prison.
292. A cedar chest do you mean? Yes.
293. An ordinary cedar chest, with hinges, for holding clothes? I do not know what it was intended for.

George Barrett examined:—

294. *By the Chairman:* How long have you been in this place? Four weeks were done of G. Barrett.
my sentence when I came here. I have served four months altogether.
295. What was your sentence? Eighteen months.
296. Who tried you? Judge Cary.
297. For what offence? For obtaining goods under false pretences.
298. What is your trade? Rough carpenter.
299. How have you been employed since you came here? In one thing and another—different sorts of work.
300. Have you been employed in this workshop all the time? Yes.
301. What are you doing now? Assisting in making spoons.
302. Cannot you inform us of any particular kind of work you have done? In different carpentering working—making door studs, drawers, and boxes, and anything that came into the shop.
303. Are many articles manufactured to go out of the prison? That I cannot tell.
304. Are many portable articles, small articles of furniture, and things of that kind made? I never take notice in regard of that.
305. You must know what is made in the workshop—have you never seen fancy articles made, such as tea caddies? There have been some odd ones made in the shop.

William Evans examined:—

306. *By the Chairman:* Are you a cabinet-maker or a carpenter by trade? Carpenter. W. Evans.
307. How long have you been in Darlinghurst? Three months.
308. What is your sentence? Six months.
309. What was the charge against you? Felony.
310. Who tried you? I am sure I do not know their names; I was tried at the Police Office.
311. During the time you have been here how have you been employed? I have made a large chest of drawers for the hospital; I have made another chest of drawers, and have worked at door frames and doors for the building.
312. Have you never made or seen any small articles made, such as work boxes, tea caddies, desks, or anything of that kind? No.
313. *By Mr. Lucas:* With reference to these two chests of drawers, do you know what became of them? I do not know who they were for.
314. You do not know whether they are in the prison? I cannot say.
315. What sort of drawers were they? Cedar.
316. Large chests? Regular sized chests.
317. Have you seen any other drawers made by any other of the men, or any other cabinet work? There was one chest of drawers made, I think, for the clergyman, Mr. Agnew.

[The Committee left the main joiners' workshop, and entered a smaller one where were three men.]

William Morton examined:—

318. *By Mr. Lucas:* How long have you been here? A year and ten months. W. Morton.
319. What is your sentence? Five years.
320. Were you any trade when you came here? A baker and confectioner.
321. How came you to take to carpentering? I asked the superintendent to put me to it.
322. Are you making these doors? Yes.
323. Can you make one of these doors now? Yes.
324. Can you make sashes? Yes.
325. Have you made them? Yes, for the new hospital.

- Darlinghurst Gaol.
8 Feb., 1861.
W. Morton.
326. Have you made any panel doors since you have been here? Yes, for the new wing.
327. Have you made any furniture of any description? No.
328. Have you been engaged in any work of that kind? Yes, I have been making stools.
329. What sort of stools? Plain stools for the gardens, I think.
330. Do you like the trade of a carpenter better than that of a confectioner? I am a thorough tradesman as a confectioner.
331. When you go out of this prison, will you follow carpentering? No, I shall return to my own trade.
332. *By Mr. Windeyer*: Have you any objection to state what you were tried for? Horse-stealing.
333. Was your sentence imprisonment in Darlinghurst? I had two sentences, three years and two years.
334. One after the other? Yes.
335. With hard labour? Yes.
336. Do you get anything in the way of privileges according to the work you do—any extra rations? Yes, we get tea and sugar, and extra bread.
337. According to the work you do? For doing more work.
338. *By Mr. Lucas*: Have you any piece-work here? No.
339. *By the Chairman*: You cannot shorten your time or earn money by extra work? No, there is no chance of it.
340. *By Mr. Windeyer*: Where do you come from originally? Melbourne.
341. Where were you tried? At Goulburn.
342. *By the Chairman*: How long have you been in the Colony? I was born in the Colony.
343. In what part of it? Melbourne. I believe I am one of the oldest natives.
344. *By Mr. Windeyer*: What is your age? Twenty-four.
345. *By Mr. Hart*: What do you do with your tools at night? They are left in the workshop.
346. Are you searched before you are locked up? No.

John M'Mahon examined:—

- J. M'Mahon.
347. *By the Chairman*: How long have you been here? Seventeen months.
348. What is your sentence? Eighteen months.
349. You will be out of this place then in a month? In three weeks.
350. What was the charge against you? Stealing a saddle and bridle.
351. Who tried you? I do not know, I was tried at the Police Office.
352. Are you a carpenter by trade? No, a cooper.
353. What have you worked at since you have been here? Partly at keeping the articles in the prison in repair.
354. Have you worked at your proper trade? Part of the time I have.
355. *By Mr. Sutherland*: Keeping the utensils in repair for the use of the prison? Yes.
356. And in making articles for the use of the prison? The greater part of the articles used in the prison are supplied by contract.
357. You have not made many articles? No, I make articles for the turnkeys sometimes.
358. Buckets and things of that kind? Yes.
359. Washing-tubs? Yes.
360. *By the Chairman*: When did you make the last articles of this kind? A short time ago.
361. Three months, three weeks, or three days? The last articles I made about three weeks ago for the use of the Gaol establishment.
362. What did you mean when you said you made articles for the turnkeys, did you mean articles for the household use of the turnkeys? Yes.
363. When did you make the last article of that kind? About three months ago.
364. Who was it for? Mr. Graham.
365. Did you ever make any article of a similar kind for any other officer of the establishment? Yes.
366. For whom? One for Mr. Lee, and one for Mr. Callaghan, and articles for Mr. Wallis.
367. Who else? I do not well know. Mr. M'Coy has a list of all I made.
368. *By Mr. Sutherland*: Who is Mr. M'Coy? The next officer to Mr. Harrison.
369. *By the Chairman*: What have you done in this particular workshop—have you assisted the carpenters? I have been sharpening the tools; I do not do any particular work here.
370. You do not work at the trade of a carpenter? No.
371. *By Mr. Hart*: How many prisoners usually work in this workshop? Two and sometimes three.
372. Was there any one in charge this morning before we came? Yes.
373. Was any one present here in charge of you? Yes, Mr. Macpherson.
374. Was he here at the moment we came? Not at the moment.
375. Were you by yourselves at that time? Yes.
376. *By the Chairman*: At what time were you and the other men working in this shop unlocked? About half-past six I might be.
377. Did you come direct to this workshop? We had our breakfast partly first before we came—some hominy.
378. Did you come after breakfast here? Yes.
379. Have you been working here ever since? Yes.
380. Has Mr. Macpherson been in the workshop in the morning? Yes.
381. Several times? Yes.
382. Have you been working here ever since you turned out after getting your breakfast? Yes.

Martin

Martin McMahon examined:—

Darlinghurst
Gaol.
8 Feb., 1861.
M. McMahon.

383. *By the Chairman*: How long have you been here? Four months.
 384. Under what sentence? Six months.
 385. What was your offence? Pledging some tools in a carpenter's basket.
 386. That had been stolen? I did not know that they had been stolen.
 387. That was proved in Court? Yes.
 388. Are you a carpenter? Yes.
 389. Have you worked in the Colony as a carpenter? Yes.
 390. How long have you been in the Colony? Six or seven years.
 391. Where have you worked? At different buildings in Sydney.
 392. Have you always worked in Sydney? All but three months.
 393. Are you well known in the trade? Yes.
 394. Do you know this gentleman (*referring to Mr. Sutherland*)? Yes.
 395. Do you know Mr. Sutherland as a builder in Sydney? Yes.
 396. Were you ever in this position before? No.
 397. The offence for which you came here was your first offence? The first in my life.
 398. What have you been employed at during the four months you have been here? For the last few days I have been at work on these doors.
 399. How were you employed when you first came, and, as far as your memory serves you, how have you been employed since? I was at work at the fence outside, putting it up, that was my first job, then I made a gate for the fence; I then made a door for the yard inside. I cannot exactly recollect what other work I had; I have had several small jobs.
 400. Surely you can recollect what you have done from then till now—it is not a very long time? I was making pick handles part of my time.
 401. Have you worked generally upon joiners' work for the new buildings in the establishment? Yes.
 402. Are these doors for the new building? Yes.
 403. Carpenters' work for the new building has been the work upon which you have generally been employed? Yes.
 404. Have you made any fancy articles during the time you have been here—writing-desks or anything of that kind? No.
 405. Is there any reason for three men being in this shop separate from the others? I am not aware.
 406. You are not inferior or superior workmen? Not that I am aware.
 407. *By Mr. Windeyer*: Have you always worked in this shop? I worked in the other until some more men came, and then I was shifted into this.
 408. *By Mr. Hart*: Was that at your own wish? No. I was exempted for a few days, and when I went back to work I found, during my absence, another man had been put to my bench, and I was put in here.
 409. Why were you exempted? I was not well.
 410. Is there any overseer over this and the next shop? Mr. Macpherson.
 411. Does he instruct the men how to perform their work? Yes.
 412. *By the Chairman*: Have you ever known any other overseers since you have been here? No.
 413. Mr. Macpherson has had charge of this department ever since you have been here? Yes.
 414. *By Mr. Hart*: Are any lads instructed by the overseer? Yes.
 415. *By Mr. Windeyer*: Who tried you? I was tried by the Sydney Bench.

[The Committee next visited the blacksmith's shop, a building about 20 feet by 15, with a sloping roof varying in height from 7 to 10 feet. Six men and an overseer were in this shop at two forges.]

Mr. Shepherd Howarth examined:—

416. *By the Chairman*: Are you an overseer? Yes.
 417. How long have you been so? Since January, 1859.
 418. Are there any other workshops of which you have charge besides this? Yes, three altogether.
 419. How many men have you at work? Eight.
 420. Are they all at work now? Yes.

Mr. S.
Howarth.

[Of prisoners working in the blacksmith's shop,—]

Francis Trindall examined:—

421. *By the Chairman*: How long have you been here? Between ten and eleven months. F. Trindall.
 422. Under what sentence? Under sentence of two years.
 423. For what offence did you come here? For uttering bad money.
 424. What trade are you? A blacksmith.
 425. Were you apprenticed to that business? I worked at that trade with my father at West Maitland.
 426. Are you a native of the Colony? Yes, of Maitland.
 427. Were you ever in this position before being convicted of this offence? No.
 428. You were never before convicted? No.
 429. How long have you to serve? A little better than thirteen months.
 430. What judge tried you? Judge Dickinson.

- Darlinghurst Gaol. Working at my trade.
8 Feb., 1861.
F. Trindall.
431. How have you been employed during the time you have been in Darlinghurst?
432. All the time you have been here? Yes.
433. What have you generally made—what are you making now? I am making these things (*a handle for a well bucket*).
434. What are these buckets used for? I cannot tell you.
435. Are they to be used in gaol? I cannot say.
436. How many of these bucket handles are you making now? I made, I think, two besides this.
437. How many have you to make? I do not know.
438. Have you not orders how many to make—they are not ordered one at a time? No; still I go on till I am told to stop.
439. Should you go on the whole week with them if you were not told to stop? Yes.
440. That is finished—have you another in hand now? Yes.
441. When that is finished will you make another? I do not know; if I am told I will make it.
442. *By Mr. Windeyer*: When did you begin making these bucket handles? Yesterday.
443. *By the Chairman*: That is the third you have made? Yes.
444. *By Mr. Windeyer*: When you began this what were you told to do? Make bucket handles.
445. *By the Chairman*: How many were you told to make? I could not say now whether I was told to make any particular number.
446. You do not know what they are to be used for? I do not.
447. You do not know whether they are to be used in the gaol or not? I do not.
448. What was the last thing you made previous to the bucket handles? That I could not say.
449. Why it was only yesterday you commenced making these? Yes.
450. Surely you can recollect what you made yesterday? No, I could not.
451. What did you make the day before that? I could perhaps in the course of a few hours remember.
452. What did you make the day before that? That I could not tell you unless I was left to consider for a few hours, then I might be able to say.
453. What do you suppose you will make to-morrow—do you suppose you will make more bucket handles? I could not tell you; what is sent to the shop I do.
454. Can you inform us any single thing you have made in the week besides bucket handles? I could not say at once what I have been working at. If I had a little time to consider I dare say I could mind the most. There are so many things, sharpening tools, and such things as these.
455. *By Mr. Mate*: How long does it take to make one of these? About an hour, or an hour and a half.
456. What do you do at night when you have done your work, do you leave the shop in this state? As it is.
457. Are you not searched? No, we are not searched in the evening.
458. *By Mr. Hart*: How often do you change your clothes here? About once a week.
459. When did you put that shirt on? Last Saturday.
460. And your trousers? And my trousers.
461. And you have not had any change since? No.
462. How long have you been wearing that handkerchief round your neck? Almost ever since I have been in gaol.
463. That is, between ten and eleven months? Yes.
464. Did you wash yourself to-day? Yes, in the morning.
465. How? I washed myself in the tub.
466. Do you ever wash in a bath? No, I do not.
467. You never wash thoroughly in a bath? No.
468. Is that the case with the rest of the prisoners in this workshop? I believe it is; we do not know where to do it.
469. Is there no place for that purpose here? I have never seen any place.
470. Is your skin in a dirty state now? It is not in the cleanest state, still I wash my body.
471. Would you wish to have a bath? Yes; as this shop is a dirty place to work in.
472. When was your hair cut last? I could not say what day it was; it was on the last day that we had hair-cutting here.
473. How long since was that? It might be a month or better.
474. More than a month? It might be, I would not be certain.

James Smith (a man of colour) examined:—

- James Smith.
475. *By the Chairman*: How long have you been here? A month.
476. For what time were you sentenced? A month.
477. What was your offence? Taking a pair of boots.
478. You were convicted of theft? Yes.
479. Have you been working here as assistant to the blacksmiths? No; I was brought here this morning.
480. You never worked here before? No.

James

James Cotton examined :—

Darlinghurst
Gaol,
8 Feb., 1861,
J. Cotton.

481. *By the Chairman*: Are you a blacksmith by trade? No, a nailmaker; but I can do 8
other work.
482. How long have you been here? Eleven weeks.
483. What was your sentence? Three months.
484. For what offence? Larceny.
485. Were you sent here by the Sydney Police Bench? Yes.
486. How long have you been in the Colony? Ever since 1833.
487. Have you worked in Sydney? Yes; till my trade got that bad by so many nails
coming from home, that I could get no work.
488. What have you been doing in gaol? Working as a blacksmith.
489. What have you been doing? Sharpening chisels and picks, and anything the overseer
of the shop told me to do.
490. Have you ever made things of this kind (*bucket handles*)? No; in fact, I could not
work very much when I came here, but by the instructions of the overseer, I did as well as
I could.
491. At what time did you come here this morning? Directly the bell rang, the first thing;
then we went to breakfast at eight, stopped half an hour, went to work again; we go to
dinner at twelve, stop an hour, come back again, and knock off at four.
492. Who is your overseer? Mr. Howard.
493. Has he been overseer all the time you have been here? Yes.
494. *By Mr. Hart*: When did you last change your clothes? Last Saturday.
495. Is that the day on which the prisoners usually change their clothes? Yes.
496. Have you washed yourself all over since you have been here? Yes, I washed myself
up by the well in the tub. There is a great trough there, and if a man likes he can wash
himself there.
497. How often have you done that? Oftentimes since I have been here.
498. Are the men searched when they leave here after work. Sometimes, I think; at least
I have been searched once or twice, I think.
499. Is that all? Yes.
500. Is it a rule to search the prisoners? Yes, I believe it is.
501. Are you searched every day? The overseer, when we go out, keeps a strict eye on us,
so that we cannot take anything out. When we get there, sometimes we are searched.

James Daly examined :—

James Daly.

502. *By the Chairman*: How long have you been in this prison? Nearly four months.
503. What is the term of your sentence? Three years, with hard labour.
504. For what offence? A market robbery.
505. Breaking into a stall? Yes.
506. Were any other persons sentenced with you? Yes, one to Parramatta, and the other
to Cockatoo.
507. What is the name of the man who was sent to Cockatoo? John Owen.
508. Who tried you? Judge Holroyd.
509. What have you been employed at during the time you have been here? I have been
assisting at blacksmith's work.
510. Did you take to it of your own choice? I was put to it.
511. You were not at this trade before you came to prison? No, I was never at any work.
512. What occupation were you before you came here? A jockey.
513. Are you a native of the Colony? Yes.
514. What is your age? I was sixteen last anniversary day.
515. *By Mr. Windeyer*: Can you read and write? No; I never had the opportunity, I
lost my friends when I was very young.
516. Have you any opportunity of learning to read and write in the gaol? No, not now.
517. Was there at one time? Yes, when Mr. Callaghan was here.
518. What was he? The schoolmaster.
519. There is no schoolmaster now? No.
520. *By Mr. Hart*: Was he a prisoner? No.
521. *By Mr. Windeyer*: What clothes did you get when you came into the gaol? I had
my trousers when I came from Cockatoo, a jacket, and shirt. I wore them for two months,
and then I got another shirt the other day.
522. *By the Chairman*: Were the articles you were charged with stealing out of the market
jewellery? No.
523. What were they? £13, a pair of boots, and a basket.
524. *By Mr. Windeyer*: When did you last change your clothes? On Saturday last.
525. *By the Chairman*: Have you ever washed all over your body since you have been in
the gaol? Several times; I generally wash myself in the yard.
526. From head to foot? Yes.
527. *By Mr. Hart*: Do other men wash in the same water, or is the water emptied? Some
of the men do not wash, they do not like stripping in the yard.
528. When you wash, do other prisoners wash in the same tub after you? In the same
tub, but not with the same water.
529. *By Mr. Windeyer*: Are any combs allowed? No.
530. *By Mr. Hart*: What religion are you? A Catholic.
531. How often do you receive religious instruction? No further than I go every Sunday
to it.

- Darlinghurst Gaol. 532. Does the clergyman visit the gaol every week? I never see him.
8 Feb., 1861. 533. What does he do on Sunday? Just a mass in the morning, and sometimes in the evening.
- James Daly. 534. Has he spoken to you individually at all? When first I was committed Father Sheehy spoke to me.
535. Do you know your catechism? I know some of it.
536. Are there any other Catholic convicts? Yes; I am about the smallest in the place.
537. Are the Catholics taught their catechism by any one? No, except by one of the men in the yard. Some of the men study and learn it.
538. *By Mr. Lucas*: You say you change your clothes every Saturday? Yes.
539. How can you change if you have only one shirt? Some of the men going out may give you a shirt, or you may get a man to lend you one.
540. If you have only one you do not change your shirt at all? No, you cannot unless you get some person to lend you one.
541. *By the Chairman*: Where are you locked up? In No. 19 cell, hard labour wing.
542. Is it a single cell? No.
543. How many are there in the cell? Four besides me.
544. Do you know their names? One is Arabian, who came by the mail-boat; another is George Stephens. I do not know the others' names.
545. Are they young or old? Older than me—one is a middle-aged man.
546. *By Mr. Hart*: Before you came here used you to attend church? Yes, I used to go of a night.
547. *By the Chairman*: How many boys of your age are here? Only one in our yard.

[The Committee next visited a small blacksmith's shop adjoining, in which three men were employed.]

John Carroll examined:—

- John Carroll. 548. *By the Chairman*: Are you a blacksmith by trade? No, a tin and copper smith.
549. Did you ever work at smiths' work before you came here? Yes, I had a little insight into it.
550. When did you come here? On the 1st April I was tried.
551. What was your sentence? Two years, with hard labour.
552. What was the charge? Uttering a forged cheque.
553. By whom were you tried. By Judge Dickinson.
554. Where? At the Court House.
555. During the time you have been here how have you been employed? In working at any trade, sometimes as a tinsmith, at other times working for the gaol as a blacksmith.
556. Can you state to us with any degree of order the course of work upon which you have been engaged from the time you came here? You get such a variety of work that it would puzzle you.
557. What was the first work you did? I was working at my own business as a tinsmith.
558. What did you make? Several things for the gaol, pots, pannicans, tin dishes, kettles.
559. How long did you continue to be employed in that manner? Three months.
560. Did you do any coppersmith's work? Yes, I made some copper tea-kettles.
561. The usual copper tea-kettles? Yes.
562. Did you do any other coppersmith's work? No.
563. How many copper tea-kettles did you make? I made one, and repaired several.
564. Then what work did you do? Then I made some half-dozen baking dishes, cullenders, and wash-hand basins.
565. Since you have been working at the forge what kind of work have you generally done? General work for the stonemasons in the gaol, sharpening and repairing their tools.
566. Have you ever made any articles complete in themselves, as bedsteads, children's cots? Yes.
567. Any other articles of a portable character? Yes, I have been assisting to make such things.
568. Will you state what things in particular you have made? A cot, I may mention, I assisted to make.
569. Did you make any other articles for domestic use? I assisted in making out-door work.
570. What do you mean by out-door work? Such as Government orders as we were told.
571. What articles were they? I assisted in making a branch to hold a lamp for the Victoria Military Barracks.
572. Has there been much work done for the Military Barracks? Yes; there has not been so much done lately as there was six months ago.
573. Are you a native of the Colony? Yes, a native of Sydney.
574. What is your age? Twenty-four.
575. Are your parents in Sydney? My mother and sisters are, but, unfortunately, my father is in a similar place to myself.
576. Were you ever in a similar position to this before you were convicted of this offence? No, I was here once before for an assault on my wife, that is all.
577. You are married then? Yes, and have one child.
578. How long have you been married? Six years.
579. You married then at the age of 18? Yes.
580. Does your wife ever visit you here? Yes, every visiting Sunday, every opportunity when she can she comes to see me.

581. What regulations are you subjected to in the gaol as to cleanliness—are you required to wash at any particular period? No, we have to wash our own clothes, and clean our own cells. Darlinghurst Gaol. 8 Feb., 1861.
582. If you had not chosen to wash to-day, would you have been allowed to neglect? I never saw an instance of a person having been punished for not doing it. John Carroll.
583. You are never directed to wash yourself from head to foot? We are never asked.
584. How often have you a change of linen? We get half a day a week; on Saturday we knock off at twelve, and have the remainder of the day for washing.
585. Have you any clothing from the prison? We are allowed only one shirt.
586. *By Mr. Sutherland.* What is the class of work generally done for the Military Barracks? We have made a stand to hold the lamp over the gate—we have also made staples and bolts for the new building.
587. Is this the kind of shirt usually given? Yes.
588. Have they all these words upon them? Yes, "Darlinghurst Gaol."

Edward Tarlington examined:—

589. *By the Chairman.* How long have you been here? Going on for three months. E. Tarlington.
590. What is your sentence? Two years.
591. On what charge? Horse stealing.
592. Where were you tried? At Singleton.
593. By whom? Judge Owen.
594. Are you a native of the Colony? Yes.
595. What is your age? 17 in May.
596. You were about 16 when you were tried? I was tried in November—I was then turned of 16.
597. Are your friends living at Singleton? No; I do not know where my friends are—the last time I heard of them they were going to the Suowy River.
598. Where were you born? At the Glebe, Sydney.
599. Did you go to Singleton with your parents? No, I went up the country stock-keeping.
600. How long is it since you went up the country? Getting on for two years.
601. Since you have been here how have you been employed? Striking.
602. Have you been accustomed to this before? Yes, with my father; my father is a blacksmith.
603. Can you read and write? Yes.
604. You received some education in Sydney? Yes.
605. What school did you go to? I went to several schools; the first school I went to was close to the Scots Church, Mr. Donald Macpherson's.
606. Can you write pretty well? Yes. (*The witness wrote his name.*)
607. How many boys are there in the gaol of your age? I do not know.
608. Are there others? Yes, there is one in the other shop.
609. Do you ever have conversation with them? Yes.
610. Do you know whether they can read and write? No.
611. Is there any public instruction in the gaol? Not that I am aware of.
612. What regulations are you subjected to as to cleanliness—are you ever required to wash yourself? I wash myself before my meals.
613. Suppose you neglected to do so would you be required—are you ever asked? No.
614. It is left to you as a matter of choice either to wash or to go unwashed? Yes.
615. In point of fact when were you washed last? This morning.
616. Do you wash every morning? Yes.
617. That is, your hands and face? Yes.
618. Do you ever wash your body all over from head to foot? Yes, in the yard.
619. Do you often change your linen? Once a week.
620. Are you supplied with the necessary means of keeping your hair clean? I had a comb when I came here, and I afterwards asked Mr. McCoy for one, and he gave me one.
621. Do you who work in these shops get any extra rations, or any privileges? Yes; besides what we have at our dinner time we are allowed extra bread, and tea and sugar on Saturdays.

[The previous witness, John Carroll, said they had half a pound of bread daily, [J. Carroll.] a quarter of a pound of tea and a little sugar weekly.]

John Hall examined:—

622. *By the Chairman.* Of what place are you a native? Liverpool, in England. John Hall.
623. How long have you been here? About a year and eleven months.
624. Under what sentence are you? Three years.
625. For what offence? Horse stealing.
626. Who tried you? Judge Dickinson.
627. Where? At Goulburn.
628. How have you been employed since you have been here? I have done different things since I have been in gaol. When I first came into the gaol I was exempted by the doctor from hard work. I have been piling stones and taking away the dirt from the yard, and different things.
629. What are you doing in here at this moment? I came here to take the dirt away.
630. You are not assigned to this workshop? No.
631. Can you read and write? Yes, a little.
632. What is your age? Twenty-two.

- Darlinghurst Gaol. 633. Have you any books to read during your leisure time? Yes.
 8 Feb., 1861. 634. What books have you been reading? Different books, Chambers' Journal and History.
 John Hall. 635. *By Mr. Mate*: Do you get any books you like on Sunday? Yes.
 636. What do you do on Sunday? On Sunday there is church or chapel at the usual hours; that is regular every Sunday, and is about the best point there is in the place.
 637. *By Mr. Hart*: What religion are you? A Roman Catholic.
 638. How often do you see your clergyman? Once a week, except sometimes he may come to hear confessions on Saturday, or to visit the sick.
 639. Have you had private conversation with him since you have been here? Yes.

[The Committee having left the blacksmiths' shops, proceeded to the cooking-house, where the cook was engaged in serving out dinner to the various messes in kids.]

The Cook examined:—

- The Cook. 640. *The Chairman*: For how many men is this the allowance (*pointing to one of the kids*)? For six men.
 641. Of what is it supposed to consist? $3\frac{1}{2}$ lbs. of meat when cooked.
 642. What do you put into the soup? Potatoes, carrots, and a few parsnips.
 643. Always about the same? Yes; we want a few more vegetables; there are too many potatoes.
 644. With what is it thickened—with rice? No, with a little hominy.
 645. Can you state what quantity of vegetables in proportion to the meat you have for the entire mess? The quantity of meat served out to-day was 256 lbs.; of potatoes, carrots, and parsnips, 157 lbs. Of this there was used for the messes—put into the copper—140 lbs. vegetables and 230 lbs. meat.
 646. You think the quantity of potatoes is disproportionate? Yes.
 647. How many men are to be supplied with that boiling of soup? I have to supply to-day 193 males, 32 females, at hard labour, and 115 male and female convicts.
 648. *By Mr. Hart*: Is the diet always the same? Yes.

Matthias Nolan, stating that he was the delegate appointed by the prisoners, and coming forward—examined:—

- M. Nolan. 649. *By Mr. Sutherland*: Is the bread similar to what is here? Yes.
 650. *By Mr. Hart*: Do you consider to-day's bread wholesome or not? Some I do.
 651. And some of it do you think unwholesome? Yes, some of it is very heavy.
 652. Who has the duty of seeing whether the bread is wholesome or not? There is a delegate appointed every day. I am the delegate for to-day.
 653. Did you approve of the bread to-day? Yes, I did; it is better than it has been for some time past.
 654. Are the prisoners satisfied with what the delegate decides? Sometimes they are, more times they are not, for it is very seldom we have good bread. If I had sent it back this morning it would only have been sent back again.
 655. *By Mr. Sutherland*: Then you do not keep it because it is good? It is better this morning than it has been for some time past.

[The Committee having examined the bread, &c., proceeded to the labour wing, entering the ward of which they passed to the labour yard, where the prisoners were crowded beneath a narrow shed, as a shelter from the rain, which was falling heavily.]

John Lynch coming forward and requesting to be heard—examined:—

- John Lynch. 656. *By the Chairman*: When did you come here? I received a sentence for forgery, and came here from Cockatoo Island nine months ago to serve a second sentence in this gaol.
 657. When did you receive your sentence? In February, 1858.
 658. By whom were you tried? By Judge Dickinson, in Sydney, at the Criminal Court.
 659. You were sentenced to Cockatoo? Yes, for five years.
 660. How long have you been here? Going on for ten months.
 661. How have you been employed? Cutting stones over there, earning at the rate of ten shillings a day for the Government.
 662. Did I understand you that you wished to make a complaint to these gentlemen, who are a Committee of the Legislative Assembly as to the usage you receive here? Of the bedding here.
 663. You can state what you like? I have only had one blanket from the time I came in till now, it has never been changed, and the bedding is wretchedly dirty and filthy.
 664. Do I understand you to say that there are vermin in the cells? Yes; I have had to clean myself several times, and throw my clothes away.
 665. Are there any means of personal washing? There are means of washing these blankets if they were taken out and washed.
 666. Are there means of bathing? There is a bath, but it is not for us, we never get it.
 667. You have been here nearly ten months; supposing you had neglected to wash yourself would you have been compelled to do so? No.
 668. Are there no regulations to compel persons here to wash? No.
 669. You must have some knowledge of what is going on here; are there any instances in which persons have never washed during the time you have been here? I believe there

- are some who do not try to look after themselves properly—men can wash if they like, there is water to wash here in the yard.
670. Do you always get good bread? Not always; sometimes it is very indifferent; and when we refuse it it comes back again—we may take it or go without.
671. *By Mr. Hart*: How is the water supplied? From a tank, when there is a scarcity in the pipes.
672. Is it from the water works? Yes; I understand the pipes are from the water works on Lachlan Swamps.
673. Is there anything else you wish to state? No; only as to the way we have rations, our rations are sometimes very inferior.
674. Is this your first offence? Yes; I was a builder in Sydney for years. I got a sentence of twelve years from Judge Dickinson; he mitigated it down to two fives and two ones. I am now earning at the rate of 10s a day for the Government.
675. *By the Chairman*: What are you doing? Cutting octagonal shafts for the Telegraph Office in Sydney. Here is my clothing, one shirt.
676. How long have you had that hat? It is the only thing I have had since I came here, and I got that from a man who was going out. Nine months ago I asked the superintendent for a hat, and I could not get one.
677. What is your cell? No. 24.

John Galahan, having also expressed a wish to be heard, was examined:—

678. *By the Chairman*: You wish to say something to the Committee—how long have you been here? Twenty months. J. Galahan.
679. Under what sentence? Two years.
680. What judge gave you that sentence? Judge Stephens.
681. What was the charge against you? Assault and attempt to commit a rape.
682. You can make what statement you wish? It is with regard to the rations—we had very bad bread one day at dinner, we objected to it, and some were locked up in consequence during the dinner hour. I was afterwards sent down to the quarry, and in consequence of the heat of the weather, drinking a quantity of water, and having no food from breakfast until the evening, I had a bad attack in my inside.
683. Have you any complaint to make about the state of your cell? No.
684. Are there vermin in your cell? No; unless bugs.

George Williams examined:—

685. *By the Chairman*: How long have you been in the prison? Six months. G. Williams.
686. What was your offence? Horse stealing.
687. Who tried you? Mr. Callaghan, at Albury.
688. What was your sentence? Three years, with hard labour.
689. What have you been employed at during the three months you have been here? In the stone yard, most of my time, assisting in cutting stone.
690. You are in irons now? Yes.
691. When were you put in irons? When I went over to the I-land.
692. Are you one of the men who came from Cockatoo Island? Yes, and I have been in the other wing most of my time; I am now in a cell as lousy as a bandicoot, and I have no means of keeping myself clean; I am picking them off me every day.

William Collins examined:—

693. *By Mr. Hart*: What is your age? Eighteen. W. Collins.
694. How long have you been here? Eleven months.
695. What is your offence? Uttering.
696. Are you in a cell with other people? Yes.
697. Have you intercourse with the people who are here for hard labour—can you speak when you like? Yes.
698. *By Mr. Windeyer*: How often do you change your clothes? Once or twice a week.
699. *By Mr. Morris*: How many shirts have you? Some have three or four, others have only one.
700. How many have you? Two or three.
701. How did you get them? Asked Mr. Harrison for them.

[The Committee re-entered the labour ward.]

Thomas Harvey examined:—

[The prisoner's throat was frightfully swollen, and he appeared to speak with extreme difficulty.]

702. *By the Chairman*: How long have you been here? Four years next month. T. Harvey.
703. What is your sentence? Twenty-two years.
704. What were you tried for? Highway robbery.
705. Who tried you? Mr. Justice Terry, at Bathurst.
706. Had you one sentence? There were two charges.
707. What was the other charge? They were both for highway robbery. My sentences were fifteen years and seven. Since I have been in trouble here I have been very bad.
708. *By Mr. Wilson*: What is the matter with you? My throat is very bad; I can scarcely swallow anything.

Darlinghurst Gaol. 709. What does the doctor say is the matter with you? He says he can do nothing for me use of; this brown bread I cannot swallow; I have asked the doctor to give me white bread, and he has refused.

T. Harvey.

710. Is there any of the other food you object to? Bread is the only food I can eat, and since the doctor stopped my white bread, which was allowed me for a short time, I have scarcely been able to take anything.

711. Has that swelling in your throat become worse? Yes.

712. May not the difficulty of swallowing arise rather from the increased swelling than from the nature of the bread? I think it is the bread.

713. That brown bread is better for you than white? I cannot get it down; white bread will crumble, but this will not. I was brought from Cockatoo to undergo an operation, and I was willing to bear it; Dr. Nathan, Dr. West, and I think Dr. Greenup, examined me, and they thought it should not be performed. They said it would kill me, and I have been here ever since.

[The Committee next visited the solitary cells, in which the insubordinate prisoners from Cockatoo Island were confined, and remarked upon the ill ventilated state of the corridor, the window at one end of which was closed with panes of glass.]

William Henry examined:—

W. Henry. 714. *By the Chairman.* When were you tried? In September, 1860.

715. Where? At Bathurst.

716. For what offence? Stealing.

717. Who tried you? Judge Wise.

718. What was your sentence? Six years on the public works, with hard labour.

719. When were you sent to Cockatoo Island? In December.

720. Did you not join in the insubordination which took place there? Yes.

721. Will you state what led you to do so? There were regulations existing by which each prisoner could shorten his sentence more than half. In the first instance he had half his time reduced by the ticket-of-leave system, and he could shorten it one-third less by the mark system for extra work and good conduct. That was an inducement to good conduct and hard labour. When I arrived on the island I found that system done away, and no remuneration or reward held out for good conduct or hard labour. The full sentence was carried out indiscriminately, no matter for what crime. Moreover, we were put to labour with men sentenced under the old regulations, we were put to the same labour and to the same task, so that a casual observer would imagine we were all labouring under the same system. About eighteen months ago I heard that the prisoners made a similar movement or insurrection, and that some Members of the Legislative Assembly visited the island, and promised an amelioration of their condition. I am not aware whether those gentlemen paid their visit officially, but under their promises the men went to their work. Now, finding that nothing has been done, that no alteration has been made, we have determined to refuse to work till we have some means of shortening our time, or some reward for good conduct. We are all aware that in every prison under the British flag, every prisoner has some means of mitigating his sentence, and we conceive that we are very hardly treated under the present system, in being deprived of that privilege. We arranged together on the 1st of January that we would refuse to work; we talked the matter over in our wards, and we carried out our intention on the following day.

[The Committee then proceeded to the trial wing, where was confined,—]

George Swan examined:—

George Swan. 722. *By the Chairman.* When were you sentenced? On the 12th September, 1860, on a charge of murder. Judge Milford tried me at Maitland, and sentenced me to death.

723. Your sentence was afterwards commuted? Yes, to life imprisonment, the first three years in irons.

724. You were removed from Maitland to Cockatoo Island? Yes, I arrived there the latter part of November.

725. What kind of work were you set to do? Drawing a hand cart, to assist in the quarries.

726. How long did you continue working? I was unwell when I first went there, under the doctor's hands. I then went to work to build a wharf for the steamer to come to, on one side of the island. I was taken into the hospital by Dr. West.

727. What was the matter with you? Rheumatism.

728. How long did you continue to work before the offence for which you were removed here? I was under the doctor's hands some weeks.

729. You did refuse to work? Yes, on the 2nd January.

730. Why did you refuse to work? Because I had been up to the office to ask to be allowed to write to the Government and was refused. I wanted to know if they would bring Mr. Fitzgerald, the publican, face to face with me, that I might ask him some questions relative to the occurrences that happened in his house on the morning of the 18th April.

731. What do you suppose he would prove? He might know the man's name that was in his house on that morning of the murder, and if he knew that man's name, and the man could be produced, he could prove that I was at Lochinvar.

732. *By Mr. Windeyer.* You believe this man could prove that on the morning when this man was killed you were at Lochinvar, and could not have been at Stoney Creek? Yes, at the time of the trial I wanted Mr. Fitzgerald to be brought forward, as I thought that as this man was a carrier he might know his name, and he could prove that I was at Lochinvar.

[Four

[Four lads, named Alfred Young, aged 14 years 6 months, Edward Chalk, aged 15, George Tagg, aged 15, and John Mulholland, *alias* the "Cadger," aged 9, were brought from cell No. 7 in the same wing.]

Alfred Young examined:—

733. *By Mr. Hart*: What is your age? Fourteen years, the 6th last June. Alfred Young.
734. What was your offence? I was charged with horse stealing.
735. What was your sentence? Twelve months.
736. How long have you been here? Four months all but a week.
737. What part of the gaol are you usually put in? This part, down in the committed yard.
738. Do you mix with the convicted prisoners? No, I am kept separate.
739. Can you read and write? Yes.
740. Do you ever read? Sometimes when we get books.
741. What books do you get? Some out of the library—some novels.
742. Can you recollect the name of any novel you have read here? I have read one of the name of Margaret Catchpole, Harry Mowbray, and Valentine Vox.
743. Who supplies you with these books? Mr. Ainsworth.
744. Is he one of the turnkeys? No, a prisoner.
745. Has he charge of the library? Yes.
746. Do you ever write? No, I have not been awriting, that was a privilege I had; I have not got it now.
747. Have you any opportunity of practising writing if you wish to do so? Yes, if Mr. Beverley will let us.
748. What religion are you? A Protestant.
749. How often do you see the clergyman? Twice a week sometimes.
750. What does he do when he comes? Preaches.
751. On what days? Wednesdays and Sundays.
752. Does he give you any private instruction? No.
753. What clergyman have you seen? I never heard his name; he is a one-armed gentleman.
754. Has any other clergyman who you thought belonged to this gaol visited it? No.
755. Have you seen the Protestant bishop here? No, and I would not know him perhaps if I did see him.
756. Have you heard that he has been here? No.
757. Have you heard of any other clergyman but Mr. Agnew being here? I have heard of the priest being here.
758. What do you do during the day time? We do nothing now, we used to write.
759. Would you be desirous of learning a trade? Yes, I am sentenced to be bound out.
760. To what trade? I was not told that.
761. Have you any parents? I have got a mother.
762. Where is she? In Sydney.
763. What is she? I do not know; I have not seen her for a good while before.
764. How long was it before you came here that you saw your mother? Three years.
765. Have you done any work in the gaol? No; Mr. Holroyd ordered that I was to be kept separate from any other prisoners.
766. Are you kept separate? Yes; there are three other boys in the cell with me.
767. How often have any of the boys with you been sentenced before? The smallest one has been twice during my time.
768. The other, Chalk? I have never seen him before.
769. Has Tagg ever been here before? Once before.
770. What do you talk about when you are in the cells together? About various little things.
771. About the novels you have been reading? Yes.
772. What did you think of Margaret Catchpole? I liked it very much.
773. Have you been telling your companions what a nice book it was? Sometimes.
774. What did you do during the three years in which you did not see your mother? I have been up the country with this man.
775. What man? The man I took the horse from.
776. What were you engaged in? He learned me to farm.
777. Have you had any religious books supplied to you to read? Yes, I had a Bible.
778. How often have you had the Bible? I had it till the Cockatoo men came here, and then I lost it.
779. What part of the Bible used you to read? Almost any part of it.
780. Has any particular part struck you? Yes, about Joseph and his brethren.
781. Can you tell me in a few words Joseph's history—what occurred to Joseph? He was sold by his brethren, and bought by the Egyptians.
782. What did he become after? He got in prison, and then afterwards he interpreted Pharaoh's dream; and then he became the governor of the country.
783. What inference do you draw from that? I thought a good deal of it.
784. Suppose you were to get out now what would you think of doing? I would go and stop at home, stop with my mother, or go up the country again.
785. Would you know where to find your mother? Yes.
786. Is she in service? She is living either with my brother or sister, I do not know which.

Edward

Darlinghurst
Gaol.
8. Feb., 1861.
E. Chalk.

Edward Chalk examined:—

787. *By Mr. Hart:* What is your age? Fifteen.
788. What were you sent here for? I was sent on suspicion of stealing.
789. What is your sentence? Three months.
790. Have you been here before? Once.
791. What for? On suspicion of taking an oil-skin coat.
792. Are your parents living? My stepfather and my mother are living in Sydney.
793. Are you a native of the Colony? I am.
794. Have you been engaged in any business? I was at shoemaking for a month, and I have been shepherding up the country, in New England.

George Tagg examined:—

- George Tagg. 795. *By Mr. Hart:* How old are you? Fifteen.
796. What is your sentence? Three months.
797. What were you sent here for? On suspicion of stealing a watch.
798. Have you been engaged in any business? I have been at sea for three years. I had been on shore about six weeks when I was sent here.
799. Do you get any books to read? Yes.
800. When did you get the last? Last Saturday.
801. What is the name of it? "Woman's Love."
802. Have you that book? No, I lent it to the man in the next cell.

John Mulholland, *alias* "The Cadger," examined:—

- J. Mulholland. 803. *By the Chairman:* What is your age? Going on for ten.
804. What were you sent here for? A till.
805. For robbing a till? Yes.
806. How many times have you been here before? Twice; I was in for a till and for hair oil.
807. Have you a father or mother? Yes.
808. When you come out again will you keep away from these tills? I don't know.

[Of other prisoners in the trial wing,—]

James Wade examined:—

- James Wade. 809. *By the Chairman:* Under what sentence are you labouring? Seven years.
810. For what? Picking a lady's pocket of 2s. 4½d.
811. Were you sentenced to Cockatoo Island? Yes, on the 4th June last. I was tried before a Magistrate, and wished to have the case summarily dealt with; but having a lawyer I left the matter in his hands, and he had it brought before a higher Court.
812. By whom were you tried? By Mr. Justice Holroyd, and he gave me seven years. If the case had been dealt with summarily I should not have had more than three or six months. Certainly I had been in gaol once before.
813. What were you in gaol for before? A similar thing.
814. What sentence did you get then? One month.
815. That was given you by a Magistrate? Yes.
816. You were never tried before a Court until this occasion? No. Another thing was that a policeman swore that he knew me to be sent to Hobart Town, which I was never nearer than at present. I have been in the Colony three years; I landed at Adelaide, and could have proved that I was a hard-working man.
817. *By Mr. Hart:* Have you sent any petition to Government? No.
818. *By Mr. Wilson:* Have you asked leave to send any petition to Government? No; if I had it would have been all the same; for a good many asked and were not allowed, and I did not think it was of any use asking. That was the reason of my falling out, I thought I was very unjustly dealt with. What is the good of my being there for seven years working my life out? I might as well be here as go there for seven years, and have no hope of anything.

John English examined:—

- John English. 819. *By the Chairman:* What country are you a native of? Ireland.
820. You were in the army? Yes.
821. When did you enlist? In January, 1851. I came out in the 11th regiment, and deserted from it when it was going home. I was afterwards taken and handed over to the 12th regiment. I was tried by a district court martial, and got three months' imprisonment. While I was doing the three months—I had done two out of the three—I complained to Captain Miller of the cell being damp, and he called me a damned impertinent puppy, and said I should not go on with my tricks in that regiment. I told him I was no puppy: he ordered me to silence. I then raised my hand and struck him in the face, but I never marked —
822. You were tried by court martial? Yes, and was sentenced to transportation for the term of my natural life.
823. You were sent to Cockatoo Island? Yes.
824. How long were you on the island before this insubordination took place? Seventeen months.
825. You refused to work? Yes.

826. On what ground? I fell out with the rest of the men, till something was done by the Government to alter the regulations, so that we might shorten our time. Darlinghurst Gaol.
827. *By Mr. Hart:* Is that oakum for you to pick (*pointing to some pieces of old rope in the prisoner's cell*)? Yes. 8 Feb., 1861.
828. Why is it not picked? Because I am bad in my inside. John English.
829. How long have you been ill? Since yesterday.
830. Has the doctor been to see you? Yes.

Thomas Brown, *alias* Laniger, examined:—

831. *By the Chairman:* What is your sentence? Five years. T. Brown.
832. For what offence? Stealing from a dwelling.
833. Who tried you? The Chief Justice.
834. How long were you on Cockatoo Island before the insubordination took place? About eighteen months.
835. What is the statement you wish to make? Relative to the new Act. In the first place, when men are sentenced and receive a sentence, as they did in former years when transportation was in vogue; and at the time that Act was repealed in June, 1858, there was some provision made by the Executive Government and the Judges that prisoners should receive a commutation of sentence at the Bar; so that the sentences now and formerly should be proportionable to each other, which I believe has never taken place, for I myself have made inquiries from many prisoners.
836. Will you state simply the ground of complaint which has led the men to refuse to work? This is one portion of it: men sent there are without hope; and, in the second place, working under prisoners like themselves, placed in authority as sub-overseers—men who are generally selected from the worst class of men. The worst men are the best to suit for Government purposes. Another ground of objection is the want of classification. All the men are huddled together without regard to their convictions, or their general conduct. First, second, and third sentenced men are all huddled together, youth with the old veteran in crime, and so forth. The next is the very filthy state of the wards they sleep in. The dormitories are crowded with vermin, bugs; you could fill a barrow after the ward has been stoved.
837. Are there any other vermin besides bugs? Yes, plenty.
838. Common lice? Not many—fleas and bugs. The place is stoved twice a year, but the blankets are never washed.
839. Did you ever notice any obscenity in these dormitories? Except in the conversation, nothing unnatural; but there might have been for aught I know to the contrary. Then also they complain of the way in which the gratuity money is divided among the men, some receiving a treble portion to others, without deserving it.

[The oakum in this cell was not picked: in reply to a question from Mr. Hart, the prisoner said it was because he was suffering from diarrhoea.]

Louis Sims (a man of colour), examined:—

840. *By the Chairman:* Were you sentenced to Cockatoo? Yes. Louis Sims.
841. On what charge? A charge of horse stealing.
842. By whom were you sentenced? Judge Callaghan.
843. When? The 19th October, 1859.
844. Up to what time did you work at Cockatoo? The 2nd January.
845. Were you then removed with the insubordinate prisoners? Yes. I am at a loss to understand what I am here for. In the first instance I got fourteen days, but I never fell out. I got it, so they said, for saying I would fall out and agitating the men.
846. Did you refuse to work? No.
847. Did you identify yourself with those who did? I never did.
848. Are you willing to go back to work? I am quite willing; I never refused to do so. I expected to go back when I had completed these fourteen days, and was completely astonished when I was told I was to remain here.
849. *By Mr. Wilson:* Of what country are you a native? I am a native of New York.
850. Can you read and write? Yes.

[The Committee next inspected the wall in rear of the blacksmiths' sheds, and then proceeded to the lumber-room, formerly devoted to the purpose of a surgery, in which were a chest of drawers, a cabinet with twenty drawers and compartments, the top of a wardrobe, and two well-buckets. Having also visited the room occupied by the shoemakers and tailors—a large airy room above the lumber-room—they crossed the yard to the hospital, where, at his own desire, one of the patients—]

Charles Rogers, was examined:—

851. *By the Chairman:* How long have you been in the Colony? Nine years. I am a house painter by trade, and am known to Mr. Lucas, the Member of Assembly, for whom I have completed several contracts in my own trade. C. Rogers.
852. *By Mr. Lucas:* Where? At Camperdown. I was partner of ———. In the year 1860 I was tried at the Criminal Quarter Sessions, before Mr. Holroyd, for obtaining money under false pretences, the amount being five shillings. At the time of the trial I made application to Justice Holroyd to get my trial postponed; he asked me upon what grounds; I told him that it was such a short time from my committal to the time of trial

- Darlinghurst trial that the authorities of Darlinghurst Gaol had not been able to get the subpoenas served.
 Gaol. Mr. Holroyd overruled that, and placed me on my trial, without any witnesses or counsel.
 8 Feb., 1861. I wish you would call Mr. Harrison as a witness in this case. The prosecutor in this case,
 C. Rogers. or the man that was the chief cause of my being apprehended, was Patrick Erwin, and besides him was Joseph Noble. I had a contract with them to complete a certain portion of house-painting and when it was nearly finished a quarrel took place between me and the prosecutor—I may say a fight—and he refused to pay me, and gave me in charge for receiving 5s. under false pretences. This 5s. he had lent me during the time I was working for him.
853. *By the Chairman*: Supposing the trial had been postponed? I would have produced witnesses who would have established my innocence.
854. *By Mr. Lucas*: In what way, did they see him lend you the money? Yes, there were two witnesses, Ellen Jaques and the barmaid of the public house where the money was lent.
855. *By the Chairman*: What was your sentence? Four years, and I was never tried before in a Criminal Court.
856. Have you a family? No.
857. Have you sent in any petition to the Government? I applied when I was on Cockatoo to seek redress, and I found it in vain; on the last occasion when I applied, and spoke of my good conduct, I was told by the clerk of Cockatoo Island and by the superintendent, that the character of a prisoner during incarceration was of no value, that maintaining a good character on a penal establishment was mere policy on the part of a prisoner.
858. *By Mr. Hart*: That is not what is referred to—did you represent that you had been accused unjustly, and that you were in a position to prove your innocence? I had not an opportunity.
859. Were you not supplied with paper? No.
860. *By the Chairman*: Since you have been here have you applied to the Governor of the Gaol? Yes, and Mr. Beverley granted me permission.
861. *By Mr. Lucas*: Are you one of the men who came to me when I visited Cockatoo Island? Yes.
862. How often does the Governor of the Gaol visit here? Once a day.
863. How often does Mr. Agnew come here? Once in two or three days.
- P. Murray. 864. *By Mr. Hart (to Patrick Murray)*: How often are your bed-clothes changed—your sheets? Once a week.

[The Committee next visited the women's ward, where a number of the prisoners were engaged at needlework.]

Mrs. Mary Cullen, head female turnkey, examined:—

- Mrs. M. 865. *By the Chairman*: Is this hard labour (*referring to the needlework*)? Yes.
 Cullen. 866. What are these women making? Articles of clothing.
 867. What other kind of labour is there? Cleaning the wings, attending the hospital, and keeping the prisoners' clothing clean. There are now 26 under sentence for hard labour; there are 81 in the prison altogether to-day.
 868. *By Mr. Hart*: Who are the caps being made for? The prisoners—they are all obliged to wear caps.
 869. How is it that some of the girls have not their caps on? They have washed them, and this being a wet day they are obliged to dry them on the ranges.

[Of prisoners in the female ward—]

Mary Bellamy examined:—

- M. Bellamy. 870. *By the Chairman*: What is your sentence? Six months.
 871. What was your offence? I was charged with theft.
 872. Are you a married woman? Yes.
- Turnkey.] [The turnkey stated that the prisoner had had three children at a birth.]
873. You have a family? Yes, I have two alive.
 874. Two alive of these three children? Not of them.
 875. Are the dormitories—the places where you sleep here—sufficiently clean? Quite clean.
 876. Are there no vermin? No vermin.
 877. Are the bed-clothes clean? Yes.
 878. Are you quite satisfied with the general usage of the gaol? Yes.
 879. Have you sufficient body clothes? Yes.
 880. What are you making? The collar of a shirt.
 881. Who is that for? I do not know; we never make any inquiry.

Christina Watson examined:—

- C. Watson. 882. How old are you? Seventy.
 883. What is the charge against you? Stealing.
 884. What is the sentence? Six months, with hard labour.
 885. Who sentenced you? I do not know.
 886. Where were you tried? At the Police Court.
 887. Were you sent here by the Magistrates? Yes; I am a very industrious woman.
 888. Have you ever been here before? Yes.
 889. How often? Once or twice, I believe.
 890. Not more? I do not know.

Sarah

Sarah Neal examined :—

891. What is your age? Sixteen. Darlinghurst Gaol.
 892. What are you here for? I am committed for trial. 8 Feb., 1861.
 893. What are the other two here for? Disorderly conduct; kicking up a row. Sarah Neal.
 894. Are you troubled with vermin in this cell? Yes, there are some—only bugs.
 895. Are those marks we see on the ceiling the marks of bugs? Yes.
 896. How often are the bed-clothes taken out to be aired? I have been here only three days; they have not been taken out.
 897. *By the Chairman (to Ann M'Intyre)*: Are these places clean and free from vermin? A. M'Intyre. There are a great many bugs.

Sarah Johnson examined :—

898. How long have you been here? Only one day. S. Johnson.
 899. What was your sentence? Two months the Magistrates gave me.
 900. For what? A drop of drink.
 901. Was that all? That was all.
 902. Were you ever here before for that offence? Yes.
 903. How many times have you been here before? Indeed I do not know; for a drop of drink two or three times.

Mary Riley examined :—

904. How long have you been here? Three weeks, and I have to stop another. Mary Riley.
 905. What were you sent here for? A drop of drink.
 906. Are you married? Yes.
 907. Have you a family? I had three boys; they are all dead.
 908. Have you ever been here before for the same thing? Yes.
 909. Do you not think it terrible for a young woman like you to be taken from her home for indulgence in this? Sometimes the constables take me when I am no more drunk than I am now. I merely stepped out of the rain in York-street, and the constable said I was drunk and took me up.
 910. *By Mr. Hart*: Where do you wash? In that tub.
 911. How many towels have you? Two for the three of us; sometimes we get two, sometimes three, sometimes four.

Mary Ann Richards examined :—

912. *By Mr. Hart*: What have you in your hand? The share of meat I got for my dinner, I heard you gentlemen were coming and thought proper to keep it to shew you. Mary Ann Richards.
 913. Is that all your allowance of meat? Yes, from day till to-morrow at twelve o'clock.
 914. How many meals a day have you? We have hominy in the morning and evening.
 915. How much bread have you? We have a loaf cut up into three for three women.
 916. *By the Chairman*: Is that your allowance of bread, and your allowance of meat for the day? Yes.
 917. Is the bread good? It is sometimes—sometimes it is not.
 918. You are a married woman, are you not? Yes.
 919. You have been accustomed to keep house? Yes.
 920. Have you ever made your own bread? Yes, when I was up the country.
 921. You know good bread then? Yes.
 922. Have you ever had bread that you believed was made of bad flour? Yes.
 923. Bread that you could double up like putty? Yes; I have tried it so, and have often done that with it in my hand.
 924. Where do you take meals? Sometimes in the yard; when it rains we eat our meals in the cells.
 925. You are supplied with plates, knives, and forks? No, with spoons.
 926. Are the cells cleaned? Thoroughly cleaned, everything is kept thoroughly clean—yesterday was a general cleaning.
 927. Was there a general cleaning of the cells yesterday? Yes.
 928. You knew we were coming here to-day? I did not till you made your appearance.
 929. When did you see us make our appearance? Just as you came into the building.
 930. You say you kept this from dinner time? I kept it because I did not want it.

[The turnkey here remarked that the prisoners kept their meat to eat with [Turnkey.] their tea.

There is no tea nor sugar allowed.]

Hannah Nunn examined :—

931. *By the Chairman*: What is your sentence? Three months. H. Nunn.
 932. For what offence? I was charged with drunkenness, and have been in here a week last Tuesday; I am subject to epileptic fits, and had two fits on the day I was taken up. At about half-past eleven o'clock I was sitting at my door waiting for my husband, and that was the last I recollect before I was taken by the constable; I do not feel the fits coming on. The last fit I had was a day or two ago.
 933. Where were you sentenced? At the Sydney Police Office.
 934. Do you know the name of the constable who took you? I do not, and I should not know the man again.

- Darlinghurst Gaol. 935. What did he say? He said he took me from my door about half-past eleven o'clock.
 S Feb., 1861. 936. *By Mr. Windeyer*: Your husband keeps a shop in Elizabeth-street? Yes; there is another woman lives in the same house with him, and I wanted him to put her away, because it is hard to have another woman put over me. I had taken the pledge last year for twelve months, and I had taken no drink from before Christmas to the time I was taken up.
 H. Nunn. 937. *By Mr. Hart*: Is the bread pretty good? Yes, it is pretty good, but there is very little of it. I have no complaint about that.
 938. Have you ever been here before? Yes, I have, and I deserved it then.

[The Committee proceeded to a cell in which were three females, the eldest between 30 and 40, the second about 20, and the third, Mary Ann Rutter, who stated that she was eleven years of age, her parents live at Morpeth; was sentenced for six months' imprisonment for robbing a till; was going out on the following day, and believed she was to be sent home.]

Mary Ann Mulhern examined:—

- Mary Ann Mulhern. 939. *By Mr. Morris*: What is your sentence? Two months.
 940. For what offence? Robbery.
 941. Were you ever here before? No; I am going out to-morrow; my master is coming to meet me.
 942. Who is your master? Dr. McKay, of Phillip-street.
 943. *By Mr. Hart*: Has this little girl been here the whole time you have been here? No, she was removed from another cell.
 944. Is she a well behaved girl? Yes, very well.
 945. *By Mr. Sutherland*: How long have you been in the Colony? Not long, I came here last August.
 946. *By Mr. Morris*: Did you come with your father and mother? They are not alive.
 947. What part of Scotland do you come from? Inverness.
 948. Were you tried at the Police Court? Yes.
 949. Were you living at Dr. McKay's at the time you were convicted? I had left three days when I was put in here. I left there against their will.

[The whole of the cells in the upper portion of the women's wards were swarming with bugs; about the ceilings, the walls, the hinges of the doors, they were in masses of an inch or more in diameter.]

The Committee having left the women's ward, proceeded to inspect No. 24 cell, occupied by — Lynch; this with the adjoining cells were undergoing the process of whitewashing, and a large number of blankets were piled up in the centre of the cell.

[Turnkey.]

In reply to a question from a Member of the Committee the turnkey in attendance said he could not point out Lynch's blanket, as it had no distinguishing mark, but that the men knew their own from folding them up and putting them in a particular place.]

THURSDAY, 14 FEBRUARY, 1861.

Present:—

MR. HART,	|	MR. PARKES,
MR. LUCAS,	|	MR. SUTHERLAND,
MR. MATE,	|	MR. WALSH,
MR. MORRIS,	|	MR. WILSON,

MR. WINDEYER.

HENRY PARKES, ESQ., IN THE CHAIR.

Henry Beverley, Esq., called in and examined:—

- H. Beverley, Esq. 950. *By the Chairman*: You hold an office under Government in this Colony? Yes.
 951. Will you be good enough to state the proper designation of that office? Principal gaoler of Darlinghurst Gaol.
 14 Feb., 1861. 952. How long have you held that office? Within two months of seven years.
 953. Who was your immediate predecessor? Captain Webster.
 954. I think he died? He died quite suddenly.
 955. Was he the successor to Mr. Keek? No, to Captain McLerie; he was there about eleven months.
 956. Captain Webster was there between Captain McLerie and yourself? Yes, I think about four years.
 957. What is the staff of officers, both male and female, at the present time—will you be good enough to state the name and grade of office of each? With the exception of Mr. Harrison, the chaplains, the surgeon, the dispenser, the clerk, and messenger, they are all of the same grade—(*Vide Appendix A, subsequently furnished*)—they are called warders; formerly they were called turnkeys. Mr. Harrison is the principal turnkey.

958. How long has Mr. Harrison been there? He took charge on the same day as Captain H. Beverley, Esq.
M'Lerie—about twelve years ago.
959. Was he not a turnkey under Mr. Keck? No.
960. He first entered the service in that establishment when Mr. M'Lerie did? Yes, on 14 Feb., 1861.
the same day.
961. What are the other officers under Mr. Harrison? They are all warders.
962. All of the same rank, receiving the same pay, and having to perform the same duties? Yes, with the exception of the gatekeeper.
963. How many are there? Fifteen.
964. I suppose these warders are distributed over different periods of the twenty-four hours, —that some are night and some are day warders? Yes.
965. Do they take these services turn and turn about,—first one set of men taking the night service and then another? Yes; there is a circular form, and on this is the name of each warder, and each warder as his name comes round has to perform the duty of the man whose name precedes his; so that we can always tell the name of a warder on duty upon a particular date, in case of anything happening.
966. You say there is a gatekeeper? Yes. He receives pay as a turnkey.
967. Is there only one? Yes.
968. Then there are sixteen, exclusive of yourself? Yes, and the surgeon, the dispenser, three chaplains, and a clerk.
969. Are there not some overseers? There are four overseers.
970. What are the three chaplains? The Rev. Mr. Forde is the Roman Catholic chaplain now, we have had the Rev. Mr. Sheehy; the Rev. Mr. Agnew is the Protestant, and the Rev. Robert Stewart the Presbyterian minister.
971. What are the names of the overseers? Mr. Macpherson, over the carpenters; Mr. Howarth, over the blacksmiths; Mr. Peters, over the stonemasons; Mr. Bryers, overseer at the quarry; and Mr. Ryan over the tailoring department, who ranks as a turnkey.
972. How are they remunerated? They get ten shillings a day.
973. Have they any extras of any description? Nothing whatever.
974. They have no interest in the work of the prisoners over and above their salaries? Not the slightest.
975. What are their hours of attendance? From six in the morning till about half-past four; the warders from eight to six.
976. Can you state with any kind of precision when these gentlemen respectively took charge? Twelve months on the 1st of last month.
977. Did they all take charge about the same time? Yes, when the new arrangement took place.
978. What instructions did they receive at the time of taking charge of this industrial department? I think they received instructions from the Colonial Architect's Department, under whose department they work; he has charge of them.
979. Do you know whether they received any written instructions? I do not think they did.
980. Was their position this—that they had charge of the labour of the prisoners, and directed them in the prosecution of that labour, without in any way interfering with the penal discipline—the prisoners for all penal purposes being still under you? Under me. The intention was, when this alteration was made, that these four men, although overseers, should also act as turnkeys during the day, and watch the prisoners.
981. Do they so act? Yes, of course, they exercise a proper vigilance over the men.
982. Can you state how many men were turned out this morning respectively to the four industrial departments of the prison? I could not positively without reference to my books.
983. How many do you suppose are in the carpenters' shop, for instance? Eight.
984. How many in the blacksmiths'? Five.
985. Tailors'? At present I think only five.
986. Shoemakers'? Three.
987. How many at the stone yard? About thirty.
988. Are the shoemakers under any overseers? They are in the same building with the tailors.
989. There is no shoemaking overseer? No.
990. Do you know whether the overseers are competent tradesmen in their respective callings? Yes, they bear a very high character, I believe.
991. They produced high testimonials to obtain these appointments? Yes; Mr. Dawson was very particular about it.
992. Will you explain as clearly as you can in evidence the plan of the gaol? The original intention of the gaol was that there was to be a tower in the centre of seven wings.
993. Wings radiating from a tower? Yes, and between the wings the yards for exercise, classification, and so forth. The tower was intended to communicate with each of these wings. There was to be a balcony from each wing to the tower. One was to have been a schoolroom, another a chapel, and so forth. I believe at the top was to be a sort of observatory for the principal gaoler, and when there he could see every individual in every yard.
994. Were all the wings to be uniform? All the wings were to be uniform.
995. How many wings have been completed out of the seven originally designed? Four.
996. How are those situated? A is what is called the committed wing—that is, where prisoners for trial are put; the next is the hard labour wing; on the opposite side is the new wing of single cells; next to that is one occupied by females. The workshop occupied by tailors is square at present, but is to be extended the same as the other wings when complete.

- H. Beverley, Esq.
14 Feb., 1861.
997. During the last two years a good deal of stonework has been carried out by the prisoners in enlarging the wings? Yes.
998. In carrying out those works has the original design been to some extent departed from? The only departure from it is in the alteration of the new wing which is now all single cells. Originally it was intended that they were to be of the same size as the other cells. That was altered before the building was proceeded with.
999. Are there not some separate buildings in the yard,—are they included in the plan of the gaol? The bath-house is, but not the dead-house.
1000. How many prisoners were there in the gaol this morning? 400.
1001. How many of these are males? 313 males and 87 females.
1002. Of this 313 how many are committed for trial, and how many are under sentence? 12 for trial.
1003. Can you state how many of the men under sentence are under summary sentences from the Police Office? I have them down in the memorandum before me as confines, but they would not all be under summary sentence,—I should say, 40.
1004. Then there will be about 270 under sentence from the higher Courts? Yes; 137 labour men.
1005. What are the longest sentences of any of those men? The longest I have ever had has been four years.
1006. Are there not some there for life? At present, but not what we consider as our own prisoners.
1007. But the longest sentence, according to the usual commitment to Darlinghurst, is four years? Yes; there is one here for five years, the man who spoke to the Committee the other day and said he considered his sentence illegal.
1008. How many sentences are accompanied by labour? 137.
1009. Do these include the Cockatoo Island men? Without them.
1010. How many Cockatoo Island insubordinates are there? 99.
1011. How long have they been in Darlinghurst Gaol? 83 came in on the 2nd January, and the others on the 4th.
1012. Can you tell us how many of the 87 women are under committal, and how many are under sentence? There are 52 confines, and 25 labour, sentenced to labour from Courts of Quarter Sessions and Police Offices.
1013. What are the offences against the female prisoners chiefly? The mass of them for using obscene language; they are women who are so frequently brought before the Police Office that the magistrates sentence them for six months, twelve months, and even two years.
1014. For obscene language and drunkenness? Yes, that is the principal offence,—nineteenths of those you saw the other day were sentenced for that.
1015. You were present when this Committee visited the gaol last week? Yes.
1016. It was noticed that a large number of the prisoners were women advanced in years? Yes.
1017. Can you state with any degree of certainty whether these represent a class repeatedly in prison for drunkenness? Yes, with great certainty.
1018. What are the regulations of the gaol with regard to the safe keeping, cleanliness, moral discipline, and industrial operations of the prison,—will you be good enough to give us by way of example what would be done by a prisoner arriving at the gaol under a sentence of four years' imprisonment,—what would be done with him as soon as he had received his sentence? As soon as he had received his sentence he would come into the gaol, his hair would be cut, he would be shaved, cleaned, and have clean clothes put upon him. If his sentence were labour he would be put into the labour yard.
1019. Will you give us these particulars minutely,—suppose he were received at five in the evening what would be done to him that night? He would merely be locked up in the hard labour yard.
1020. Would this shaving go on that night? No; he would have the prison dress, and be washed and shaved the next morning. I mean by that that he would have to wash himself, and that the barber would shave him and cut his hair, and he would have a clean suit of prison dress, according to the season, either the summer or the winter dress.
1021. Would any bedding be furnished to him? Yes.
1022. Would he be told how long that was to last, and whether he was to keep it clean? Yes, they are obliged to do so.
1023. Would he be told that? Yes, by the warder who takes him in charge.
1024. Then what would be done with him when he was caused to wash, and to put on this dress? According to his trade, if he were a carpenter he would be put into the carpenter's shop.
1025. They would ascertain his trade? Yes; all these particulars are ascertained in the office, into which they are taken when they are brought into the gaol;—the height, description, religion, and trade or calling are all taken down, and then they are passed through.
1026. Then if he were a blacksmith or a carpenter he would be sent to one of those departments of the gaol? Yes.
1027. Suppose he were a labourer? He would be put to cut stone in the rough, or sent to the quarry.
1028. At what time would he go to work on the second day? He would be sent out with the other prisoners.
1029. Will you describe the daily routine of the gaol? In the morning at a quarter to six the bell rings; that, of course, is done by the warder who leaves his post at six o'clock. As soon as the prison is opened, at six o'clock, the prisoners are let out of their cells, and have to

to bring down and empty their night-tubs; between that and seven they get their breakfast, and they are then rung out to work—their work being either at one of the four trades already alluded to, or such labour as is required in the gaol. At twelve the bell rings and the men come into the wing, where a table is got ready by the wardsmen, and they sit down to dinner. H. Beverley,
Esq.
14 Feb., 1861.

1030. What is their dinner, generally? Boiled beef, bread, and soup.
1031. Were you present when the Committee were in the cooking-house last week? Yes.
1032. Was that, which they then saw, the ordinary fare? Yes, the very same invariably.
1033. Week-day and Sunday? Yes, every day.
1034. The year round? Yes.
1035. Both as to kind and quantity? Yes.
1036. Then what is the next step? At one o'clock they go to work again till the ring of the bell about half-past four.
1037. You say, "about half-past four,"—do they not always leave off work at exactly the same time? We cannot always be exact if a number of fresh prisoners come in. The great object is to get the men in, so as to have the muster properly conducted at five.
1038. What should you suppose is the variation in the time of leaving off work—five minutes, or half-an-hour? Not more than five or ten minutes.
1039. At all events they are mustered at five? I must remark that they are mustered at five if there are not three van loads from the Police Offices. If we have a van load from the Water Police Office, another with men from the Central Police Office, and another with women, that delays the muster, as we cannot muster until we have the complete number that have come in. It has happened that, in consequence of this, the muster has been as late as half-past six.
1040. Has it ever been dark when the muster has taken place? Not exactly very dark, except in winter time.
1041. How is this ceremony of mustering performed? The men are brought into the yard, through the small side door, in the presence of the turnkeys on each landing where the cells are; the names are then called over from the muster book, and every prisoner must come in, in his turn, one by one, and he is then taken up to whatever range he belongs to, and is locked up.
1042. Are you ever present at the mustering? Frequently.
1043. Not uniformly? Not uniformly.
1044. You do not consider it to be your duty? No; for the first three years I never missed a muster; but I have not attended so regularly since that time, for reasons I have explained.
1045. The accommodation of the cells consists chiefly of cells built for three prisoners to sleep in? Yes.
1046. Can you give us the dimensions of those cells? The larger cells about ten or twelve feet. There are only two kinds of cells, those and the cells in the new wing.
1047. Are they square? As nearly as possible, the smaller are eight feet.
1048. What does the bedding consist of? Two blankets, a bed-tick filled with straw for a mattress, and a pillow of the same kind.
1049. Is this bed placed upon anything—does it rest upon the stone floor, or upon a board? It is placed on a board raised about five inches from the flags.
1050. Is there any regulation by which the blankets are washed, and the bedding examined and cleaned at any stated period? When the bedding is dirty it is taken away and other bedding is supplied as fast as it can be obtained from the storekeeper's department.
1051. Is there no regulation by which the blankets are washed? No.
1052. Do you think it may be the case that blankets in some instances have been used by prisoners for more than twelve months without washing? Yes, I think it may.
1053. What steps are adopted to keep the walls clean and free them from vermin? The walls are whitewashed.
1054. How often are they whitewashed? Whenever the cells are dirty.
1055. When the Committee were in the gaol last week there was some whitewashing going on in one of the wings; do you recollect that? I did not see it.
1056. You did not know about the whitewashing that was going on in one of the wings? No, I did not see it.
1057. What regulations are there for enforcing personal cleanliness—suppose a dirty person comes into the gaol, who does not wash himself from one month's end to another, what is done in such a case? The prisoners have half a holiday on Saturday for the purpose of washing.
1058. Are they compelled to do it? I think they always wish to do it.
1059. Do you think it possible there are prisoners in the cells who have not been washed for a week? I think not.
1060. You think it would be surprising if prisoners were found who had not been washed for a month? Yes, I should.
1061. *By Mr. Morris:* What do you mean by washing—do you mean washing all over? I suppose the Chairman means washing all over.
1062. *By the Chairman:* The Committee were told that it was very probable there were prisoners in the gaol who had not been washed for a year? I do not believe it.
1063. There is no regulation for enforcing personal cleanliness? No.
1064. If a person chose to neglect himself he might do so for a very long time? I do not think the other prisoners would themselves allow it.
1065. But is there a regulation by which, whether the other prisoners wish it or not, he would be compelled to wash himself? No.
1066. With regard to the prisoners who are working in the shops, what care is taken to prevent.

- H. Beverley, Esq.
14 Feb., 1861.
- prevent their secreting their tools when they retire to their cells at night? My instructions are that they shall be all searched. Every thing is taken from them before they come in.
1067. Do you think these instructions are uniformly acted upon, and not only acted upon, but with such strict scrutiny that there can be no concealment? I think so.
1068. Have you ever seen this search carried out? Frequently.
1069. Were you satisfied that it was effective? Yes.
1070. What kind of work is done in these shops? The principal part of the blacksmith's work is for the balustrades and iron doors for the new wings. The carpenter's work is for the Colonial Architect, or for any person who wishes to have any thing made, and for which they send all the materials.
1071. Have you had much custom of that kind—have many persons sent in materials for articles to be made? Very little.
1072. Not much either in the blacksmiths' carpenters', or tailors'? More in the tailors' room than in the other shops.
1073. What class of persons send in tailoring to be done? Principally tailors send in the work cut out, and we make it up in the gaol.
1074. When the Committee were at the gaol last week, there were several articles of cabinet furniture in one of the vacant rooms, which you said were for Mr. Agnew, the Church of England chaplain? Yes.
1075. Could you state on what terms these articles are made? All the materials are sent in by Mr. Agnew, even to the varnish and spirits of wine, locks, hinges, and so forth, and he will have to pay £3 for the making of the cabinet.
1076. What would he pay for making the chest of drawers? The chest of drawers will be charged 17s., he finding all the materials. We have no materials at the gaol.
1077. There was also a cornice, which you stated was for a wardrobe? It was for Mr. Coles, of the Colonial Architect's Department. It was evidently intended for the top of a wardrobe, but the work was stopped. I asked the carpenter about it, and he said he had got instructions, for some reason, not to go on with it. Whether the work was for Mr. Coles himself, or for the Colonial Architect's Department, I could not say. We have done a great deal of work for Government House.
1078. In what kind of work are the female prisoners employed? There are very few needlewomen.
1079. What kind of work are they employed upon? Whatever work is sent to be done.
1080. Some ladies send different articles to be made? Yes.
1081. We saw some half-dozen women working at a table—were these all the needlewomen you had? These were all the women who could hold a needle. They all have a shake in the hand after they have been at the gaol a few times, and unless they have long sentences they do not, while they are there, come round sufficiently to work with the needle; they are, therefore, employed in picking oakum.
1082. Do the books of the gaol represent accurately all the work executed in the stone yard, blacksmiths', carpenters', tailors', and shoemakers' departments? Every item.
1083. Do the books represent for whom the work is executed? Yes.
1084. Whether for the gaol or for private persons? Yes; for the military barracks or otherwise.
1085. Is there a valuation made of the work executed for the gaol, so as to shew what amount is earned by the prisoners when so engaged? Yes.
1086. Then the Committee can see what amount of work has been executed in a year? Yes. Every Monday morning I furnish a return to the Sheriff of all the work performed by the different trades.
1087. Is there not a good deal of work done for the military barracks? Yes.
1088. What does that consist of? What are called punishment buckets; they are very heavy buckets, and I suppose the soldiers are kept working with them as a punishment, and hence they are called "punishment buckets." They wear them out very fast.
1089. Do you make any thing else for the military barracks? Very few things, except ironwork.
1090. Is any account opened for the military barracks? No; we do not charge them.
1091. All this work is done without charge? Yes.
1092. With regard to the Sheriff—how often does the Sheriff visit Darlinghurst Gaol—how often has he visited it since the 1st January? I dare say twenty times.
1093. About what hour of the twenty-four does he make his appearance there? At all hours.
1094. Did you ever see him there at 12 at night? No. I have seen him come at 3 or 4 o'clock in the afternoon; at 10 in the morning; but more frequently at about 11 o'clock.
1095. Is he ever there before 9 o'clock in the morning or after 4 in the afternoon? Rarely, unless the Court happens to be on.
1096. Do you recollect his ever being there either before or after these hours? Yes.
1097. Does he remain there long when he attends? About an hour.
1098. Does he personally examine the cells and the various departments of the gaol? Yes.
1099. Does he see the prisoners? Yes.
1100. Does he make it a point at all in any manner to make himself acquainted with the characters of the prisoners after the sitting of the Criminal Court—does he see specially the new prisoners who have been added to the gaol by the result of the sitting? I do not think he does.
1101. They are mustered for his inspection, I suppose? Yes.
1102. *By Mr. Morris*: Does he not go to the cells? Yes.
1103. *By the Chairman*: There are some confined to the cells for insanity? Yes.

1104. Under what circumstances are they confined? The usual way is, that, for some act they have committed, some one complains at the Police Office, and they are sent to gaol, for want of sureties, for a fortnight, in order that the doctor of the gaol may have an opportunity of deciding whether they are insane from drink, or fit subjects for Tarban Creek.
1105. How long are they detained there? If a man were found to be insane from drunkenness and were sentenced for fourteen days, he would remain for fourteen days and would then be discharged.
1106. Who has charge of him? The warder of the wing.
1107. Does the party in charge of these people ever complain of not having sufficient protection? Two men are locked up at night in the cell with these prisoners.
1108. Neither the keeper of the male or female prisoners suffering from insanity complain of insufficient means of protection? Once or twice there have been some complaints.
1109. There was a person in the female cells last week when the Committee were there? Yes, she has gone to Tarban Creek.
1110. How long had she been there? Only from the previous Tuesday.
1111. You have never had any serious complaint? No.
1112. There is a female prisoner in the cell, named Catherine Read, under a sentence of fifteen years? Yes.
1113. What has been this woman's conduct during the time she has been in gaol? She is the best behaved woman I have ever seen since I have been there.
1114. Generally? Yes.
1115. Have you no exception? None whatever; she has never undergone the slightest punishment since I have been there.
1116. How is she employed? As one of the nurses in the female hospital.
1117. She has some responsibility then? Yes.
1118. And is thoroughly trustworthy? Yes.
1119. Is she well-regulated, and kind as a nurse? Yes.
1120. Have the prisoners ever complained to you of a want of protection from the weather in the yard? Yes.
1121. In the men's yard, for instance, there is only one very small and insufficient shed to protect them in wet weather? Yes; but they suffer more particularly from the heat in summer, and I have often had to strike them off from working in the middle of the day, having in fact seen them fainting from the heat.
1122. Have the women any protection from the sun and rain when in the yard? No; we were to have had sheds, but the plans were withdrawn.
1123. Will you have the goodness to state the routine of your duties as principal gaoler—when do you first go through the gaol? In the morning at daylight I generally get up and see all the men come on duty to their posts.
1124. Are you out before any of the prisoners are unlocked? Yes.
1125. Generally you see them all turned out? Yes. After the men have gone to work I go round the prison—go among the men and see what they are doing.
1126. Do you see them locked up—I think you said you are not always at the muster? I wait till the keys are handed up. I walk up and down while they are mustering the prisoners.
1127. Do you ever endeavour to make yourself acquainted with the history, and, from the history, with the character of the prisoner, with a view to classification? No; I have no means of classifying them.
1128. You do not make many inquiries of that kind—you do not consider it within your duty? I often speak to them.
1129. What kind of library have you—you have some few books? (*The witness handed in a list. Vide Appendix B.*)
1130. How have these books been accumulated? The larger number has been sent by persons outside without any name being given.
1131. *By Mr. Hart*: Are there any books in your library not down in your list? No.
1132. *By the Chairman*: Do many private persons, ladies or gentlemen, visit the gaol from motives of philanthropy? Very rarely.
1133. You are aware no doubt from reading, if not from personal knowledge, that, in the mother and other countries, it is a common thing for benevolent persons to visit gaols? Yes; I may almost say it is a rare occurrence.
1134. Has Darlinghurst Gaol during the last year been visited by any person with that object? No.
1135. Persons sometimes visit it from curiosity, I presume? Yes.
1136. You have never seen a Mrs. Fry or a Howard there? No, I do not think the public take much interest in them.
1137. Will you be good enough to state to the Committee the particulars of the escape of prisoners a short time ago from the gaol? Last morning week about four o'clock I was awake by the warder on duty knocking violently at the door. I immediately ran down into the stockade with a revolver, and there saw from No. 4 cell, in the top range of the new wing, a piece of blanket rope. On going round the gaol, I found a plank with another portion of a blanket rope attached to it, in the north-east corner, by which evidently the prisoners had escaped from the gaol over the outer wall. I immediately reported the case to the Sheriff.
1138. What were these prisoners' names? Clarke and Cavanagh.
1139. What were their respective sentences? Clarke was sentenced for life, for highway robbery with fire-arms, and Cavanagh was a prisoner who had only six months of his sentence to serve.

H. Beverley,
Esq.
14 Feb., 1861:

- H. Beverley, Esq. 1140. What is the height from the window to the ground? Thirty feet.
1141. Did you measure the space through which they forced their bodies? Yes; it is seven inches and a half.
- 14 Feb., 1861. 1142. I believe nothing has since been heard of those prisoners? This morning a policeman came with the shirt of one of them—at least, I presume it was. It was found at Newtown.
1143. In what condition was the shirt? It was not torn in any way.
1144. Not stained with blood? No, there was not much blood came from them.
1145. Ought not the warder, who was in charge that night, to have seen them after they got into the yard, and before they scaled the wall? Yes.
1146. There must have been remissness on the part of the warder on duty that night? The warders I allude to are those who had charge of locking them up, neither of whom would have been on duty when the men escaped.
1147. Some warder was on duty, was there not? Yes, one.
1148. Ought he not to have seen them when they were in the yard? He was very attentive, for I heard him call "Threc o'clock" a short time before, and my instructions are, as soon as they call the hour, to go round every part and see that all is safe.
1149. Will you state at what time the respective chaplains attend the gaol? On Sunday morning, at half-past eight.
1150. Do they preach? Yes.
1151. Do they attend at any other time? Yes; the Roman Catholic chaplain comes at two o'clock in the afternoon.
1152. Do they make personal inquiries amongst the prisoners? Yes, both of them.
1153. Do the chaplains manifest any solicitude for the instruction of the prisoners? Yes; they are very much among them. The chaplain of the Church of England attends of a Wednesday morning also.
1154. Do you mean that they take a good deal of interest in the discharge of their duties? Yes.
1155. That remark applies to all of them? Yes.
1156. *By Mr. Morris*: What is the nature of the ablutions required when a man is first received; you say he is washed—how is he washed? In the bath-house.
1157. There is a house, then, containing baths? Yes, hot and cold baths, and a shower-bath ten feet high.
1158. Are the men required to bathe in this regularly? They do bathe in them very frequently.
1159. *By Mr. Wilson*: They always have access to them? Yes.
1160. *By the Chairman*: I may inform you, at this stage, that the prisoners stated to us that they never used the bath-house, that there was a bath in the gaol, but that it was not used by the prisoners? They should have it.
1161. *By Mr. Morris*: Are the men required to wash every morning? No.
1162. Not even their faces? No; Saturday afternoon is the only time that has ever been the rule, they then get a half-holiday, and the other prisoners wash the clothes in one of these baths.
1163. Is there sufficient employment for the carpenters in the public service? Yes, plenty.
1164. Therefore it would not be necessary in order to give them employment to take in private work? Certainly not; and it is the same with the blacksmiths—we have plenty of work for twenty of them.
1165. Does the Sheriff, at any time, visit the whole of the cells? Yes, every cell.
1166. What was the reason that the cells in the women's ward, those particularly on the eastern side, were in the condition in which we saw them with regard to vermin? Probably there was no lime at the time sufficient to whitewash them. We generally get a cart load of lime, but it is sometimes difficult to get. When it is whitewashed the men come in, and we first have one side whitewashed and then the other.
1167. How often is that done? Not very frequently.
1168. Once a year? Yes, I should say twice a year.
1169. Are the yards lighted in all parts at night? No.
1170. It is, therefore, easy for a prisoner who has made his way into the yard to elude the warder and get over the wall? Yes, and I do not think it is high enough.
1171. After the five o'clock muster how do the prisoners employ themselves? They are confined to their cells after five o'clock, and the hard labour men are generally tired enough, and soon go to sleep. A little later they are so quiet you might hear a pin drop.
1172. *By Mr. Lucas*: Have you any control over the industrial department at all with reference to the quantity or description of work? No.
1173. The Colonial Architect appoints the overseers? Yes, and the overseers, being the practical men, are the valuers.
1174. Taking the number of prisoners at present in the gaol, can you give the number of old and new offenders? I should say three-fourths are old offenders.
1175. Do you find that is the usual proportion? Yes, they come in and out till they die.
1176. After they have come in a second time, you expect to have them frequent inmates of the gaol? Yes; unless by chance they go up the country, they are in and out till they die. One woman, who is now in the Refuge, has been in the gaol seventeen times in one year.
1177. Why do you find it difficult to obtain lime? At times we have found it difficult; the Colonial Architect has sent word that he has not got any.
1178. Are you particular in searching the blacksmiths? Yes. One of the prisoners, who built a boat at Cockatoo, was near manufacturing an iron ladder, which I have in my office.
1179. *By the Chairman*: When you say he was near doing so, what do you mean? I mean
to

- to say that it was discovered before it was completed. It was made of a bar of iron, with notches in it, and a shifting step to fit into the notches. If you went into the shop, you saw nothing but a bar of iron lying on the ground. H. Beverley, Esq.
1180. *By Mr. Lucas*: By what scale is the value of the work fixed? The order is that it shall be charged at half the price it would be done for outside. 14 Feb., 1861.
1181. *By Mr. Walsh*: In the event of any of the men becoming ill, when they are confined in the cells during the night, what means of communication have they? They call out, or knock at the iron door, which makes a great noise; the warder asks what cell it is, and, if he finds a prisoner is ill, he sends for the dispenser, who lives near the gaol.
1182. Are there any night-tubs in the cells? Yes, in every one.
1183. This weekly washing, does it take place in the bath-room? Yes, and some outside the bath-room, there are such a number.
1184. What vessels have they to wash themselves in outside? Buckets and tubs.
1185. I see in the list of books you have handed in, the books are classified as Protestant and Catholic library; in the list of books under the head of Protestant library, I see neither Prayer Books nor Bibles? Bibles and Prayer Books they get regularly at prayers on Sunday.
1186. *By Mr. Windeyer*: Have they Bibles at any other times? No.
1187. Is there not a Bible in every cell? No.
1188. *By Mr. Walsh*: Under the head of Catholic library, there are Bibles and Prayer Books—are those only used at the time of service? Yes.
1189. They are not for circulation? No; many of the prisoners are fond of reading, and the clergymen give them any of the books they choose.
1190. Does the chaplain act as librarian? He is the person who has them under his charge.
1191. *By Mr. Wilson*: Which chaplain? The Rev. Mr. Agnew.
1192. *By Mr. Walsh*: He has the Protestant library under his charge? Yes; and the Rev. Mr. Forde has the other.
1193. *By the Chairman*: A prisoner has died since we were at the gaol the other day; I saw a notice of that. Will you state the circumstances under which the death occurred? She was a woman of about forty years of age, and absolutely died of inanition; her palate was gone, and she could swallow nothing, and gradually died of starvation; I suppose I could have taken her up in my hand.
1194. In that case was a change of diet made? They got every thing they call medical comforts.
1195. What do medical comforts consist of in Darlinghurst Gaol? Wine, if necessary, and brandy; these are under the doctor's charge.
1196. What is the food—the nutriment they get in place of bread? Eggs and butter, and raw meat cooked—arrowroot, and every thing; the dispensary is nicely fitted up.
1197. How often does Dr. West visit the gaol? Every day.
1198. How long has he been Medical Visitor to the gaol? He was there just before I went; he has been there seven years.
1199. Can you state of your own knowledge whether he is kind and considerate to the prisoners when sick? He has been most attentive.
1200. You have never seen any reason to infer that he has in any way neglected them? On the contrary, I think he manifests great anxiety, and particularly if they are seriously ill.
1201. Is the dispenser equally attentive to his duties? He is the best I have ever seen.
1202. *By Mr. Hart*: Before you were appointed to your present office had you any experience either as to prisons or prison discipline? None whatever; I had never been in a gaol in my life, before my appointment.
1203. Do you consider that your duty now is principally the safe custody of the prisoners, or their reformation? Their safe custody simply.
1204. *By the Chairman*: Are you supplied, as the head officer of the gaol, with any works on prison discipline, any reports upon the improved prisons of Europe, or any of the many works that have been printed on the general subject of prison management? No, I have not been supplied with any, but I have read a great many—the Brothers Mayhew on Prisons I got from Mr. MacDonald, and also the Adventures of a Gaol Chaplain.
1205. Have you read Recorder Hill's Charges? No.
1206. Lord Brougham's Papers on the subject of Prisons and Prison Discipline? No.
1207. Any Reports of the National Association for the promotion of Social Science? No.
1208. You have then neither in your private possession, nor have you been supplied by Government with any of these works? No.
1209. Have you any books of that description? No.
1210. *By Mr. Hart*: Is there a matron of the gaol? Yes.
1211. Who is the matron? Mrs. Beverley.
1212. Does she exercise any personal superintendence over the female prisoners? Yes, she goes round the cells and looks after them.
1213. Have you any rules provided by the Government as to the custody and management of prisoners in gaol? Yes.
1214. What are the rules? I think they were framed in 1848.
1215. *By Mr. Walsh*: Is it not an Act of Council? Yes, a Gaol Act.
1216. *By Mr. Hart*: Do you allude to the rules promulgated from the Colonial Secretary in 1841, which were produced before a former Committee of the Legislative Assembly? Yes.
1217. Have any subsequent rules been made? No; but from time to time, as circumstances have arisen in the gaol, I have issued written orders, which have been posted up.
1218. Do you keep a journal? Yes.

- H. Beverley, Esq.
14 Feb., 1861.
1219. What does it contain? The number of people that go in and out of the gaol every day, and what has been done.
1220. Do you ever inflict any punishment on your own authority? Yes.
1221. Does that journal contain a record of the punishments inflicted? Yes.
1222. And of the punishments inflicted by the Visiting Justices? Yes; it is kept in a separate book.
1223. Are there any other occurrences mentioned? Yes.
1224. What are the occurrences you principally note in your journal? Every thing that occurs that is not an every day occurrence.
1225. For instance, if a prisoner proves insubordinate, do you enter that in your journal? Yes.
1226. Have you made any entries of that kind, or had any cause to do so lately? Yes, I think about every second or third day. I find by punishing them on the instant it has the most beneficial effect.
1227. Do you visit each cell yourself daily? Not each cell; at one time the new wing, at another time one of the other wings.
1228. When you omit to do so do you enter that in your journal? No.
1229. You keep a record of the visits of the Visiting Magistrates, and of the surgeon and chaplain? Yes; every one that comes into the gaol, whenever he comes, enters his name in the book.
1230. Will you be good enough to state what course you pursue with respect to the prisoners' clothing when the prisoners are first admitted? When first admitted the clothing is taken off, and made into a bundle, ticketed, and put away in a cell which has shelves built round for the purpose.
1231. Do you fumigate or purify the clothing before it is put away? No; we have but very recently had a fumigating place erected; it is the last building put up.
1232. Then the clothing is delivered to the prisoners when they go out in the same state as when it is received? No; it is constantly opened, for it would of course be destroyed if the prisoner had a long sentence, unless that were done.
1233. Who has the charge of that particular department? There is a man on the wing who has charge of it—his name is Lee—or whatever warder happens to be there; he comes on from time to time.
1234. Is the room in which the clothing is contained under the charge of any particular warder who may be there? They are under the charge of the warder who is there at the time. The things are put into a stone cell, for in the building they used to be kept in I found that a quantity of the clothing was eaten by the rats; then I had shelves put into the cell.
1235. Who regulates the clothing of the prisoners? I do.
1236. Do you send requisitions to the Government for the clothing that is required? Yes.
1237. Do you make any distinction in the clothing of those prisoners who are committed for misdemeanour and those for felony? Yes; those who are committed for misdemeanour in the confine yards wear their own clothes, and the hard labour men get the prison dress.
1238. Will you describe the prison dress to the Committee—in respect to what it consists of? The summer prison dress consists of a wide jacket, branded trousers of the same texture, a check shirt, and a handkerchief about the neck.
1239. *By Mr. Windeyer:* What is their head-dress? The head-dress which ought to be worn, as best suited to the climate, is a straw hat; but, unfortunately, we cannot get half the number required.
1240. Is there any hat prescribed? Yes.
1241. Is there a prescribed time to get them? No; we get them whenever we can.
1242. A prisoner shewed the Committee a Jim Crow hat, filthy and greasy, and said he had had it for upwards of twelve months, and that it was given to him by a prisoner who was leaving the prison—can you state why he was not supplied with a proper head-dress? From the difficulty of getting it.
1243. Have you made a requisition for hats? Yes; to the Storekeeper.
1244. When did you make the last? At the beginning of the year.
1245. When before that? Six months.
1246. What was the answer to your requisition made six months ago? They had not got them, but would send them as soon as they could.
1247. Have you communicated the fact to the Sheriff? The Sheriff is aware of the fact.
1248. Have you officially communicated it? I have frequently spoken of it.
1249. Are you aware whether he has taken any steps to remedy it? I do not think he has taken any.
1250. As to boots or shoes, in what way are you supplied with them? In the same way; we make a requisition for them.
1251. Have the requisitions been complied with for these articles? Yes, pretty well; by degrees we get them.
1252. When you make a requisition do you find that it is generally complied with? I have made many private communications; I have written repeatedly private notes to the Storekeeper begging shoes—some of the men were in bare feet—and then perhaps a few would come in. I do not believe there is a proper supply in the store.
1253. What is the winter dress of the prisoners? A grey jacket, waistcoat, and trousers.
1254. Is there any distinction made in the dresses of prisoners who are sentenced to hard labour for long periods, and those who are confined for lighter offences? No.
1255. Is there any party-coloured dress used in the prison? No.
1256. Is there any dress of yellow and grey combined? No, that is peculiar to Cockatoo Island, and to the men being in irons there.

1257. If you look at the 18th regulation of the gaol you will find this direction—"No prisoner who has not been convicted of felony shall be liable to be clothed in a party-coloured dress, but if it be deemed expedient to have a prison dress for prisoners not convicted of felony, the same shall be plain." Now do you state to the Committee that there is no party-coloured dress for men convicted of felony? Certainly not.
1258. Is it not a fact that that dress was formerly used in Darlinghurst Gaol? Never since I have been there, but only when the men were sentenced to irons—to be worked in irons at Cockatoo.
1259. During your time were men, who were convicted of felony and sentenced to be worked in irons, clothed in party-coloured dress? No, I never saw a prisoner in party-coloured dress since I have been there.
1260. What steps are taken to keep the cells properly cleaned and ventilated each day? The doors are opened, and then there is a draught of cool air through the door.
1261. Are there any other steps taken for ventilation? No; the bed clothes are rolled up, the tubs are taken out and aired, and returned again; for washing, at night, a can of water is placed in the cell.
1262. Is the bedding taken out daily? No.
1263. Or weekly? No; except that it is aired in the cells.
1264. Is any other mode taken for promoting cleanliness? Or on the balcony that goes round.
1265. Are the cells swept daily? Every day; there are two men on duty for the purpose every day.
1266. Are the cells washed? No.
1267. The floors are not washed? No.
1268. Do you observe any distinction as to cleanliness between the wing in which the women are confined, and the wings in which the men are confined? I think our wings are much nicer and more cleanly; I think the women are naturally more dirty—they have got things hanging about which gives their wing a dirty appearance. Still, whenever there is an opportunity, the cells are whitewashed, in consequence of the great number of bugs in the plaster of the walls.
1269. Is there any disinfecting fluid used? Yes.
1270. What fluid? Whatever the doctor called disinfecting fluid; we have had to use it very largely since so many Cockatoo prisoners have been in twenty-eight days. Some of them are giving way—their heads are becoming affected.
1271. Is there any classification in the female ward? No; there is but the one building.
1272. Is there not a distinction made between debtors and others confined for contempt on civil process, prisoners committed on charge of felony, and prisoners convicted of felony—I speak generally now? Yes.
1273. Is that classification observed in the women's wing? No.
1274. *By Mr. Walsh:* Suppose you had a female debtor, would the female debtor have to go into the convicted wing? Yes.
1275. *By Mr. Hart:* If a female prisoner is committed on charge of felony or misdemeanour, and another is convicted of felony, is there no distinction made in the confinement of these prisoners? None; they are all the same.
1276. *By the Chairman:* Are any of the prisoners allowed to have their food—those who can pay for it—brought in? Yes—that is the confines not sentenced to hard labour—if a woman has any friends outside. But then the rule is they must maintain them altogether; they can't have hominy for breakfast, and a piece of roast beef from outside for dinner.
1277. We visited a cell in which were two old women undergoing sentences for drunkenness according to their own account, and another young, robust woman, who, according to her own statement, was committed to trial for robbery; the latter stated that she was supported by a gentleman who lived outside? Then she is supported *in toto*.
1278. *By Mr. Walsh:* If convicted and sentenced to hard labour, would she be allowed to receive her food from outside? Yes,* that has ever been the rule of the gaol, that persons may have their food sent in to them. The reason I always understood was, that it saves the expense of their maintenance.
1279. *By Mr. Hart:* Do you know who made the rule—is it a written rule? Yes.
1280. Where do you find it? It was one of the written rules when I went into gaol, as regards debtors and persons confined without hard labour.
1281. *By Mr. Walsh:* A person convicted for a term of imprisonment without hard labour, if fed by the gaol, has a different ration from one sentenced with hard labour? Yes.
1282. Who has the most? The hard labour man, of course; he gets half a pound of bread more.†
1283. *By Mr. Hart:* Can you state the extent of ground upon which the present gaol is built? Three acres three rods.
1284. *By the Chairman:* Can you hand in a plan of the gaol? I will get a plan and send it; there was one made by Mr. Wells.
1285. Will you then hand that in? I will. (*Not furnished.*‡)
1286. *By Mr. Hart:* Considering the number of prisoners you now have under your charge, and the classification you think it is desirable to make, can you say whether that extent of ground is sufficient? I do not consider it anything like sufficient.

1287.

* NOTE (*correction by witness on revision*):—No; if sentenced to hard labour they are not allowed to support themselves.

† NOTE (*correction by witness on revision*):— $\frac{1}{4}$ lb. bread and $\frac{3}{4}$ lb. meat more. Scale annexed. (*Vide Appendix C.*)

‡ NOTE.—Stated to have been mislaid.

- H. Deverley, Esq. 1287. Is there any room for proper workshops to be constructed? Yes; they are in course of erection now.
- 14 Feb., 1861. 1288. In what part of the gaol? The old building, where the blacksmiths' shop is left standing; the foundation of the new one is just adjoining that, and it will go completely across the gaol.
1289. If any further buildings are erected there, will it not seriously interfere with the ventilation of the whole place? No; on the new plans I do not think it will be nearly so bad as with the old stone buildings that are there, when they are cleared away. The new sheds are all to be open, that one man walking up and down can see all the men at work.
1290. As to the site of the gaol, what is your opinion as to the advisability of retaining dangerous and long-sentenced prisoners in the present building? I am very much averse to it. I do not think it is a fit gaol to have persons of that kind, situated as it is now in the middle of Sydney.
1291. When that gaol was first erected, are you aware if there were many buildings in that locality? I am aware there were not any buildings to be seen.
1292. What is the case now? It is surrounded by terraces and public-houses, which keeps me in a great ferment for fear they should throw rum in ginger-beer bottles over the wall, and if the men were all armed with tools something serious might happen.
1293. Has that occurred in any instance? Never but on two occasions have I had spirits thrown over the wall; but I have had spirits brought in clandestinely by the turnkeys, who, of course, were dismissed on the instant.
1294. Can persons see the interior of the prison from private houses erected around? Yes, from the terrace along the side of the gaol.
1295. Is it your opinion that the gaol should be removed to a more remote locality? Yes; I have often and often spoken of it. I think if it were knocked down, and the same stone were used in the gaol towards Randwick, you might sell far more than would pay the expense. I think the site of Darlinghurst is beautiful for building.
1296. Who did you make these suggestions to? To many persons who, when speaking of the gaol casually, had complained of the gaol being where it now is.
1297. Have your complaints been in writing? No.
1298. Considering that prisoners have frequently escaped from gaol, is it not rather dangerous to citizens who reside in that locality, if they come in contact with them? If the prisoners now in gaol chose to rush at the wall, they might easily escape—there is nothing to prevent them.
1299. *By Mr. Windeyer*: What is there to prevent the outbreak? There is nothing worth speaking of.
1300. *By Mr. Hart*: You mean that if a simultaneous rush were made upon the men, they might escape? I am certain that if forty men took one of the building poles, and used it against the wall, it would go down, as it is badly built, weak, and quite rotten in parts; but I have heard the prisoners make the same remark, and that keeps me anxious. I have heard the Cockatoo men say, "If we are to be here, what is to prevent our knocking the wall down?"
1301. Have you made any arrangement with the police authorities to aid you in the event of such a rush taking place. We have them close by, but not in any number. We called in a few the other day, and we were under arms for the first time. Captain M'Leir sent some of his men, when the Cockatoo men refused to come forward.
1302. Have you any persons in gaol accustomed to the use of arms? Yes; nearly all the turnkeys have been soldiers.
1303. Are they provided with firearms and ammunition? Yes; we never shew them, as I do not think it advisable for a few men to walk about the gaol with arms loaded.
1304. Where do you keep the ammunition? In the gateway; there is a lodge in the gateway, where they are all kept clean, in the same way as in an armoury.
1305. *By Mr. Windeyer*: Have you any revolvers? Yes; we have lately been supplied with revolvers, and have got sixty rounds of ball cartridges.
1306. *By Mr. Hart*: Sixty for each man? No; sixty altogether. It is dangerous to show firearms.
1307. *By Mr. Windeyer*: Suppose an attack to be made on any warder or turnkey, what would you do? They would overpower us in a moment. What could we do?
1308. *By Mr. Hart*: Do you consider your force sufficient for the safe custody of the prisoners? No.
1309. Have you made any representations to Government? Yes; very recently.
1310. *By Mr. Wilson*: Suppose there were watch-towers or turrets at each corner of the prison, and a warder placed there with firearms, do you think it would add to the security of the place? I do not approve of firearms except in numbers, for it leads the prisoners to look with distrust at the warders.
1311. Are the warders who are on duty at night supplied with firearms or any other means of defence? I have, since this escape, given a musket to each.
1312. Are they supplied with hangers? They have half a dozen of what are called hangers or swords. There ought to be a *chevaux-de-frize* all over that top wall.
1313. *By Mr. Lucas*: Would not broken bottle-glass on the top be better? Better than at present; but I should think that one of those large bars would be much better.
1314. Would it not be easy to throw a rope over for them to haul themselves up with—would not glass be better? They would not have the same means of making a rope fast if it were covered with glass.
1315. *By Mr. Hart*: Have you had any complaints from the inhabitants of Darlinghurst as to the cesspools in the gaol, and the matter flowing from them? Yes.

1316. Are you not aware there is a dreadful stench occasionally in the locality? Yes, from the front of the gaol. H. Beverley,
Esq.
1317. How is that occasioned? From the sewers throughout the gaol.
1318. Where are your principal cesspools, or how many are there in the gaol? There are none in the gaol; there is a grating here and there in the gaol, and underneath runs the sewer. The sewers came out under the front gate, and that was the place complained of. We had it opened about two years ago; we had the whole thing opened in consequence of the complaint—that was the only time I ever saw them. 14 Feb., 1861.
1319. Then the matter is emptied upon the persons in the lower part of Woolloomooloo—where are the night-buckets emptied? Some in the ashpit, others in the privies.
1320. Where are the night-buckets emptied? Into the privies; that goes into the sewers.
1321. Into the same sewers? Yes.
1322. What accommodation have the men during the day time? They have the stone places in the yard at the end of the hard labour shed—on the off side there are a set of privies.
1323. These also, I presume, run into the sewers? Yes.
1324. Has the officer for the health of the city paid you any visits? He did some time ago.
1325. Did he take notice of these facts? I do not think he did; he merely walked in, and asked some questions.
1326. *By Mr. Sutherland*: Are you aware that he has reported upon the matter several times? Yes.
1327. *By Mr. Hart*: Who has the supervision as to the food supplied to the prisoners? I have, and the turnkey with the prisoner as a delegate. The turnkey has the daily supervision, he being deputed with a prisoner, on the arrival of the food every morning, to satisfy himself that it is good. The prisoners have an opportunity of refusing the food, which was done this morning.
1328. Have you many complaints of the food? Not many; more so with regard to the vegetables. Sometimes we have letters from the contractor saying he can't get particular vegetables. If the prisoners choose to be rusty they say they should have carrots or turnips.
1329. Prisoners, when the Committee visited the gaol, complained that there was a greater proportion of potatoes than of other vegetables? It is a fact that it is so; but I at once wrote to the contractor asking him to substitute leeks for onions; his answer is that it is impossible to get them, and that, therefore, he had sent a greater quantity of potatoes.
1330. *By Mr. Wilson*: Could he not substitute barley or rice? I asked him to do so.
1331. *By Mr. Hart*: When the contractor refused did you purchase articles at his risk? No.
1332. Do you think you would have been justified in doing that? No; I could not under his note purchase what he said he could not get.
1333. That was his statement—did you satisfy yourself that his statement was correct? I presume, as he has been contractor so great a number of years, that it was correct.
1334. Did you take any steps to ascertain whether his statement was correct? No further than that I have bought bread.
1335. I believe there have been constant complaints as to the quality of the bread? But they will complain, they say themselves, for nothing but wickedness.
1336. *By Mr. Lucas*: With regard to the bread, is the bread we saw when we were at the gaol a fair specimen? Sometimes it is better, sometimes worse.
1337. *By Mr. Hart*: Is there any reception room for the prisoners when they are first brought to gaol? None but the office.
1338. What office? The office below stairs; as they come in they enter an under-ground passage, and the first room is an office where all particulars are taken, and then they are passed away into the yard.
1339. After that is done what is the next step? They are then taken up, cleaned, and fresh clothes put on them.
1340. Can you state to the Committee the particular mode in which that is performed? When the prisoner comes in his warrant is read; all the particulars are taken down in a book. If he is a man for trial he is taken to the trial wing.
1341. Does he undergo a thorough cleaning? Yes.
1342. Is he put into a bath and washed? Yes.
1343. Is that done in each case? I will not say in each case.
1344. You don't consider it your duty to see that done? I could not see it done.
1345. Do you give directions that it should be done? Yes, that is the direction.
1346. Is the same course pursued with the women? The women have great objection to the bath, as Mrs. Cullen will tell you. They are all washed and cleaned; I do not mean to say all go into the bath.
1347. You do not compel them to do so—there is no compulsory regulation on the prisoners, as to washing themselves daily? No.
1348. Nor as to changing their clothing? No.
1349. Is the ventilation of the gaol good? I think so—I never heard it complained of. I think the health of the prisoners, taking the number in gaol, is wonderful.
1350. Is there any provision for warming the cells in winter? None.
1351. Is it not excessively cold? Yes, the building being all stonework.
1352. Have the prisoners complained of the cold? No.
1353. How do you promote the warmth in winter? In no way at all, except by an additional blanket.

- H. Beverley, Esq.
14 Feb., 1861.
1354. Or by increasing the number of prisoners in each cell? We never do that if we can avoid it. We have sometimes seven in a cell; they do not complain of cold.
1355. What is the average amount of sickness you have in the gaol? Taking one year with another, I do not think I have ever known a larger number than eight. I have on occasions entered in my journal, not a single male or female sick in the whole establishment.
1356. What is the sickness to which they are generally liable? Such as people bring in with them—such as sore legs, which take a long time to cure; but, as regards a prisoner's health in gaol, it is seldom a man is sick at all.
1357. The sickness is principally that arising from intemperance? Yes; chiefly arising from sore legs.
1358. What is the average of insane patients you have in the gaol? I think we have on the average from two to three in a week sent in from outside.
1359. *By Mr. Walsh*: Lunatics, or for good behaviour? A large number for drunkenness, and they go out again in a few days.
1360. *By Mr. Hart*: Are any of the female prisoners employed as servants to yourself or any of the turnkeys? There is only one turnkey besides myself living in the gaol.
1361. Are female servants employed in your house as domestic servants? Yes.
1362. How many at the present time? The housemaid, making up the bed-rooms, the pantry-woman, and cook.
1363. What are they confined for? Generally sentenced women, for three months.
1364. Are any male prisoners employed in the domestic arrangements of the gaol? No.
1365. Is there any mode of communication between the male prisoners and those females employed as domestic servants? No; whenever a prisoner has occasion to come to the house, he is attended by a turnkey. For instance, if he comes from the cook-house with the women's food, he is attended by a turnkey.
1366. Has that always been the case? Yes; it always takes a great deal of the turnkey's time.
1367. Was it not a source of complaint some time ago, that there were irregularities respecting the female prisoners in the gaol, attributed to the male prisoners? Yes; in the case of Dr. Lang's servant; at that time there was a pantry-man.
1368. Then the rule you alluded to has not always been in existence? No, it has been altered from that time.
1369. Have you made any application to the Government for books to supply your library? Application was made by the Sheriff, I think, some time ago, and £20 for each library, the Protestant and Catholic, was granted; I think it was last session.
1370. Has that money been expended? I think it has; the Rev. Mr. Sheehy bought the books for his library.
1371. In the list you have handed in, I observe in the department of the Catholic library a large number of Bibles and Prayer Books, and none in the Protestant library—how do you account for that? There are plenty of Bibles and Prayer Books, they are not put down in that list; I presume because it was supposed that a list of them was not required by the Committee. I received a large number of Bibles and Prayer Books, and marked them all myself "Darlinghurst Gaol."
1372. Is there any Sunday school in the gaol? No.
1373. Is there any means taken to promote morality or education among the prisoners by instructing them in reading and writing? We had for a short time; but the man who acted as schoolmaster was sent away to Berrima; since that there has been no school.
1374. You have nothing of that kind in the gaol at present? No.
1375. When we were visiting the gaol the other day, we were told by one of the prisoners that he had been reading Valentine Vox, Margaret Catchpole, and Woman's Love—can you state whether those books are in the library? I can state that Woman's Love is in my possession, for I got it immediately after the Committee left.
1376. Do you know any thing of the other two books? They are all books furnished from outside.
1377. I do not observe the books I allude to—Margaret Catchpole and Valentine Vox—in the list you have handed in? Then they are books that have been smuggled in by the friends of the prisoners.
1378. You do not doubt the correctness of the statement made by the prisoner? No.
1379. *By the Chairman*: Have you read this book, "Woman's Love"? No; I just looked into it; I have it in my drawer.
1380. Is it a book of a moral tendency? Yes; but no book should be given to the prisoners except by the clergyman; he should have an opportunity of judging whether the book was or was not a fit one for the particular prisoner.
1381. *By Mr. Hart*: How often does the Catholic chaplain visit the gaol for the purpose of instruction? He comes to prayers on Sunday at half-past 8 and at 2 o'clock. Mr. Sheehy used always to go over the gaol on Saturday afternoon.
1382. *By Mr. Wilson*: Does he do so now? He is promoted in the church, and there is another chaplain.
1383. Does the present chaplain do the same? He will do the same.
1384. *By Mr. Hart*: Then he does not visit the prison daily for the purpose of instruction? No, neither of the chaplains do so.
1385. If he were willing to do so, would you afford him facilities for that purpose? Certainly.
1386. Is the prison visited by any other Catholic clergyman? Yes, I dare say by a dozen different clergymen; for instance, our Catholic chaplain has often been away, and then other clergymen have taken it in turn.

H. Beverley,
Esq.

14 Feb., 1861.

1387. Then their visits are on Sunday? Yes.
1388. I ask whether the prison is visited on week days by other clergymen? No.
1389. Have you had visits from the Archbishop? I never recollect seeing him but twice; but I think the Archbishop came specially to see a particular prisoner then.
1390. *By the Chairman*: Does the Bishop of Sydney ever visit you? I have never seen him.
1391. *By Mr Hart*: Is the gaol visited by Episcopalian clergymen, or by clergymen of dissenting congregations, besides the chaplain? No; the Rev. Mr. Stewart, a Presbyterian minister, has lately been appointed one of the chaplains at £50 a year.
1392. Then the clergy who visit your gaol are persons who are paid for that purpose? Yes.
1393. *By the Chairman*: During the time that Goodsir, the last who was executed, was lying under sentence, was he visited by any one except the chaplain? There were two persons who came and sang with him, preached to him, and read prayers to him; they came frequently. They did also in the previous case when a man was under sentence. There was also a lady, a Mrs. Forster, who attended the young sailor, Moyes, who was hanged; but it was carried to such an extent at last that it seemed to be objected to, and on going to the Sheriff's Office one day, I said she must bring an order from the Sheriff or I could not admit her, and it was stopped. The rule in such cases being that a prisoner is entitled to see any clergyman or other religious person he wishes or asks for; so when it was found that the prisoner did not want the services of Mrs. Forster, the minister of our church did not consider it right she should come.
1394. Then Moyes did not wish for Mrs. Forster's attendance? He used to laugh as soon as her back was turned, and I was much horrified to see a man in his condition act as he did.
1395. *By Mr. Hart*: What denomination did he belong to? He was a Protestant, or in fact he was nothing. It was a most horrible sight to see that man brushing up his hair as he was ascending the scaffold. When he was in gaol he used, as soon as Mrs. Forster had left him, to begin to whistle a jig. He had been a sailor, had run away from home, and said he had never been to church. He stabbed a man on board ship.
1396. Is there a desire manifested on the part of the public, or of any portion of it, to witness capital punishment? Very little; there are not, generally, above half a dozen applications for admission on such occasions. When the last man was executed there were very few present—some of the jury and a few policemen.
1397. What do you do with the bodies of prisoners who die in the gaol? They are sent away in a cart to be buried. A requisition is sent in for a coffin for so-and-so, giving his length, and mentioning what church he belongs to. After the inquest, if he has any friends, they are allowed to take him away.
1398. Is there any record of what is done with the body? There is a printed form furnished, which has to be filled up.
1399. *By Mr. Wilson*: How is the jury selected for an inquest on a patient who dies in gaol? If it is any particular case a jury is summoned from outside of twelve people; if not, one or two of the prisoners, one or two debtors, who are intelligent men, and one or two of the warders, form a jury.
1400. What medical witnesses are examined? The dispenser and surgeon of the gaol.
1401. No others? No others.
1402. These are the medical officers who have been attending the patient? Who have been attending the patient throughout; and there is also the coroner, who is pretty nearly a doctor himself.
1403. So that, if a prisoner should die from negligence, the dispenser and medical officer would be the only persons to give evidence? You can have no better evidence than the evidence of people who are in daily attendance. If any person dies in gaol the fact is known to four hundred people.
1404. These four hundred people are not aware of what medicine has been administered, or how the patient has been attended? No.
1405. If a patient were to die through the negligence of the dispenser, or of the medical officer, there would be no means of discovering it? No; the administration of the medicine is confined to them.
1406. *By Mr. Hart*: You stated, in a previous part of your evidence, that the dispenser lived out of the gaol? Yes; he should live in it though.
1407. Who is the dispenser? A young man named Walsh; he was on Cockatoo Island in that capacity, and was transferred to me; my dispenser being sent there.
1408. Is he a chemist by profession—has he been brought up to it? Yes.
1409. Does he prescribe for the patients? I think not, except under Dr. West.
1410. He is not allowed to administer any medicine except under the direction of Dr. West? No.
1411. How far does he live from the gaol? It is no distance; a little further than the end of the terrace. He is sent for almost every night.
1412. What is the object of sending for him? If a man knocks and says he is ill, he is sent for.
1413. Is he entitled to prescribe without the authority of Dr. West? No; but if he saw the man was really ill he would send for Dr. West.
1414. Then it is left to his judgment to decide whether a man is ill or not? Yes.
1415. If he decides that he is well there is nothing done for him? Yes.
1416. *By Mr. Walsh*: You say the last man who was executed was attended by two persons who sang and prayed with him? Yes.
1417. Do you know who they were? I do not know, but I can easily find out; they were two common looking men, and they became so obstreperous at last that I would not let them in.

- H. Beverley, 1418. Did they attend at his execution? No; I would not allow them in.
 Esq. 1419. Who did attend them? The Rev. Mr. Agnew.
 14 Feb., 1861. 1420. You say you would not allow these men in—did you ask the convict if he desired their attendance? Yes.
 1421. Did he say he desired their attendance? Yes.
 1422. Was it after that you prevented their visiting him? Yes; but there was a particular reason. It was on account of the clergyman, who conceived that he had got the man into a state of mind that would be interrupted if they interfered.
 1423. Are you aware whether those persons represented themselves to be Primitive Methodists? I do not know—in my country they are called Ranters.
 1424. *By Mr. Hart*: Are their names entered in your visitor's book? I think they are; they got leave to come in.
 1425. *By Mr. Walsh*: Their proceedings, you thought, were characterized by a great deal of fanaticism and enthusiasm? Yes; I did not say anything till I found it necessary to apply to Mr. Agnew, and Mr. Agnew said he had administered the sacrament to him, and did not wish to have him interfered with.
 1426. Had not the prisoner told you, on a former occasion, that he wished to see them? Yes.
 1427. On a previous occasion you say a man was visited by the same persons? Yes.
 1428. What was the convict's name? Moyes; it was on account of their conduct at the execution of Moyes that I would not allow them to see the prisoner on this occasion.
 1429. Did these men attend Moyes at his execution? Yes; and they made a dreadful scene of it.
 1430. What occurred that was so dreadful at that execution? They threw up their hands, and began bawling out just as the man was about to drop.
 1431. What was the subject of their cry? I do not know; I thought it very unseemly.
 1432. What was the subject of their cry? I suppose it was to pray for him.
 1433. You did not think they were praying in the right way? I did not think it was a proper scene for a private execution.
 1434. On account of their conduct on that occasion you wished to exclude them from subsequent executions? Yes.
 1435. Had Moyes expressed any desire to see those men? Yes; he was asked if he would like to see them.
 1436. He had seen them while under sentence? Yes.
 1437. *By the Chairman*: Will you ascertain the names of those men, and send them to the Committee? Yes. (*Not furnished.*)
 1438. *By Mr. Walsh*: Do you recollect a man of the name of Baxter being executed about five years ago—two men were executed at the same time? Rogers was one of the two men; he was executed for murdering a man, with a fruit-cake, at Parramatta.*
 1439. Do you remember the name of the other? No, I do not.
 1440. Do you remember what denomination Rogers belonged to? I think the two men belonged to different denominations.
 1441. Do you remember the man who was executed having been attended by Mr. Watsford, the Wesleyan Minister? Yes, I think so; that is a good while ago.
 1442. Had you any opportunity of observing Mr. Watsford's intercourse with the prisoner? No; when a prisoner is under sentence of death I never go with the clergyman, but go by myself at night.
 1443. Did you hear Mr. Watsford pray with that prisoner at all? No; he would pray alone with him in his cell.
 1444. Did you hear him exhort him to prayer as they approached the scaffold? I forget.
 1445. Is the gaol visited by the Sisters of Charity? Yes.
 1446. How frequently? I do not see them so frequently now as formerly—I think about once a week. There was a lady, who has now gone home, a Mrs. de Lacy, who often visited the gaol.
 1447. Do they visit all the prisoners? No; only on the female side.
 1448. Do they visit all the female prisoners? All the prisoners who wish come forward to speak to them.
 1449. Are they admitted to the gaol under any order? No; they have free ingress.
 1450. Have you ever had any direction from the Sheriff to admit them? No; they are never refused admission.
 1451. Have they ever seen the male prisoners? They went to see one, but not under the circumstance of being condemned.
 1452. What was the prisoner's name? Butler.
 1453. They can see any prisoner upon asking for him particularly? Yes; if they come to the male side it is for the purpose of seeing some particular prisoner.
 1454. Did I understand you to say you are a member of the Church of England? I am.
 1455. *By the Chairman*: What situation did you fill under Government prior to your appointment to the one you now hold? I was fifteen years in the Attorney General's Office.
 1456. Did you fill the situation now occupied by Mr. W. B. Plunkett? Yes.
 1457. *By Mr. Hart*: Are any steps now being taken to complete the gaol according to the original design? Yes, as fast as we can go on with the number of men we have.
 1458. *By the Chairman*: Have you anything further to communicate to the Committee?

APPENDIX.

* NOTE (by witness on revision):—Samuel Wilcox was the other.

H. Beverley,
Esq.

14 Feb., 1861.

C.

DARLINGHURST GAOL.

RATIONS AND ALLOWANCES.

Ration No. 2, authorized to be issued to Wardsmen in Gaol, to Prisoners detained as witnesses, or for want of bail, is composed of the following articles, viz. :—

- 20 ounces Wheat Bread
- 8 " Maize Meal
- 16 " Fresh Meat
- ½ " Salt
- 1 " Sugar
- ½ " Soap

Ration No. 4, authorized to be issued to Prisoners sentenced to imprisonment, and hard labour in Gaol, is composed of the following articles, viz. :—

- 16 ounces Wheat Bread
- 10 " Maize Meal
- 16 " Fresh Meat
- ½ " Salt
- 1 " Sugar
- ½ " Soap

Ration No. 5, authorized to be issued to other Prisoners not in Cells, is composed of the following articles, viz. :—

- 12 ounces Wheat Bread
- 10 " Maize Meal
- 4 " Fresh Meat
- 8 " Vegetables
- ½ " Salt
- ½ " Soap

Ration No. 6, authorized to be issued to Children of Female Prisoners, is composed of the following articles, viz. :—

- 8 ounces best Wheat Bread
- 4 " Fresh Meat
- 1 pint Milk
- ¼ ounce Soap

In addition every Prisoner actually at hard labour is allowed ½ lb. bread ; and 100 lbs. of vegetables supplied daily for the whole number of prisoners.

Ration No. 7, authorized to be issued to Female Turnkeys, consists of,—

- 24 ounces Flour
- 16 " Fresh Meat
- ½ " Salt
- ½ " Tea
- 2½ " Sugar
- ½ " Soap

Ration No. 8, authorized to be issued to Prisoners confined in solitary cells, consists of,—

- 24 ounces Wheat Bread, or
- 20 " Flour.

The following are the authorized allowances of Fuel and Light for the Sydney Gaol, viz. :—

	Summer daily Allowance.			Winter daily Allowance.		
	Pounds Coal.	Candles.	Gills Oil.	Pounds Coal.	Candles.	Gills Oil.
Transportation Ward	...	Mthly	3	...	Mthly	3
Gaol Office	7½ lbs.	1	32	7½ lbs.	1½	32
Cooking*	...	...	...	...	...	...
Apartments in which there are fire-places, (5, each 32lbs.)	...	...	160	...	...	...
Lights in Apartments, to burn 2 hours each, when occupied (4, each ¼ gill)	...	...	1	...	...	1
Large Passage Lamp	...	...	1	...	...	1½
For Prisoners sentenced to death, and other contingencies	...	...	2	...	...	2
Dispenser	...	...	32	...	...	...
Female Turnkeys	32	...	32	...	...	...
For the use of the Hospital	79	4 lbs.	...	79	4 lbs.	...
For Debtors	73	1 lb.	½	73	5 lbs.	½

*The allowance of coals for cooking is 2lbs. for each prisoner, and for each of the children of female prisoners confined in gaol.

The winter months are June, July, August, and September.

FRIDAY, 15 FEBRUARY, 1861.

Present :—

Mr. HART,
Mr. LUCAS,
Mr. MATE,
Mr. MORRIS,

Mr. PARKES,
Mr. SUTHERLAND,
Mr. WALSH,
Mr. WILSON,

Mr. WINDEYER.

HENRY PARKES, ESQ., CHAIRMAN.

Parramatta Gaol. 15 Feb., 1861. [The Committee having met at 6-45 A.M., at the Railway Terminus, Sydney, proceeded to the Station at Parramatta, and thence to the Gaol, arriving there as a gang of twenty-one men, who had been employed outside the prison, entered the gate.]

Thomas Harrison examined :—

[Engaged in searching the prisoners.]

T. Harrison. 1459. *By the Chairman* : Do these men work outside under guard? Yes, they have just come in to breakfast.

1460. What sentences are they under? They are men whose sentences have nearly expired.

1461. Do you take only men of that description outside? Yes.

1462. How many men are there? Twenty-one in this party.

1463. What is the longest period of the unexpired term these men have to serve? I am not aware—that is the person in charge.

[The witness pointed out Mr. M'Cormick, and proceeded with the searching of the road party.]

Mr. Patrick M'Cormick examined :—

Mr. Patrick M'Cormick. 1464. *By the Chairman* : The men who are mustered here are a road party? They work in the quarry, and sometimes on the road.

1465. Under what regulations? Under escort—they quarry stones.

1466. Who directs their work? The overseer of the hard labour.

1467. At what time do the men turn out? At eight o'clock, except when they are engaged in taking stones out of the yard. Parramatta
Gaol.
15 Feb., 1861.
1468. Under what guard do they work? Four men form an escort.
1469. How is the selection of prisoners made for these road parties? The men with the shortest sentences are chosen. Mr. Patrick
M'Cormick.
1470. Those whose sentences are nearly expired? The men who have the shortest time to serve.
1471. They may be men with long sentences. There are no long-sentenced men.
1472. What are the sentences of the prisoners? They may be ten or twelve months. If a man has a three years sentence, and he remains here two, he then goes away.
1473. I saw several men searching the prisoners just now? Yes, that is their duty.
1474. Is that the usual practice? Yes; they are searched when they go out and when they come in.

[The Committee visited the stone-cutting yard. They next entered No. 1 wing, on each side of which were ranged the prisoners. One of the turnkeys called over their names from a muster-roll, and they then dispersed to the cells on the ground floor to breakfast.

The Committee inspected the several cells. In No. 9 was a man suffering from a bad leg, of whom the Chairman inquired whether he had the same food as the other prisoners. He replied in the affirmative, but added that his general health was good.]

John Wilkes examined:—

1475. *By the Chairman:* How long have you been here? Two years and eight months. John Wilkes.
1476. How are you employed? Hat-making.
1477. Your cell seems very clean? Yes, I take pains in keeping it so as well as I can.

John Driscoll examined:—

[Having expressed a wish to make a statement.]

1478. *By the Chairman:* How long have you been here? Nine months. John Driscoll.
1479. Under what sentence? Twelve months.
1480. For what offence? Embezzlement.
1481. By whom were you tried? By Justice Holroyd.
1482. Hard labour? Yes.
1483. You say you have a grievance to complain of? I have certain facts to state which I should wish to mention to you. On the Sunday we Protestants are locked up immediately after breakfast in these cells, as many as eight or nine of us together, where three men sleep.
1484. What are these cells called? Sleeping cells. They are at the top of the middle landing. We were locked up there, and there was all sorts of beastly and obscene language going on; it was disgusting to a man to hear it: then if we have come down here there has been no closet to go to, but a place six or seven feet long, the same as this cell, with a number of night-tubs; I have seen as many as fifteen men in that place at a time, and when it is known that many of the men who come here are guilty of sodomy and other crimes, it is disgusting for a man to have to go to ease himself; he cannot even make water without thrusting his penis in a man's nose or mouth; when you are going to make water there is a man sitting on a tub. In the next place I have to state, that of the nine months I have been here I have, with the exception of two months, been under the doctor's hands ever since I have been here. I have worn out my shoes, which are supposed to last three months, but which are knocked out in much less time, when you have to walk over the sharp stones in the quarry, and I have not been able to obtain new ones.
1485. What did the doctor attend you for? A loathsome disease caught from the women in Sydney; but we are all liable to that, and may have the same misfortune, and it is not because a man is in prison, and has that complaint, that he should be so treated. In the next place, although I have only been in the cells twice since I have been here for being too candid to the visiting magistrate, I was put in the cells for twenty-four hours.
1486. Who is the visiting magistrate? Dr. Greenup. I had also my tea and sugar stopped for a month, and my extra half-pound of bread.
1487. What did you say to Dr. Greenup? I told him that as we were going out I looked at Mr. M'Cormick, who treats the men more like dogs than anything else, and he said, "What are you looking at?" I said I was looking at nothing. If I had said what suggested itself to my mind—"A cat may look at a king"—I should have been insolent, for that was in my mind.
1488. Was it for that you were put in the cells—did you say anything more in his hearing? Yes; I told Dr. Greenup I was looking at and admiring Mr. M'Cormick. For that I was put in the cells for four and twenty hours, and was stopped my tea and sugar and extra bread.
1489. *By Mr. Windleyer:* Are tea and sugar extras? Yes, and I was at hard labour.
1490. What food do you get? One pound of bread, two ounces of tea, and two pints of tea the same as this (*producing a tin pot of tea.*)
1491. Are these rations what are understood to be hospital rations? Yes; I get two pieces of bread like this (*producing a piece of bread*) and that allowance of tea for the morning and evening.
1492. Is that what you have had for breakfast this morning? Yes.
1493. *By Mr. Hart:* Do you get any portion of the food in the kid (*alluding to a quantity of hominy contained in a kid in the cell*)? No, that belongs to the other men.

- Parramatta Gaol. 1494. *By the Chairman*: Have you anything to complain of with regard to the general management of the prison—you have complained of being locked up in the cells, and also of indecency? Yes, I complain of the closet more especially.
- 15 Feb., 1861. John Driscoll. 1495. Have you anything else to complain of? Perhaps I should not be able to substantiate any other charges; and it is of no use making a complaint without I could do so, as I should only be punished.
1496. Have you ever noticed any improper conduct on the part of the prisoners? No, never; but instead of hailing the Sabbath as a day of rest it is anything but that.
1497. Is there not service on Sundays? Yes, and those who are Protestants are locked up in the morning.
1498. Is there no Protestant service? In the afternoon.
1499. *By Mr. Lucas*: And then the others are locked up? Yes.
1500. You said that during the time you were locked up eight or nine were in one cell—were the tubs removed? No; one tub remains the whole time.
1501. Are not the tubs taken out in the morning? Yes, they are emptied; but one tub remains the whole day.

[No. 1 cell, referred to by the preceding witness, was an ordinary cell, and contained three night-tubs. The Committee having proceeded thither,—]

Mr. McCormick further examined:—

- Mr. Patrick McCormick. 1502. *By the Chairman*: Is that the place where all the prisoners go? It is, when the men are locked in.
- [In nearly all of the cells on the ground floor were three or four men, seated either on a form or on the stones, with a kid before them containing hominy.]
1503. How many men sleep in this cell (No. 19)? Only one; the men from the upper cells eat in these lower ones.
1504. Whose bed is that? Peter Heenan's.
1505. Is he in the cell? No.
1506. Do the men go into any of the cells? Wherever the breakfast is laid out.

Thomas Chew examined:—

- T. Chew. 1507. What is the food you have for breakfast? Hominy.
1508. Have you eaten any? Yes.
1509. Have you eaten all you intend to eat? (*More than half the quantity provided had been left in the kid.*) Yes.
1510. Are you satisfied with the food? Yes.
1511. Is it good? Yes; this is very good. Sometimes it is bad.
1512. What do you get for dinner? Beef and potatoes we are supposed to get.
1513. How long have you been in this prison? Three years within a month.
1514. What is the period of your sentence? That is the period—three years.
1515. You will soon be out? Yes.
1516. What were you sent here for? An assault on my wife.
1517. Where were you tried? At Bathurst.
1518. By whom? Judge Dickinson.
1519. Have you been in Parramatta all the time? Yes.
1520. How have you been employed during the time? Sometimes in the hospital, and for sixteen months I have been sent on a road party, to which I was not sentenced.
1521. Are you generally satisfied with the food you have—is it good uniformly? I have no reason to complain of the food, only once now and then.
1522. Have you ever noticed ob-scenity in the conduct of the prisoners, anything offensive to you? I have no complaint in that way.

James Collins examined:—

[Having stated that he wished to make a complaint.]

- J. Collins. 1523. *By the Chairman*: How long have you been here, who sentenced you, and for what offence? I was tried by Mr. Justice Dickinson, now Chief Justice in Sydney; I got a sentence of two years with hard labour, for felony.
1524. When did you receive that sentence? On the 8th June, 1860.
1525. You have some statement you wish to make to the Committee? Yes, it is concerning the people having to wash their linen.
1526. State as clearly and as fully as you can the nature of your complaint? The tubs that you see in the cells, and likewise that are used throughout the night by men that are taking medicine, and are under the doctor's hands, are fetched down, and we have to wash our flannels and other clothes in them.
1527. Anything else? Yes; I was sent here, I believe, for reformation. I was put in the yard stone-cutting, and was stone-cutting there for some eight months. I was taken out of that and sent out to the roads. I was working here at the back, at the cesspool which is made to take the drainage from the gaol. I was working from morning till night in the water and refuse of the gaol, and Mr. Flinders, one of the turnkeys over us, as I was finishing the flagging, told me to put the flag over the top; as I was putting it on, the water was working the ground into mud. While I was doing this the bell rang, and I stopped behind the other men to finish setting it. He afterwards reported me to Mr. McCormick for not setting it properly, and Mr. McCormick's answer was, "Put him in the cells." I was kept in the cells six days, till the magistrate came, and then I got forty-eight hours. He did not

not find fault when I was setting it, though he saw me at work, but went and reported it; and yet these men are put here to see that the prisoners reform.

1528. What magistrate were you brought before? Dr. Greenup; he likewise stopped my tea and sugar for two months.

1529. When was this? About three months ago.

1530. You do not know in what month it occurred? No; between three and four months ago.

1531. *By Mr. Windeyer*: During the six days before the magistrate came were you in solitary confinement? Not on solitary rations.

1532. But before the magistrate came you were in solitary confinement? Yes.

1533. Were you deprived of your tea and sugar as part of your sentence? Yes.

1534. Did you hear the statement made by Driscoll as to obscene conduct in the closets? Yes; of course everybody is aware that the refuse of the world comes into places of this description; but there are some who are not altogether discarded by society who are obliged to mix with the others.

1535. Have you observed anything of this kind? As regards obscene language, you can hear it every minute of the day.

1536. Have you witnessed obscene exposure? You cannot help it.

1537. As a man, have your feelings been shocked in any way by what you have seen? I have turned my head and walked away.

1538. Were you ever in a place of this kind before? Yes.

1539. Are you a married man? Yes.

1540. What were you tried for? Felony—robbing the post office at Kempsey, Macleay River.

1541. Of the four men now in this cell does either sleep in it at night? No, neither of us.

1542. Are your rations generally good? Sometimes for weeks, I can say on my oath, the bread has been like vinegar.

1543. That seems pretty good? That is first-class bread; that is hospital bread.

1544. *By Mr. Wilson*: When you get bad bread cannot you complain and have it changed? Sometimes it is changed, sometimes it is not. I have sometimes been out all day without tasting a mouthful, it has been so bad.

1545. Are you aware who decides whether it shall be changed or whether it shall not? I believe Mr. Allen.

1546. *By the Chairman*: Are you all locked up separately at night? Those that are in the lower tier cells are locked up singly, but in the upper cells there are three in a cell. In the other wing I have slept with as many as five in a cell.

1547. Who sleeps in this cell? James Pearce.

1548. *By Mr. Wilson*: Will you state how you wash your body here? Since I have been in gaol all I have been able to wash has been my feet and legs, and sometimes I have got another man to wash my back.

1549. Is there any bath here? No.

1550. *By Mr. Windeyer*: Are you made to wash every day? No.

1551. *By the Chairman*: Is there any regulation by which, if you were disposed to be dirty, you would be compelled to wash? As far as clean shirts are concerned—

1552. But with regard to your persons, have you ever been required to wash your persons? Never, since I have been in gaol.

1553. Suppose this case,—that there were a person here of very dirty habits, who would never wash himself from one month to another? He would remain dirty, so far as the authorities were concerned.

1554. *By Mr. Windeyer*: Have you ever seen a man washed? I have seen people washed who have been deranged.

James Pearce brought forward and examined:—

1555. *By the Chairman*: Did you sleep in this cell last night? Yes.

James Pearce.

1556. How long have you been in the gaol? Eighteen months.

1557. What sentence are you under? Five years.

1558. For what offence? Robbing a publican.

1559. Who tried you? Justice Callaghan. I was sentenced to Cockatoo.

1560. For what reason were you removed here? For the benefit of my health.

1561. Were you removed under the direction of the medical officer? Yes.

1562. How long have you slept in this particular cell? I think about five months.

1563. How are you employed during the day? Hat-making.

1564. Will you bring out your bedding, and let us look at it? (*The witness brought his bedding, blankets, &c., from his cell.*)

1565. When did you receive these blankets? Eight or nine months since.

1566. When were they last washed? They have never been washed since I had them.

1567. You have two of them? Yes.

1568. Have you any other covering? A rug. (*The witness produced the same.*)

1569. Did you receive that at the same time? Yes.

1570. When you turned out this morning, what steps did you take with regard to putting your cell right? I doubled up my mattress, and folded my blankets and rug up, in accordance with the instructions.

1571. In the manner in which we saw them just now? Yes.

1572. They are not aired in any way? No.

1573. Is the folding up-of your bed-clothes the first thing you do? Yes.

1574.

- Parramatta Gaol. 1574. Does it remain so all day? Yes.
 15 Feb., 1861. 1575. All the prisoners sleep on a board of that kind (*pointing to a deal board, about six feet by two, raised three or four inches from the floor by battens*)? Yes.
 James Pearce. 1576. When was that cell last whitewashed? Two months ago.
 1577. Can you state when it was whitewashed on the occasion previous to that? Not since I have been in the cell.
 1578. Are there any vermin? There are a few bugs, but it is swarming with fleas.
 1579. Any other kind of vermin? No.
 1580. *By Mr. Wilson*: Did you get the straw for that bed new when you came here? Yes, it is generally altered every three or four months.
 1581. Has it been altered since you have been here? Yes.
 1582. You are an invalid now? Yes.
 1583. Have you hospital rations? 1 lb. bread, 2 oz. rice.
 1584. What is your complaint? Diseased liver, and palpitation of the heart.
 1585. Is that the complaint for which you were sent from Cockatoo here? Yes.
 1586. Do you find yourself getting better here? No; worse.

William Williams examined:—

[Having said he wished to make a complaint.]

- W. Williams. 1587. *By Mr. Hart*: What are you here for? At the time you were elected at Armidale I received some money, and was tried at Maitland for receiving this money knowing it to be stolen. I got two years for it.
 1588. By whom were you tried? Judge Owen.
 1589. How long have you been here? Twelve months; I was kept at Maitland Gaol twelve months for the good of Government. As I am a tradesman I was kept there to do some work, and after that was done I was sent to this gaol.
 1590. What trade are you? A bricklayer and plasterer, but I understand building generally.
 1591. You have some complaint to make respecting your treatment in this gaol? Yes; about four months ago I was working outside at the palisading wall, and when I came in to breakfast, I saw that our hominy was all covered over with dust, and was just like water. We tasted it, and it was very bad. Some of the men put up a murmur, and I asked to see Mr. Allen; Mr. McCormick sent for him, and when he came we asked him how it was the breakfast was so bad, and said we could not work upon it; he gave us no satisfaction whatever.
 1592. What was the immediate cause of complaint? Many mornings we are shoved out to work without breaking our fast.
 1593. Is that in consequence of the badness of your food? Yes.
 1594. *By Mr. Wilson*: Do you mean the badness of the way in which it is prepared? No; I mean that the meal is of bad quality, it comes here so that the men cannot eat it.
 1595. Does that complaint refer to the hominy, or to the food served out for dinner? To the hominy, but the meat is sometimes disgusting, not fit for any man to eat. When I came in from my work some of the men sent for a magistrate—at least I believe he was here—and after the men spoke to Mr. Allen, I went into the cell and sat down, but I could not eat my breakfast. I was afterwards fetched out and put into a cell.
 1596. By order of the magistrate? I cannot say, but twelve men and I were put in a cell.
 1597. When was that? Four months ago.
 1598. Was any investigation held by the magistrate? There was, which was a dear one to me.
 1599. When that was held were the proceedings taken down in writing? I cannot say about that.
 1600. What did the magistrate do to you? When Mr. Allen came round at night, I said to him, "Mr. Allen, what did you put me here for?" "I will shew you in the morning," said he. The next morning he fetched me out and charged me with mutiny, and I got fourteen days solitary.
 1601. Do you mean to say that you had fourteen days solitary confinement without any evidence against you? Just so; but there was evidence enough against me to speak falsely.
 1602. Evidence was taken? Yes; but the thing will shew that there was no attempt at mutiny.

[The Committee inspected a cell in the first story, about twelve feet by seven, and eleven feet high, lighted by two apertures guarded by iron rails. In the cell were three mattresses, which, with the blankets and rugs, were folded and placed against the wall. It being observed by the Chairman that one pair of blankets appeared very dirty, one of the occupants of this cell,—]

Camille Valenti, brought in and examined:—

- C. Valenti. 1603. *By the Chairman*: How long have you been here? Seventeen months.
 1604. For what offence? Fraudulent insolvency; but I gave all my property to my creditors, and my wife robbed me.
 1605. When were you tried? In April, 1858.
 1606. What was your sentence? Three years.
 1607. Who tried you? Judge Dickenson.
 1608. How have you been employed during this time? I have been assisting as wardman in the hospital.
 1609. That is your bed, is it not? Yes.

1610. Will you open it? (*The witness opened his bed and blankets.*)
 1611. When did you receive these? (*Referring to the blankets*) Six months ago.
 1612. When were they washed? About five months ago, they have not been washed since.
 1613. Have you good health? Yes, very good health.
 1614. Do you get good food? Yes
 1615. You have no complaint to make about the gaol? Not the slightest.

Parramatta
 Gaol.
 15 Feb., 1861.
 C. Valenti.

[The Chairman observing a Bible in this cell inquired of the turnkey whether [Turnkey.] there were Bibles in all the cells. The turnkey replied that there were not, in all.]

James Taylor examined :—

[Coming forward and requesting to be allowed to make a statement.]

1616. *By the Chairman* : What is your sentence? Two years.
 1617. For what? Forgery.
 1618. How long have you to remain here? Twelve months and three weeks, as nearly as I can guess.
 1619. You have been in the army, I believe? Yes, in the XIth.
 1620. You would be glad to volunteer to enlist to go to New Zealand? Yes.
 1621. How did you leave the army? I deserted. I have been here ten months and I have only got tea and sugar three times. They have got into the fashion of making the men work, and not allowing them tea and sugar.
 1622. *By Mr. Morris* : Have you had any sentence since you have been in prison? I have been in the cells.
 1623. What for? Nothing at all that I am aware of—because one of the turnkeys said I made some noise, which I never did; I got four days in the cell. I have been gagged and put naked into my cell.
 1624. What for? Only for asking Mr. Allen for a book; it was by his orders I was gagged, and left with nothing on but my shirt, and all night it was raining. I had no blankets, nothing but the stone walls.
 1625. *By Mr. Hart* : Were you violent? No; I never said a word improper that I am aware of to Mr. Allen, or to any one else. I was seized by one of the wardsmen, Mr. Williams and Mr. McCormick, and handcuffed and gagged.
 1626. When was this? Two or three months ago, I cannot tell the exact time.
 1627. *By Mr. Sutherland* : Were you not making a noise? I never said a word, but asked Mr. Allen for a book, and he said I was not conducting myself like another man; he told me to mind myself, and I never made an improper reply. He said he would gag me, and send me into a cell.

James Taylor.

Thomas Nagle examined :—

1628. *By Mr. Windeyer* : How old are you? Eighteen.
 1629. You are in here for an assault? Yes.
 1630. Who sentenced you? Justice Holroyd.
 1631. What is your sentence? Eighteen months, with hard labour.
 1632. Since you received that sentence, has it been mitigated? Yes, to nine months.
 1633. Do you sleep alone? Yes.
 1634. At other times have you to associate with men who have been in gaols before? Yes.
 1635. How often are your clothes washed? Once a week.
 1636. Where? In the yard; in the night-tubs, and sometimes in the other tubs.
 1637. Sometimes they have no other tubs than the night-tubs to wash in? No.
 1638. *By Mr. Morris* : Do you wash yourself all over? Yes; every Saturday, in the shop where I work.
 1639. *By Mr. Windeyer* : Do you do that of your own accord, or are you made to do it? I do it of my own accord.
 1640. Is there any regulation by which the people are obliged to wash themselves? Yes; if they did not, they would be checked and put in the cells for being dirty.
 1641. Have you ever seen that done? Yes; I have seen a man taken on Saturday morning and put in the cells.
 1642. Do you refer to the washing of clothes or the washing of the person? Clothes.
 1643. Is there any regulation by which prisoners are compelled to keep their skins clean? No, I do not know of any.
 1644. What are you doing here? Shoemaking.
 1645. Was that your trade before you came here? I am no trade in particular; I was with a stonemason for a time.
 1646. How has your health been since you have been here? My health has been very well.
 1647. Have you made any progress in shoemaking? I can close a boot, and am getting on very well.
 1648. Do you think the trade will be of any use to you when you get out? Yes.
 1649. *By Mr. Morris* : Is the food you get here pretty good? Yes.
 1650. You have no cause to complain? No, I have not much cause to complain.
 1651. *By Mr. Windeyer* : Is the hominy good? Yes; it has been since I have been here.
 1652. The bread? The bread has been bad once or twice.
 1653. When did you come here? In September, 1860.
 1654. *By Mr. Hart* : Can you read and write? Yes.
 1655. *By Mr. Windeyer* : Is there any teaching in gaol? Not that I know of.
 1656. *By Mr. Hart* : Have you had any visits from clergymen? Yes; a clergyman comes every Sunday.

T. Nagle.

- Parramatta Gaol. 15 Feb., 1861.
T. Nagle.
1657. *By Mr. Morris*: Does he come on week-days? Yes, sometimes on Saturdays.
1658. *By Mr. Windeyer*: Has he ever spoken to you privately? No.
1659. What are you? A Catholic.
1660. *By Mr. Hart*: When the clergyman comes on Sunday I suppose he says mass? Yes; and when he comes on Saturday those who wish to see him can.
1661. Does he visit the cells? Not that I know, unless where a man is in solitary confinement.
1662. *By Mr. Morris*: Have you had any solitary confinement? Yes, the first week every six months.
1663. *By Mr. Hart*: Have you ever been to confession? No; I have never spoken to the clergyman since I have been here.
1664. *By Mr. Windeyer*: What do you intend to do when you go out? I think of going to my brother, who is up the country; he is a shoemaker; if I cannot better myself I shall go to him.
1665. *By Mr. Hart*: Have you any books? Yes.
1666. Can you get what books you please, or are they supplied by the gaoler? There are two libraries—catholic and other books.
1667. *By Mr. Windeyer*: Have you had any books? Yes; I have got books from the librarian, and books from Mr. Dalhanty.
1668. Who is Mr. Dalhanty? He is clerk to the priest.
1669. How did you get them? I asked for them.
1670. *By Mr. Hart*: What books have you read? The Leisure Hour, and the Home Friend, and different other books.
1671. Have you read any religious books? Yes; I have read Butler's Lives of the Saints.
1672. Have you a Prayer Book? Yes.
1673. A Bible? No; I have my own Prayer Book; I got my mother to fetch it.
1674. How often are you at liberty to read it? Every night.
1675. Do you keep it in your cell? Yes, in my bag; and I fetch it up every night.
1676. *By Mr. Windeyer*: Are there any vermin in the cell you sleep in? No.
1677. *By Mr. Morris*: No bugs? I have not seen any. I believe turpentine is put on the boards every week.
1678. Are combs supplied in the gaol? I have got my own, but I believe they are supplied. I never asked for one.

Patrick O'Heir examined:—

[Having come forward and requested to be heard.]

- P. O'Heir.
1679. *By the Chairman*: What is your sentence? Two years.
1680. For what offence? Perjury.
1681. By whom were you tried? Justice Holroyd.
1682. How long have you been here? Four months this month. I wish to be removed to Darlinghurst in consequence of my health being so bad. I am suffering from lumbago, and sitting plaiting in this wing does not agree with me. In the winter here the cold goes through me, and if I am not removed I do not think I can survive the next winter.
1683. *By Mr. Wilson*: What is the matter with you? I am suffering from lumbago, and being deformed I suffer much, and am afraid of the cold of winter.
1684. Do you feel generally a pain about the chest? I am very weak.
1685. You complain of the coldness of your cell in winter? Yes.
1686. In summer you do not feel so much pain? No.
1687. In Sydney did you enjoy better health? Always.

[The Committee next visited the cook-house, a long narrow building, clean and well ventilated. Two sets of coppers were fitted up, one for the general use of the prisoners and the other for hospital purposes. The cook and his assistants had just cleaned out the coppers and was preparing to cook the dinner.]

John Passmore examined:—

- J. Passmore.
1688. *By the Chairman*: Have you charge of this place? Yes.
1689. Will you state the course of one day's proceedings? The first thing done is to light the fire about six o'clock; the contractor generally comes about half-an-hour after that, and we receive the rations for the day. Meantime my mate is getting the hominy for the men. We keep the hominy boiling over-night, and at eight o'clock it is served out.
1690. How much is served out for each man? A kid holds the allowance for four.
1691. How many pounds do you suppose there are in a kid? About 8 lbs. in each kid; amply sufficient for all the men.
1692. Is there generally some of it left? Yes, there is more than they eat at times.
1693. What is done with the refuse hominy? I do not know.
1694. After the hominy is served out what do you do? My particular duty is to see after those who are on hospital diet—that takes up all the muster-time at eight o'clock. After that we cut up the bread for the men; 1 lb. of bread is a full ration, and $\frac{1}{2}$ lb. extra for indulgence. I speak of indulgence by hearsay, my instructions are to send out a certain quantity of rations.
1695. What do you do then? Get the soup ready.
1696. What do you cook for dinner? Beef and soup.
1697. How? In this copper.

1698. How much meat do you receive per head? I received this morning into the kitchen 168½ lbs. of beef, 235 lbs. of bread, 89½ lbs. meal, 94 lbs. potatoes, 10¼ lbs. sugar, 87 ozs. salt, for the general rations of the establishment. Parramatta
Gaol.
15 Feb., 1861.
1699. *By Mr. Wilson:* Do you receive no other vegetables but potatoes? No. J. Passmore.
1700. Never? Not since I have been here; when I first came into the gaol they used to receive pumpkins.
1701. *By the Chairman:* How many men will the quantity you have stated supply? The men who are rationed to day are:—155 hard labour, that is to say, full ration of 1 lb. of bread; 13 confines—they have ¾ lb. of bread each; 7 solitary confines, entitled to 1½ lbs. bread; cooks and extra men in the establishment—7 of us altogether.
1702. How do you prepare the soup? By boiling—directly the meat is cut up, which is generally about half-past eleven, and we keep the soup boiling from a little after eight till half-past eleven.
1703. How is it thickened? Generally speaking there is some of the hominy remaining, and we put that in.
1704. *By Mr. Wilson:* What do you do with the potatoes? Serve them out at the rate of three to one man.
1705. Are they put into the soup? Yes.
1706. What means have you of dividing the quantity? By weight, into messes of four, except in certain cases.
1707. How often do you clean out the boilers? Every day.
1708. Is there any cooking after dinner? No, except putting on the hominy for the next morning.
1709. How often do you clean the floor of this place? Thoroughly once, and it is swept up once or twice besides.
1710. What are you cooking now? I am cooking for the officer on duty.

[The Committee then proceeded to the female yard, where a number of prisoners were engaged at needlework, seated on forms protected from the weather by a shed about 40 feet long by ten deep.]

Mrs. Ellen Freeman examined:—

1711. *By the Chairman:* You are the principal turnkey? Yes. Mrs. Ellen
Freeman.
1712. How long have you held that situation? Over two years.
1713. How many female prisoners are there in the gaol? Forty-five.
1714. How are they classified as to their sentences? Fifteen years is the longest sentence, and there are some who have four years and three years.
1715. Who is the prisoner who has fifteen years? Mary Ann Perry, the woman who was tried for the murder of her husband, Mary Ann Brady three years, and Mary Ann Burns four years.
1716. What are the lightest sentences? From a month to three months.
1717. What were Brady and Burns convicted of? Brady of murder, and Burns of attempting to poison her husband.
1718. And they are all associated together? Yes.
1719. How are they employed to-day? Some at needlework, and some as servants.
1720. How many are employed at needlework? Fourteen at fine needlework.
1721. What description of articles do you include under the term of fine needlework? All ladies' and gentlemen's wear.
1722. What is the second class of work? Making clothing for the children in the orphan school—pinafors, trousers, and articles of that kind.
1723. How many are employed in that kind of work? Twelve or fourteen.
1724. How are the prisoners lodged? Three in some cells, three and a child in some, four in some, and two in some, according to the number we have in.
1725. *By Mr. Windeyer:* Is your husband employed in the gaol? No.
1726. *By Mr. Hart:* How many women are usually here? I have had as high as sixty.
1727. *By Mr. Windeyer:* What is the smallest number you have had? Forty.
1728. *By Mr. Hart:* What is the age of the youngest you have here? Fifteen.
1729. What is she here for? Stealing from her master—and we had quite a little girl here before her.
1730. What was her age? About fifteen.
1731. *By Mr. Lucas:* What is the number of those who have been convicted of their first offence? About four or five; all the rest have been convicted more than once.
1732. Is that the usual average? It is more than I have had generally.
1733. *By Mr. Windeyer:* How do you manage with the young people who come here? They have a cell for themselves, because they used to disagree with the others. Mary Ann Brady sleeps in a separate cell, because she used to disagree with the others.
1734. *By Mr. Lucas:* How many cells have you? Eighteen.
1735. Which will hold four prisoners in each, and not be at all crowded? There will be quite enough in a cell, but not over-crowded.
1736. Have you any single cells? Not any, but solitary cells.
1737. I suppose you have had some confines who have spent the principal part of their time in the gaol? Yes.
1738. *By Mr. Windeyer:* What is the name of that young woman with a child? That is not her child, Mary Fowler is the mother.
1739. What was her sentence? Eighteen months.
1740. Was the child born in the gaol? Yes.
1741. How long has she been in? Over twelve months.
1742. When was the child born? Six months after she came in.

Elizabeth

- Parramatta Gaol.
15 Feb., 1861.
E. Parker.
- Elizabeth Parker examined:—
1743. *By the Chairman*: What is your sentence? Twelve months.
1744. For what offence? Bad conduct.
[Mr. Allen stated that the prisoner was convicted of keeping a brothel.]
1745. What is your age? Seventeen.
1746. How long have you been here? Twelve months.
1747. Was any one sentenced at the same time? Yes, this person (*pointing to a prisoner sitting with her*).

- Mary Ann Perry examined:—
- M. A. Perry. 1748. *By the Chairman*: How long have you been here? A year and nine months.
1749. What discipline are you subject to here; for instance, at what time do you turn out? At six o'clock.
1750. What have you to do then? I am employed to keep the hall clean, to see that the benches are right.* I was at the fine needlework table once.
1751. How long have you filled your present situation? I think about four months.
1752. Have you had pretty good health since you have been here? My health is failing me greatly; it is not half so good as it was when I first came here.
1753. *By Mr. Wilson*: What do you complain of? Severe pains in my back, rheumatic pains, with sitting a long time; I was ten months at needlework.
1754. Were you subject to rheumatism before you came here? No.
1755. Have you a sufficiency of bedding? Yes.
1756. You never complain of being cold at night? No.
1757. Do you eat your food pretty well? No, I cannot; I have been a good bit in prison now.
1758. Your principal complaint is rheumatism in your back? Yes, and in my head.

[The Committee next inspected the female cells on the first floor,—]

- Mrs. Freeman further examined:—
- Mrs. Freeman. 1759. *By the Chairman*: Have you noticed any failure in Mrs. Perry's health? No, she is pretty quiet.
1760. Does she appear to have any tendency to despondency? No, I have not noticed anything particular.
1761. *By Mr. Windeyer*: Is the bedding taken out of the cells? Yes, once a fortnight.
1762. *By the Chairman*: When are the cells unlocked in the morning? At six o'clock.
1763. What do the women then do? They wash and go down into the yard.
1764. They have some time to themselves? Yes.
1765. When do they go to work? About half-past six.
1766. When do they breakfast? At eight; they have an hour from eight to nine.
1767. They then go on with their work? Yes, until the dinner-hour; the dinner-hour is from one to two.
1768. Then they work until about four? Yes, or five; they then come up here and walk about till they are mustered, and then, when the roll is called over, they turn into the cells and are locked up.
1769. When is the roll called? At half-past five.
1770. So that they are out about eleven hours and a half? Yes.
1771. *By Mr. Hart*: Is there any light in the wings? No; there is no light.
1772. *By the Chairman*: Is there no watch kept here? No, we sleep in the end cell.
1773. What regulation have you for enforcing personal cleanliness? They wash every Saturday, if they choose, themselves.
1774. I mean as to their personal cleanliness? They are all very clean.
1775. What regulation is there for enforcing personal cleanliness; suppose a woman is dirty in her habits? Of course I see to it.
1776. It is left to your discretion? Yes; if a woman is not able to clean herself I see another do it.
1777. I wish to know whether, at a certain hour or day in the week, a woman is compelled to wash herself? Every morning every woman is supposed to wash herself.
1778. *By Mr. Hart*: Is there any bath-room? No.
1779. *By the Chairman*: Have you any prisoners in the hospital? Yes.
1780. Who is the medical visitor of the gaol? Dr. Greenup.
1781. Has he visited the young girl who is in fits in the yard? Yes.
1782. Has he prescribed for her? Yes, several times.
1783. Can you state whether the medical visitor has given any opinion as to the cause of that girl's fits? From what the girl has told the doctor, she was born with fits.
1784. They do not arise from an ill course of conduct? Not at all; she was quite quiet at her work when she was taken so.
1785. Is she generally well-behaved? Yes, in the prison.
1786. Have you much insubordination? Not much; sometimes they are rough.
1787. What has been Elizabeth Parker's conduct? Latterly since she has been here it has been better; at first her conduct was very lightsome and troublesome. She was very troublesome when she came here at first, and was put into a cell by herself. They upbraid one another with the crimes they have done outside.
1788. You have been here two years? Yes.

1789. During that time have many of the ladies about Parramatta visited the female prisoners? Not many; there have been a few. Parramatta Gaol.
1790. Persons often visit gaols, as I dare say you are aware, from motives of curiosity; I do not allude to such visits, but to visits dictated by a desire to produce reformation among the prisoners? There have not been any of that kind; people have just come in and looked round. 15 Feb., 1861. Mrs. Freeman.
1791. *By Mr. Hart*: Is there any record kept of the visitors to the gaol? Not that I am aware of.
1792. During the whole two years you have been here, do I understand that the female prisoners have never been visited by ladies, who have gone among them to inquire into their habits and character? Not that I am aware of.
1793. I suppose there is a chaplain to the gaol? Yes. Father Ambrose is the Roman Catholic chaplain, and sometimes Parson King comes, and sometimes Parson Lumsdaice.
1794. Do they come here often? Yes.
1795. Is divine service performed on Sunday? Yes.
1796. Do the male and female prisoners attend together? Yes, all in one wing; the male and female turnkeys sitting between the women and men during divine service.
1797. *By Mr. Windeyer*: There is a woman here whose husband is also in the gaol? Yes.
1798. Are they permitted to see each other? Yes. They have seen each other only once or twice since they have been here—when they asked.
1799. *By the Chairman*: I suppose you have a number of women here, who have husbands and families? Yes.
1800. Do the husbands come to see their wives? Yes.
1801. Do they come as often as they can to see them? They come on the first Sunday of every month.
1802. Are the cells free from vermin, other than fleas? There may be fleas—anything else the gaol is very free from; for, when any prisoner comes in, we take her into one of the cells, and make her change her clothing.
1803. *By Mr. Hart*: As a general rule, do the women shew any shame or regret at their crimes? Some do—some do not; some seem to say they are better off here than any where else.
1804. Do they appear to be careless as to their condition? Some do—others do not.
1805. Do you allude to those who come here as vagrants, or to those who are sent here for stealing and other offences? There are a few who seem to rather regret it when they come at first, but not those who come frequently.
1806. Do young persons, or those who are more advanced in years, appear to suffer the most from regret? The young persons do not like to be confined.
1807. *By Mr. Windeyer*: During the two years you have been here, have you found young people come here more than once? Some of the young ones have been here four times since I have been here.
1808. For what kind of crime—bad conduct or stealing? Both.
1809. *By Mr. Sutherland*: What kind of work is done here? It goes to the school—what is called slop work; the other, the fine work, goes to the party who sends it; we make a bill out for it.
1810. Who values the work? Mrs. Allen.
1811. Is there any valuation put upon the work that goes to the Orphan School? No.

[Proceeding to the solitary cells beneath the women's wing,—]

Caleb George examined:—
[A prisoner in one of the cells.]

1812. *By the Chairman*: What is your sentence? Two years with hard labour. Caleb George.
1813. How long have you been in gaol? Four months.
1814. How do you come to be in irons? I had a row the other morning with one of the turnkeys. He is a new hand, is a great tyrant, and treats the men very badly. He got my temper up, and I made a rush at him; I did not strike at him, but caught hold of his shirt. For that I was sentenced to 28 days solitary, and three months in irons.
1815. Who did you receive the sentence from? From two magistrates in the gaol—one was Dr. Greenup, and the other was a little man—I do not know the other gentleman's name. I have a very poor prospect before me, for there is now a warrant in the Detective Office to have me tried for bigamy when I leave this. I should have gone on quietly if it had not been for this—but I am innocent of the charge.
1816. Are you innocent of the charge of bigamy? No; but I am quite innocent of the charge for which I got this two years.
1817. You say you made a rush at the officer? Yes.
1818. What induced you to do that? The bad treatment I received.
1819. What did the bad treatment consist of? The refusal of any little indulgence.
1820. You have no bed here? No.
1821. Have you had any bed since you have been here? No, I am doing solitary now.
1822. How many days have you been here? Since Sunday.
1823. And you have no bed nor anything else except what we see here? No, but two bits of blankets.
1824. What is this? A kid of water.
1825. What is underneath? The night-tub.
1826. When is that emptied? Every morning.
1827. Do you undress at night? No, I am not able to get my trousers off till I get them altered, on account of my irons.

- Parramatta Gaol. 1828. Have you been washed since you have been in the cell? Yes, I get a wash every morning.
 15 Feb., 1861. 1829. Are you allowed books? Yes, any book in the library.
 Caleb George. 1830. What countryman are you? An Englishman.
 1831. How long have you been in the country? Between eight and nine years.
 1832. What food are you allowed daily in solitary confinement? One pound and a half of bread a day.
 1833. Anything else? No. (*The witness produced his bread.*) That is better than we have had; we have had very bad bread.
 1834. You have water I suppose? Yes.
 1835. Plenty of water? Yes.
 1836. How often is your night-tub emptied? Every morning.
 1837. Once in twenty-four hours? Yes.
 1838. Are there any vermin in this cell? No; this is the first time I have been in the cells since I have been here. These cells are not so clean as the others.
 1839. *By Mr. Hart*: If the tub is used during the day, does it remain till the following morning? Yes.

Edward Power examined:—

- E. Power. 1840. *By the Chairman*: What is your sentence? Five years.
 1841. For what offence? Burglary.
 1842. Where were you tried? At Bathurst.
 1843. By whom? Judge Therry, on the 24th September, 1858.
 1844. Were you sentenced to Cockatoo? To the roads and public works of the Colony.
 1845. When did you reach Cockatoo? On the 26th October, 1858.
 1846. Are you a tradesman? Yes, a cooper.
 1847. How were you employed at Cockatoo? For a while at stone-cutting; I was then made overseer of the cook-house.
 1848. How long did you continue in that capacity? Nine months.
 1849. What led you to be removed? This affair.
 1850. You were in that situation at the time of the insubordination? Yes.
 1851. It is right to inform you that we are a Committee of the Legislative Assembly appointed to inquire into the state of the prisons of the County of Cumberland—can you state to us whether there was any consultation at Cockatoo prior to the refusal to work? No, I never heard of any.
 1852. Did you ever consult with others as to the best means to take to remedy the evils complained of? Yes.
 1853. How many persons were there in any consultations in which you took a part? I never took a part; there was a rumour among the men.
 1854. I want to know whether there was, at any time, a consultation at which it was suggested that you should refuse to work? Yes.
 1855. Can you state how many there were at these consultations? Sometimes three or four, sometimes ten or a dozen used to meet altogether.
 1856. When they came to the conclusion that they would refuse to work? Yes.
 1857. Were the probable results of such a refusal started as an objection? Yes; the feeling of the men at the time was, that they did not care what came up foremost to them. We were promised from time to time that something should be done for us, and nothing was done, and we did not care what we did; and we thought what we did might as well be done at once, and be known to the authorities at Sydney.
 1858. Did you ever hear men express sentiments of this kind—that they would sooner lose their lives than continue in that state? Yes, I have, time after time.
 1859. You are sure of that? Yes, positive.
 1860. What have you heard them say? I have heard them talk of making their escape; they said, they might as well be shot at once as remain there the term of their natural life.
 1861. The complaint arose out of the regulation that certain of the prisoners, who arrived at the island before a certain date, were allowed to make overtime as much as nine days a week, while those who arrived after that date, although they worked as hard as the others, only made six days a week? Yes; besides there was a great deal of complaint about sleeping places.
 1862. What do you refer to? Obscene conduct.
 1863. Will you state in what that consisted? The way they carried on their obscenity; they were worse than brute beasts.
 1864. Will you state plainly what it was? Cohabiting with one another.
 1865. Are you stating a fact of which you have been a witness? I have not been a witness; it has been reported at the office time after time, and it has always been cloaked; it has never been brought to public light.
 1866. The sleeping compartments are in tiers, one opposite to the other, so that the men have to creep into them on their hands and knees; the warder goes up and down the passage during the night, does he not? He is supposed to do so.
 1867. Can you state whether the prisoners ever leave their berths during the night? Yes.
 1868. Have you seen them get into each other's berths? Yes, I am positive of it, and often.
 1869. Have you heard obscene language? Yes, constantly.
 1870. Are you a married man? Yes.
 1871. Have you any children? Yes.
 1872. Have you heard language that has shocked you as a husband and father? Yes; the whole of the language from once they got in till they got out in the morning was disgusting.
 1873.

1873. In hot weather were not these places very oppressive? Most oppressive; in the morning you can't breathe, and almost faint when you come into the open air. Parramatta Gaol. 15 Feb., 1861. E. Power.
1874. You have said that unnatural crime was committed, what led you to think that was the case if you never saw it? The conversation that went on between one and another when they got into the bunks.
1875. What age are you? Thirty-four.
1876. How long have you been in the Colony? I came here in 1850.
1877. Have you been all your life mixing with working men? Yes.
1878. What part of the world are you a native of? America.
1879. You arrived here before the gold discovery? No, I came from California in 1850.
1880. Were you induced to come here in consequence of the discovery of gold? Yes.
1881. When you said you judged unnatural crime to have been committed, I understood you to say that it had often been committed in Cockatoo Island—did you infer this from conversation and inuendoes among the men just as you would infer other facts from inuendoes and indirect expressions among men of the same class? Yes; but on one occasion in the mess-shed I saw it with my own eyes.
1882. Will you state what you did see? It was on Sunday, in the mess-shed, just after dinner, and I was, I suppose, about a dozen feet away from two men, and was reading a book, and I saw one of these two sitting on the other, and the other loosing him with his hands; I was disgusted and walked out. I reported it at the time, but never heard anything of it afterwards.
1883. Was one sitting down on the other's lap? No; one was working the other with his hands.
1884. In fact, one was indecently fingering the other? Yes.
1885. With regard to these sleeping apartments at Cockatoo Island, what state have they been in as to the night-tubs in the morning? Very bad; they are lying under our nose all night; of course every man when it comes to his turn must use them.
1886. Were you always able to sleep? No.
1887. Could you sleep generally? No.
1888. What prevented you? The foul atmosphere, and the tremendous noise all night.
1889. Imprecations and singing? Yes; the language is frightful.
1890. And you say the men were going in and out of each other's berths? Yes, it was as common as anything in the world.
1891. They did so almost regularly? Yes.
1892. Without any limit or any hindrance? Yes.
1893. Were they shifting about in a state of nakedness? Yes.
1894. At the time you were there were the berths full? Yes.
1895. Have you seen them sleeping on the top of the berths? There may have been one or two sleeping on the top of the berths.
1896. Since you have been here what have you been doing? I have been in solitary confinement all the time.
1897. Are you willing to go back? Not to go back to Cockatoo Island; I would sooner work here or anywhere.
1898. Where is your wife? At Bathurst.
1899. Has she ever visited you? I receive letters monthly from her, or nearly so. Those worst men who are on Cockatoo Island are receiving indulgences, while those who have never been convicted before have no indulgence.
1900. When you told us just now that you had no doubt that unnatural crime took place in the dormitories on Cockatoo Island, did you mean what you saw in the mess-room, or did you mean the act of sodomy? Sodomy in these dormitories.
1901. Have you heard it acknowledged? Time after time.
1902. There has been something more than mere inuendoes? Yes.
1903. Were you ever punished during the time you were on the island? Never.
1904. Till this act of insubordination? No.
1905. Suppose all the prisoners were treated alike, would you be willing to go back? In fact I would not like to go back; I am disgusted with the place; there is no place to get by yourself, you are all huddled up like sheep in a pen, and you can't close your eyes and your ears to what goes on.
1906. Did you marry in this country? Yes.
1907. Is your wife a native? Yes.
1908. You have no bed here, I suppose? No, only a blanket.
1909. What food do you get? A bit of bread and water.
1910. How often is your night-tub emptied? As often as I like.

John Corner examined:—

[Having complained of his treatment when on Cockatoo Island.]

1911. *By the Chairman*: What is your sentence? Five years.
1912. What is your offence? I was accused of highway robbery.
1913. Who tried you? Judge Callaghan.
1914. Were you sentenced to Cockatoo Island? Yes.
1915. When did you enter upon the island? On the 8th September, 1858.
1916. Were you ever punished for bad conduct during the time you were on the island before this last act of insubordination? No; I fell out once before, and got 14 days—that was the only punishment.
1917. How were you employed on the island? Always at work.

John Corner.

- Parramatta Gaol. 15 Feb., 1861. John Corner.
1918. At what work? With the building gang.
1919. You complain of the state of the sleeping apartments there, and of your general treatment? The berths we slept in—the dirt under them was never cleaned out from one year's end to another. The boards—you can scrape off the filth.
1920. Do you mean bugs? Bugs and filth both. The rats run about the place in dozens.
1921. Had you any body vermin there? No, I never did.
1922. Are you a married man? I am.
1923. Have you a wife and children? I have one son alive.
1924. Did you ever witness conduct in that place shocking to your feelings as a husband and a father? I never did.
1925. You never witnessed obscene conduct? The discourse of the men sometimes is disgusting.
1926. Is not disgusting conduct shocking to your feelings? Yes.
1927. What am I to understand from your previous answer? I understood you in a different light; I thought you meant unnatural crimes; but the language of the men I did not like to hear.
1928. Did you ever hear language that led you to think unnatural crime had been committed there? Yes.
1929. What is your opinion as to whether the crime of sodomy has been committed there—do you think it has or has not been committed there? From what I have heard, my humble opinion is, that it has been, but not lately.
1930. Were the prisoners in the habit of going from one sleeping berth to another at night? Not to my knowledge.
1931. You had to creep into your berth on your hands and knees? Yes.
1932. Did you ever experience any ill effects from the state of the atmosphere, in consequence of the dormitories being overcrowded? Yes.
1933. Were those berths full during the time you were there? Yes; I have known them to be so full that they have been three deep.
1934. Was there much noise there during the night? Yes; if I had my choice I would rather stop here in this cell than go back to the island. I have no one here to trouble me; I am here in peace and quietness.
1935. Have you any books here? I have. I would sooner do the remainder of my time here than go back to the island again.

[Visiting the yard where the joiners' and blacksmiths' shops are situated,—]

Mr. Richard Godson examined:—

- Mr. R. Godson. 1936. *By the Chairman*: You are appointed as overseer of the carpenters? Yes.
1937. When did you receive that appointment? On the 9th November, 1859.
1938. From whom? The Sheriff, on the recommendation of the Colonial Architect.
1939. How many men are under you? I have thirteen just now.
1940. Are any of them carpenters by trade? Only one.
1941. What work are they generally employed upon? Making wheelbarrows, handcarts, and some of them clog soles.
1942. What are the clog soles? They have leather uppers put on them by the shoemakers, and the magistrates think they will last longer, and be cheaper and better than the shoes they wear at present.
1943. Is any work done for persons outside? No, it is all public work; we have now some handcarts making for Darlinghurst Gaol, and a dozen barrows went down to the Architect's Office.
1944. I observe one of the men working in irons? Yes, that is one of the men first sent from Cockatoo Island. There is also work done for the Lunatic Asylum.

John Kelly examined:—

[A prisoner working in the blacksmiths' shop.]

- John Kelly. 1945. *By the Chairman*: What do you work at generally? Anything that has been to be made. Since I have been here I have done all the work.
1946. What have you been making? Palisading for the front of the Government House.
1947. Do you ever make any articles to go outside? No, only the iron-work for wheelbarrows, that is all; there have been axles made for three go-carts.

[The Committee having resolved to hear certain prisoners in the absence of the prison authorities,—]

Alfred Baker examined:—

- Alfred Baker. 1948. *By the Chairman*: How long have you been in this prison? Nine months.
1949. For what term was your sentence? Twelve months.
1950. For what offence? An assault was sworn against me.
1951. Who sentenced you? Mr. Justice Holroyd.
1952. You wish to make some statement to this Committee? Yes.
1953. Will you proceed to do so—you may speak quite unreservedly here, only adhere strictly to facts? The fact is, that, since I have been here, I have witnessed the treatment of the people here—our victuals, when it is cooked in the sort of way it is, is more fit for pigs. When it is put down for you it is in a tub, which four or five have to eat out of, and you have

have to take it with your fingers and teeth the same as cannibals. Four or five of you are put into a cell, to eat it together, where a man has slept all night. Another thing is, that the men who are working here, I have seen them punished for getting a drop of clean water to wash their face; they have been sent to the cells for twenty-four or forty-eight hours. Parramatta
Gaal.
15 Feb., 1861.
— Alfred Baker.

1954. Have you ever been punished? I never gave them any occasion, but I have seen many; they are sent to the cells, and have two dirty pieces of blanket which I have often seen over the lime; these I have seen taken away from them, and their board, and they had to lie on the stone. Very often the men have to make complaints about the bread they get. Three or four were punished the other day for doing so; though the bread was that sour they could not eat it.

1955. The bread is very good to-day, is it not? It is good enough at times.

1956. Do not you consider it very good to-day? I have not seen it yet.

1957. Did you not consider the bread you received yesterday good? Yes, it was sweet enough yesterday. They are taken out of the yard for the most frivolous offences; if an officer speaks to them and they turn round, that is made a complaint of.

1958. You say the meat is served up in a filthy state? Yes; the meat and potatoes are cooked, and the potatoes with their skins on are put into the soup.

1959. Are you allowed spoons? Horn spoons.

1960. Is the bedding good? Yes, the bedding I have got is good enough; a straw mattress and two blankets.

1961. *By Mr. Windeyer*: Are the men made to wash at all? Yes, they are made to wash themselves; they can do that every Saturday.

1962. *By the Chairman*: Are they compelled to do that? No, they are not compelled unless they choose.

1963. *By Mr. Windeyer*: Are you in a cell by yourself? No; I asked for one, and had it for sometime, but I was taken out the other day to let a man go in that was in irons. I am now in a cell with four others. You have to mix here with people who have committed all sorts of crimes.

1964. Do you know whether the men complain at all of not being able to shorten their time by doing extra work? No, I never heard any complaints in that way.

1965. *By Mr. Walsh*: You say that, sometimes, men are put into the cells, and their bedding and boards are taken away? Yes.

1966. Can you remember any particular person who has been so treated? Yes, there was one put in last Sunday—Nicholas Burns.

1967. How do you know that that was done in his case—did you see the board and bedding taken away? I saw it outside the cell when I went to take the lime from the cell beyond his. He was there from Sunday till Tuesday before he was tried.

1968. He was not tried, then, at the time he was in the cell? No; he was in from Sunday at dinner-time till Tuesday.

1969. He was put in on Sunday, and you saw the bedding outside on Monday morning? Yes.

1970. Is he still in the gaol? Yes.

1971. Is he in the cell now? No, he is in the carpenters' yard working with the blacksmiths; he has done his forty-eight hours.

Matthew Britton brought in and examined:—

1972. *By the Chairman*: How long have you been in this gaol? Twelve months the 7th of next month. M. Britton.

1973. What is your sentence? Two years.

1974. For what offence did you receive that sentence? I was charged with robbing Mr. West.

1975. Who tried you? Judge Dowling.

1976. How have you been employed during the time you have been here? About six months out of that I was at the stone-cutting.

1977. Are you a mason? No.

1978. Are you a labourer? Yes.

1979. You are in irons now? Yes.

1980. How came you to be in irons? I received a sentence of six months here.

1981. What for? Striking an officer.

1982. When did that occur? Six months on the 24th March next.

1983. Have you ever been punished before during the time you have been here? Nine or ten times.

1984. What were you punished for those different times? I cannot speak to you in that way you are speaking to—(*The witness here appeared to be confused.*) I could explain myself if I were allowed to speak out straight, Sir. (*The witness here handed a slate to Mr. Hart, who read the following:—*) "Sir,—I would wish to make various complaints to you now, but " my inability renders me incapable of doing so. I wish to bring under your notice, that, if " a man makes a complaint, he incurs the displeasure of Mr. Allen, and if Mr. Allen does not " annoy you in a direct way he does so in an indirect manner. I know that although you " promise me your protection that any order you may leave here concerning my future treat- " ment will be violated in your absence. There are plenty of men would be glad to make " complaints were they not frightened of the after-claps. I am aware that what I am doing " now will cause me to lead the life of a dog during the remainder of my sentence, if I have " to finish it in Parramatta. Were I able to explain to you the manner in which the officers " of

- Parramatta Gaol. 15 Feb., 1861. " of this establishment carry out their duty, you would scarce give credit to all. I regret that it is my inability will not allow me to explain the truth of those cases, but plenty of the men would and could, if they were not afraid of the after-punishment while in this gaol."
- M. Britton. 1985. What do you mean by your inability to explain? That is how it was wrote.
1986. You say you have been punished nine or ten times? Yes, recently.
1987. What were you punished for? If you will allow me to speak I will state the reason.
1988. So long as you adhere strictly to the facts, you can speak to us without any reserve? I have a complaint to make against Mr. Allen first.
1989. Will you explain to us why you have been punished these nine or ten times? Yes, I will. I was punished last week for coming here and speaking about the bread, when the men in No. 2 said it was sour.
1990. What sentence did you receive? A week in the cells.
1991. Can you remember what was the first punishment you received before you were put in irons? The first was forty-eight hours solitary.
1992. What was that for? It was when I came from Bathurst. I would not go to load a cart with stones with no shoes on.
1993. Can you recollect what you received your second punishment for? No.
1994. Were the seven, eight, or nine punishments inflicted for offences similar to these? I got forty-eight hours for telling one of the officers he was drunk, and I proved it. in the office that he was beastly drunk, and that he was so also on Saturday and Monday.
1995. You say you received a sentence of six months in irons for striking an officer? Yes.
1996. How did that arise? I had just come out of the hospital after being in six weeks for a disease of the heart, and I would not go into No. 2 cell with two cranky men; and because I would not be sent to Mr. M'Cormick the next morning, and he came where I was lying on the bunk berth with two blankets over it. He said, "What is the matter with you—you are a damned liar, there is nothing the matter with you?" I said, "If nothing is the matter with me, I must get up, but, if nothing is the matter with me, what did the doctor send me to the hospital for six weeks for?" He said, "Up you get or I shall drag the blankets away." With that the officer pulled away the blanket, and shoved me. I hit him, and he knocked me down; my head fell against the stone. For that I got six months in irons.
1997. You said you wished to make a charge against Mr. Allen, what is it? The charge I have to make is this. The men in No. 2 wing refused to eat the bread; they said it was sour, and all the men would not work in the stone yard. The officer came up and said, "Britton, are you going to work?" I said, "I do not intend to refuse to work, nor is it my intention to say that I will not." I said to the men, "Let us go up and speak to Mr. M'Cormick in a proper manner." Mr. Crawford said, "What do all you men want—I shall only let half-a-dozen men go up." They said, "We all want to see Mr. M'Cormick." I was the first man at the gate, and said, "I want to speak to Mr. M'Cormick about my rations for myself." With that the gate was opened, and half-a-dozen men were let out, and the two delegates and cook came in with the bread. Mr. Allen came in and handed me half a loaf, and said, "Is this bad bread?" I said, "This is sour." With that he caught hold of me in a violent manner. I abused Mr. Allen, and he said, "Take him to the cells like a dog," and gave me two shoves. When I got out, I turned round and abused Mr. Allen in a violent manner. I do not deny that I did. That is the complaint I have to make.
1998. And what became of all that bread? It went to Mr. Allen's pigs.
1999. *By Mr. Hart*: Who sentenced you to six months in irons for striking the officer? The old gentleman that comes here, and another magistrate.
2000. Were regular proceedings taken against you, and the evidence taken down in writing? Yes.
2001. *By the Chairman*: What evidence? Mr. M'Williams swore that Mr. M'Cormick never said anything of the kind, calling me a damned liar. In fact, it was no good my speaking when Mr. M'Cormick and the other officer swore against me. I had nothing to say, and only pleaded guilty. I said it was no good my speaking. Just before that, I had another complaint to make —
2002. Are there pigs kept in this gaol? No; but pigs are kept outside, and fed upon prisoners' rations, and fowls also fed upon hominy. I have a few words to speak against Mr. M'Williams. One Saturday nearly six months ago, Mr. M'Williams came into the yard—we were all ranged up in the yard, and were counted man by man; Mr. M'Cormick came into the yard, and said, "How many men are there?" and the officer said, "Thirty-three men." There were forty-seven men before breakfast, and forty-eight after breakfast. Mr. M'Cormick said, "Well, how many men have you got?" "Thirty-three." "You ought to have more than that" said Mr. M'Cormick. The officer went and counted them again. Mr. M'Cormick said, "Have you made them correct now?" There was "13" marked on the wall, and he said, "The men must be correct, for this is the number of them." Mr. M'Cormick had then to call the men into the yard, and Mr. Armstrong found the men correct; and Mr. M'Cormick had to report the officer for being drunk. I got forty-eight hours for telling him he was drunk. On Monday morning he was fetched before the magistrate, and fined 10s. or was reprimanded for being drunk in the gaol.
2003. Has your bunk berth been taken away from you at any time during the night? No.
2004. *By Mr. Wilson*: Why are you without shoes? I asked Mr. M'Cormick for a pair of shoes, and he said, "When you are due for them you shall get them."
2005. Have you no shoes? It is just the same as if I had none; the bottoms are all gone, and they hurt me more than if I had none.
2006. *By Mr. Hart*: Are those the heaviest irons worn in the gaol? I had a heavier pair
on

on, but when the Sheriff came he ordered another pair for me, and mine were given to one of the Cockatoo men. I was a long time before I could get a belt to support the irons. I have done twelve months here, and I would rather do two years at Darlinghurst than another twelve months here.

Parramatta
Gaol.
16 Feb., 1861.
M. Britton.

2007. Can you take your trousers off? Yes. What I have been punished the Lord only knows. I have a very bad disease, and I have been put in the cells.

2008. What is your disease? Palpitation and pain at the heart. I have been very bad. The magistrates ordered my irons to be taken off on the first of last month, and I spoke to Mr. Allen in the wing, and said, the magistrates had been so good as to knock my irons off. He said he had received no orders, but that if he had been present my irons should have come off. He said, "On account of your committing yourself the way you have, you shall wear your irons, but if your conduct is good you shall not do the seven days solitary."

2009. When was the order given by the magistrate? Either on the Wednesday or Thursday preceding the 1st February.

Nicholas Burns brought in and examined.

2010. *By Mr. Walsh*: How long have you been here? About five months.

N. Burns.

2011. Under what sentence? Three years.

2012. For what crime? Robbery.

2013. Have you been punished here lately? No, I have not.

2014. Were you in the cells lately? Yes, I was in the cells five days.

2015. When was that? Since last Sunday.

2016. When were you first put in? On Sunday.

2017. At what time of the night? About nine o'clock in the morning.

2018. Did you remain in the cells during the night? Yes.

2019. Had you a bed there? No.

2020. Had you first of all bed clothing or blankets? Two old blankets during the night.

2021. Had you a board? No.

2022. You had to lie on the stones? Yes.

2023. When you went into the cell at first, was there a board there? Yes.

2024. Was it removed upon your going into the cell? Yes, it was removed when I went into the cell.

2025. Who removed it? One of the turnkeys,

2026. What is his name? Armstrong.

2027. Were you obliged to lie upon the flag-stones during the time you were there? Yes, all the time.

2028. *By Mr. Wilson*: Have you been tried—were you sentenced to the cells by the magistrates? Yes, I had forty-eight hours. I was there three days before I was brought before them.

2029. Are those the best boots you have? Yes.

2030. *By Mr. Walsh*: At the time this board was removed from the cell, did the turnkey say why he took it away? No; he never told me why he took it.

2031. Had you had any misunderstanding with that turnkey before? No; I never had any.

2032. Was that the only time you had been punished? Yes.

2033. What were you punished for? The blade of a knife I had on me.

2034. *By Mr. Hart*: How did you get it? I made it.

2035. *By Mr. Lucas*: What did you make it for? To cut my meat with. We have no knives in this place, but have to take the meat in our hands and tear it in pieces.

2036. You have a spoon? Yes.

Hugh Downing brought in and examined:—

2037. *By Mr. Lucas*: How long have you been here? Two years and eight months.

H. Downing.

2038. What is your sentence? Three years.

2039. What did you come here for? Robbery.

2040. Have you been punished since you have been here? Yes.

2041. How many times? Two.

2042. For what period? Once I was in for between two and three months.

2043. Was that solitary confinement? Part of it.

2044. How often were you let out of the cells? Not at all.

2045. What bedding had you? Part of the time two blankets.

2046. The rest of the time? Nothing else; I had no board at one time, and no blanket, and water was thrown over me.

2047. By whom? One of the turnkeys. I was in handcuffs part of the time—I had no use of my hands.

2048. What were you put in there for? Not giving information that two men were going to escape.

2049. Did the men make their escape? No.

2050. How have you been treated since that? Very well.

2051. Have you not been punished since that? No; I have been tried since, but discharged.

2052. You have only once been punished? Yes.

2053. Have you any other complaint to make? Of bad rations.

2054. Just state the whole of your complaint as briefly as you can? The arbitrary manner the officers of the establishment exercise authority over the prisoners.

2055. Have you asked at any time to see the magistrates? No, never; because I knew it was of no use, for it is all cut and dried before you come in.

2056.

- Parramatta Gaol. 2056. Have you known any men, who have asked to see the magistrates, punished? Yes.
 15 Feb., 1861. 2057. When was that? At the time the men were tried here for mutiny.
 H. Downing. 2058. When was that? The men felt aggrieved, and they complained to Mr. Allen, and said they wanted to see the magistrates, and he went and took their names down, and they received from fourteen to thirty days solitary.
 2059. You did not wish to give this evidence? No; for I know that if a man gives evidence here, he will lead the life of a dog after—I know it from experience. I have been so treated that I have not the use of either of my arms. I was in the cells six weeks before I was tried.

John Rowan brought in and examined:—

- John Rowan. 2060. *By Mr. Lucas*: How long have you been here? Five months.
 2061. What for? Horse stealing.
 2062. Where were you tried? At Yass.
 2063. What was your sentence? Two years.
 2064. Have you any complaint to make of the treatment you have received? When these gentlemen leave the gaol severity will fall upon me. I had not been in the gaol ten days before I was taken up. I did not know the regulations of the gaol, and some of the men said it would be best to see the magistrates about them, and they said they would do so. Mr. M'Cormick came in, and one of the men fell out, and said, "I beg pardon, we want to see Mr. Allen." "What do you want to make a complaint about?" "The rations." Mr. Allen came and said the men who complained were to send in their names; about ten sent in their names, and we were all locked up. We were fetched from the cells next day one by one and tried for mutiny—some had a month and some fourteen days. I did not know it was against the rules of the gaol, it was the first time ever I was in the gaol for any crime. If there is a knife, or a bit of tin, or iron to cut the meat with—which is sometimes brought up half-cooked—found upon a prisoner, he gets twenty-four or forty-eight hours, and his tea and sugar and extra bread is stopped.
 2065. Is your tea and sugar stopped? Yes, my tea and sugar and extra bread is stopped for two months.
 2066. What for? One of the officers swearing falsely against me. He said he was sitting alongside me in the necessary, and saw me throw a note down the necessary. I had a witness that I wanted to bring forward, who saw me there, but the magistrate would not allow me. The same officer was pulling at me again; I had a stone on the banker ready for the drayman to put on, and this man came to me, began to domineer over me, and said, why had I not got a stone ready? I said, I had got one. He said, "You had better not give me a chance." I said, "I will not leave myself in any man's power, I will do my duty, and I intend to prosecute you before the Sheriff for perjury." I got four days in the cells for that, where I had two dirty bits of blanket.
 2067. You do not have the blankets which belong to your cell? No.
 2068. Are the blankets you have in your cell washed? No; I have heard men who have been here two years say that these blankets have not been washed all the time.

FRIDAY, 22 FEBRUARY, 1861.

Present:—

MR. COWPER,	|	MR. MORRIS,
MR. LUCAS,	|	MR. WALSH,
MR. MATE,	|	MR. WINDEYER.

H. PARKES, ESQ., IN THE CHAIR.

Mr. Thomas Harrison called in and examined:—

- Mr. T. Harrison. 2069. *By the Chairman*: You are principal turnkey at Darlinghurst Gaol? Yes.
 2070. Did you petition the Legislative Assembly? I did.
 22 Feb., 1861. 2071. Will you look at that petition (*handing a paper to witness*)—is that your petition? That is my petition.
 2072. In that petition you state you have been dismissed from the service? Yes.
 2073. When was that? Some eight days ago.
 2074. Do you know on what day you were dismissed? I really forget the date.
 2075. Did anything take place before your dismissal? There was an inquiry by Captain M'Levie.
 2076. Were any steps taken with reference to yourself? None whatever; I was told of no charge whatever.
 2077. Were you suspended first? Yes.
 2078. How many days after your suspension were you dismissed? That inquiry took place on Saturday, and I expected to be called up on Monday. I was told there was no charge against me—the Sheriff then suspended me.
 2079. When did this suspension take place? On the Monday following the inquiry.
 2080. Do you mean that the inquiry concluded on the Saturday? No; Captain M'Levie stated that he should adjourn to Monday; and on Monday, when he came again, he went on with the case of the Cockatoo prisoners who escaped.

2081.

Mr. T. Harrison.

22 Feb., 1861.

- 2081. What Monday was this when you were suspended, was it a fortnight or a week ago last Monday? I made a memorandum of it—I think it was last Monday week.
- 2082. When did your dismissal take place after that? The dismissal took place at the time the Sheriff was suspended—about a week after that, last Monday or Tuesday.
- 2083. Was any letter addressed to you when you were suspended? No.
- 2084. Was any letter addressed to you when you were dismissed? No.
- 2085. How long have you been in the public service? Twenty-three years last September.
- 2086. You have not been all that time at Darlinghurst? No; I went there when Mr. Keek was removed; when Captain M'Leric went there in 1849.
- 2087. What situation did you hold previously? I was appointed by Sheriff Young, and placed on the gate as assistant principal turnkey.
- 2088. Did you hold that all the time prior to your appointment as principal turnkey? Yes.
- 2089. What were you before you were appointed to Darlinghurst? I was at Newcastle, and held the office of lock-up keeper and principal bailiff of the Court of Requests, on the recommendation of Dr. Brooks, and —
- 2090. Since you have been appointed principal turnkey have you resided within the prison walls? Yes.
- 2091. Will you state to the Committee what have been your duties as principal turnkey, and what amount of responsibility you consider yourself to have borne in that office? During the time Captain Webster was principal gaoler my duties were properly defined.
- 2092. He was the first gaoler after you went there? No; he was principal gaoler when I was principal turnkey. My duties at that time were to receive and discharge prisoners—to muster the men—to see the cells properly secured after the men were locked up—to prevent any irregularity that might come within my notice, or that might be reported by the turnkeys—and to report such irregularities to Captain Webster.
- 2093. Anything more? No; I think that is all.
- 2094. Could you describe to the Committee how you perform these duties, or, in other words, will you state the day's or the week's routine in the gaol at that time? In the morning my first duty was to deliver the keys of the prison to the respective turnkeys in charge of each wing, at six in the morning. After seeing the whole of the turnkeys on duty—some of them sometimes would be late, and then my instructions were not to unlock the outer gate of the prison till such time as such turnkey was on his post. After doing that I got my breakfast, and then I used to visit Captain Webster at his office, at eight o'clock precisely, to report anything that might have happened during the night. After that the discharge of the prisoners took place, at ten o'clock—those prisoners whose time had expired. Directly on the discharge of the prisoners Captain Webster and I used to visit every cell in the whole establishment, and also the yards.
- 2095. Male and female? Not the female. The matron did that duty. Then we used to see that the prisoners were at their work, and very frequently we used to visit the prisoners—four or five times a day, perhaps oftener—as occasion might require. The next duty would be to receive prisoners from the police offices, or perhaps during the day and night from different country stations; and after the prisoners had been received, and their hair had been cut, and such like, then came on the muster—the ration return being made out first, as a check for the general muster; and then Captain Webster used invariably to go with me to the muster, and directly the men were called out and put in the cells, the turnkeys locked them up, and I examined to see that they were properly locked up. I then took away the keys with me to my bed-room, where they remained.
- 2096. Then you would not be called out at night unless there were some unusual occurrence? Invariably I was called out. There was hardly a night that I was not, either on account of receiving prisoners from country stations, or on account of sickness. In case of sickness the turnkey in charge calls me out. I send him to the dispenser, and I take the turnkey's post till he returns.
- 2097. If all went on uninterruptedly, you would not be disturbed during the night? No.
- 2098. How long was Captain Webster gaoler? I think about four years.
- 2099. Do you remember in what year he died? 1853, I think.
- 2100. Did your office as principal turnkey extend over the female department? No; I had nothing whatever to do with the female department.
- 2101. In no way? In no way.
- 2102. Who was the next gaoler? Mr. Beverley. I was acting about seventeen days, and then Mr. Beverley was appointed.
- 2103. I think you said, in the earlier part of your evidence, that your duties have not been properly defined since Captain Webster's death? No; they have been so mixed up I really cannot properly understand them.
- 2104. Can you give us a specimen of your day's duty since that time? My day's duty has certainly been a great deal heavier; but, with respect to orders being issued, I have frequently seen orders stuck up about the boxes—I presume by order of the Sheriff—of which I have not known anything about until a day or two after they have been issued. When I have issued orders, carrying out Captain Webster's principles of gaol management, those orders have been contradicted.
- 2105. What do you mean by Captain Webster's principles of gaol management? Everything with reference to the discipline and management of the gaol passed through my hands at that time, but since then the turnkeys have invariably known the orders before I have known them myself.
- 2106. I suppose you have stated and definite duties now? The truth is I have to do the whole of it; everything lies upon my shoulders, and has done for a considerable time.
- 2107. Do you mean that you have to do the whole of the work of the principal gaoler? There

Mr. T.
Harrison.
22 Feb., 1861.

There is no use mincing the matter : I have to do everything with the exception of signing documents. These, of course, I reserve for Mr. Beverley's signature.

2108. Were any works carried on in the gaol during Captain Webster's time? No; there was a little stone-cutting for building the bath-house.

2109. Have the workshops been opened since then? They have been opened since his death.

2110. The tailoring, blacksmiths', and carpenters' shops? Yes.

2111. None of these shops existed during his time? There were shops, but no work systematically came out of them for private individuals.

2112. Do you remember about what time they were introduced? About nine years ago, or shortly after Mr. O'Neill Brennan was appointed Sheriff.

2113. Had you, as principal turnkey, anything to do with the works? I had charge of the works for eight years, independently of my ordinary duties as principal turnkey. Under my superintendence the new wing, part of bath-house, the debtors' prison, the completion of front entrance, and dead-house, were built, besides several minor works.

2114. When did this charge cease? On the 1st January, 1860; then it was handed over to the Colonial Architect.

2115. What has been the character of the work that has been executed in your shops? There has been a great deal of ironwork done for the Government Offices. The lightning conductor at the Military Barracks was manufactured under my superintendence, and many other kinds of ironwork.

2116. Is any work done inside the gaol for private families? Yes.

2117. In all the shops? Yes.

2118. Is there any large proportion of work of that kind? No; the larger proportion is for Government.

2119. What are the articles made in the blacksmiths' shop for persons outside? Chiefly repairs of bedsteads and other articles—axles made.

2120. Any farming implements? Yes.

2121. Do you recollect any particular instance? There was a great deal of work done for Mr. Ryan Brennan, in farming implements.

2122. About what time? I think his account has been standing over some four years? I am not aware whether it is settled or not yet.

2123. Are all the articles made for private persons entered in the books? Yes.

2124. On what calculation is the work priced? The general charge has not been so much for the work as tradesmen would have charged outside; there is no scale laid down.

2125. You have no data upon which you calculate the price? It appears in the book.

2126. How do you arrive at the price you fix? For some time past I inquired of one or two tradesmen what would be the cost, and then fixed an average price with the sanction of Mr. Beverley.

2127. What particular articles have you made for Mr. Brennan? Harrows, ploughs, and iron railings.

2128. Were the ploughs made throughout, woodwork and all? I think they were all made of iron.

2129. Has any cabinetwork been made for any body? Some cabinet was made the other day for the Rev. Mr. Agnew, and a handsome chest of drawers was made for one of the turnkeys. I suppose it is the overseer's province to charge for them.

2130. These things are all entered in the book? They are all entered in the book, or should be.

2131. Do persons having work done in these shops send in the material? They send in the material; Government will not find it.

2132. When articles are made by the blacksmiths, the material must be sent in? Yes.

2133. You only charge for the work? Yes.

2134. Whose duty was it to keep this book? Mr. Wickham, the clerk of the gaol; he had charge, and still has charge.

2135. Are the books accessible to you at all times? Yes.

2136. Do you consider, from your own knowledge, that they represent accurately what work has been done? I think every item is down there, up to the time it was under my charge—of the appointment of the overseer.

2137. You think every job executed for private parties has been entered in these books? I think so—I am almost sure.

2138. Have you any doubt of it? No; for when a turnkey has made a return at the end of the week, I have looked at the book.

2139. Is there much work done at the tailors' shop? No; that is not a paying establishment, and I have repeatedly spoken to the Sheriff about it.

2140. Is there much work done there for people outside? There is a good deal done, but not enough to pay the man for overlooking the prisoners.

2141. Is there much done for the prisoners there? Yes, in making up slops.

2142. Do the officers of the gaol frequently employ the prisoners? Through the overseers, they have to gain permission.

2143. Have they had many articles manufactured in that way? I think not; they have had tubs and buckets, and perhaps they might get some things done that no one would know anything about. I have frequently gone to the carpenters' shop and seen little boxes about, and have broken them up.

2144. Are you aware that there was a large article of domestic furniture being made when the Committee visited the gaol, which was afterwards stopped? There was a wardrobe, I believe, in progress.

2145. It was being made for some gentleman in the Colonial Architect's Office? Yes.

2146. Was that stopped the following day? I do not know; that is entirely in the hands of the Colonial Architect's Department. I have never interfered since the Colonial Architect took charge of the work.

2147. In describing the manner in which you have performed your duties as principal turnkey, you have not told us in what way you came in contact with the Sheriff—in what way does the Sheriff appear in the management of the gaol? Since, what I must call the bad system of introducing work for private individuals—the mixing of Government work with private work—there has been a bad tendency.

2148. I want to know when the Sheriff appears at the gaol, at what hours, and in what degree he has an influence upon the management of the gaol? It was his own proposal to hand the whole of the works to the Colonial Architect.

2149. Does he ever come to the gaol? Sometimes.

2150. How often? Sometimes twice a week; sometimes it may be a month before he comes, and I have known him to be there three times a week. His visits all appear in the book.

2151. What does he do when he comes to the gaol? He invariably goes into Mr. Beverley's office.

2152. Does he go through the gaol? Yes.

2153. What do you mean when you say he goes through it? The plan I have taken upon myself to adopt is, when the Sheriff comes into the gaol, to allow him to go through the stockade and prison by himself before I go to him, so that he may see what is going on.

2154. Does he ever go into the cells? He has been into some of the cells.

2155. Frequently? No.

2156. You say he has sometimes been in the gaol only once a month—how long has he remained in the gaol when he has visited it? Sometimes two or three hours—sometimes one hour.

2157. Did he make any inquiries? No, not particularly.

2158. Are we to understand that he just simply walked through the yard where the men have been at work, and has then walked back? Yes; he may sometimes speak to the overseers about what work they were doing, or what they were going to do with the stone they were cutting, or he may ask the overseer of the blacksmiths' shop what work the men are about.

2159. Are you speaking of the practice of any lengthened period, or only of last week? I am speaking from the time he was first appointed Sheriff, before and after the overseers were appointed.

2160. Did he not appear at the gaol more frequently before the work was handed over to the Colonial Architect? No, he did not.

2161. Then the visits you have now been describing to the Committee are his visits as they have been made during the whole period that he has been Sheriff? Yes.

2162. What regulations have you had during the time you have been principal turnkey, and how have they been enforced? They have been so numerous that I could not tell you unless I had them here. They were one on the top of another, so that I hardly understood what was my duty.

2163. Can you tell us what regulations were enforced with regard to the daily routine of the gaol, with respect to the management of the prisoners? They are released from their cells at six in the morning and get their breakfast; at seven they are turned out to work; at twelve they come in to get their dinner, and go out again at one. When I had the management of the works I never used to allow the men from their work till a quarter-past five, but now they leave their work at four.

2164. How do you enforce cleanliness among the prisoners? On many occasions when I have found that men have been dirty, that they would not keep themselves clean, I have ordered them to be put in a large stone cistern, and have had them scrubbed. That is chiefly among the men sentenced to imprisonment without hard labour.

2165. Are they required to wash at any period of the week? They are.

2166. When are they required to wash? Every day; and any man that does not wash himself the turnkey reports to me, and I report him to the principal gaoler.

2167. Do you recollect any case where a man was punished for not keeping himself clean? I know a great many; only three weeks ago, a man of the name of Parker—

2168. Were you present when some of the prisoners spoke to this Committee about the want of any regulations to enforce cleanliness? No.

2169. It was stated to us, when we were in the gaol, that, if a prisoner chose to neglect himself for a twelvemonth, he would not be forced to keep his person clean? That is wrong; there is a bath-room with a good supply of water there, and a tank overhead.

2170. Is that bath ever used by the prisoners? It is.

2171. By the prisoners in a state of health? Yes.

2172. Can the prisoners, after they have done their work, avail themselves of that bath? They can.

2173. And, in fact, do they? Some do; some wash in the yard; there is a large stone cistern in the yard where they wash.

2174. During the last week you were there acting as turnkey did any prisoners wash in that bath? Yes.

2175. Any prisoners in a state of health? Yes.

2176. More than one? I think four or five.

2177. There has never been any obstacle to their using the bath? Decidedly not.

2178. Then, if the prisoners have stated that the bath was of no use to them, they have stated what is not true? It could not be true; for the instructions to the turnkeys in each wing are, that the prisoners can go and have a bath or a shower-bath when they wish it.

2179.

Mr. T.
Harrison,
22 Feb., 1861.

- Mr. T. Harrison.
22 Feb., 1861.
2179. They are not required to use it? Not so long as they have this stone cistern in the yard to wash in on Saturdays.
2180. Are they required on Saturdays to shave and have a wash? Yes, to shave and have a wash.
2181. That has always been done? Yes; the turnkey in charge of the wing sees that it is done.
2182. On what day in the week, at what hour, would all the prisoners in the gaol be in a perfectly clean state? On Sunday morning they should be.
2183. They would be or should be? They would be.
2184. On any Sunday morning during the time you have been turokey have all the prisoners been perfectly washed? Yes.
2185. *By Mr. Morris*: All over? I would not say all over.
2186. *By the Chairman*: In speaking of washing have you had reference to the face and hands only? To the face and hands.
2187. Referring to the question I put just now, supposing a prisoner chose to leave his person dirty, could he do it? No, he could not do it, for one prisoner would tell upon another.
2188. Suppose one prisoner did not tell of another? The turokey would report it, as he has done on several occasions.
2189. There is not any way in which they are compelled to thoroughly cleanse themselves? They are not compelled, but they have the opportunity.
2190. How often is the bedding cleaned? The blankets are sometimes washed; and if it is found necessary, through so many dirty men coming in, we have had to stove the blankets; at other times to wash them, and fresh straw is supplied every time a bed is required.
2191. At the time this Committee visited the gaol were there any of the blankets that had been in use more than twelve months without being washed? No.
2192. You say positively there were not? Yes.
2193. If it has been represented to us that such has been the case, we have been misinformed? I do not think it possible. I have myself seen the blankets washed repeatedly.
2194. Do you recollect that a man named John Lynch slept in cell No. 24, in the hard labour wing? Yes.
2195. If that man represented that his blankets had not been washed for thirteen months did he state the truth? No; to my certain knowledge he could not, for we had to change that man from one cell to another.
2196. Were you not in the cell with the Committee, and did you not notice that the blankets looked very dirty? The blankets looked dark.
2197. At the time the complaint was made the men were under the shed, at the back of the hard labour wing, and the Committee then went to the female department; at the expiration of about two hours they returned to the hard labour wing, and visited cell No. 24, of which the complaint had been made, and found persons whitewashing it? Yes.
2198. Had these men been employed during the time we were in the gaol? They were at work before you came in.
2199. It was an accident then that they were employed in whitewashing that cell at that particular time? Yes. I have all the cells gone through every three months, regularly. They were whitewashing the cells at 7 o'clock in the morning.
2200. If this prisoner Lynch represented to us that he could not keep himself free from vermin, did he represent the truth? It is false; Lynch is as clean as any man in the gaol.
2201. How often do you say the cells are whitewashed? Every three months.
2202. Have you men regularly employed to whitewash the cells? Yes.
2203. Have you men always employed in whitewashing one part or other of the gaol? Continually, more especially in the cells of the men sentenced to imprisonment without hard labour, for they are the dirtiest, and it takes one man continually to keep all those cells clean.
2204. Is there any kind of vermin in the cells? There are a few bugs.
2205. Are they there to any extent? Not in the male; in the female department I believe there are; some cells are worse than others, but generally they are pretty clean, and as we see little holes in the wall we have them stopped up.
2206. In the hard labour wing are there any persons confined for debt? No.
2207. There is no one confined in the hard labour wing except men under hard labour sentence? Yes; there are some who are sentenced, without hard labour, to fine or imprisonment.
2208. Where were the Cockatoo Island prisoners kept—the insubordinate prisoners? In the new wing; there are 78 there, and I think 14 or 15 in the single cells in the trial wing.
2209. Are any of those men confined in the same story with prisoners confined for debt? No.
2210. Are there any men confined for disobeying orders of magistrates to make certain payments? Yes.
2211. Confined where the men under long sentences are confined? No, with men sentenced to imprisonment without labour, in the confine wing.
2212. In what you call the hard labour wing, when you get to the second story going upstairs, the first cell on the left-hand side, were there not two men confined; one for disobeying an order to pay wages, and the other for disobeying an order to support an illegitimate child? I think these men were under remand for these offences.
2213. They were there? They were there, and all remanded men are put upon that landing. Upon that landing all men in transit to Cockatoo are put.
2214. On both sides? On both sides.
2215. Was not a man from Cockatoo there? Yes.

2216. Was not Swan, who was convicted of murder, there? Yes.
2217. On the opposite side of the same landing, so that when the doors were open they could talk together if they chose? Yes, they could.
2218. Do you remember two young men being in one of those cells, either in that wing or in the adjoining wing, who were runaway sailors from the "Iris"? Yes.
2219. Do you remember how long those men had been there under remand? I think nearly if not quite three months.
2220. Had one been there six months? One had been six months nearly, if not quite.
2221. Have those men been confined with prisoners charged with felony? No; they were with men awaiting trial for felony, at their own request.
2222. Was there not, on the day we visited the gaol, a man in the cell with them, who was charged with felony? I cannot say.
2223. Have persons charged with felony been with them at any time? In the yard?
2224. In the cell? I could not be certain without I saw the muster book. I rather think not, but I could not be positive.
2225. How many turnkeys are there in the gaol? Thirteen.
2226. Is that the number that has been there for some time past? Yes; we had that number in Captain Webster's time; after that we had an increase, and then a reduction took place, from 1st January, 1860, of six men.
2227. When did these prisoners come to Darlinghurst Gaol from Cockatoo Island? I think somewhere in January; I have a memorandum of the date.
2228. How many of them are there? 98 men altogether—the insubordinate men from Cockatoo.
2229. Was there any change made in the arrangement of the turnkeys on their arrival? No.
2230. Was the number of turnkeys employed at the time of their arrival sufficient to look after the prisoners already in the gaol? I think not—I should have expected an increase.
2231. In what way did their arrival increase the work of the gaol? In this way—that the number being greater, a greater number of men were required to guard them.
2232. How were they disposed of? They were searched and drafted off, each man to his cell.
2233. How did they behave themselves? They behaved very quietly. Of course, they used to get up to the windows, and shout to the people outside, but they were very submissive to the officers in charge.
2234. Was the same arrangement of turnkeys preserved without any alteration whatever? No; we had to appoint a second turnkey over what we call the new wing, to assist the turnkey then in charge.
2235. Were they confined to separate cells? Yes, they were.
2236. All of them? All of them.
2237. Had you sufficient room for the separate confinement of that large number, without interfering with the prisoners already in the gaol? No.
2238. How did you make room for them? We had to put five in a cell.
2239. Five of the others? Yes.
2240. For how many were the cells made? I think all in the labour wing will contain five.
2241. Were they built to contain five? No, three.
2242. Are the Cockatoo Island prisoners there now? Yes.
2243. Two escaped? Yes.
2244. Will you describe how those two escaped? They got out through the window of the cell, by means of the bed-boards. There are three bed-boards go on two stretchers, and they made this a sort of landing to stand on, while they worked away at the window-sill.
2245. What had you, as principal turnkey, to do with the safe custody of these prisoners on the night they escaped? The men in solitary confinement were locked up before, and one of these men who escaped was one of thirty-two whose sentence of solitary confinement had expired. About ten minutes or a quarter to four it came on dark and began to rain, and I ordered the turnkey to take them into the yard, to count them into the wing and see that all was correct. He counted thirty-two and one was taken from that thirty-two to go over to the trial wing with the other men as there was not sufficient room in the wing for that man. Then I shut the door, and while the locking up was going on I stood outside for the safety of the entrance gate. After they were locked up, I went round and saw the locks and bolts all shut, and the outer door also locked.
2246. Was there any change of turnkeys that night? No, there was a change of turnkeys a day or two previous to that.
2247. Was a turnkey named Whiddon in the gaol? Yes.
2248. And another named Fallon? Yes.
2249. Were either of these men on duty that night? Fallon was on duty, but not at night—he leaves directly the muster is over.
2250. Was Whiddon in any way replaced by Fallon that night? No; when the Cockatoo Islanders came there first I wished to put the sharpest man I could to assist the turnkey in charge of the wing, and I placed Whiddon there. He was there some days, and the Sheriff told me he wished Fallon to be placed on day duty; as I had no other post I removed Whiddon, and put Fallon in his place.
2251. Did you consider this man Whiddon to be superior to Fallon? Yes, decidedly.
2252. Has he had more experience? Considerably more. Fallon had only just come from Mr. Brennan's place a few days before.
2253. What do you mean by Mr. Brennan's place? He was a servant to Mr. Brennan.
2254. What was the precise duty he was performing that night? To look after these thirty-one prisoners when they came in, that was his duty.

Mr. T.
Harrison.

22 Feb., 1861.

Mr. T.
Harrison.

22 Feb., 1861.

2255. Do you consider that he was a fit man for that duty? No, I do not by an means; neither is he fit to be there now.

2256. Do you think the escape of the prisoners is in any way attributable to the circumstance that this inexperienced man was employed as a turnkey? That, and allowing the bed-boards to be in the cell; if it had not been for the bed-boards they could not have got to the window.

2257. How did the inexperience of this turnkey contribute to their getting out? Only in allowing one man to get to the cell of the other in the way they did.

2258. How do you suppose one man got from his cell to the other? One man going up the staircase might have run right up, and instead of going to his own cell might have gone to the cell of the other without being noticed.

2259. That is to say, this inexperienced man, Fallon, did not keep a sufficiently strict watch over the prisoners while they were being locked up, so that one escaped his observation and got into the other's cell, and he locked them up without noticing the second man in the cell? Yes; in going round one side of the wing the doors all open to you, but by going the other way they open from you; and he must have gone round so as to shut the door and never look in to see who were in the cells. I have often warned him of that.

2260. If this man Whiddon had been discharging this duty, do you think the same thing would have occurred? Certainly not, for he took the course I pointed out. I gave him repeated orders not to allow one of the prisoners to have any of the keys.

2261. Whiddon had been in the gaol some time? He was there before Fallon came.

2262. Was he a vigilant man? Yes.

2263. Do you consider him a sharper man than Fallon? I consider him a very sharp man indeed.

2264. If you had carried out your wish Whiddon would have been there? Yes.

2265. Fallon was there by the interference of the Sheriff? Yes; the Sheriff said I was to put him on day duty, and that he was* to escort the prisoners to Darlinghurst.

2266. There were some turnkeys discharged about twelve months ago,—six—during the time that Mr. Forster was Colonial Secretary? Yes.

2267. Do you recollect why these men were discharged? For the purpose of appointing four overseers to take charge of the works.

2268. Were those the turnkeys latest employed who were discharged? No.

2269. Were some of them old servants, who had been there a long time? Yes.

2270. Was any reason given for their discharge? No.

2271. Some of the men were discharged with very high characters? Yes; every one had a good character.

2272. It has been stated as a fact that the men who were discharged were all Protestants, and that the men who were retained were all Catholics? I believe that is the case.

2273. Do you state that that is the case? With the exception of one; I believe five out of the six were.

2274. Were the men Pegg and Johnson good men? Yes, two as good men as I ever wish to have in the establishment.

2275. Do you know what Johnson is doing now—is he office-keeper to Mr. Darvall? Yes; it was very much against my wish that Johnson was ever discharged.

2276. Is he a very respectable man? He is.

2277. Had he been in the gaol a long time? Yes.

2278. Did you see the character given to him by Mr. Beverley when he was discharged? I did; it was a very high character.

2279. Were some of the turnkeys who were retained very young hands compared with those who were discharged? Yes; and very old men, too, some of them.

2280. Some of the oldest were discharged, and men who had been there but a short time were retained? Yes.

2281. And yet the men who were discharged had very high characters from the very persons who discharged them? Yes.

2282. You say they were all Protestants? One I am doubtful about, but I think he also was a Protestant.

2283. Are you aware that the men believe they were discharged because they were Protestants? They all told me so, and taxed the Sheriff with it.

2284. *By Mr. Walsh:* Did you hear them say so to the Sheriff? I did not, but I am aware they did so, for Mr. Beverley told me so himself.

2285. *By the Chairman:* With regard to the prisoner Polack, has he received different treatment from the other prisoners—you state in one of the paragraphs of your petition to the Assembly that, "With regard to the treatment of the prisoner Polack your petitioner is prepared to prove, on the evidence of eight or nine different witnesses, that the said prisoner has not been indulged in any way contrary to the discipline of the prison, and that he has not been treated in a manner different from other prisoners"—do you maintain that? Yes; not only the free officers, but gentlemen from outside who have visited Polack in prison, can state that they have invariably seen him in the dress that has been ordered by the Sheriff.

2286. *By Mr. Mate:* Is that the ordinary prison dress, the same as that worn by other prisoners? Yes.

2287. *By the Chairman:* You are prepared to prove that allegation if you are allowed the opportunity? Yes.

2288. Was the charge against you, and upon which you were dismissed, as far as you understand

* NOTE (Correction by witness on revision):—To be escort constable.

stand it—I put the matter so, because you say you do not clearly understand the charge—was it because you had treated Polack in a manner different from the other prisoners? I believe so, and something the Sheriff said about the escape of the prisoners.

Mr. T.
Harrison.

22 Feb., 1861.

2289. You have never been told the ground of your dismissal? Not directly. I was down town at the time Mr. Uhr was there, and he left the message with Mr. Read, who was in charge, that I was dismissed.

2290. You said just now that these Cockatoo Island prisoners escaped through the men being allowed to get together at night, in the manner you have described, from want of vigilance on the part of the turnkey, and from being allowed bed-boards—did you caution Mr. Brenan against the men from Cockatoo Island being allowed bed-boards? On one occasion the turnkey in charge of the wing, Whiddon, expressed a wish to have the bed-boards removed, and the Sheriff said he would not have them removed. When Whiddon told me I said he was quite right, and I thought it was necessary to have them removed; but before I could speak to the Sheriff he had passed out of the gaol.

2291. Was Fallon dismissed after the escape? He was suspended and afterwards reinstated.

2292. Is it within your knowledge that any one interceded with Captain M'Lerie on his behalf? I believe Mr. Ryan Brenan did.

2293. He has been reinstated? Yes.

2294. Are any of the turnkeys given to habits of intemperance? I have reported them on different occasions.

2295. You have seen them drunk? In liquor; I will not say drunk. I have reported it to Mr. Beverley. They have been reprimanded three or four times, and in some cases, when I have insisted upon their being dismissed, they have been dismissed.

2296. Will you state whether any complaints have ever been made against yourself, of intemperance? Never.

2297. No report has been made to Mr. Beverley? Not that I am aware of. If there had been he would have reported it to me.

2298. Have you any objection to state to the Committee at what time Mr. Beverley appears in the prison in the morning? He sometimes goes round the prison.

2299. At what time is he first seen? Some mornings at six, some mornings at seven, and some mornings at eight.

2300. Have you frequently seen him at six? Yes; I have seen him.

2301. *By Mr. Walsh:* You say the cells were systematically whitewashed every three months? Yes.

2302. Had you ever any difficulty about carrying out that arrangement? No; the regulation is to whitewash every three months, and that is invariably done, but the whitewash gets so thick upon the walls that sometimes we simply wash them with water, and that answers all purposes, and cleanses the cells as well.

2303. You have a regulation for whitewashing the gaol once in three months? Yes; and when these dirty men come we have to keep a man continually at work.

2304. During the time you have been in the gaol has that regulation been carried out? Yes.

2305. Have you had any difficulty in procuring material? We have sometimes had to wait for lime.

2306. Has that occurred frequently? Not more than three or four times.

2307. Within what period? Within the last two years; it may have occurred oftener than that.

2308. If these bed-boards had been removed from the cells would the prisoners have been obliged to sleep on the stone floor? They would still have had their straw mattresses.

2309. During the time that the men from Cockatoo Island were in the prison were any charges of insubordination preferred against any of them? No.

2310. Do you remember any charge being preferred against some twenty-five of them, by the turnkey, of their all refusing to leave the dinner table at a particular time? Those were never reported to me; I never heard of it.

2311. Nor of any inquiry in reference to it? No.

2312. You have a prisoner of the name of Landells in the gaol? Yes.

2313. He belonged to Cockatoo Island? Yes.

2314. Was he employed at any work at the gaol? He was before he was sent to Cockatoo Island. The Colonial Architect wished to keep him there as being a clever tradesman. He was almost clever enough to make an iron ladder in the gaol, but he did not complete it.

2315. Who detected that? One of the prisoners gave information of it, and I requested Mr. Beverley to send him to Cockatoo.

2316. *By Mr. Lucas:* Are the tradesmen searched before they go into their cells at night? No; but the overseers muster all the tools and lock them up.

2317. But they are not searched after they leave the workshops? We would not have time to search every man.

2318. Are you aware that it is done in Parramatta Gaol? They have not the fluctuation of prisoners we have here. We would not have the opportunity before dark of carrying that regulation into effect.

2319. Do you not think a blacksmith may make tools and secrete them about his person? He may do so, and has done so.

2320. Under whose charge are these men—the mechanics? Under the charge of three overseers, stonemasons, carpenters, and blacksmiths.

2321. Have the other officers of the gaol anything to do with them? No; not since the work has been under the Colonial Architect.

2322. What department are they under? They are nominated by the Colonial Architect, and are appointed by the Sheriff.

Mr. T.
Harrison.
22 Feb., 1861.

2323. *By the Chairman:* Has the Sheriff ever given any orders affecting the general discipline of the gaol? No, nothing definite; one order tumbled over on the top of another. There are some printed regulations, but they have been so altered and varied that no one knows what they are.

2324. Has he ever, from first to last, in his visits, caused any alteration to be made in the discipline of the gaol? He has made no alteration whatever. I beg pardon with respect to the change of the duties of turnkeys, and, of course, that is discipline. When Captain M'Lerie first took charge, there was a rule carried out that three turnkeys should be on night duty, and that each turnkey should alternately take his night duty. That was carried out strictly by Captain M'Lerie and Captain Webster until, I think, about twelve months ago, and then it was changed by the Sheriff from that, that the men should take night duty fortnight about; from that again it was altered, and the men were to take night duty alternately; but only two men were to go on duty at night, one at the gate and the other at the stockade and north wing. Now, if there had been, as there was at first, three men on duty at night, the two men would not have escaped the other night.

2325. Do you recollect a turnkey named Rispen? Yes.

2326. Has he been dismissed? Yes.

2327. When was he dismissed? I think the day before yesterday.

2328. Was a charge ever made against him of stealing anything out of the gaol? The overseer gave him a piece of waste iron plate, and he took it out of the gaol. It was reported to the Sheriff, who investigated the matter and censured him.

2329. It was given him by an overseer? Yes, that is what was stated.

2330. Do you remember an attempt to escape from Darlinghurst Gaol being made about a year ago by three prisoners? There was no attempt made; from the situation of the ladder it was impossible; the ladder was 32 feet in length, and it was in front of the new hospital; and they must have got it round the corner of the building to let it fall upon the wall, which they could not do without being observed. There was an old man on the post at the time.

2331. Were not the men punished for trying to escape? That was a different case entirely; that was an attempt made to break the padlock off the trial gate.

2332. Do you remember my putting a question in the House to Mr. Forster, when he was Colonial Secretary, about the attempt to escape from Darlinghurst Gaol? That was an attempt at the trial gate, and the men were punished.

2333. Was there any attempt to escape about twelve months ago, for which the prisoners were removed, and one was sent to Maitland Gaol? I remember that circumstance; the man was not sent to Maitland Gaol for that purpose; he was sent there because they required a mason to put up some buildings.

2334. Who was the turnkey you alluded to who was on duty at the hospital? John Donald. That was the report, that Mr. Beverley had given Bowen permission to go home to his breakfast, and Donald took his post while he was away; Mr. Beverley stated that to the Sheriff.

2335. Was not Bowen often away on leave? No; Mr. Beverley gave him leave sometimes.

2336. Is it not the fact that he was often away on leave? No; he has had leave for a day, half-a-day, or a few hours.

2337. You wished to say something about a man named Banks; this man has given evidence before Capt. M'Lerie, in the late investigation? Yes. Banks stated in his evidence that Polack had a dressing-case and a lot of jewellery in his cell, which I am prepared to contradict and say is false. If such things were in the gaol they must be there now. With respect to the deed-box, that was allowed in for Polack to take out some deeds for Messrs. Johnson & Johnson, and for Dr. O'Brien, and, after that was done, the box was locked and sent away. I was present at the time, but the box was never in the cell; it was in my own office.

2338. Do you wish to say anything more about Banks? I can state his general character; he is a runaway from Van Diemen's Land, and has been twice convicted of perjury.

2339. Is he at large? No, at Cockatoo; his ticket—(*The witness handed in a number of statements. Vide Appendix A.*)

2340. What are those statements? They are the statements of a number of the prisoners in the gaol with reference to Polack and this man Banks, and I can bring free officers, and different solicitors in the town, to contradict the statements of Banks.

2341. The memoranda you hand in have been made by prisoners in Darlinghurst Gaol? Yes.

2342. With respect to this allegation that Polack was treated like the other prisoners, do you mean that he was secured in the same manner, that he wore the same kind of dress, and lived upon the same kind of food? Yes.

2343. Do you state, as an officer of the gaol, that such was the case? Yes, such was the case, and I am prepared to prove it.

2344. Do you mean that you will prove it by the persons signing these papers? Yes, and by some of the free officers.

2345. Would the testimony of any officers of the gaol be in opposition to yours? I am not aware.

2346. If it has been represented to the Government at any time that you were in the habit of drinking with the other turnkeys at public-houses in the neighbourhood of the gaol, is there any truth in such statement? I have occasionally gone in, but I have not exactly been drinking with them; I may have had a glass of ginger-beer.

2347. When you say you have occasionally gone in, do you mean that you have just taken a glass of liquor and gone out again? Yes.

2348. You have not been in the habit of drinking for a long period together—of sitting in one

one of these houses for hours? I remember on one occasion when a turnkey was leaving, his asking me to go in with him, and the whole lot of them, with the exception of those who were on duty, went in.

Mr. T. Harrison.

2349. If it has been represented to the Government at any time that you, the principal turnkey, have been seen drunk in gaol, is it true? No.

22 Feb., 1861.

2350. Have you ever heard of such a charge? No; in fact, I could not be without being seen; for there is first one clergyman and then another, besides other parties, constantly visiting the gaol.

2351. If any representation has been made from the same quarter that you have a considerable quantity of furniture in your house which has been made in the gaol of Government material, is that true? That is grossly false.

2352. You can disprove any such statement? Of course I can.

APPENDIX.

A.

1. Edward Cusser:—I am a wardman in the committed wing; for some time Polack was confined here; he was employed picking oakum, and I have frequently taken him the material and returned it when finished; there was nothing in his cell different to another prisoner; I have repeatedly supplied him with a broom to clean his cell; his clothing was the same as other prisoners, and such as he continued to wear when he left the wing; I have daily seen him since, and never observed any change.

EDWD. CUSSER.

Darlinghurst Gaol,
11th February, 1861.

2. Edward Cheetum:—I am wardman of the committed wing; for some time Polack was confined there, and I had regularly to enter his cell for the purpose of seeing it had been cleaned, and when he was sick I cleaned it myself; I never saw anything there different to the cell of any other prisoner; I have repeatedly taken him his rations, and on some occasions, when he was unable to eat them at the time, I have taken them to the cook-house and warmed them, and at the same time procured him hot water for his tea; he was always dressed as other prisoners; and since he left the wing I have observed no change in him.

his
EDWD. x CHEETUM.
mark.

Darlinghurst Gaol,
11th February, 1861.

3. William Tanner:—I have been employed for the past few months over the men picking oakum; during this period I have regularly supplied Polack with oakum, the usual material for the day, and it has always been returned to me finished; the quantity has been the same as that given to others; I daily saw him, and never observed him in any other than prison clothing; I have repeatedly been in the cell myself for his oakum, and I never saw anything there different from the cell of other prisoners.

WILLIAM TANNER.

Darlinghurst Gaol,
11th February, 1861.

4. Thomas Smith:—I am a barber to the gaol, and have regularly shaved Polack; for this purpose I have visited him in his cell, where I have repeatedly found him sick; his cell was in no wise different from my own; and he was invariably in prison clothing.

THOMAS SMITH.

Darlinghurst Gaol,
11th February, 1861.

5. Henry Samuels:—I was for some time assisting James M'Donald with the ironwork of the new wing, and in doing this had every opportunity of seeing and conversing with Polack; I always observed him dressed in prison clothing; I have frequently been in his cell; I am a Jew, and during Polack's repeated sickness I have been allowed to visit him and read to him, and never saw anything in his cell different to that of any other prisoner; I know the man Banks, who has been brought from Cockatoo Island; I was partial to this man; and on the morning of his departure from this place I remarked to him, I was sorry he was going; he replied, Yes, this is Mr. Harrison's doings, and I'll crush him yet.

MON. H. SAMUELS.

Darlinghurst Gaol,
11th February, 1861.

6. James M'Donald:—For some months past I was employed completing the ironwork in the new wing—of course I was obliged both to see and speak to Polack, as also to see into his cell; I never saw anything about his cell different to the other prisoners; and, as to himself, I always observed him in prison clothing; I frequently conversed with him, and had full opportunity of observing all about him.

JAMES M'DONALD.

Darlinghurst Gaol,
11th February, 1861.

7. William Smith:—I am a wardman in the wing where Polack is confined; I have been in the habit of taking him his work, and taking it from him when completed, viz., picking oakum; I take it to him in his cell, and, in doing so, have never seen any difference there from my own; I have also taken him his rations; and here and elsewhere, whenever I have seen him, he has always appeared in prison clothing.

his
WM. x SMITH.
mark.

Darlinghurst Gaol,
11th February, 1861.

Mr. T.
Harrison.
22 Feb., 1861.

8. *John Lynch*:—For fifteen months I was acting in the capacity of overseer on Cockatoo Island, and well knew Banks; he was employed as servant to the taskwork clerk; he was there about two months, when, in consequence of his endeavouring to make mischief by false statements, he was discharged, and returned to his work; subsequently he was appointed camp constable; he pursued the same course of conduct as he did towards Mr. Ball, and he was dismissed, and again returned to work; he afterwards made a false statement in the case of Gordon and Barlow, letting out a man in the day for the purpose of distilling; it was afterwards proved that Banks gave a false statement, and Barlow and Gordon were acquitted; his character is notorious for falsehood, and not fit for belief; he was ever ready for any purpose in the shape of conspiracy, but none would trust him.

J. LYNCH.

Darlinghurst Gaol,
11th February, 1861.

9. *Thomas Harvey*:—I know the man Banks, and was first acquainted with him at Norfolk Island; I am aware he was there punished on a charge of perjury, or something like it; a man was charged with having tobacco secreted in his bed, Banks supported this, and the man was punished; it so happened a free man had seen Banks' treachery, saw him put the tobacco there himself, and then, with the chief constable, prosecuted the man; he had the case again brought forward, and Banks, for this offence, got six months in chains, and the chief constable was dismissed; I have since known him, and his character is well understood as one not to be believed on oath.

ROBT. T. HARVEY.

Darlinghurst Gaol,
11th February, 1861.

10. *Hugh O'Donnell*:—I well know the man known as Banks; I first became acquainted with him in 1842, in England, in Preston Gaol, he was then in the 72nd Regiment; in 1844 I again met him in the Millbank Penitentiary, he was then under orders for Norfolk Island; I next saw him in 1846, at the Probation Establishment, Impression Bay, V. D. Land; I am positive he had a long sentence; to the best of my belief it has not yet expired.

his
H. x O'DONNELL.
mark.

Darlinghurst Gaol,
11th February, 1861.

11. *John Graham*:—I know Robert Banks; he was tried at the same court with me, viz., the December Supreme Court, 1857; I know him on Cockatoo Island, to be broke in the first place from Mr. Ball's employ; and secondly, from being camp constable, &c.; in fact I could not believe that man (Banks) upon his oath—to prove what I say: the morning or two previous to his removal to Cockatoo, he has come to where I had been at work, and told me that by fair or foul means he would get Mr. Harrison broke; this he told me in the presence of several men, which I am ready to bring forward if required.

JOHN GRAHAM.

Darlinghurst Gaol,
11th February, 1861.

Mr. Frederick Pegg called in and examined:—

- Mr. F. Pegg. 2353. *By the Chairman*: Have you resided long in Sydney? I have been in Sydney about nine years.
2354. What occupation do you follow now? I am carter now to Luker's steam-mill.
2355. Where do you reside? Behind the steam-mill on the South Head Road.
2356. Have you a family? Yes; three children.
2357. Were you ever employed by the Government in any capacity? The first time, I was in the Sydney Police, three years and two months, under Captain M'Leerie.
2358. When did you enter the police? I came from Moreton Bay in January, 1851; and in February, I joined the Sydney Police. I stayed in three years and two months—the greater part of the time sergeant, and left it at my own request.
2359. What did you do after leaving the police? I went into the gaol within a few months after.
2360. What do you mean? I was appointed turnkey in the gaol in August, 1855.
2361. Did you apply for the appointment? Yes; to the principal gaoler, Mr. Beverley.
2362. How long did you remain there? Four years, four months, and twelve days.
2363. When were you discharged? Last New Year's Day twelve months, I had to retire in consequence of four overseers going in.
2364. Did any others retire besides you? Five more besides me.
2365. Mr. Forster was Colonial Secretary then? Yes.
2366. Can you recollect whether any attention was paid to the length of time that the turnkeys had served, in discharging you? There was none.
2367. The newest men were not those who were discharged? No.
2368. Did you receive any testimonial from the gaoler? I did.
2369. Have you got it with you? Yes.
2370. Will you hand it in? (*Produced. Vide copy, Appendix A.*)
2371. At the time of this discharge, how many turnkeys were retained? Eighteen turnkeys, I believe, were employed.
2372. So that twelve were retained? Yes.
2373. Do you recollect how many of these twelve who were retained, received their appointments at dates subsequent to your appointment? Three.
2374. Three younger officers than you? Yes.
2375. Were they younger men than you? Two of them were old enough to be my father; they are sent now to Berrima Gaol—Smith and O'Callaghan; one was a young man.

2376.

2376. Can you say whether there was any feeling generally entertained among the men that were discharged at that time, that they had been discharged on religious grounds? Mr. F. Pegg.
22 Feb., 1861.
Yes, there was.
2377. Were they in fact all Protestants? Yes, every one.
2378. What were the three younger officers who were retained? One Protestant and two Roman Catholics were retained—the youngest turnkeys.
2379. Is Johnson one of the discharged Protestants? Yes, an older turnkey than me, who had been there about six years.
2380. Did you ever see the testimonial he received from Mr. Beverley? Yes.
2381. Is it similar to yours? Much the same wording.
2382. During the time you were turnkey, did one of the female prisoners have a child? Yes.
2383. Can you remember about the time this woman was delivered of a child? In about fifteen months, as near as I can state, from the time of her reception into the gaol.
2384. How was this woman employed? As laundress to Mr. Beverley.
2385. Is the woman in the gaol now? I cannot say; she was a long sentenced woman.
2386. Do you remember her name? Harriet Stephenson.
2387. Do you remember what her sentence was? Somewhere from four to five years.
2388. Who was the alleged father of the child? It was reported by Mr. Beverley that it was Chambers, one of his servants.
2389. Was he also a prisoner? Yes.
2390. How was he employed? As house servant; a sort of butler I should call him.
2391. Was the child in the gaol at the time you left? Yes.
2392. How old was it then? About two years.
2393. You do not know whether it is there now? No.
2394. What number of prisoners were employed in Mr. Beverley's house as domestic servants at the time this interesting event took place? Two men—a cook, and Chambers the butler; a black man was the cook, but I cannot say he was there always; and about four women servants.
2395. Had Mr. Beverley any free servants? No; he has never had a free servant, I believe, since he has been in the gaol.
2396. Had you anything to do with the female department of the gaol while you were there? Nothing more than going across with a prisoner when anything was going to them, to see them there and back.
2397. Thomas Harrison was the principal turnkey all the time you were in the gaol, was he not? Yes.
2398. How was he brought into relation with you in the discharge of your duties—how did you come in contact with him during the day? I never got any instructions from him at all. I did not see that he had any influence over the prisoners, for sometimes we would not see him for a day; he would never go among them; the first time we saw his face would be about nine o'clock in the morning.
2399. Did he not appear at six o'clock every morning, to deliver the keys up to the turnkeys? Not one morning I was there.
2400. Who did you get your keys from? I was not in charge of a wing; I very seldom had keys to lay hold of, except when I was in charge of a wing, that would be once in eight days.
2401. When you were did you receive the keys from Harrison when you unlocked the doors? I used to fetch them from Harrison's house, the door was left undone for the purpose; the keys were hanging on a hook at the back, on purpose that any one could fetch them, so that he should not be disturbed.
2402. Was that the way you got possession of the keys when you unlocked the cells? Yes.
2403. Where was Harrison? In bed; he never used to turn out till about eight, and the first thing he did was to send me or one of the other turnkeys for two glasses of rum for him; that was the first salute we got regularly every morning.
2404. Then you had to give him the keys? Yes. That was his regular dose every morning—either a glass of gin or two glasses of rum.
2405. Do you mean to say you ever brought spirits into the gaol for him? Yes, I have been sent many times.
2406. When you say many, how many do you mean? Half a score of times and more. The first thing was—"fetch me so-and-so," and he would give me a little flask. I have fetched two glasses of rum and seen him drink the whole of it at once.
2407. Did you ever take rum yourself of a morning? Very seldom.
2408. And still Harrison would appear perfectly sober throughout the day? No, he would not; he would frequently go out with the turnkeys to a public-house and drink, or send turnkeys out for it and drink it at the box—at least I have seen him do it dozens of times.
2409. You have never seen him incapacitated from drink? I have seen him under the influence of drink several times.
2410. *By Mr. Morris:* Not so that he could not do his duty? Yes, I have on one or two occasions, which I shall mention before I go away.
2411. *By the Chairman:* If his duty was confined to lying in bed he could lie in bed and drink? Yes he could, for there was no one to call him to order.
2412. Do you say you have seen Harrison, during the time you have been there, drunk? Yes, on one occasion.
2413. Will you state the circumstances under which you saw him drunk? One night when I was on duty at the gate, between twelve and one o'clock, his wife and he had been out, and when they came in he was so far under the influence of drink that his wife had to hold him up

- Mr. F. Pegg. up coming in at the gate. Previous to that a turnkey of the name of Horton, who was on duty at the wing—I was at the gate—goes to the box and catches Smith with a female prisoner; he came and told me what he had done, and he said, "If I tell Mr. Beverley, Smith will be dismissed;" he then took my place and I went and fetched Mr. Beverley, who was just going in. The turnkey was found in one of the boxes with the female prisoner, Mary Bellamy. Some time after Mr. Beverley called Horton to him, and he said it was the case, he did catch them there. Well, Mr. Harrison went over to the gaoler, and they had some warm words—I could hear at the gate. Next morning both men were suspended; he got Horton suspended for telling an untruth; that never was brought to light again. I met the female prisoner, Mary Bellamy, and she told me it was the case—Smith was with her, and Horton caught them.
2414. This woman told you after you left the gaol? Yes.
2415. You mean cohabiting together? Yes.
2416. How did the female prisoner get there? Through being employed as Mr. Harrison's servant.
2417. She had permission to go out? She was not locked up at all.
2418. Except that she was locked within the gaol walls? That was all. It was between ten and eleven o'clock.
2419. Could the servants employed by Mr. Beverley and Mr. Harrison walk about where the shrubbery is? They could in the dark; there was no turnkey on the front to see them, only the two.
2420. Then they were pretty much like free persons? Just the same. They would even come out and smoke before your face and defy you to take the pipe from them; they would say they got leave from Mr. Harrison.
2421. Have they ever demeaned themselves that way before you? Yes, and I have gone and taken the pipe out of their mouth and broken it before them.
2422. They braved you to do it? Yes, because they were Mr. Harrison's servants.
2423. You said when you went for the keys of the different wards in the morning, you could go and open Mr. Harrison's door and take them off the peg? Yes, the door was left undone on purpose.
2424. Could these persons, who were almost as free as free persons, get the keys? Yes, at any time from six at night till six in the morning.
2425. Could they in fact have unlocked the wings? Yes, when a man's back was turned.
2426. Suppose one of these ladies had entertained the turnkey on guard, could the other have gone in the mean time and unlocked the wing? Yes, the key was at their disposal at any time.
2427. Have you ever seen any of the turnkeys drunk? Yes, I have, many times; Mr. Beverley even found them drunk one Sunday himself, and sent them home, and he has never reported them at all.
2428. Speaking with reference to the eighteen turnkeys who were there while you were there, were any of the men retained given to habits of intoxication? Yes, three.
2429. As far as you recollect were the six who were discharged intemperate men? Not one.
2430. Putting yourself out of the question, were the other five men some of the best turnkeys? The best and soberest. There is a man of the name of Lee there now who has been fetched up many times for being drunk in the box, and drunk in the gaol in the middle of the day. Armstrong is another drunkard who has been sent home three or four times for drunkenness; and Milligan I have known three or four different times drunk on duty.
2431. These men are all there now? Yes. Thomas Lee was even accused by a prisoner of stealing rations, and he shewed it in Lee's basket to Mr. Harrison, and he would not take notice of it; it was then reported to Mr. Beverley, and he said he would not believe it. I have seen 30 lbs. of beef stowed away at a time, salted in the cook-house and the bones taken out; and 60 loaves of bread, and 30 loaves of bread, and onions, stowed away to be carried away.
2432. By the free people who lived outside? Yes.
2433. Was it carried out? Lee was reported by a prisoner.
2434. Do you believe that rations have been carried away? I firmly believe it; I know Lee myself. I have seen him have prisoners' rations cooked and taken to the wing to make his meals of;—the same man that is now in charge of the hard labour wing. Since I left the gaol I have seen him two or three days drunk in a public-house.
2435. Did you ever see Harrison drink in public-houses? Scores of times.
2436. Have you seen him standing any length of time with persons drinking? Yes, I saw him drink with a discharged prisoner.
2437. You have seen Mr. Harrison do that while principal turnkey? Yes, with a man named Campbell, formerly the clerk; I saw him drinking at the Queen's Arms after the man was discharged.
2438. Have you ever heard that turnkeys borrowed money from prisoners? Yes, a man named Carthy was accused of it.
2439. Was there any investigation? None that I have seen. Prisoners, when discharged from gaol, go and visit his house. I have seen him at night smoking in the box with the prisoner clerk. The prisoner clerk had the indulgence of smoking, and I have seen him smoking in the box with Christopher Carthy. It was of no use for a man to make a report, for the less reports he made the better he was liked. There have been all sorts of implements made and taken out by the turnkeys. I reported it at first to the gaoler, and it was stopped afterwards by the Colonial Architect, to whom I reported it also.
2440. With regard to the workshops in the gaol, have you known turnkeys to have articles made

made there which were not paid for? I have known them to have them made of Govern- Mr. F. Pegg.
ment material; I could not ascertain whether they were paid for.

2441. Which of the turnkeys had articles made in that way? Rispen, a man who is sus- 22 Feb., 1861.
pended lately.

2442. Who else? M'Coy, Harrison, Lee—he used to have wood and iron the same as if it
were his own; he had a cheffonier that was made of Government cedar that was sent, for
the gates at the bottom of Palmer-street going into the Domain, by the Colonial Architect.
A man named Walter Raleigh made a cheffonier to fit in his fire-place.

2443. Out of the wood sent in for constructing the Domain gates he contrived to have a
cheffonier made for himself? Yes.

2444. *By Mr. Morris:* Is that prisoner in Darlinghurst now? No. I recognised the
wood, and saw it being done day after day—some days a good deal, other days not much;
it was done piece by piece; the boards covered it, and the man would go and work under
these boards to prevent its being seen.

2445. *By the Chairman:* It was made to a great extent secretly? Yes, it was.

2446. Were many articles made secretly? Yes, he had a child's carriage made in the gaol,
and made it away outside to some one; I could not say whether it was given or sold—a
child's carriage, I dare say, worth £3.

2447. With regard to the tailoring shop, was there much work done there? Yes, they
smuggled away a good deal.

2448. Did any of the officers of the gaol have work done there? Yes, they had the work
made, but it was in the wing where this clandestine work between Rispen and Leo took
place; no other man had anything to do with them but these two men, and I have known them
to have prisoners at work on Sunday—trousersmaking, shoemaking, watchmaking.

2449. Have you ever known shoes carried out for the family of any turnkey? I have
seen Rispen with a pair of Government shoes on his feet wearing them, and I have seen a
great many females' shoes cut to waste to golosh shoes that were made. Milligan and I went
there, and found ten pairs of shoes that were cut all to waste, soles and everything, to be
worked up afresh. Turnkeys used to get cloth boots goloshed.

2450. Did you ever report these things? I did frequently report them to the gaoler till I
saw it was no use.

2451. It does not appear very clearly what you mean by cutting to waste? I went into the
shoemakers' shops along with the principal turnkey and Milligan, and we found ten pairs of
Government shoes, males' and females' shoes, the uppers all unstitched and the soles cut,
everything cut to bits, on purpose to be worked up afresh in a more decent manner.

2452. That is, that by working them up anew they might not appear as prisoners' shoes?
They would not.

2453. Do you suppose that these were worked up anew by prisoners for some of the officers
of the gaol? I believe they were worked up for officers of the gaol; several of them were
cloth boots.

2454. During the time that you were turnkey in Darlinghurst Gaol had you any knowledge
whether luxuries were at any time brought in to prisoners through the connivance of
officers of the gaol? I am well aware of it.

2455. You have no doubt that was the case? I am sure of it, for I found them; there was
a man named Tessimond, a prisoner in the gaol, he was worth money, and his wife kept
a shop outside in the town; he was put into what is called the bath-house, and while he had
charge of that—what charge he had I could not say—nearly nothing or next to nothing—I
went there one day, and saw some luxuries on a shelf—vinegar, pickles, bacon, cheese, some
eggs; I saw that the stock was pretty nearly run out, and I did not say anything at that time,
but waited a little bit longer—I knew the turnkey at the gate, Burke, did get bamboozled,
and that things were taken in unknown to him, so I waited, and when I thought he had got
a fresh supply, I told Burke to go there; accordingly, he went and found there had been a
fresh supply brought in, and took them up to Mr. Beverley.

2456. *By Mr. Cowper:* In what month was this? In 1859, while Tessimond was in prison;
he brought them up. The Sheriff knew of it, and Mr. Beverley knew of it. There was
nothing more about it. Soon after that, the principal turnkey wanted to know from Burke
who gave him the information; Burke would not tell him, and then there was a down upon
one man for telling.

2457. *By the Chairman:* Then, in fact, the persons who were considered the chief offenders
were those who attempted to correct these improper practices? Yes; they were the persons
that were blamed.

2458. Was any attempt ever made with you to induce you to connive at the introduction of
articles of this kind? Prisoners have done it till they found it was no use.

2459. Did you ever see any other instances of it? Yes; I have known a man of the name
of Rispen, who is outside this morning, to go on errands for prisoners.

2460. You mean to purchase articles for them? Yes. There was some prisoners going to
be shifted to Cockatoo Island or Parramatta; he goes to Woolloomooloo for these same
prisoners, and tells a person to bring up a bundle of clothes for him—that was for a man
confined in Rispen's wing. A man that has money, whether inside or out, can get whatever
he likes.

2461. *By Mr. Lucas:* That is, a man, if confined in the gaol, can get anything he likes?
I have known them to take bladders of rum from men in the debtors' prison.

2462. How do you suppose it got in? I believe it went through the gates.

2463. Are articles of this kind thrown over the wall? —

2464. *By Mr. Cowper:* How could the man at the gate be bamboozled, as you term it?
There are turnkeys in there that he could not stop; for instance, a man of the name of
Rispen

- Mr. F. Pegg. Rispen carries in a basket every morning, and he does not search him; if he has any suspicion he has to report it, and then the principal turnkey will stop him.
- 22 Feb., 1861. 2465. How do you know Rispen does what you assert? I do not know whether he does it; I say he carries in a basket every morning. I have seen prisoners' hominy taken by him regularly for breakfast. In fact I have seen that man take half a side of leather in, sole and kip, and have prisoners to work for him week after week, unknown to the authorities—at least, I do not know whether it was unknown, he never paid anything for it; and I saw him carry boots out—more than he could wear during his life.
2466. Was he supposed to be much in the confidence of Harrison? Yes; he was one of the foremost men in the gaol—that is, a man in charge of a wing. Rispen had more boots made there on the sly than he could wear during his life. He kept prisoners at work for him, in the wing, week after week, and month after month.
2467. *By the Chairman*: During the time you were there, how often did you see the Sheriff there? Sometimes he would come up once a week; sometimes he would go to Mr. Beverley and no further; sometimes he would take a walk round the yards into the workshops, and take no note of the prisoners.
2468. Did he ever examine into the condition of the cells? No.
2469. Or give orders as to the treatment of the prisoners? No; I have seen him go a time or two into Rispen's wing, or into Mr. Beverley's house, or, perhaps, into two or three cells, out and away.
2470. Were the cells kept perfectly clean? Some of them—in fact, pretty well.
2471. Have the prisoners ever been in a state of personal filth? Yes.
2472. Was there any regulation by which they were compelled to wash themselves from head to foot? There was no regulation; they could wash themselves or leave it alone.
2473. If it has been stated by Mr. Harrison that the prisoners are compelled to wash and shave at the end of the week, and to appear perfectly clean on Sunday—is that true? It is not.
2474. Have you seen men in a state of filth on Sunday? They have never shaved nor washed, and, in the confine yard, I have seen vermin crawling on them as large almost as rice—disgraceful.
2475. Suppose a man of filthy habits were sent to the gaol, and did not wash from year to year, would he be interfered with? No. In the confine yard the dirtiest and filthiest men are here, and you see vermin creeping over their shirts. I saw one shirt banging on the wall that was all alive; if it had been on the road they could have dragged it after them. I made a report of it, and that shirt was fetched away and burned.
2476. You cannot give any information to the Committee respecting the female department of the gaol? What I can say about that is that two of the female turnkeys used to wear prisoners' underclothing and shoes.
2477. How did you get the chance of seeing their underclothing? I saw it plain enough; I could see the skirts and shoes month after month; they never wore their own shoes.
2478. What turnkeys were these? Mrs. Hanlon and Mrs. Cullen.
2479. *By Mr. Cowper*: Are they there now? They are there now. The other turnkeys noticed it as well as I did. There is not a turnkey that was in the gaol when I left but knows what I say to be correct.
2480. *By the Chairman*: Had you the opportunity of observing the conduct of the female prisoners? Yes, I had; I have heard them go on with all manner of blackguard language—filthy language.
2481. In the presence of the female turnkeys? Yes.
2482. In the presence of the male prisoners who were there for some of the purposes of the gaol? Yes. I have gone there to take hot water, and I have heard them going on in the presence of the female turnkeys with the most filthy language.
2483. Do you think any irregularities ever occurred in the gaol besides those in connection with the houses of the officers? I cannot say, for they were only certain days that I had the opportunity of going across to the female gaol. Drunkenness was a prevalent thing in the gaol—the turnkeys going out to get drink, as well as drinking in the box.
2484. *By Mr. Morris*: Do you remember some prisoners trying to escape from Woolloomooloo Gaol some time in 1859? Yes, it was while I was there.
2485. Did they try to escape? Yes.
2486. In what way? They were building the hospital on the south side of the gaol, and, during the breakfast-time, the turnkey that should have been on duty never came; all the prisoners were with the ladders and tools, and, during the breakfast-time, they got a ladder, and two or three of them were creeping up it, when another turnkey came by accident and discovered them.
2487. Was the ladder placed against the outer wall? Yes.
2488. How did they manage to get the ladder? They were building the new hospital.
2489. Did they remove the ladder from the hospital to the wall? Yes; it was only a few yards—they pushed it over.
2490. What became of the prisoners who attempted to escape? One was sent to Maitland, and the other to Parramatta; and the turnkey that should have been with them, came in and out as he liked.
2491. Who was he? Bowen; he was a pal of the principal turnkey's (Harrison). He has been away two or three days together.
2492. Is Bowen at the gaol now? Yes, he is up at Yass; he was one of the men who had to leave, so they got him this appointment.
2493. When he was absent for two or three days, was it by permission of the governor of the gaol? No, by no permission at all.

2494. *By Mr. Mate*: How do you know he had no permission from the governor of the Mr. F. Pegg-gaol? He used to stop away without.
2495. Might he not get permission from the gaoler unknown to you? He might have done ^{22 Feb., 1861.} it, but I fully believe he never did, on account of the intimacy between him and the principal turnkey.
2496. Were any complaints made against you yourself to the gaoler, or principal turnkey, at any time? No.
2497. Have you never been censured at all? No.
2498. Have you and Mr. Harrison ever had any quarrel? We never used to have any quarrel, but I reported him several times to the gaoler for misconduct.
2499. Was any investigation made by the gaoler in consequence of these reports? No; he had that influence that it was all settled.
2500. You said you thought that the reason why the six turnkeys who were discharged, were selected, was, that they were Protestants? Yes.
2501. Were the greater part of the turnkeys who remained, Catholics? Yes, the majority of them. I reported a man named Thomas Lee for some stuff that went in for the Botanic Gardens, to make seats. The wood went in to make eleven, but there were only nine made; Lee had one made for his own purposes, and the Government battens were planed and cut, and nailed on it, which I saw with my own eyes. I reported that to the gaoler, and I never heard any more of it, except that Mr. Beverley said he paid for the making of it.
2502. *By Mr. Morris*: What time in the morning did Mr. Beverley appear in the gaol? We might see his face about ten o'clock, when the prisoners were being discharged.
2503. It was not his habit to appear at six or seven o'clock? Neither of them.
2504. If Mr. Harrison says his general habit was to appear not later than eight o'clock—six, seven, or eight—is that statement incorrect? Quite incorrect. Unless there was some special cause we never saw his face till half-past nine.
2505. What time did Mr. Beverley generally shew himself? At ten o'clock, as the principal turnkey was about to discharge the prisoners he would stand by.
2506. Did he not generally attend at the muster of the prisoners at seven? Never.
2507. Or at half-past four? Never; not one time in a month. I have seen the prisoners mustered when they have both been absent. Mr. Beverley's face was not seen round the gaol once in a month, nor through,—I mean in the workshops. I have been on duty in the gaol seven days, and have never seen his face until the seventh morning, and that was going out of his own door.
2508. *By Mr. Cowper*: Did you ever see the Sheriff make a general inspection in all the wards and cells? I cannot say I ever did. The Sheriff did not call so long as he got what he wanted done in the gaol himself; he used to send carts and drays—
2509. Are you aware whether any work was done in the workshops for persons out of the gaol other than the Government? Yes; a good deal.
2510. Can you state any particulars of these cases? The Sheriff had two drays made.
2511. The whole of them? The frame came in and the shafts, and they were made there and painted.
2512. Was the timber sent in? Yes.
2513. And the iron? Yes.
2514. Was anything else made for him? There was a water-truck made.
2515. Any farming implements? Yes.
2516. What were they? Both harrows and scuffles were made—new ones; at the time I am speaking of there were two or three old ploughs to be made up afresh, and the Colonial Architect said he would be very glad if he would take them out, and they were taken out. And a water cistern he had lined.
2517. Has the Sheriff had any work done since the workshops were placed under the Colonial Architect? No.
2518. Do you know any other persons who have had work done besides the Sheriff? Yes, a man named Kidman, a contractor on the South Head Road, had gates and posts made—while Government work, the roofing of the hospital, would stand still—to take to his own place at Randwick; the men at work at the new wing let the roof stand still while they were doing this work.
2519. Was there not an officer of the Colonial Architect's department specially authorized to see that these men did the work of the gaol? Yes; Mr. Sharkey.
2520. This work could not have been done without his knowledge? He was in frequently and saw them; I never heard him tell the men to stop from doing them.
2521. Although the roof of the building was standing still while this private work was being done? Yes.
2522. *By Mr. Morris*: What was the name of the publican from whom you used to get the rum and gin for Mr. Harrison of a morning? I used to fetch it from O'Neil's.
2523. *By Mr. Cowper*: Did you ever remonstrate with Mr. Beverley, or the Sheriff, upon anything you saw that you considered a breach of the regulations? Not with the Sheriff, but I have gone in to Mr. Beverley.
2524. *By Mr. Lucas*: Have you ever heard any complaints made by the prisoners of the bread rations? I have, frequently.
2525. What has been done? I have sent it back several times to the contractor and got fresh; but at the same time the principal turnkey, Harrison, was very thick with him.
2526. *By Mr. Cowper*: Was Mr. Kidman the contractor then? Yes; I sent it back to Mr. Kidman on several occasions, and took the responsibility on myself. A turnkey goes every morning to see that it is of proper weight and good quality.
2527. Do the turnkeys take regular days, so that the contractor may know what turnkey is likely

- Mr. F. Pegg likely to be on duty on a particular day—is there a regular roster? There is a roster; he could ascertain that very easily.
- 22 Feb., 1861. 2528. Have you ever known a board to be called to survey the bread? I do not think there was while I was there. I know the potatoes, bread, and everything of that kind was bad.
2529. When you sent it back was there always a good article sent in return? Yes.
2530. With reference to correspondence, is there any way in which prisoners can get paper and writing materials? Yes, anything they want; but the prisoner clerk does all the writing in that gaol; I have known Mr. Wickham not to be there for three or four days.
2531. Who is Mr. Wickham? The free clerk.
2532. You have known him to be absent three or four days? Yes, and a prisoner doing his duty, making out ration returns.
2533. Can any prisoner in the gaol, if he has money, obtain writing materials, and get any correspondence out of the gaol without being examined by a turnkey? Yes, he can; and I can state why he can do it; there is a prisoner clerk, and that office is very nearly, you may say, always left to himself; he has pens, ink, paper, envelopes—anything he likes to take with him, and he can associate with any prisoner in the gaol.
2534. Can this man go over the gaol and have correspondence with all the prisoners in the gaol? Yes.
2535. Is he locked up with the other prisoners or left to roam where he likes? Left to roam about. I have known him to be locked up drunk when I was in; I reported it to Mr. Harrison.
2536. What happened? There was no notice taken of it. It was a man named Peters.
2537. When you have a report to make to whom is it your duty to report? Chiefly to the principal turnkey.
2538. Of course it is his duty to report to the gaoler? Yes.
2539. Did you ever make any report to the gaoler? Yes, frequently.
2540. Will you tell us any one occasion? When the principal turnkey would not tell him the truth of it then I had occasion to go to the gaoler.
2541. Will you give us instances of the offences that you reported to the gaoler? One occasion was with reference to Swan, a man who was sentenced; I had to put him in a cell for black-guard language; he would not go, and dared me to try my hand, and I called upon Rispen to assist me, and he would not; I reported him to the principal turnkey, and it was not taken notice of; then I had to go to the gaoler; the man did go in at last, but instead of locking him up in a cell, he put him in the wing to roam about in the corridor at large.
2542. He was locked up in consequence of your making a complaint to the principal gaoler? Yes. The turnkey at the gate often did it; he would not make a report to the principal turnkey because he would not tell the truth to Mr. Beverley. The clerk, Mr. Wickham, would come in at twelve in the day, and sometimes never come at all; this prisoner Wilson did all the work. Mr. Beverley would sign the ration return in blank, and it was made up between the prisoner cook and this prisoner clerk what rations were to come in; he would put in what he thought fit, and it would be sent off by the messenger without Mr. Beverley seeing what it was.
2543. *By Mr. Lucas:* Then Mr. Beverley signed in blank and allowed these people to make it up? Yes, the prisoner cook and the prisoner clerk would fill in the quantities, and neither Mr. Beverley nor the free clerk would know what came in; everything was trusted to these prisoners.

ADDENDUM.

I caught Rispen stealing Government iron; he was reported; I appeared before the Sheriff against him, but the Sheriff overlooked it.—FREDERICK PEGG.

APPENDIX.

A.

FREDERICK PEGG,

Having been directed by the Sheriff to inform you that your services as an officer of this gaol will not be required after the 31st day of December next, I now give you due notice of the same, and, whilst expressing my regret at your losing your situation, I have to add that I shall be glad to assist you in any way in my power to procure other employment.

It appears that this notice to you is in consequence of some proposed alterations, to take effect from the 1st of January next, over which I have no control whatever. I take the opportunity of expressing my regret that your services should be done away with here, because I can bear testimony to your uniform good conduct and vigilance during the time you have been in this gaol.

(Signed) H. C. BEVERLEY.

*Darlinghurst Gaol,
Sydney, 15 November, 1859.*

THURSDAY,

THURSDAY, 28 FEBRUARY, 1861.

Present:—

MR. HART,		MR. MORRIS,
MR. LUCAS,	|	MR. SUTHERLAND,
MR. MATE,	|	MR. WALSH,
		MR. WILSON.

HENRY PARKES, ESQ., IN THE CHAIR.

Mr. Samuel Whiddon called in and examined:—

2544. *By the Chairman:* You have been employed as turnkey in Darlinghurst Gaol? I have. Mr. S. Whiddon.
2545. How long have you been so employed? Just upon six months.
2546. Do you remember when you were first engaged? I think it was somewhere in the month of September. 28 Feb., 1861.
2547. How long have you been in the Colony? About six years.
2548. What were your previous occupations? I am a builder by trade.
2549. Have you followed that employment in this Colony? I have. I have erected many buildings here, among others the row of houses on Church Hill, built for Mr. G. A. Lloyd. I have also built part of Belgrave Terrace and many other buildings. Previous to that I was nine years in Messrs. Peto's firm, as chief overseer.
2550. In what part of England? In London. My father was there twenty-five years before me, in the time of Messrs. Grissell and Peto.
2551. At whose instance were you appointed to Darlinghurst Gaol? By the Sheriff.
2552. Had you testimonials from the parties in England under whom you had served? Testimonials were sent to Mr. Cowper by me from Sir Morton Peto. I came out to this Colony as schoolmaster on board the ship, and I have here testimonials from the passengers on board. I used to conduct divine service on board ship, as well as perform my duties as schoolmaster. (*The witness produced several testimonials and handed the same to the Chairman.*)
2553. What were your duties in Darlinghurst Gaol? When I first commenced the duties they were the same as the other turnkeys'—night and day.
2554. Cannot you describe them to us—give us a day's routine? For instance, if I was on the gate, which is considered the first post, I was in company with the gatekeeper, and if there were any message I had to convey it. If any visitors came to the gaol I generally accompanied them, either to the gaoler or to the deputy gaoler. Of course my duty continued at night—to open and shut the gates, and so forth. You go on duty at six this morning and keep on duty till six to-morrow morning, if you have day and night duty.
2555. Do the Committee understand that you were employed upon the gate, as you call it, regularly? No. You asked me to give you a day's routine, and I have done so. The next post I had to go to was, perhaps, upon the north wall.
2556. What would be the nature of your duties there? All you are supposed to do there is to see that no prisoners come round that way; that there is no communication with the prisoners in the yard.
2557. Would that be twenty-four hours also? No, twelve hours; from six to six.
2558. *By Mr. Wilson:* You are not on duty there when the prisoners are locked up in the cells? No, until after muster is over.
2559. *By the Chairman:* Is there a warder on duty at each wall of the gaol? Yes, except the front wall; and there is a man on duty at the east wall, and another man takes the front of the workshops, called the stockade.
2560. What are his duties? He is supposed to see that all the prisoners go in at meal times.
2561. Does he walk backwards and forwards like a sentinel? Generally; sometimes he sits down.
2562. Is he armed? No.
2563. Is he required to parade the place, or does he do what he likes? Almost what he likes.
2564. Can he sit down and talk with the prisoners? That has been done very frequently.
2565. You have stated two days' duty—what is the third? The next duty would be on the stockade.
2566. That would be similar? Yes, that would be similar, with the exception that on that post you remain on night duty.
2567. The stockade is the place where the prisoners cut stones? Yes. The night duty has been commenced since the escape took place.
2568. Which escape? The escape of the two men.
2569. What would be the fourth day's duty? Since the Cockatoo men have come it would be to go on the wing.
2570. When you say "on the wing," do you mean to say at the door of the wing? When on duty you have to be at the two wings, the committed and the hard labour wing, to go from door to door.
2571. What would be the fifth day's duty? That, as at present constituted, would be in the garden, where the Cockatoo men escaped from last time, called east wall.
2572. Would that be for twenty-four hours? No, for twelve hours.
2573. The turnkey "upon the wing," as you call it, would be there twenty-four hours? Yes.
2574. That has been only since the two men escaped? Yes; previous to that the man at the stockade was at night-time up at the wing on duty.
2575. Are the men armed at night? Since the escape took place they have been.

- Mr. S. Whiddon.
23 Feb., 1861.
2576. How are they armed? With carbines.
2577. Then do we understand that all the turnkeys who are employed have the same rotation of duties at regular stated times—that the same duties come to all of them? No; there has been an exception made with some of the men; there was an exception made with a man named Fallon some time since.
2578. By the general system maintained in the gaol, did the turnkeys go in regular rotation upon the same class of duties in their turn? Unless there were a special order from the Sheriff to the contrary.
2579. Were you not the turnkey appointed to the wing which the two men escaped from? I was the first man in charge of it, in conjunction with M'Coy.
2580. When was that? I do not remember the date. I remember the morning when it occurred.
2581. Did it come to your turn in the order of this rotation to be on this wing? No, I was specially appointed there.
2582. Why were you specially appointed there? I do not know. Mr. Harrison put me there, and gave me special instructions, and said he should hold me responsible if they were not carried out.
2583. At what time of the twenty-four hours was it you received these orders? I think it was in the morning after the Cockatoo Island prisoners arrived in the evening.
2584. On the first morning after their arrival there? Yes.
2585. At what time did you receive the order? About seven o'clock in the morning.
2586. How long did you continue to discharge that duty? Eight or nine days.
2587. Every day? Every day.
2588. Till they were locked up? I saw to their being locked up, and that closed my duty for the day.
2589. What occurred then? After that, Mr. Harrison came to me one morning early, and said, "Whiddon, I am very sorry I am obliged to shift you from this post." I said, "I am not at all sorry, for I consider it a very responsible one, and I shall be glad to be released from it." He said, "I should not shift you from it, but the Sheriff wants to put another man on day duty, and this is the only post I have for him."
2590. Were you then shifted? I was then shifted to my usual duties as before, and Fallon was placed in my place.
2591. Had Fallon been long in the gaol? No, he had come there very recently.
2592. Do you know what situation he had held before? He told me he had been a jobbing man for the Sheriff and his father.
2593. What do you mean by a "jobbing man"? He had done jobs of bricklaying and white-washing about his estate.
2594. You say that when you were placed in the wing with the Cockatoo Island prisoners you received special instructions from Mr. Harrison, will you state what they were? The instructions chiefly were that I was to allow no prisoners to touch the keys or locks unless I was present. I had two men to go round with buckets in order that they might wash every morning, and I went round with them on every occasion; Mr. M'Coy took one floor, and I the other. In the same way when the men went round with the bread, they called me to attend them, so that while I was with them no prisoners were allowed to touch the keys.
2595. Were they all searched when they were locked up at night? They were in solitary confinement at that time.
2596. Did the prisoners escape on the first night that Fallon had charge? No, I think two or three nights after.
2597. Can you explain how they effected their escape? Two men got into one cell.
2598. Will you explain how one of the prisoners got into the cell of the other? I believe that they arranged it in the exercise yard.
2599. They had been released from solitary confinement, then? Yes; I believe that when the prisoners were admitted into the wing two of them rushed up stairs into one cell, and that the man in the next cell to the empty one, as he passed by the empty cell, closed the door.
2600. It has been stated to the Committee that if you go round the wing in one direction the doors open *from* you, while if you go in the opposite direction they open *to* you; so that in closing the doors when going in one direction you would not see the *inside* of the cell? Going from the entrance doorway the doors open in front; if you go the other way, the doors open in front again.
2601. Will you state positively that your instructions were, that you were to go round the wing so as to close the doors to you, in order that you might see the inside of the cells? That was part of my positive instructions; and another was, that I was never to shut the door unless I saw the man in the cell.
2602. You uniformly acted upon this instruction? Yes.
2603. Can you say whether on this occasion the turnkey went the other way? I was not on duty.
2604. Have you heard so? I think he must.
2605. Have you had any conversation with Fallon as to this escape? Yes; at the time Capt. M'Levie was there, making this inquiry into the case, several of the turnkeys who were standing by advised Fallon not to say he had anything to do with it, but to put it on M'Coy; and Fallon said, "I locked the two floors, and it is no use my denying it."
2606. Who advised him? Several of the officers standing by said, "Do they know that you shut them? if they do not, I would not admit it, if I were you." He said, "I locked the two floors, and it's of no use my denying it." The bed-boards in the cells I complained of several times, I spoke to the Sheriff about it—not that I contemplated an escape being attempted,

attempted, but on account of the annoyance, for I found that some of the men were hallooing and hooting out of the windows. I found out the cell that the sounds came from, and found that the men had formed a sort of scaffold by means of their bed-boards, by means of which they reached the windows. I spoke to Mr. Harrison about it, and he said, "I know it is wrong, but I cannot help it, for the Sheriff will have them there."

Mr. S.
Whiddon.

28 Feb., 1861.

2607. Did you suggest that they should be removed? Yes, a dozen times. I spoke to each party who had the control.

2608. Was it your suggestion that they should lie on the stones? They had straw mattresses.

2609. The mattresses would be on the stones? Yes; but the stones in that wing are perfectly dry.

2610. Do you suppose that the prisoners had possession of implements to assist them in making their escape? I furnished a report on that subject. On Friday last, I went on duty with a prisoner to Tarban Creek, a man named Sharp, who had been a prisoner at Darlinghurst, but was removed to the Lunatic Asylum, in consequence of insanity; he was insane only on one point—religion. He informed me, that some time previous to the escape taking place, he had seen three men, whom he named, who were wardsmen in the hospital, constantly in communication with the Cockatoo Islanders; that he had seen one of these wardsmen bring up a hammer similar to the one found, and also a large bundle of tarred twine, and several small pieces of iron. He told me that these were wrapped in a gaol towel, and placed in the washing place of the hospital for two or three days previous to the escape; that these Cockatoo men in the hospital were constantly in communication with prisoners in the exercise yard outside, underneath. He described to me how they had communication; he said the Cockatoo Island prisoner in the hospital lowered a piece of thread down to the men in the exercise yard, who fastened on a piece of paper, and then it was pulled up to the hospital, and that the man above would then write something on a piece of paper and throw it out into the yard. I think that was the chief substance of the conversation.

2611. When you returned to the gaol, what did you do? I reported it to Mr. Callaghan, who was then acting chief turnkey, and after that I went to Mr. Inspector Read, who is now acting as principal gaoler. Mr. Callaghan told me I had better make a written report of it and give it to Mr. Read, and I did so.

2612. When did you do so? On the same evening that I came back from Tarban Creek, on Friday last. Mr. Read took the report from me, and said, "It's all right."

2613. *By Mr. Hart:* Did this man Sharp state where the prisoners had got their writing materials? They are kept in the hospital for the use of the wardsmen.

2614. Would the prisoners have the means of writing? They had pencils; and the prisoners in the hospital can lower anything into the yard below—pens, ink, and paper are in the hospital.

2615. *By the Chairman:* Did you ever see any of the turnkeys in a state of intoxication? No, I have not; I have seen one man the worse for liquor—only one.

2616. More than once? Yes.

2617. Have you any objection to state who that was? A man named Elliott.

2618. Have you ever seen any of the turnkeys asleep when on duty? I have seen this man asleep on one occasion.

2619. What duty was he on when asleep? In charge of the Cockatoo Island men, in the exercise yard.

2620. In this very yard where a system of signals with the men in the hospital was kept up? In the same yard.

2621. Will you state under what circumstances you saw him asleep? I was on duty at the stockade, and the prisoner who acts as clerk in the gaol said, "Mr. Whiddon, come up in the hospital, and I will shew you something." I went up, got on a bedstead, and looked out of the window into the yard, and there I saw this man asleep, and the prisoners pelting him with pieces of potato. I said to the men, "Don't do that;" and then I went round to the yard, which is a long way round from the hospital, and by the time I got there he had been waked up, I suppose by a piece of potato hitting him, and was walking about.

2622. Did you report him? Yes.

2623. When did this occur? On the 8th February. I must state that the next morning a prisoner, John Connor, a Cockatoo man, came to me while I was on duty at the same post that Elliott had had on the previous day. He said, "You will excuse me, sir, but what I am going to tell I hope you will not let my mates know, otherwise they will murder me." I promised him I would not. He then went on to say that an escape was contemplated. "If they get away," he said, "it only makes it a damned sight worse for us who are left behind; and if we go we are almost sure to get caught; but I have overheard some of my mates say 'just now that if they catch that cove,' to use his own words, 'asleep again, they will try it on.'" I went to Mr. Beverley, and made a full report of the circumstance to him, and in consequence he wrote out a notice, which was posted in the stockade sentry-box, cautioning all the turnkeys on the post to be more vigilant for the future, as the Cockatoo Island prisoners had been overheard contemplating an escape.

2624. You have been suspended from duty yourself? Yes.

2625. Will you state under what circumstances you were suspended, and when it occurred? Ever since Mr. Read has been there, from what motive I do not know, whenever I have made a report to him of any irregularity, he has always appeared to treat it with the greatest contempt. In fact, he has made a point of watching me, to endeavour to find some fault with me. On Saturday morning last I was on duty at the gate——

2626. This would be the morning after you had made the report to which you have referred? Yes. I was on duty all day, and had a good deal of running about, and the day was excessively

Mr. S.
Whiddon.
28 Feb., 1861.

sively close. At night I stayed on duty, and it was raining heavily the greater part of the night, so that it was impossible to walk in the gateway without being drenched. About ten o'clock Mr. Read came down to the gate, walked into the lodge, and put the gas up to its full height, in addition to which there was a fire which is kept constantly burning at all times. The room is only about ten feet square and the ceiling is very low. It is the duty of the night-watchman to call the half-hours from nine o'clock, and I called every half-hour up to half-past two. About a quarter of an hour or twenty minutes after that I sat and read the paper—

2627. That would be on Sunday morning? That would be on Sunday morning. I then thought I would have a lounge on the seat a bit and wait till the clock struck three, for I felt excessively fatigued. While lying waiting there I must have dozed off, because I did not hear the clock strike three. About three minutes after this Inspector Read came down, called me, and told me he would dismiss me. I told him I could not have been asleep two moments as he must have been aware. He told me he did not want any damned explanation, go I should. He afterwards came back again and told me, "I will suspend you only till I see the Sheriff." That was all that occurred on that occasion.

2628. Is this lodge within gates? Yes, it is between the outer and the inner gates. In fact the turnkeys call it an indifferent post; there is a bar to go across the gates, which is padlocked; I put the bar across the gates about ten o'clock, and fastened the back and front gates, and took all the keys inside with me.

2629. How is that post regarded—is it regarded as a post where great vigilance is required? No, there is scarcely a man on duty there who may not fall into a doze in the twenty-four hours. It is very different when you are on the stockade, there you are obliged to be very vigilant.

2630. If there had been any one approaching the gate would you, sleeping or waking, have heard them? Yes, the slightest noise I should have heard.

2631. *By Mr. Hart*: Could you have been approached without the gates being unlocked by yourself? No.

2632. *By the Chairman*: Would you have heard any attempt to force the gates? Yes, the slightest noise is heard there in a moment.

2633. Is this the distinction between that and any other post in the gaol, that here the officer can only be approached through an iron gate, which is locked, while in all other places he is open to attack? Yes. In fact since the escape of Cavanagh and Clark the officers never think of sitting down at night, except at the gate.

2634. Did you continue on the post that night, or did some other person relieve you? Mr. Read would not allow me to stop a moment.

2635. Were you sent away then? Yes, at three o'clock in the morning.

2636. Did you return to the gaol on Sunday morning? No, I was not there.

2637. Did you return to the gaol on Monday morning? Yes.

2638. When did you get to the gaol on Monday morning? About ten o'clock.

2639. Did you remain there? Yes; first of all I went to see the Sheriff.

2640. Were you there when the seventeen prisoners escaped on Monday? Yes; I was in the gate waiting for the Sheriff.

2641. Can you state to the Committee what occurred, as far as you have any knowledge, of the escape? I was sitting in the gate two or three hours, and while I was there, Mr. Read went out to O'Neil's public-house. About an hour or an hour and a quarter after that, Mr. Read came rushing back to the gaol, with both hands up,—“My God! my God! all the prisoners are gone.” I immediately started off to see what it was was the matter.

2642. Do you mean that you started off outside the gaol? I started out to the Court House. I came back and found no firearms except the guns. I then went up to Mr. Harrison to get his revolver.

2643. *By Mr. Hart*: Where was that? In the gaol. I got the revolver, but there were no bullets that would fit it, so I immediately went off without it, and succeeded in capturing one of the prisoners at the back of Mr. Roberts', in Botany-street. I then went on further across the Sand Hills, by the cottages, and materially assisted the police in capturing a second.

2644. *By the Chairman*: You were present among those who captured him when he was captured? I was the first to lay hold of him. After that, I got information that prisoners had been seen round Rushcutter's Bay; I started in pursuit, and learned that two men had been seen going into a shed opposite the White Conduit House. I went over to the place, and when the men saw me, as they knew me perfectly well, they started off. They had turned their trousers inside out, and were changing their shirts. One had got his shirt off, and in his fright, left both it and his shoes behind; the shirt I brought back to the gaol.

2645. *By Mr. Windeyer*: Did you follow them up any further? No; after that I went to Inspector Harrison, at the police station, and gave him the information.

2646. *By the Chairman*: Had you any communication with Mr. Read during these occurrences on Monday? After I came back from the Surry Hills, I went on to the stockade, and he was in the midst of the prisoners who were left; I called him on one side, and he said, “Do you want me particularly?” I said, “If it was not particular, I would not have troubled you at this moment.” He then came on one side, and I told him I had just got information that some of the prisoners had gone down Rushcutter Bay way, should I go in pursuit of them with Callaghan. Callaghan was the man who was waiting at the gate to see the Sheriff. “Oh,” he said, “Callaghan, go to the devil, and you can use your discretion in the matter; let the police look after them.”

2647. These particular expressions you have given at different times—are you quite certain that they are exactly what he used? Yes, quite certain; if I were to speak strictly to the fact, they would be worse.

2648. Had you any further intercourse with Mr. Read? Not on that occasion.
2649. Did he know that you had actually captured one of the prisoners and brought him back? I do not know.
2650. Was it after you had captured one of the prisoners you saw him? Yes.
2651. You said just now that you made a report of what you were told at Tarban Creek to Mr. Read? Yes.
2652. Have you a copy of that? Mr. Read has.
2653. Could you get it from him? I have applied to him twice for it, the first time verbally. I asked him if he would be kind enough to furnish a copy of the report I gave him last Friday, that I wanted to present it to a Committee of the Legislative Assembly. He said, "Damn the Committee; I have nothing to do with the Committee, or the Committee with me."
2654. Are you sure he said, "Damn the Committee"? Yes, I am quite positive. "I do not know anything about it at all," he said, "where it is now."
2655. You did not get it? No. He seemed very much annoyed, followed me up to the gate, and gave the man at the gate instructions not to permit me inside the gates again.
2656. Did he say anything more than this? Not to me.
2657. You said you applied in writing for it? Yes; on the following (Wednesday) morning, fearing he might deny a verbal statement, I sent in a written application. (*The witness produced a paper.*)
2658. Is that a copy of it? This is the one I sent him.
2659. How did you get it? He sent it back again. He said he did not know where it was, and not to bother him again. (*Witness read the letter. Vide Appendix A.*)
2660. At this time, I infer from what you have already said, and also from the language of this letter, that you intended to apply to be examined before this Committee? I did.
2661. Do you suppose that this last escape was in any way facilitated by this system of signalizing, which you have previously described? Yes. There are several gentlemen, and I believe there is one here now, who saw the signalizing going on on Monday when he was waiting on the South Head Road for a 'bus.
2662. I asked you whether you supposed this to be the case—I now ask you, whether you have any positive evidence of it? I have positive evidence that communication took place. This gentleman will tell you, that while he was waiting he saw what resembled a piece of iron or dark wood pass from the window of the hospital down below.
2663. You refer to Mr. Olson, who has been summoned? Yes.
2664. During the time you were turnkey at the gaol, it would, I presume, be your duty sometimes to unlock the wings? That was the special duty of the man who was on the wing.
2665. Did you not perform that special duty in the rotation of your duties? No.
2666. I have understood from you, and from previous witnesses, that every turnkey had the same kind of duty to perform in rotation? What we term the ordinary turnkeys have to assist, when it is their turn, on the wing, but there are regular turnkeys for that special business.
2667. You have been present when the wings have been unlocked? Yes.
2668. Do you know where the keys were obtained to unlock the wings? Yes, they were generally obtained from Mr. Harrison.
2669. How were they obtained? Mr. M'Coy, who lived with Mr. Harrison, generally used to bring them down in his hands.
2670. Have you ever seen any person go into Mr. Harrison's house—the door being open—and take the keys off the peg or hook on which they hang? No, unless it were M'Coy.
2671. Did you ever see those keys hang on a peg or hook behind the door? Yes, frequently; but I think that was when Mr. Harrison was engaged, and the 'warder hung them up till Mr. Harrison would remove them.
2672. When did Mr. Harrison appear? Sometimes at half-past six; sometimes at six.
2673. Have the cells in Darlinghurst Gaol been regularly kept clean? I think in the male wings they have been kept cleaner than in the other portion.
2674. Was there any difference in the treatment of the walls and floors of the cells after this Committee visited the gaol as compared with the treatment of them prior to the Committee's visit? Not any particular difference, except in the female wing.
2675. Has there been any difference there? Yes, two or three men have been engaged whitewashing.
2676. There has been more whitewashing done since than before? Yes; I never saw it so much before.
2677. Has the gaol been more vigilantly looked after in other respects since the Committee visited the gaol? Since the new officers have been there. Whether it has been from their not having a knowledge of their duties or what, I do not know, but the whole place has been in a state of fermentation.
2678. Did you ever hear any singing or loud noises in the yard? In the confine yard, sometimes they will hum to themselves.
2679. You have never heard any disorderly noise? No.
2680. *By Mr. Walsh:* The information you received from Sharp, and reported to Inspector Read, referred to the escape of Clarke and Cavanagh? Yes; how they obtained implements was by allowing the hospital windows to remain unfastened.
2681. Have you ever been in Mr. Harrison's house after the prisoners have been locked up in the evening? Yes, frequently.
2682. Have you had any opportunity of observing where he kept the keys? He generally kept the keys on pegs, for they were in constant request for the debtor's prison till it was locked

Mr. S.
Whiddon.

28 Feb., 1861.

- Mr. S. Whiddon.
28 Feb., 1861.
- locked up at half-past seven, and then the lamplighter wanted them to go into the wings. So that the keys were in constant request till after eight o'clock.
2683. After eight o'clock have you seen the keys? They were removed after that—where, I do not know.
2684. Have you been to Mr. Harrison's house early in the morning? Yes.
2685. Have you observed where they were then? No, because Mr. McCoy would bring them down to the cells with him; if he were not well Mr. Harrison would bring them down himself.
2686. They were not on the peg? No.
2687. *By the Chairman*: Was Pegg in the gaol during the time you were there? No.
2688. *By Mr. Walsh*: When you were upon this gate duty on the night you were suspended you say you were obliged to call the half-hours? Every half-hour after nine o'clock.
2689. You were expected to do that throughout the night? Yes.
2690. Was that practice observed before Mr. Road had charge of the gaol? Yes, with this difference, that after twelve o'clock we used to call the hours only, instead of the half-hours.
2691. In the course of the week how often were you on night duty? Every third night.
2692. That would be two nights in the week? Yes.
2693. Would you be on duty the entire day before as well? Yes.
2694. That is, you would have twenty-four hours' duty without intermission? Without the slightest intermission—we were not even allowed to go to our meals.
2695. *By Mr. Windeyer*: Suppose you had been on duty all day did you remain on duty all that night? Yes.
2696. When did you go on duty next day? We were then off duty till five the next evening, when we were expected to attend muster. After that we went home till the next morning.
2697. *By Mr. Lucas*: You had twenty-four hours on and twenty-four hours off, with the exception of a short time about five o'clock when you were expected to attend muster? Yes.
2698. *By Mr. Mate*: I did not understand you properly about taking round the buckets to the cells—did the prisoners wash in the buckets? Yes; a bucket was taken round to each cell for the prisoners to wash in.
2699. *By Mr. Lucas*: Is each prisoner compelled to wash in the bucket? He is supposed to do so.
2700. Is there a bucket taken to each man? No; one bucket has to do for about three cells, and then we change the water.
2701. What buckets are used? Large horse-buckets.
2702. Are the buckets used for any other purpose? No, only for fetching hot water, or anything of that kind.
2703. *By Mr. Mate*: Are you aware whether Mr. Harrison has any servant to attend on him? Two female prisoners have been there to attend on the house.
2704. *By Mr. Windeyer*: He is a married man is he not? Yes.
2705. *By Mr. Mate*: Are the servants allowed any liberty to roam about the place? No, I never saw them away from the house.
2706. Can they get away from his house? Not without being observed, I think. A male prisoner is never allowed to approach there unless in company with a turnkey.
2707. *By Mr. Hurt*: Do you consider that the official staff in the gaol is sufficient to secure the safe custody and management of the prisoners? No, not now, and much less so when the escape of Clarke and Cavanagh took place. There have been four or five turnkeys engaged since then. At that time there was only one man in the whole establishment inside at night besides the man at the gate, and that one was unarmed.
2708. Is there a sufficient supply of firearms to arm all the warders? There may be, but I have not seen them.
2709. Were you usually furnished with firearms? Not until that escape took place.
2710. *By Mr. Windeyer*: Suppose there were a rising of the prisoners, are the firearms and ammunition in such a place as to be ready at once for the arming of the turnkeys? There are only six carbines in the lodge.*
2711. Is the ammunition there? The bags hang beside the guns, but there is ammunition for only three.†
2712. Are you supplied with hangers? No.
2713. Then, supposing a rising of the prisoners to take place, you could get arms for only three persons? Yes; and on the side of the north wall it is so dark that you cannot see your hand before you, so that in passing by the dead-house a number of prisoners might be concealed behind, spring upon you and take away your arms.
2714. *By Mr. Morris*: Are the turnkeys accustomed to the use of firearms? No, I think not. I believe some have never fired a gun.
2715. *By Mr. Windeyer*: There is no drill of any kind for the men? No.
2716. When you are in this lodge are you there alone? No.‡
2717. Then no one from the inside can get the keys and open the gates? No; Mr. Read was obliged to wait till I fetched the keys and unlocked the gate.
2718. *By Mr. Hart*: Can you state whether any muster of the prisoners takes place before their meals? There is no muster before meals.
2719. With respect to the gangs who work outside, are they mustered every evening? They are

* NOTE (Added by witness on revision):—That I have seen. I have since been informed that there are thirteen carbines locked up in the lodge, tho' not seen by turnkeys.

† NOTE (Added by witness on revision):—So far as I have observed.

‡ NOTE (Correction by witness on revision):—Yes.

are mustered every evening; and, more than that, they are counted when they are let into the gate from the hard labour yard.

2720. Are they searched each time they come in to their meals? No.

2721. Are they searched before they retire to their cells? Not the ordinary prisoners.

2722. I am speaking of the gangs? No, they are not searched.

2723. *By Mr. Windeyer*: Are not the hard labour men searched when they come in? When they were at work at the quarries they were.

2724. Are not these blacksmiths and carpenters searched? No.

2725. *By Mr. Hart*: Have you heard any conversation among the prisoners as to the condition of the wall that surrounds the gaol? I have heard the Cockatoo men say they would damned soon get out of that if they could get over the other part; in fact, they looked upon the outer wall as nothing to accomplish.

2726. Did they mean that they would scale the wall or knock it down? Scale it.

2727. Have you heard any of the prisoners say it would be easy to knock it down? No, I never heard that.

2728. Do you consider that that could be done? In some portions of it, if a stone or two were to be taken out, and it were to be undermined, the wall would fall in.

2729. *By Mr. Windeyer*: Do you not think, if the prisoners got a piece of scantling, or scaffolding, such as is lying about, and were to use it as a ram, they might easily knock the wall down? Since this escape I find that the wall is built of ashlar; the stones on the inner and outer side are, many of them, not more than three inches thick, and the space between is filled with rubble and mortar. Now, it would be easy to get out a piece of this stone on the inner side, and then to force out the other.

2730. *By Mr. Lucas*: Is not ashlar generally at least one-third the thickness of the wall? Yes.

2731. Was not this wall composed of stones more like flag than ashlar? Yes.

2732. And the whole of the inside is filled up with mortar and small stones? Yes.

2733. The headers are—how many feet apart? I suppose about every five feet.

2734. I suppose there are about two ashlar and one header? Yes.

2735. *By Mr. Hart*: Did you observe that any part of the wall was in a tumbling condition? The front wall is; in fact, the whole wall.

2736. Do you mean the eastern wall? No; the western wall overhangs very much, and, more than that, the wall is crippled; there appears to have been a settlement at one time or other, although it has been stopped.

2737. You have stated that whenever you have made reports of irregularities to Mr. Read he has treated them with contempt—can you give any other instances of having made reports to him other than that you made to him on your return from Tarban Creek? Yes. I have spoken to him several times about the hospital windows. I pointed out to him that that was the means by which the prisoners communicated before Clarke and Cavanagh escaped. He said, "Attend to your own duty; I will attend to mine."

2738. Can you mention any other instances? There were several others, but I cannot call them to mind at this moment. In fact, from what motives I do not know, but any suggestions I made he treated with the most profound contempt.

2739. I want to know what suggestions you have made? With respect to the prisoner in the front I suggested that there ought to be a turnkey in the front, for the box of the prisoner is in close proximity to Mr. Harrison's house, and the male and female prisoners have thus the means of constant communication.

2740. Are there any female prisoners occupied as servants to the principal gaoler? Yes.

2741. Is there any guard outside the walls of the gaol? None whatever.

2742. Was there not a guard placed there, some time since, after the men escaped? There was, on the northern wall.

2743. Why was he removed—have you heard any cause assigned? I believe the Sheriff thought it more beneficial to have the man inside than outside, consequently the box, which was outside, is now inside the wall.

2744. *By Mr. Lucas*: You said an exception was made in reference to Fallon's duty as a turnkey? Yes; when he first came, instead of taking duty as an ordinary turnkey, he was put to convey the prisoners from the gaol to different parts.

2745. Previous to his coming there how was that duty performed? By another man, named Donald; he was employed whenever this duty occurred.

2746. Then this man Fallon was put in Donald's place? Yes.

2747. Was Donald looked upon, originally, as one of the turnkeys? No.

2748. Then Fallon was not a turnkey? He was a turnkey when there were no prisoners to convey; he was put on day duty at the wings.

2749. He was exempted from night duty and no other turnkey had been exempted? He was stationed on the wings entirely.*

2750. Are letters, sent out by the prisoners, opened by any one? They are generally supposed to be opened by the gaoler or deputy gaoler.

2751. *By Mr. Hart*: And initialed by them? Yes.

2752. *By Mr. Lucas*: Do you know whether that is always done? I believe it is.

2753. Have you known any other officer of the gaol to open letters? No.

2754. You said, at the time these seventeen prisoners escaped, Mr. Read was up at Mr. O'Neil's public-house? Yes.

2755. Are you sure of that? Yes; for he went away about an hour or an hour and a quarter before the prisoners escaped.

2756.

Mr. S.
Whiddon.

28 Feb., 1861.

* NOTE (*Added by witness on revision*):—When an escort was not required.

- Mr. S. Whiddon.
28 Feb., 1861.
2756. Did you see him at O'Neil's public-house yourself? He said he had been there.
2757. You know nothing further of it? No.
2758. Do you know whether he lived at O'Neil's public-house—whether he lodged there while he was at the gaol? I think not; he is a married man and lives at home.*
2759. Both Mr. Harrison and Mr. Beverley have several servants there? Yes; Mr. Harrison has two, I think, and Mr. Beverley four.
2760. Are those servants locked up at night? Yes.
2761. At what time? About seven; when I have been on night duty I have seen them go over.
2762. How far are these women allowed to go from Mr. Harrison's or Mr. Beverley's house? I have never seen them further than the trees by the house, playing with the children.
2763. Are any of the male prisoners allowed to go near these trees? No, unless a turnkey is with them.
2764. Is there always a turnkey on that part of the prison, so that if a prisoner does go there he can see? No prisoner can come there except through the opening of the wing. The turnkey immediately he sees a prisoner going that way stops him.
2765. What duty does the prisoner perform who is stationed near Mr. Harrison's house? He attends upon the gatekeeper in case any provisions come in.
2766. Is that near where you say the women play with the children? The box where he sits is near the garden where they play.
2767. Is there any fence between this box and where the women are? No.
2768. The women can go up to the box? Yes; only last Friday Mr. Uhr found the man stationed there in conversation with a female, and complained of it.
2769. What has been done since? A free man has been stationed on the front, but the prisoner still remains.
2770. Then actually a free man has been stationed there to look after a prisoner? Yes. I may state that Elliott, the man I have spoken of, was on duty at the exercise yard last Monday when the prisoners escaped.
2771. *By the Chairman*: Elliott, the man whom you say you have seen drunk, and who was asleep in the exercise yard? Yes.
2772. *By Mr. Hart*: Do you believe there was any communication with persons outside to facilitate their escape? It is quite possible there might have been.
2773. Have you reason to think such was the case? Tobacco, hats, and all manner of things come over the wall; in fact, I have myself picked up bundles, generally tied to a stone, which have been flung into the labour yard.
2774. *By Mr. Lucas*: Any prisoner when let out of the gaol can thus communicate with those he has left? Yes, that has occurred several times.
2775. *By the Chairman*: When you were in pursuit of these escaped prisoners last Monday, did you meet with any manifestation on the part of any portion of the public in favour of their escape? There was only one man who did so to my knowledge; that was the man who assaulted the publican who guarded the hole to prevent the prisoners escaping. I would state that, on the night Cavanagh and Clarke escaped, they took planks from the back of the cook-house to facilitate their escape†.

APPENDIX.

A.

To Mr. Inspector Read, Acting Gaoler, Darlinghurst Gaol.

Sir,

In consequence of the ungentlemanly and insulting answer given me by you last evening, on my respectfully asking you for a copy of my written report to you on Friday last, relating to the escape of the prisoners Cavanagh and Clarke, I now again most respectfully ask you for a copy of the above-mentioned report. I may also state that I require the same for presentation (on my examination) to the Committee of the Honorable House of Assembly.

Feb'y. 27/61.

I have, &c.,
SAML. WHIDDON.

Mr. William Olson called in and examined:—

- Mr. W. Olson.
28 Feb., 1861.
2776. *By the Chairman*: What situation do you occupy? I am out of situation at present. I have been with Messrs. Levicks and Piper the last four years, until the first of last month, as assistant ironmonger.
2777. Where do you reside? In Short-street, Surry Hills.
2778. Have you resided there any length of time? About eight months.
2779. Do you frequently pass Darlinghurst Gaol? Yes.
2780. You are aware that on Monday last a number of prisoners escaped from that gaol? Yes.
2781. It has been represented to this Committee that you have a knowledge of some facts in relation to that escape—if you have will you have the goodness to state them? On Monday morning, between nine and ten o'clock, I was waiting for the omnibus to go to town. I was on the South Head Road, near the Happy Vale Hotel, when I saw something from a building in the yard, like some one from inside letting down papers and drawing them up again with a cord.

2782.

* NOTE (Correction by witness on revision):—Lodged at the gaol.

† NOTE (Added by witness on revision):—And within a few yards of M'Carty, the man on duty.

2782. Will you describe the situation of the building from which you saw this string work-
ing? I saw it from the building inside, let down inside. Mr. W. Olson.
2783. You were standing near the Happy Vale public-house? Yes. 28 Feb., 1861.
2784. Will you describe the situation of the building where you noticed this occurrence?
About the centre, at the back of the Court House—the building with large windows—I saw
some one at the window throw out some paper, and then I saw some drawn up with a cord
to the window. After that I saw what I took to be a piece of iron, it might have been a
piece of dark wood, let down.
2785. How long and how thick was it? I cannot say—it was some distance off.
2786. How thick do you suppose it was—two inches? I suppose something like that, and
about two feet six inches long.
2787. It was not a board? No, it was something like an iron bar; it was let down and
drawn up again—it was drawn up again faster than it was let down.
2788. Did you see anything else? No.
2789. Did you take the omnibus and proceed to Sydney? Yes.
2790. Did this strike your mind as something remarkable? Yes; I mentioned it the same
evening, after the escape.
2791. Did it strike your mind before you heard of the escape? Yes; I intended to have
mentioned it to Mr. Whiddon.
2792. Where were you when you heard of this escape? At home; I had just arrived home.
2793. I suppose you immediately recollected this occurrence which you had noticed in the
morning? Immediately I heard of the escape. When I came out of Short-street I saw a
man taken prisoner, and I saw three men afterwards on the Sand Hills.
2794. You know nothing further than you have stated? No.
2795. *By Mr. Male*: Do you know Mr. Whiddon? Yes, I am acquainted with him; I live
close by him.
2796. *By the Chairman*: How long have you known Mr. Whiddon? Only since I have
resided in Short-street.
2797. Six months? About that time.
2798. When you say you are acquainted with him, do you mean that you are on friendly
terms with him? Yes, I visit his house frequently.
2799. Is he a sober man? What I have seen of him.
2800. You never saw him otherwise? No.
2801. *By Mr. Hart*: To whom did you mention this occurrence? To Mr. Whiddon, in the
course of conversation about the escape in the afternoon.
2802. Did you mention it to any one else? Yes; I mentioned it to one of the Farises, who
keep the Queen's Arms Inn, and I mentioned it to Mr. Ironside, senior.
2803. Can you state whether the bar was being let down from the hospital window, or
whether it was being raised to that window? After I saw the paper or letter drawn up, I
saw this bar let down from the window, and I saw it drawn back quicker than it was let
down.
2804. What was the last you saw of it? The last I saw was its being drawn back to the
window.
2805. Was it taken in at the window? I think it was, I lost sight of it then.
2806. What time was it when you saw it? Twenty minutes to ten, or half-past nine.
2807. *By Mr. Windeyer*: When did you mention it to Mr. Ironside? Yesterday, I think.
2808. *By Mr. Morris*: After you mentioned it to Mr. Whiddon? Yes.

Mr. William Macpherson called in and examined:—

2809. *By the Chairman*: You are overseer of the carpenters' shop in Darlinghurst Gaol?
Yes. Mr. W.
Macpherson.
2810. How long have you filled that situation? Fourteen months, since the 1st January,
1860. 28 Feb., 1861.
2811. How many men have you had under your direction generally during that time? The
average number has been nine or ten—sometimes I have had twelve.
2812. What are the men employed upon? Upon finishing that new hospital most part of
the last year.
2813. What other work? Upon general repairs through the prison. Lately, within the
last two or three months, there was some furniture made there for private parties.
2814. Who has the furniture been made for chiefly? All for parties connected with the
establishment, except in one instance, and that was only three verandah posts.
2815. What kind of furniture has been made? Two or three chests of drawers. I have
here a list of all the furniture made since I took possession there.
2816. The list you produce gives the particulars of the furniture which has been made during
the time you have been overseer, the names of the parties for whom they have been made,
and the prices charged? Yes.
2817. The prices charged are simply for labour; the parties in every case have supplied the
material? Yes. (*The witness handed in the list. Vide Appendix A.*)
2818. How do you come in contact with the management of the gaol, in relation to the
prisoners; have you any power over them, or any control over them, more than you would
have as an ordinary employer over the men under you? All the control I have over them
is, when they are counted out in the morning to the stockade, to put those in my department
to their work; to keep them at work all day; and to instruct those who are not very proficient.
2819. If any of them were refractory, you would call in the officers of the gaol? Yes.

- Mr. W. Macpherson. 2820. You have nothing to do with that? No.
2821. Is there any plan by which they are regularly searched on leaving the workshops? No.
- 28 Feb., 1861. 2822. Could they carry away tools in their pockets or concealed in their clothes? I believe they could if they were disposed to do so.
2823. Do they leave the workshop just as ordinary workmen, without any interference? No; they have to clear up all the tools, and I see them locked up.
2824. They are not searched before they go out of your workshop? No.
2825. What hours do the men attend the workshop? From seven to four.
2826. Have you had any opportunity since you have been in the gaol of noticing the general management of the gaol—the control exercised over the prisoners? My business very seldom led me out of the stockade, unless I were called by some officer of the gaol.
2827. Have you ever been to the gaol as early as six o'clock? No.
2828. You never saw the cells unlocked? No.
2829. You have never been in the wings? No, unless on business, to see repairs done, or anything like that.
2830. When the Sheriff has visited the gaol has he generally visited your workshop? Yes, he has always done so.
2831. What took place on the occasion of those visits—what did he do or say? Nothing particular; he asked how we got on. If he wanted any particular work done in connection with the gaol he would request me to see it done.
2832. Did Mr. Beverley frequently visit the workshop? Yes, he went through the yard very often—not into the workshops.
2833. Did the officers of the gaol visit the workshop during the hours the men were employed there? None, unless Mr. Beverley or the Sheriff.
2834. You are a carpenter by trade? Yes.
2835. And served an apprenticeship to it? Yes.
2836. How were you engaged in Sydney before you accepted this situation? I was fifteen years in the employment of Mr. Spence, the builder, in Sydney.
2837. *By Mr. Sutherland*: You were foreman for Mr. Spence, I believe, most of that time? Yes.
2838. *By Mr. Windeyer*: How often did Mr. Beverley visit the workshop? It might be once or twice a week that he would visit the workshops. He would pass through the yard oftener than that. He would see me outside the shop, but he would not go into it. He would speak to me as he went by, because the directions that the overseers have are, that they are to take instructions for the work from the Colonial Architect's Department, so that if the Sheriff, or Mr. Beverley, had given me any orders I should have first consulted the Colonial Architect before performing the work.
2839. Did the Colonial Architect ever come there? Yes.
2840. How often? Sometimes two or three times a week; sometimes not once a fortnight; but Mr. Sharkey, Mr. Cole, and other officers were often there.
2841. How often did the Sheriff come and see the work going on? Sometimes once a week, sometimes oftener.
2842. How do the men generally seem to work? They have been very willing to work indeed, all that have come under me. I have had no occasion to punish them once since I have been there.
2843. You went to the gaol before the system of shortening time by labour was abolished? No, it was done away with before I was there.
2844. *By Mr. Mate*: Who has the fixing the price of this work? I have.
2845. How do you come at the price? My instructions were from the Sheriff when he authorized me to do these articles, to charge half the price that would be paid outside for free labour.
2846. Do you ascertain from cabinetmakers what the prices are for these works? Yes, and I can judge of these matters myself.
2847. *By Mr. Hart*: Do you consider the workshops are in an efficient state as regards their construction and size? No, they are not.
2848. What do you consider necessary to render them so? We have a row of new workshops in progress, almost from one side of the yard to the other; the foundation part is in, and the doors and sashes are making for these workshops.
2849. Are these works in progress? Yes.
2850. Who has the superintendence of them? Mr. Dawson.
2851. They are being carried out under his direction? Yes.
2852. What provision is it intended to make in them for carpenters and joiners? A large shed is to be appropriated to them; a large open shed, open in front.
2853. Is there any provision in them for the men working separately? No.
2854. They will still be all together? Yes.
2855. Do you consider that it is desirable they should be all placed together? That I could not answer.
2856. *By Mr. Windeyer*: Do the men converse much together when they are at work? If they were allowed to do so they would do it.
2857. Is talking at work forbidden? Yes.
2858. *By Mr. Hart*: Who has the immediate control of the prisoners while they are at work? The overseer.
2859. Are you aware whether he places any limit upon discussion between the prisoners? I know none of the overseers will allow the prisoners to be conversing together; if they see it they always put a stop to it.

2860. Have you made any representation to the gaoler or any other person as to the condition of this present workshop? No.
2861. Have any lads who have been convicted of larceny or felony been apprenticed from gaol during the time you have been there? No, none that I am aware of.
2862. You are aware, I suppose, that under the provision of an Act of Parliament, lads under a certain age may be apprenticed? No, I am not aware of it.
2863. *By Mr. Lucas:* I see in the list of work you have handed in, "3 large boxes;" what sort of boxes were they? Rough boxes that were made for the Sheriff, to hold some manure that he contracted to take from the Abattoir—some blood he wanted for his garden; they were about three feet wide and six feet long; they were rough boxes.
2864. *By the Chairman:* Have you noticed whether the men working in your shed, during the time you have been overseer, have been dirty—unwashed from day to day? No; there were one or two there once that I did require to keep themselves clean; but I consider it was their own neglect.
2865. When this Committee visited the gaol, there was the top of some large piece of furniture in course of being made—we understand from a witness who was examined before the Committee that that piece of furniture was afterwards abandoned—that item does not appear in this list? No, it has been abandoned.
2866. What was it? The top of a wardrobe.
2867. How far did you proceed with it? Only the cornice was made, and the gentleman for whom it was made has paid for the work.
2868. *By Mr. Walsh:* That article does not appear in this list? No, but the book will shew it.
2869. *By the Chairman:* How are the entries made in the book? They are caused to be made by the overseers. They send a daily report to the architect.
2870. *By Mr. Lucas:* Is it usual to commence the cornice of a piece of furniture first? It might be. I have seen a cornice done first.
2871. It is your duty to be in constant attendance upon the work? Yes.
2872. *By Mr. Windeyer:* Who was this wardrobe for? Mr. Coles, of the Colonial Architect's Department. He sent me a note to discontinue the work.
2873. *By Mr. Mate:* Had you the timber for the whole at the time? Very nearly.
2874. That was taken away? That was taken away.

Mr. W.
Macpherson.
28 Feb., 1861.

APPENDIX.

		A.		£	s.	d.
Mr. Wallace	{	1 bedstead .. .. .	..	0	10	0
		1 washstand .. .. .	..	0	4	0
		1 writing desk .. .. .	..	0	2	0
		1 table .. .. .	..	0	6	0
		2 hand stools .. .. .	..	0	2	0
Mr. O'Neil	—	3 verandah posts .. .. .	..	0	10	0
Mr. Brennan (Sheriff)	—	3 large boxes .. .. .	..	0	15	0
Mr. Ryan	—	1 chest drawers .. .. .	..	0	17	0
Mr. Rispen	—	1 chest drawers .. .. .	..	0	17	0
Mr. Agnew	—	1 cabinet .. .. .	..	3	0	0

Mr. Shepherd Howarth called in and examined:—

2875. *By the Chairman:* You are overseer of the blacksmiths' shop at Darlinghurst Gaol? Yes.
2876. How long have you filled that situation? I was appointed there I think on the 3rd January, 1860; but during that time I have been eighty days suspended.
2877. How did that occur? Mr. Dawson dismissed me on a charge of insolence, because, on one occasion, when he said that he and me should part, I said I thought we had parted a long time ago, believing at the time that I was under the orders of the Sheriff, having received my appointment from him.
2878. Was that all you said? Yes.
2879. That was the insolence for which you were suspended? That was the cause for which I was dismissed.
2880. But eventually you were suspended for eighty days? Yes.
2881. Who performed your duties during the time you were suspended? I believe it was Mr. Macpherson.
2882. The carpenter? Yes.
2883. What does he know about blacksmithing? I do not think he knows anything about it.
2884. There was no blacksmith in your stead? No.
2885. How many prisoners are employed under you—what is the average number? I have generally got eight.
2886. How are they employed? In jobbing work; in different kinds of work.
2887. Cannot you tell more definitely? Sometimes they have worked for the Victoria Barracks—mounting buckets, repairing tools, chisels, picks, and stonemasons' tools, or anything that may be required for the barracks. Sometimes they work for Tarban Creek. They also did some work for the guard-house, where the soldiers' guard is.

Mr. S.
Howarth.
28 Feb., 1861.

- Mr. S. Howarth.
28 Feb., 1861.
2888. The Commissariat Stores do you mean? The guard-house at the bottom of George-street—the Commissariat Stores.
2889. Is the work done in your shop entered in any book? Yes.
2890. All of it? Yes.
2891. Does the account shew what work is done for the barracks—for the Commissariat Stores—for the Government generally—and what is done for private persons? As I get orders from the Colonial Architect for the different departments, they are entered daily in the book.
2892. The orders are entered? The work is performed and forwarded according to the orders I receive.
2893. *By Mr. Windeyer*: Then the book does not shew for what place the work is done, or for whom? Yes it does.
2894. *By the Chairman*: Do you keep the book? No; a prisoner acts as clerk.
2895. Do you give him the material from which he makes the entry? I make the entry on a slate; take it into the office; and see that he enters it. I sign my report daily.
2896. In the book? No; my report, which is forwarded to the Colonial Architect daily, is signed by me.
2897. Do you do any work for private persons? Not without an order.
2898. Do you do work for private persons? No; I have had many jobs sent to me, but in consequence of not getting an order I have refused to do them.
2899. From whom have they come? I believe Mr. Harrison sent a stove, but he never said anything to me about it.
2900. To be repaired? To have a new grate put into it, but I got no instructions about it.
2901. What else was there sent to you? A bedstead was sent in by a man of the name of Lync.
2902. What was wanted to be done to the bedstead? It wanted some repairs and alterations.
2903. At what time do the prisoners come to the workshops? At seven o'clock.
2904. At what time do they leave? At four.
2905. Are they searched before they leave? No, they are never searched.
2906. Does any officer of the gaol search them? I do not know.
2907. Did you ever see them searched? No.
2908. Could they carry pieces of iron or tools in their clothing? I do not think they could. I stand at the door as they come out.
2909. Do you not think a person could carry away a chisel or a piece of iron in his clothing unless he was searched? I do not think he could.
2910. Why not? Because I am in the shop and see them at work.
2911. Your eyes cannot be everywhere—you have three shops to attend to? Yes, but I keep the iron in the principal shop. I have a store to keep the iron, except what I am using at the time. I never had any orders to search them.
2912. You really have nothing to do with them except to direct their work? Nothing in the discipline way—nothing more than to see that the work is done properly.
2913. Did the Sheriff, Mr. Beverley, or any one else visit your shop? Yes.
2914. Often? Yes, frequently; the Sheriff seldom came to the yard that he did not visit it.
2915. Have you ever noticed any of the men in your shop in a dirty, filthy condition? They could not be in my shop without being dirty.
2916. You must know what I mean—have you seen them in a filthy condition otherwise than from the dirt contracted while engaged in their labour during the day? I have no orders as to cleanliness, but if I saw a man have a dirty shirt on I have often allowed him time to go and wash it.
2917. *By Mr. Windeyer*: Were they dirty in their persons? I have always seen them with their faces and hands clean in the morning.
2918. Do you know, as a fact, that a little time ago some of these men partially succeeded in manufacturing an iron ladder? I think that was previously to my going there—I heard of it being made in the workshop.
2919. *By Mr. Hart*: What is the condition of the shops under your charge as regards cleanliness, ventilation, and other matters? There is very poor ventilation; for the work that is done the shops are large enough, but I do not approve of the plan of having three separate shops. I think if the shops were all in one it would be much better.
2920. Are they not in a very dilapidated condition? Yes; a portion of the roof has had to be taken off to let in a little air, and when it rains the rain comes through.
2921. When it rains where do the men go? It does not come through sufficiently to prevent the men working. The men outside go into the labour yard, under the shed.
2922. What persons are usually placed at the forges under your charge—are they men who have been previously brought up to the same business? If they can be got; if there are smiths in the gaol we get them, but if not we get men and teach them. I have two boys who are learning the trade. I have one tinplate worker, one watchmaker, one fitting-smith, one general-smith, and two hammermen.
2923. Do you teach any boys who are sent into the gaol that business? Yes, I have two boys now, teaching them.
2924. How many have you taught during the time you have been there? These two are the only ones I have had.
2925. How long have you had them? One of them was in the shop when I went back after my suspension, and the other, I think, I have had about two months.
2926. How do they happen to be placed under your charge? That I cannot account for—the men are sent to me.
2927. Did you apply for them? No.
2928. Have you ever suggested to any officer of the gaol that it would be desirable to place prisoners

prisoners with you, whom you could instruct and make useful after they left the gaol? I do not know that I have.

2929. Has the gaoler ever spoken to you on the subject? The gaoler was in company with the Sheriff when the Sheriff spoke to me about these boys I have now in charge.

2930. Have they ever conferred with you as to the desirableness of instructing the prisoners who are sent there? Yes, when visiting the shop.

2931. What was the result arrived at? I had instructions to give them every instruction, and to see and get them on as well as I could, so that they might be able to get a living when they got out.

2932. Have you known any prisoners discharged whom you have taught? Yes.

2933. How many? One man went out yesterday, of the name of Cotton, who had been under my instructions three months. When he came in he could make only a poor hand of sharpening tools, but before he went out he made six dozen of stonemason's tools.

2934. As he only went out yesterday, of course you cannot say what was the result of your instructions? No.

2935. Have you known the men to make chisels and knife blades? No, except chisels for the use of the establishment.

2936. *By Mr. Morris:* Did you, in the course of your duty, come in communication with Mr. Harrison, the principal turnkey, in the morning? Yes.

2937. Early in the morning? No, not early in the morning.

2938. Did you always find him out of bed when you wanted him? I never wanted him early.

2939. Were you ever at the gaol at six o'clock? I do not think I was; seven is my hour.

2940. *By Mr. Sutherland:* Do the prisoners who have been in the gaol some time get any money when they leave it? They used till lately. I recommended this man Cotton to Mr. Read for something; but it appears there was no money, and he got nothing from the gaol.

2941. Has any one got any money on your recommendation? I believe so, from what I have heard. I have never heard from the parties going out that they got it.

2942. You have recommended that certain parties should get money on going out of the gaol? Yes.

2943. Can you state the amount you have recommended? I never recommended any amount.

2944. What have you recommended? I have recommended them for anything that Mr. Beverley might think they deserved for their services.

2945. When you have recommended them to Mr. Beverley have you not recommended what they should get? No.

2946. What has been the recommendation you have given them? According as they behaved. I have recommended them as behaving well; if they have been industrious, I have recommended them as industrious; if they have improved, as improved under my charge.

2947. It has been the practice in the gaol to give those parties who have been industrious while there an amount of money on leaving? I believe so.

2948. How many parties have you recommended since you have been there? I could not state.

2949. Are there any records to shew the number? I think not.

2950. *By Mr. Hart:* Where does the money go that is received for the articles made in the gaol? I do not know. Any work I do is for the Government departments.

2951. Are you aware whether the money is kept apart as a fund to be distributed among the prisoners? No.

2952. Have you inspected the new works in course of erection? The foundation only is laid.

2953. Have you seen the plans of them? Yes.

2954. What are the main features of the workshop for your department, according to the plan? A double hob at each end of the shop, with two fires each, an open front, and the back closed, with a ventilator at the top.

2955. How many anvils? Four.

2956. Will that be sufficient? That is one more than I have at present.

2957. Do you think the provisions of the new workshops will be sufficient for the men likely to be placed under your charge? I think so.

2958. For eight prisoners? I could employ eight at the fire and two or three vicemen, according to the way that the bench might be fitted up.

2959. Is the yard likely to be cramped for room by reason of the erection of these workshops? I think not.

2960. Are they near the outer wall of the gaol? Not so near as the present workshops.

2961. What will be the space between the back of the workshops and the outer wall? That I have never measured, but I think about eighteen or twenty feet.

2962. Would it not be comparatively easy for prisoners to escape by placing a plank from the back of the present workshops to the coping of the wall? I believe it would be, for they have effected an escape in that way from what was formerly used as a dead-house.

2963. What is the space between the present workshops and the wall? I do not think it is more than six or eight feet.

2964. What is the distance from one of the chimneys to the top of the wall? Not more than a couple of feet more; but the chimney is made of oil drums, it is not a brick chimney.

2965. From the rubble part what would be the distance? The rubble part does not come as high as the roof. (*Vide Addendum.*)

2966. By placing a plank from the top of the workshop to the wall it would be easy to escape? I think so.

2967. Is any warder on duty at night there? There is one man, I think; there used to be one man.

Mr. S.
Howarth.

28 Feb., 1861.

Mr. S.
Howarth.

28 Feb., 1861.

ADDENDUM.

(Answer No. 2965.)

Since giving the above evidence I have examined the workshop, and find there is a portion of rubble work above the roof; but this would in no way facilitate the escape of prisoners, as it rises perpendicularly from the wall of the building.

Mrs. Margaret Cullen called in and examined:—

Mrs. M.
Cullen.

28 Feb., 1861.

2968. *By the Chairman*: You are principal female turnkey in Darlinghurst Gaol? Yes.
2969. How long have you held that situation? About six years last December.
2970. Have you held the situation of principal female turnkey all that time? No, I have had that five years.
2971. You filled some other situation in the first instance? Yes, I had charge of the top ranges which the other turnkey has now.
2972. Are you married? Yes.
2973. Is your husband living? Yes.
2974. Do you live outside of the gaol? No, I live in the prison; I have not been living with my husband the last eight years.
2975. Have you a family? Yes, three children.
2976. Are your children living with you in the prison? Yes.
2977. What are their ages? The youngest going on of nine, my little boy going on twelve, and another girl going on fifteen; she is not quite right in her intellect.
2978. Is she living with you? Yes.
2979. What are your duties as principal female turnkey? The principal duty is to look after the work of the female prisoners. The work that is not cut out I have to cut out and prepare for the female prisoners to work; I have to keep an account of that, and give a return to the clerk of what they do, and the prices charged for the work. I have also all the prisoners' clothing to cut out, and get made for them.
2980. Are not you responsible for the general supervision of the female ward? No; there are two free turnkeys who have charge of keeping the place clean, attending the prison, of locking up the prisoners, and unlocking them in the morning.
2981. There are two female turnkeys? Yes; they have charge of each range, and of keeping the wards clean.
2982. As principal turnkey, are not these other turnkeys under you? No, not with regard to that duty.
2983. Do I understand then that you have nothing to do with the safe custody of the prisoners? Yes, I am bound to see them all locked up, and the other turnkeys give me the keys.
2984. But the female department is under you as chief turnkey, is it not? No, I have no charge of the other two turnkeys. Mrs. Beverley sees that they do their duty in the upper ranges; I have charge of the female clothing, and charge of the stores.
2985. Is Mrs. Beverley the matron of the gaol? Yes.
2986. But do not you occupy in the female department a corresponding position to that of Mr. Harrison in the male department? No, I do not; I have no more salary than the other turnkeys. That is my charge—the work of the prisoners, cutting out for them, and keeping them employed. The other two turnkeys have charge of keeping the place clean, and also of seeing that the women are quiet, and walking among them during the day.
2987. Then you are more forewoman of work than principal turnkey? Yes.
2988. What have you to do with the prisoners—have you anything more to do with them than receiving the key in the evening? That is all; if I saw the others not doing their duty, I should report them to Mrs. Beverley.
2989. Are you responsible for the cleanliness of the cells? No.
2990. Have you anything to do with locating female prisoners in particular cells? No; I might be six months without going to the top range, unless a person were violent, and then we should all assist.
2991. Then what you are virtually is forewoman of the work? Yes, that is what I have to do.
2992. Just the same as a forewoman in any other work-room? Yes; I have to cut out the female clothing, or any of the public work I have to prepare for them.
2993. Is there much work done in the prison? Yes.
2994. What kind of work is it? I have brought my book that the Committee may see it. I keep this book, and make a return of the work to the clerk every Saturday. (*The witness handed in the same.*)
2995. This (*referring to a week's entries*) does not appear to be initialed? No; that is kept by myself, and is given to Mr. Wickham every Saturday, and he enters it in his book from mine.
2996. Are not these charges very low—two shillings to make a muslin dress? Yes; that is a little girl's dress—they are charged according to the work on them.
2997. *By Mr. Mate*: What is the charge for making a gentleman's shirt? We made one set, for which we charged 1s. 6d. each.
2998. *By the Chairman*: Is this your handwriting? Yes.
2999. The work is entered by you, and you take this book to Mr. Wickham, who enters these items in his book, and then strikes them out in yours? Yes.
3000. He does not initial it in any way? No.
3001. All the work done is entered in that book? Yes.
3002. How many women have you got in your department working now at needlework? Seven.

Mrs. M.
Cullen.

28 Feb., 1861.

3003. How many prisoners are there altogether? About eighty-four to-day.
3004. Are there only seven out of eighty-four able to do needlework? Yes.
3005. You have nothing to do, then, with any but the seven? Yes, I have all the clothing to give out, and to take in. Before I came out this morning I had to give out clothes to fourteen. I have to take an account of these, and see that I have them all back when they go out.
3006. You have charge of the stores? Yes; I have charge of all the prison clothes, and when they run out, I have to make out a requisition, and shew it to Mrs. Beverley, to get materials to be made up.
3007. What are the names of the other two turnkeys? Mary Barry and Mrs. Hanlon, who has charge of the top ranges.
3008. Are there many of the female prisoners drafted off as servants to the officers of the gaol? Not at present. Mr. Harrison and Mr. Beverley used to have servants, four and five at a time, until he left—until about a fortnight before he left.
3009. Do you remember one of the female prisoners having a child in the gaol? Yes.
3010. Was that woman's name Harriet Stephenson? Yes.
3011. Is she in gaol now? No.
3012. When did she leave? I forget the day.
3013. Not very long ago—six months? More than that—she left on Good Friday morning.
3014. How old was the child when she left? I think about eighteen months.
3015. During the time you have been in the gaol have any other similar irregularities occurred, to your knowledge? Never, to my knowledge, in any part of the establishment.
3016. This woman was servant in Mr. Beverley's house at the time? Yes.
3017. *By Mr. Mate:* Are any women employed at laundrywork? No, unless for the females in the prison. All the women do their own washing in the yard every Saturday. They have no work to do and are allowed Saturday to wash their clothes.
3018. Those women who cannot use the needle have then no work to do? Yes, the women who can do so pick oakum.
3019. Do you not think they might do laundrywork? If we had a convenient place those who could not do needlework might do laundrywork.
3020. *By Mr. Hart:* Who receives the female prisoners when they first enter the gaol? The principal turnkey.
3021. What does he do with them? He takes down their names and he sends up a return. I do not know what he does, for I am not in the office; but he sends up a return, with the names of each person, and then we find whether she is for fourteen days, three months, or whatever it is.
3022. I want to know what is done with a female prisoner when she enters the prison? She is searched by the other two turnkeys.
3023. What is the first step taken after she leaves the charge of Mr. Harrison? She is searched by the two female turnkeys.
3024. Where is she taken to? To one of the solitary cells on the lower range.
3025. Are you present there? No.
3026. That is not part of your duty? No, I am perhaps below receiving work.
3027. What is done with her afterwards? She is put into her class, whatever her class may be, whether labour or confine.
3028. Is she not washed or subjected to any other mode of cleansing? Not unless she is a person we see is not in a fit state to go in among the others; if she is such a person she is put into a bath and has clean clothing.
3029. As a general rule there is no ablution of the prisoners when they are admitted? No, unless the person coming in is so dirty as to need it.
3030. Generally speaking, are the female prisoners clean? Yes, except a few of the older creatures; some of these we are obliged to put in a bath, have their heads shaved, and clean clothes put on.
3031. Where is the bath-house? There is a large bath in such cases which we send for from the male hospital, and we get hot water.
3032. It is a tin bath? Yes; we have no convenience in our department for it.
3033. You have no convenience for washing the female prisoners in the yard? No, except what we get from the male hospital.
3034. What do you do with the clothing that prisoners have on when they enter the gaol? We keep them.
3035. Is the clothing taken by any particular warder or turnkey? By me; I take their clothes and put them into the store, and I give them prison clothes, except the women are allowed to wear their own clothes.
3036. Do you do anything to the clothes before you put them away? The women wash them, and have them clean for me to put into the store. I put their names on them, and give them to them when they go out.
3037. Is the laundry sufficient for all the purposes you have? We have no laundry for the female prisoners; they are obliged to wash their clothes in tubs in the yard.
3038. What kind of tubs? Washing-tubs which we have for the women.
3039. How many have you? Only four at present; but some of these women are going out of the gaol every day, and some of them wash one day, and some another, to get their things ready when they go out. Saturday is the regular day for the washing of the women who remain in.
3040. While the prisoners remain in the gaol, what convenience have they for washing their persons? They have a large trough in the yard, and they wash there if they please; they have also kids in their cells, two towels, a comb, and brush.

- Mrs. M. Cullen.
- 28 Feb., 1861.
3041. How often are the towels exchanged? Every week they have clean towels.
3042. How many prisoners are there in each cell? Generally three.
3043. Then they have two towels for three persons? Yes.
3044. As a rule, do you compel female prisoners to wash themselves from head to foot? Never.
3045. Do you think it necessary? I have spoken of it sometimes, and the women have refused; they said they would clean themselves when it was necessary. We only compel them when we see that they are in a dirty state.
3046. How do you know whether they are dirty? Of course we would see them, and the other women would report them if they saw anything dirty or improper.
3047. Have you any complaints? No, except about two old creatures that we are obliged to keep in separate cells. One of them has been in Tarban Creek three or four times.
3048. Are you a needlewoman by trade? No.
3049. Have you always had the duty since you have been in the gaol, of cutting out for, and of inspecting the needlewomen? No; I was not quite twelve months there when the woman who was in that place left, and then I took her's.
3050. What do you do with the female prisoners who are unable to do any needlework? They remain in the yard.
3051. Are they compelled to do anything? No, with the exception of cleaning the place; some are employed in cleaning the place.
3052. Have you found that the female prisoners frequently return to the gaol? Yes, generally, nearly every one.
3053. Does the system of confinement they are subjected to seem to have any moral influence upon them? I think it would be best if they were sent in for a great deal longer, they would be less trouble to the public. Now they are sent in for fourteen days they do nothing, and we are obliged to keep other women to clean their cells and clothes. If they were sent in for a longer time they would have an interest in keeping their cells and clothes clean.
3054. You think women should be sent there only for long sentences? I do think so, that they might be made useful.
3055. Do you believe that the establishment of a separate House of Correction to which younger offenders could be sent would be beneficial? I do; I do not think a lot of little girls should be sent in to mix with these old creatures.
3056. Is there any classification? No; we are only allowed one yard.
3057. For instance, women who are sent there for crimes—revolting crimes—have an opportunity of mixing with young girls who are in for short sentences? Yes; we have no yards to separate them.
3058. Do you believe their morals are corrupted by means of that communication? I could not exactly say that,—sometimes an innocent good girl comes there who has never been in a prison before, and when she has gone to Court she has been discharged from prison, and I have often thought it was not right to have these mixed up with the other prisoners. These women all sit at the needle-table together.
3059. Is there any system of religious instruction given to these women other than the ordinary services performed on the Sunday? Yes; the clergyman, Mr. Agnew, comes there every Sunday and Wednesday; and the Catholic clergyman comes there every Sunday, twice, forenoon and afternoon.
3060. Are the female prisoners visited by any clergyman individually? No; they come into the class amongst them, both Mr. Agnew and Father Sheehy, the Catholic clergyman, and there they see any one who wants to see them separately.
3061. Is the catechism taught to the younger girls? When the school was there it was, but not at present, except when the Sisters come.
3062. Is there any school at present? No; when there was school the catechism was taught, but that has dropped off.
3063. How long since? Three months.
3064. How did it happen that that was abandoned? I could not exactly say.
3065. Had you any official intimation made to you? *No; only I heard that Mr. Beverley, or the Sheriff thought it a very inconvenient thing, having a number of little children and girls at school. When they had no other work to do,* they used to be taught two hours a day, but Mr. Callaghan the schoolmaster was sent to Berrima, and since that time there has been no teacher, either for male or female.
3066. Have you a library? Yes. I have books given me by Mr. Agnew for the Protestants, and by Father Sheehy for the Catholics.
3067. Is there not a Vote of Parliament for buying books? I do not know. I think the clergymen got them themselves. I cannot exactly say to that.
3068. Do you find that ladies visit the gaol from motives of philanthropy? No.
3069. *By the Chairman*: During the six years you have been in the gaol has any lady ever visited the female department of the gaol from solicitude for the welfare of the prisoners? Yes. I remember Mrs. Alexander and another lady came there to see and take away three girls that were in.
3070. They came specially to see some particular prisoners? Yes, who had been in the Refuge, I believe.
3071. Do you recollect any case of ladies visiting the gaol with the view to the promotion of the general welfare of the whole body of prisoners? Not one, except the Sisters of Charity.

3072.

* NOTE (*By witness on revision*):—My answer was, "The authorities might have had, but we thought it a very inconvenient thing to have the schoolmaster removed, having a number of girls at school when they had no other work to do." (They) &c.

3072. *By Mr. Hart*: How often do they visit the gaol? Once a week, unless it is very wet or bad weather. Mrs. M. Cullen.
3073. Have they visited it lately? Yes.
3074. What do they do when they go there? They instruct all the women and all the children. 28 Feb., 1861.
3075. Are the women collected in any place? In the lower hall. There is a chair placed for each of the ladies, and the girls go to one and the women to the other. They instruct them for half-an-hour, and give them books to read.
3076. I presume these are the children only of their own denomination? No, only them, unless some of the poor women require them to go to the Asylum to see their children.
3077. Generally speaking do you find the women careless of their position, or do they reckon the gaol good quarters? They really do—some of them.
3078. *By the Chairman*: That observation does not apply indiscriminately—all the women do not like being in gaol? No, except the poor old women, who prefer being there to being at the poor-house.
3079. *By Mr. Hart*: Generally speaking are the women careless of being there? No. Some of the women are not—these, I do not think, ever return.
3080. What class of persons are they? People who have never been committed before; some of these, when they have served their time, never return again.
3081. Is there any female prisoner in the gaol at present who has been sent there for keeping a bad house? * I do not think there is in our prison. They generally get their sentences from the Court to Parramatta, on account of our getting so many from the Police Office; we get eight and ten at night.

FRIDAY, 1 MARCH, 1861.

Present:—

MR. HART,	MR. SUTHERLAND,
MR. LUCAS,	MR. WALSH,
MR. MATE,	MR. WILSON,
MR. MORRIS,	MR. WINDEYER.

HENRY PARKES, ESQ., CHAIRMAN.

[The Committee having assembled at Darlinghurst at 6:15 a.m., proceeded to the gaol, when, the gatekeeper opening the gate, they visited the hard labour and confine wings, and yards, in company with Mr. Read, the acting principal gaoler. Some of the prisoners were in the act of leaving their cells, and removing their night-tubs to the privies connected with the several yards, while a portion at the tap, in the confine yard, and others at a stone trough, in the hard labour yard, were washing their faces and hands.] Darlinghurst Gaol. 1 Mar., 1861.

[The Committee having entered the office, the Chairman took the Chair.]

Inspector John Cecil Read examined:—

3082. *By the Chairman*: You are at present Acting Gaoler at Darlinghurst Gaol? I am. Inspector J. C. Read.
3083. When did you take charge of the gaol, and by whose orders? On the 15th of February, at half-past five in the evening, by order of Captain M'Leerie, which was confirmed by Mr. Uhr, the Acting Sheriff.
3084. You have been in that situation since that period? I have.
3085. Without any further instruction that would in any way modify your position, you have still been acting gaoler in a temporary capacity? Yes.
3086. In what condition did you find the gaol when you took charge? I found it almost in its present condition.
3087. As to its general appearance? I have done but little or nothing since I have been here.
3088. The same rules are observed now as were when you took charge with respect to the management of prisoners and the general discipline of the gaol? Yes.
3089. There has been an escape of several prisoners since you have been here—perhaps you will state to the Committee when that escape took place, on what date, and at what hour of the day? On the 25th February, about ten minutes before two o'clock.
3090. Perhaps it would be most convenient if you would go on and detail the circumstances under which you were apprised of that escape? Being here without my family, I boarded at O'Neil's public-house, opposite the Court House. I was there that day as usual to dinner, and on my way back to the gaol, I saw a number of prisoners running across the Court House green, and jump over the fence into the road. I gave them immediate pursuit, knowing them to be prisoners, but at that time having no idea of the means by which they had escaped.

3091.

* Note (*By witness on revision*):—I made a mistake in my answer to the last question. There is a woman in gaol for the offence alluded to in the question; she came from Maitland, and I did not think of her at the time.

- Darlinghurst Gaol.
1 Mar., 1861.
Inspector
J. C. Read.
3091. The pursuit of the prisoners was your first act? Yes.
3092. At what particular distance between O'Neil's public-house and the gate of the gaol were you then? I was not more than three or four yards from O'Neil's public-house.
3093. And you instantly started in pursuit? Yes.
3094. Did you catch any of the prisoners? I caught one at the Sand Hills, a man named Lacey, near where the old turnpike was. I saw eight of them; they turned to the right there. I followed, and as soon as they got on the heavy ground, I closed on them, caught one, and secured him.
3095. Then I presume you returned? I did not wait to handcuff him, but returned immediately towards the gaol. I met a policeman round the corner of the gaol, gave the prisoner into his charge, came into the gaol, and gave the alarm. It was unknown at this time to any of the turnkeys.
3096. The first time you came to the gaol was after you had caught this prisoner, brought him back, and delivered him into the charge of a policeman? It was.
3097. What time elapsed from your first seeing the prisoners escaping till you reached the gaol? I do not think it could have been more than seven or eight minutes from the rate at which we went.
3098. What took place then? I confined the whole of the prisoners to the cells.
3099. That was the instant order when you came in? Yes, from the stockade yard; that was done as the most direct means of stopping any further escape. I also called the roll of these particular men from Cockatoo Island, who were confined here. I managed to get them inside the new wing, but they refused to go to the cells for me, and I had to arm the turnkeys and myself, and force them in at the point of the bayonet.
3100. Had you any difficulty then? Yes; they tried to get close to me, I suppose to get hold of the arms.
3101. They still resisted? Yes.
3102. What was the next step? As the prisoners were coming in, in order to get a description of the men who had escaped, I mustered the men, sent to the Convict Office and obtained the minutest description, which was forwarded to the police stations.
3103. You had ascertained who had actually escaped, by the names being absent from the muster? Yes.
3104. The absent ones being the escapes? Yes.
3105. A few minutes ago you shewed the Committee the place in the wall through which the prisoners escaped? Yes.
3106. Is that the yard which is called by some of the officers of the gaol the exercise yard? It is.
3107. It is called so in consequence of prisoners being sent there for exercise? From the hospital.
3108. State how many prisoners were in that yard when you went to dinner? Eighty-two.
3109. Were they placed there by your orders? By my orders; but they were put there before I came to the gaol.
3110. You were carrying out a regulation which existed before you came to the gaol? Yes.
3111. Who was the turnkey in charge? Elliott and Graham.
3112. At what time in the morning were they placed there? Before seven in the morning.
3113. And, up to the time you speak of, these two men had been in charge of them? Yes; these men are never relieved for twelve hours.
3114. You would, of course, require an explanation from the turnkeys, how the men had succeeded in getting these stones out? I did.
3115. What did they say? They could give no explanation; they said they knew nothing of it.
3116. Did you find any implements which might have assisted their escape? I beg to call your attention to those lying on the floor. *(The witness here directed the attention of the Committee to two iron stays, about two feet and a half long by an inch square, two pieces of iron hoop, and a knife.)*
3117. Have you since ascertained how these men carried on their work to excavate this stone? From observation, I have no doubt in my mind it was taken out with these implements.
3118. Have you succeeded since in satisfying yourself how they did all this without being observed by the turnkeys? Yes; there being eighty-two of them in the yard, the greater part of them stood before the hole so as completely to screen it from the observation of the turnkeys. When I came into the yard, knowing there was a breach in the wall, I had to look along twenty or thirty yards before I found the exact spot, they had it so well concealed.
3119. You had this difficulty in consequence of the manner in which the prisoners were disposed? Yes; and they had several pounds of oakum which they were picking, in order to put down before this place.
3120. The breach made in the wall communicates with the yard immediately at the back of the Court House? By the side.
3121. From which they have no difficulty in getting to the green in front? No; there is only a small wooden railing outside.
3122. What class of prisoners did the eighty-two men consist of who were in this yard? They were convicted of almost every offence in the shape of highway robbery, cattle stealing, housebreaking. There is little difference as regards Cockatoo Island prisoners, they are either sentenced to hard labour or to solitary confinement.
3123. Did these eighty-two men consist of drafts from all these classes? Yes; they were from Cockatoo Island; they were men who had been let out of solitary confinement, and were willing to pick oakum.

3124. But do I understand that this was a mixture of the prisoners? No; they were all from Cockatoo Island; and the order was, that they were not to be allowed to have any communication with the other prisoners in the gaol. Darlinghurst
Gaol.
Mar., 1861.
3125. How many of the prisoners who escaped have been retaken? Fourteen. Inspector
J. C. Read.
3126. Then three are still at large? Yes.
3127. Fourteen were taken the first day? Thirteen were taken the first day, and one the next.
3128. Who are the three who have succeeded in effecting their escape so far? Nicholas Hand, Henry Robson, and George Williams, are still at large.
3129. Do you know the sentences of any of these men? No; not without referring to the books.
3130. Were any steps taken with regard to the turnkeys in charge of the yard that day? No; they were merely questioned about it.
3131. You considered that there was no very great blame attached to them? Yes; from the very fact of my coming into the yard, knowing that there was a breach in the wall, and the difficulty I had to find the breach, I was not inclined to attach much blame to them. Another circumstance in favour of the turnkeys was the easy manner in which the thing was effected. I have heard from the conversations of the prisoners that they did not expect to do it for two hours, and I am satisfied that there were among the eighty-two prisoners themselves some who did not know anything of it.
3132. Have you been able to satisfy yourself what time they were engaged in this operation? It was after one o'clock they commenced—not more than ten minutes.
3133. Have any of them stated? They have stated that they were a very few minutes.
3134. What appearance did this hole present when it was examined at first? It appeared as if it were all done from the inside. There were marks inside where the iron bars were inserted.
3135. Is the inside of the wall sound? It is scarcely sound; it was filled up with rubble and mortar inside.
3136. *By Mr. Sutherland:* Was the wall hollow inside? I could not say.
3137. Is that the stone that came out (*referring to a stone about one foot by and about three inches thick*)? Yes.
3138. Is that the outside stone? That is the stone that was knocked out last. I should say the inside—the centre—of the wall was quite rotten. I found it crumbled in my fingers; it appeared to be filled up, in a great measure, with what is called rubble and mortar.
3139. Was the stone that came out of the wall hard? No, quite soft, it crumbled in my fingers.
3140. *By the Chairman:* Since you have had charge of the gaol, have you had any occasion to complain of the conduct of any of the turnkeys acting under you? I have.
3141. More than one instance? In two instances; two or three I have had to check.
3142. Will you state in what instances you have had to find fault? One I found sitting down in friendly conversation with two prisoners.
3143. Who was this? A man named Whiddon.
3144. In what part of the gaol was he situated? In the stockade.
3145. Sitting on a bench? On a form, and a prisoner named Garsed sitting beside him, and a prisoner named Mayne standing before them, apparently in friendly conversation. I mentioned the circumstance to the Sheriff; but no steps were taken for a few days, until I caught him asleep on his post at three o'clock on Sunday morning.
3146. What post was he on? On the gate.
3147. Will you describe in what position you found this man Whiddon when he was asleep? I noticed at first, about nine or ten at night, that he seemed very dilatory. He had the gas turned down, and was lying down at that early hour. I said that was not a fit position for him to be in, that I should expect him to be very much on the alert, and I turned the gas on. He had previously turned the gas nearly off, as, I believe, so that he might not be seen by me lying down.
3148. That was at nine o'clock? Between nine and ten. I also noticed that the gate was not properly bolted.
3149. Describe in what way it was improperly bolted? The gate was locked, but the cross-bolt was not drawn, and also the cross-bolt of the outer gate was not fastened, but the door was locked. I had them bolted immediately. I took no more notice of him till three o'clock in the morning, when I missed him calling the hour. I heard the other two sentries, but I could not hear him call three o'clock. I went down immediately, and through the window saw the man lying asleep. I could not waken him, and called the sentry off his post to assist me. In attempting to awake him the gatekeeper, Burke, who sleeps in the lodge, was awakened.
3150. Then you had these two persons present besides yourself? Yes, and Mr. Beverley has told me since that he was looking from his window at the time.
3151. Whiddon was fast asleep? He was fast asleep.
3152. What did you do in this case? I suspended him, put another man in his place, and told him to go, as I would not trust him with the charge of the place.
3153. Is the lodge of Burke, the gatekeeper, between the outer and inner gate? He sleeps over the gate—his lodge looks into the gate. He looked out of the window and said, "Is anything wrong, Sir?" I said, "Yes, Burke; dress immediately and come down."
3154. Did any altercation take place between you and this man at the time? No, only I said, "I wonder after all the caution I have given you—if you had done this in the army you would have been shot for it." When he wanted to excuse himself, I said, "It is of no use trying to excuse yourself, if you had done this in the army you would have been shot."
- 3155.

- Darlinghurst Gaol.
1 Mar., 1861.
Inspector
J. C. Read.
3155. Do you recollect whether you swore at him—whether you used any oaths? No, I am not in the habit of doing so.
3156. You say there were some other officers? Yes; Fallon, the turnkey, and Burke.
3157. You say there were some other officers against whom you had had cause of complaint? Rispen; the complaint was not from me. There was a letter brought to me by Burke, and he said, "I think I know this writing—I think I have seen it frequently come to Mr. Harrison, and it is now directed to Rispen, as Harrison is gone; I believe it is intended for a prisoner named Polack." I enclosed the letter directly and sent it to the Inspector General of Police, and have since been informed by him that it was for the prisoner Polack.
3158. But you have not seen the letter since you sent it? No.
3159. *By Mr. Hart*: Is it not the practice to open letters coming to the prison? To prisoners; not to free officers.
3160. This then was addressed to Rispen, but Burke had a suspicion that it was really intended for Polack? Yes.
3161. He thought letters in a similar handwriting had come, through Harrison, for Polack formerly? Yes. I have since heard Rispen spoken to by the Under Sheriff upon the subject; and he acknowledged that he had previously received a letter from Polack's wife intended for the prisoner, and that he went to her house to ask her why she wrote to him. I consider the excuse made to the Under Sheriff a very bad one; the going to her house shews duplicity.
3162. With regard to the other turnkeys, are you satisfied with their general character, judging from the conduct of the officers since you have been here? From the short time they have been under my charge I should not like to give any positive opinion.
3163. Have you seen any traces of insobriety? No. I consider Mr. Callaghan, who is acting as principal turnkey, a very good man; and also Burke, the gatekeeper, I think a good man. These two I have had a great deal of assistance from. The other men I am not so well able to speak of.
3164. Are they men of fair intelligence and activity? Yes.
3165. Men in the prime of life, or advanced in years? Yes, I should say Burke is under forty years of age.
3166. Speaking of the whole of the turnkeys? Some of them are rather elderly men. There is one named Armstrong.
3167. My former question—whether they were men of fair intelligence and activity—applied to all? I cannot say anything against them. In fact, my observation has been so little that I should not like to express an opinion of them.
3168. Are they men not likely to be deceived by artifices? I should not like to give an opinion. I should confide a great deal in two of them; but the others I should not like to give an opinion of at present.
3169. Have you caused any new regulations whatever to be enforced since you have been here? Very little, with the exception of keeping the turnkeys more on the alert.
3170. You have not attempted to introduce any new arrangements? I have not.
3171. In consequence of being under the impression that you are here only from day to day? That is it precisely.
3172. Have you any reason to believe that the prisoner Polack was treated differently from the other prisoners, previous to your arrival here? I have heard he was.
3173. He does not get any different treatment now? Not the slightest; he is kept in the hard labour yard, and has got his oakum to pick the same as the other prisoners.
3174. You say you have heard that he was differently treated before you came here—have you any objection to say from whom you heard that? From Mr. Callaghan.
3175. *By Mr. Hart*: Have you had any changes in the turnkeys or warders since you have been here? Yes; I have had two or three new turnkeys since I have been here, and I have had an additional one.
3176. Do you consider that the present staff of the gaol is sufficient to take care of the prisoners? Not with the Cockatoo Island prisoners; and I believe the present staff is, under any circumstances, under that they would have in Europe.
3177. Do you observe any laxity in the conduct of the warders—anything in the conduct of the warders different from what you have observed in European prisons? I think the warders are not so smart; they are rather slovenly.
3178. *By Mr. Windeyer*: Were you ever in the large prisons in England? I used to visit all the gaols in London. I was inspector of police for seventeen years.
3179. *By the Chairman*: What capacity did you fill prior to being appointed here? Inspector of the Sydney Police, in charge of the B division.
3180. How long have you filled that situation? Going on for six years. Ever since I have been in the Colony.
3181. Were you engaged for the police service here? Yes, I was appointed in London an Inspector of Police for New South Wales.
3182. Prior to that what situation had you filled? Inspector of the London Police for upwards of fifteen years, for which I receive a pension.
3183. *By Mr. Hart*: Do you consider that the practice of the warders being compelled to mix with the prisoners, on the same floor, has a demoralizing effect upon the officers? Certainly not, if the warders do their duty—if the warders keep their proper place.
3184. Would it not be better if they had a raised platform on which to patrol? They might watch the prisoners better by that means, and it would also be a means of safety if they were armed; but at present I should be timid of giving the warders arms, lest a number of the prisoners should close round them and disarm them. If they were on a raised platform they could not do that.

3185. Suppose a platform were made to run round the wall outside, would that be an improvement? I do not think it would; it might possibly be made a means of escape. I think there might be raised watch-boxes in the yard, which would answer the purpose better.

Darlinghurst
Gaol.
1 Mar., 1861.

Inspector
J. C. Read.

3186. Is there any watch kept outside? None by the gaol authorities.

3187. Would it be desirable that there should be? I have known at the gaols in Ireland a guard of soldiers to be kept, and sentries to be placed outside to prevent escapes, or any communication being made with the prisoners. I may mention that at Darlinghurst three men were apprehended by the police for throwing things into the gaol.

3188. Of course that has an injurious effect on the prisoners? Certainly; I have no doubt they throw over these implements which are found upon the prisoners daily after being continually searched. This (*producing a small parcel*) was thrown over the wall last Sunday, and contains a pipe, tobacco, a reel of cotton, and some paper for writing. (*The witness produced various tools.*)

3189. *By Mr. Windeyer*: What is this little article? A saw; it was found on a man named Lee, a Cockatoo Island prisoner. He was searched, and these two saws and a part of a file were the result. He is one of the most desperate men here.

3190. *By Mr. Hart*: When was he searched? About half-past nine in the morning, yesterday.

3191. Do you make a practice of searching the prisoners before they go to their meals? Sometimes they are searched in the morning, but more frequently at night when they are being locked up.

3192. How do you describe these instruments which were found upon Lee? Portion of a frame saw and part of a file.

3193. *By Mr. Windeyer*: Where did he keep such an article as this large saw? It was found in his cell in a corner. He has been in solitary confinement.

3194. How long do you suppose he might have had that saw with him? I think he got it the day before.

3195. From some other prisoner? My impression is that he got it in his soup. I noticed some wardsmen carrying up soup to this prisoner, and I cautioned the warder, Armstrong, to be very careful of this prisoner. Yesterday I had his cell searched and found these.

3196. *By Mr. Hart*: Are the cells searched periodically? Yes.

3197. Are the prisoners searched each day? When there is time—sometimes there is not time.

3198. Would you recommend that a sentry or patrol should be employed outside? If these prisoners were removed I think there might be a couple of policemen outside.

3199. On the north and south sides? On all sides it would be desirable; but I suppose they could not afford four men to watch these walls, as these four would mount up to twelve, having three reliefs. I have here the leg-irons which were worn by Barnett Levi (*the witness produced the same*), they are partly sawn through. The prisoners are allowed to wear a strap to keep the irons from the ground, and he managed to put the strap so as to conceal the part that was sawn through. I had his irons very carefully examined and found out this.

3200. What is he in here for? For repeated acts of robbery.

3201. *By Mr. Windeyer*: What do you suppose he effected that with? With a saw file.

3202. Have you found that since? No; this has been done some time. I think his reason for doing this has been to enable him to take off his irons at night. Many of the prisoners slip off their leg-irons. One of the prisoners who escaped was in irons, which he left behind.

Mr. James Callaghan called in and examined:—

3203. *By the Chairman*: You are a turnkey in this prison? Yes.

3204. How long have you been so occupied? About ten or eleven days.

3205. Who appointed you? Mr. Chr.

3206. On the 25th February what duty were you upon? My post was the south wall in the garden.

3207. Is that in the yard at the back of the hospital? Yes.

3208. How many prisoners were there in the yard at that time? I think there was ninety some odd.

3209. Did anything take place that day? I did not know until the men—they shouted out.

3210. Did anything take place that day? They were dancing, some picking this rope-yarn, some singing, some reading, some lying down.

3211. Nothing else took place? Not at that time.

3212. And at night I suppose you locked up all your prisoners as you received them in the morning? No, not as I received them in the morning.

3213. Were there any short? Yes, there was, but I forget the number.

3214. If nothing took place during the day, what became of them? They made their escape.

3215. Surely that was something remarkable—will you tell us how this escape was effected in your own way, as briefly as you can? Between the hours of two and three, or twelve and two.

3216. Did they scale the wall, or how did they escape? They made a hole at the bottom and got out; they did not go over the wall.

3217. Who told you they were making this hole—how did you, as the turnkey, become aware

Mr. J.
Callaghan.

Darlinghurst aware that they were escaping through a hole in the bottom of the wall? Mr. Read came in and ordered the prisoners all to be locked up.

1 Mar., 1861. 3218. And you knew nothing about it until Mr. Read came into the yard? Not a ha'p'orth; there was such a load of men in the yard that we could not see what they were doing.

Mr. J. Callaghan. 3219. *By Mr. Windeyer*: Were you in the yard? I was in the sentry-box at the big end of the wing.

[Mr. Read.]

[*Mr. Read* said, One thing I did not state, when I was examined just now,—that I visited these men at one o'clock, and that I also looked from the window of the wing overlooking the yard, and that everything seemed then correct, and in the usual state.]

Mr. Alexander Elliott examined:—

- Mr. A. Elliott. 3220. *By the Chairman*: You are a turnkey in this gaol? Yes.
3221. How long have you been engaged as a turnkey? Between three and four months.
3222. Who engaged you? The Sheriff.
3223. Mr. Brennan? Yes.
3224. What situation did you fill before you came into the gaol? I was a shoemaker.
3225. Working as a journeyman shoemaker? No; working for myself on the Botany Road.
3226. Were you on duty on the 25th February? Yes.
3227. What duty were you charged with? With the men in the yard at the back of the hospital, on the south side of the wall.
3228. How many men were in the yard on that day? Eighty-two.
3229. Do you count them when you take charge of them, or have you some return of the number? The men who have charge of them in the wing count them out.
3230. Do you get the numbers by word of mouth, or in writing? By word of mouth.
3231. How were the men employed during that day? In picking oakum.
3232. Were you in charge during the day till four o'clock in the afternoon? Yes.
3233. Did you return eighty-two men? No, seventeen short.
3234. Did any thing remarkable occur during the day? Yes, the same as every other day, singing and whistling and all like this.
3235. What did you do with the seventeen men? The men all escaped, as I believe, through a hole at the bottom of the wall.
3236. How did you become aware that they had made this hole and were escaping? By Mr. Read.
3237. You knew nothing about these men escaping till Mr. Read came in and told you? No.
3238. At that time their number was lessened by seventeen? Yes.
3239. You had not noticed these men escaping? No.
3240. Was this hole on a level with the ground? Yes.
3241. Would not the men have to lie down to creep through it? I believe they would very near have to do it.
3242. Would it be possible for any man to creep through that hole without lying at his full length on the ground? No.
3243. Does it not seem singular that without your seeing it these men could lie at their full length on the ground, and project themselves through this hole? I will explain that. I was at a distance away from these men at the bottom end of the yard, at the east end, and it is a fashion these men have got when they come into the yard at first to put their bags at the top of this little fence, there may be an inch or not an inch between the battens of this fence; and then the men have a fashion of getting their backs against this fence, and they will commence talking and playing marbles, and more picking oakum; and then another lot got in the middle of the yard between the fence and where this hole was made, and then a lot was sitting round by the hole, and more was on a form, and a whole lot were standing up and a man was standing out reading to them—and this was the way I was taken in by them.
3244. *By Mr. Windeyer*: You were outside the fence? Yes.
3245. *By Mr. Hart*: Are you on duty at night? Yes.
3246. Are you supplied with firearms, or any means of defence? Yes, with firearms; a carbine and bayonet.
3247. Did you ever fire it off? Never.
3248. *By Mr. Morris*: Do you know how to use firearms? Yes.
3249. *By Mr. Hart*: Have you ever tried them? I never tried any of the firelocks here.

[The Committee visiting the stockade yard,—]

John Williams examined:—

[Having desired to make a statement.]

- J. Williams. 3250. *By Mr. Windeyer*: You are one of the men who were sent here from Cockatoo? Yes, seven months ago. Me and six men came here in the month of August.
3251. You are not one of the men who were sent here for the late general disturbance? No.
3252. What was your original sentence to Cockatoo? Fifteen years with hard labour, and three years in irons.
3253. You wish to make some statement? For the time I have been on Cockatoo I have been very unfortunate, I have received a deal of punishment—this has all originated from oppression. I have been on Cockatoo seven years, and I have received some six years addition,

- addition, all in extension to my original sentence. This prejudices my position in two ways, first by the probation that I have to do for it, and then it acts in extension to the judge's sentence. I believe I have been represented as a bad character, and one who could not keep out of trouble; but for the time I have been in this establishment, I believe, I have conducted myself to the satisfaction of the authorities. I have been now eight years in bondage, and I have got, from the way they will bring these charges against me, seven years to do.
3254. How do you wash yourself? I generally steal a wash in the cell in a kid.
3255. Why do you wash in that way? As a preventive against vermin. One day, I was washing in this yard after another man, and I felt an itching in my neck, and caught two lice. It is a customary thing. It is a dangerous thing for a man to wash according to the system they have.
3256. Who tried you originally? Judge Stephen, on the 6th February, 1854, in Sydney.
3257. What for? Highway robbery.
3258. With violence? Yes.

[The Cockatoo Island prisoners having chosen two of their number to represent their alleged grievances,—]

+ James Arnott examined :—

[Brought from his cell in the new wing.]

3259. *By the Chairman* : I may state that this Committee is appointed by the Legislative Assembly to inquire into the state and management of gaols, and not into the justice of sentences. We understand that you have been selected by your fellow prisoners as a delegate to make some representations to us; if you have, therefore, any statement to make, with reference to the discipline and management of the gaol, we are willing to hear you? I wish to know first if a statement forwarded from here were received or suppressed. It was sent to the Sheriff; one communication was addressed to Mr. Lucas, and the other to Capt. Scott. When we had completed our fourteen days solitary, we received permission from Mr. Lucas to write to him, and we did so, and the principal of our grievances were contained in that statement.
3260. That was addressed to Mr. Lucas, but was received by him only yesterday, and has not been communicated to us? Would it not be possible for that statement to be forwarded to the Committee?
3261. Does that include all you have to say? Nearly all.
3262. You do not wish to add anything now? Any more than that I hope the Committee will try and do something for us. This system is a most oppressive system.
3263. Is there anything else you wish to say? No; I think I will not encroach upon your time, when you are going to get the written statement from Mr. Lucas.
3264. It does not appear to have come into Mr. Lucas' hands till yesterday? It was about the 20th January when it was sent to Capt. Scott, in one statement, for his perusal.
3265. *By Mr. Hart* : Have you any objection to go to work? No; I think the generality of the men would have no further objection. As the Committee have taken up the thing, we think something will be done.
3266. *By Mr. Lucas* : You think they will not object to go back to the island? No; we have been put under a piece of oppression for the last three days, in consequence of some of the men trying to get away.
3267. *By Mr. Hart* : Do you consider it to be a greater punishment to be at Cockatoo Island than here? There is no difference in either place.
3268. Is there more discipline here than at Cockatoo? I think not.

Henry Clarke examined :—

[Also brought from his cell.]

3269. *By the Chairman* : Are you one of the men who came from Cockatoo Island? Yes.
3270. The gentlemen who are here constitute a Committee of the Legislative Assembly, appointed to inquire into the state and management of the gaols, and they understand that you wish to make some statement? Yes. I do not know whether you received some papers from me last week; I wrote a statement and handed it to the Sheriff, to be forwarded to you.
3271. To be forwarded to the Committee or to me? To the Chairman of the Committee.
3272. I have not received any such statement? Will you call the gaoler, I handed it to him.

[The Chairman retired a short distance, and after speaking to the acting gaoler, returned.]

3273. The gaoler has forwarded the statement to the Sheriff's Office, but we have not received it yet? I sent these papers about ten or eleven days ago.
3274. We will obtain the statement if it be in the Sheriff's Office—does that contain all you wish to say? Yes.
3275. Have you anything you wish to state now? I have been on the island four years the 15th of this month, and of all the grievances we have there, the greatest thing is the partiality shewn to one class of individuals more than others. There were two hundred men employed for a period of ten months at the building of a house on the island. Not one man was at work at the dock; only about thirty—that was one day in June, there was a Committee on the island that day; and about thirty men were put to work at the dock that day. The moment the Committee left the island, both men and tools were ordered up to the

- Darlinghurst Gaol. 1 Mar., 1861. H. Clarke.
- the Superintendent's house. This house was commenced in August, 1859, and was not completed for the Superintendent to go into until the 4th October, 1860.
3276. *By Mr. Hart*: Was the fact of the Committee going over to the island signalled? It was known on Saturday evening that the Committee was to be there on Monday.
3277. What is the substance of your complaint? The partiality shewn to the prisoners on the island, principally by the chief warder and the Clerk of Petty Sessions.
3278. Is it to certain individuals or to individuals of a certain class? To certain individuals. One man came to the island—Handcock—in 1857; he was not long there before he was placed as a servant to Mr. Keilor; while he was there one of the children falls into the river, and he, of course, as any other man would have done, saved the child, and claims the reward, which he gets. He is then sent on the public works for a fortnight, and is transferred to the clerk—to Mr. Taylor—he is there for a few months, gets beastly drunk, makes use of the most filthy and obscene language, and is placed in the cell for one night; next morning he is released from the cell, sent back to Mr. Taylor, and is never brought under the Police Magistrate's notice; he remains with Mr. Taylor four or five months, till they are sick of him, and can keep him no longer, and he is then sent to the works; he is then sent to the dispenser, and remains with Mr. Macdonald till he obtains his ticket-of-leave. He abuses his ticket-of-leave, is sent back, and Mr. Macdonald takes him again. That is one of the instances. Another man, of the name of Alexander Gibson—
3379. Are these things in your written statement? Yes.
3280. *By Mr. Hart*: Have you made any complaint in your statement of the remission of sentences and non-remission of sentences? I am not under that system; I am under the old system; I ought to have obtained a ticket-of-leave before this.
3281. *By the Chairman*: You have been on the island some time? Four years.
3282. State, without reserve—without any suppression of the truth—what is the conduct of the prisoners in the dormitories, where they sleep at night? I never saw an instance of immorality. I have heard several little rumours concerning the like.
3283. Have you ever heard obscene language? I have, repeatedly.
3284. Are not the men, more or less, kept awake in the night through the crowded state of the place? Yes. The bugs are a great nuisance—a most terrible nuisance; in fact, the ward has to be stoved four, five, and six times, and whitewashed, during the summer.
3285. What is the state of the atmosphere in the ward at night—how have you experienced it? I have been lying with nothing but my shirt on, and all of a muck sweat.
3286. Have you felt oppressively bad smells? Dreadful, especially the first thing in the morning.
3287. Do the men ever get out of their berths? Yes, to walk about.
3288. Naked? Naked; nothing, only their shirts on.

Edward Power examined:—

[Brought from his cell, having expressed a wish to speak to the Committee.]

- E. Power.
3289. *By the Chairman*: What is it you wish to see us about? About the irons, and being confined in the cell. Last Tuesday week I was brought down from Parramatta, and was picking oakum in the yard until last Monday, and since that time I have been ironed, and kept in a cell. I know no reason for it, unless because I saw other men going through the bolt, and I could not prevent that without having my head broke, or being killed perhaps.
3290. You were one of the prisoners in the yard at the time? Yes.
3291. You did not attempt to escape? No, it would not answer my purpose. I have a wife and family to see after.

[Certain prisoners desiring to give information of a very serious character, Committee proceeded to the lower hospital.]

Frederick M'Gregor, *alias* Lawry, called in and examined:—

- F. M'Gregor.
3292. *By the Chairman*: You are one of the prisoners who came from Cockatoo Island? Yes.
3293. The Committee understand that you wish to make some statement to them? Yes, I want to make a complaint about the men on the island.
3294. When did you go to the island? Two years and six months ago.
3295. For what offence? Horse stealing.
3296. Who tried you? Judge Callaghan.
3297. At what place? Bathurst.
3298. How were you employed during the time you were on the island? In the building gang.
3299. Doing what? Drawing stone and winding the windlass.
3300. You mean you were employed in getting the stone ready for building? Yes.
3301. Where did you sleep? In No. 1 ward.
3302. How many persons slept in that ward during the time you were there? Sixty or seventy.
3303. You have stated that you do not wish to go back to the island—on what account is that? Vice—sleeping with one another like man and wife, and all sorts of beastliness.
3304. Do you state unhesitatingly, and of your own knowledge, that the men have slept together? I am confident of it. I have seen it too often; it has made my blood run cold. I have never been used to such things. I have been in the bush all my life.
3305. Do you mean that you have seen acts of sodomy committed? Yes; there are only a few battens between us, and men around us, and I could not help seeing it.

3306. Will you describe what you have seen on any one occasion—describe what particular occurrence you saw at any particular time, or what you have witnessed during the whole night? I was a wardman for eight months on the island, and I was supposed to stop up all night, and the men, when I turned my back to go down the passage, would get out of their berths and go into others. Darlinghurst Gaol. 1 Mar., 1861. F. M'Gregor.
3307. Tell us what your duty was as wardman? To sit up all night, and parade up and down between the berths.
3308. What have you seen during the time? They have been running into one another's bunks, and I could not stop it; they have threatened to knock my brains out with the boards if I attempted to stop them, or to report.
3309. What have you seen them do—speak plainly? Go into one another's berths—and all sorts of bad language—I have taken a light and caught them in the act of sodomy.
3310. *By Mr. Wilson:* You have yourself caught them in the act of sodomy? Yes.
3311. *By the Chairman:* You have taken a light to the berth and seen men in the act of unnatural connection? Yes.
3312. You have no doubt about it? No, not the least.
3313. Have you seen that on more occasions than one? Yes.
3314. What have you said? I have said I would report them, and they have said if I did they would knock out my brains with a board.
3315. Would conduct of an unseemly nature be going on all night—I do not mean such conduct as you have described, but talking about such things? Yes; talking about it all night.
3316. Were the men exposing their persons? Yes, and going about stark naked in the wards.
3317. Making obscene displays of their persons? Yes.
3318. Do you recollect what particular prisoners they were who did those things? Yes, I remember several: _____ was one, and a man who has gone away; _____ was another.
3319. You say that when you were wardman you have gone with a light to a berth, and seen prisoners in the act of unnatural connection? Yes, I have.
3320. Do you remember who these prisoners were on any occasion when you have caught them? Yes.
3321. Will you state who they were? _____ and a young fellow named _____.
3322. Is he in the gaol just now? Yes.
3323. How long has _____ been on the island? Twelve or thirteen months.
3324. Who was the aggressor in any act of that kind—which was the passive and which was the active party? _____ is a filthy beast of a man; perhaps three or four men go into his berth in a night.
3325. You understand my question—which was the active and which the passive party? Yes.
3326. You say _____ is "a filthy beast of a man"—what do you mean by that? The men are going with him all night; as one man gets up another goes.
3327. You are thinking of the serious import of what you say? Yes.
3328. Have you known others besides _____ who have gone with _____ as if he were a woman? I do not know his proper name, but he is nicknamed _____. His nose is all on one side of his face.
3329. Any one else? Yes; one man who has gone away, _____. I believe he is away.
3330. Any one else? Yes; a man of the name of _____; he has lost two fingers on one hand.
3331. Is he here? No; he has gone with his ticket.
3332. Have you seen these men with _____? Yes.
3333. Have you seen them committing acts of sodomy with _____? Yes.
3334. Have you seen any one else? Yes; there are others, but I forget their names at present.
3335. Have you seen the same kind of criminality between other men where _____ was not concerned—where some one else was the submitting party? Yes; plenty.
3336. Can you mention any names? A man of the name of _____.
3337. This person, _____, also submits himself to the improper liberties of these men in the same way? Yes.
3338. Prostitutes himself to them? Yes.
3339. Are both these men, _____ and _____, young? Yes, very young.
3340. How old is _____? One or two and twenty.
3341. How old is _____? About nineteen.
3342. I should gather from what you say, that _____ is a complete prostitute in the hands of these people? Yes, he is.
3343. _____ in the same way, but to a less extent? Yes.
3344. Do you know of any other cases? Yes; a man of the name of _____, who was brought over here some time ago.
3345. Who also submitted in the same manner as _____, who acted as a common instrument for the besial gratification of the other prisoners? Yes.
3346. Is he here now? I think he is in Parramatta, he came over with eight men who were brought from the island some months ago.
3347. Have you yourself seen men having connection with _____ or _____? Yes; I have seen a man named _____ frequently with _____, even on the works in the daytime. I have seen them on the works in the daytime, with their clothes down, and one having connection with the other.
3348. In that ward was the conduct of the prisoners generally very obscene and repulsive? Yes,

- Darlinghurst Gaol.** Yes, very much so. I took some of them to the office at one time—four of them for obscene conduct—but before I got to the office, they threatened that, if I prosecuted them, they would knock my brains out. So that when I got to the office I was afraid to make the complaint.
- 1 Mar., 1861.**
- F. McGregor.**
3349. When was that? Fifteen or sixteen months ago, perhaps more.
3350. I suppose these enormities you have just mentioned are limited to a certain number, only a few comparatively indulge in these beastly practices? Yes.
3351. All the prisoners do not? No.
3352. Speaking of the whole of them, are obscene language and obscene displays of the person common among them? Yes, very common.
3353. You say you have seen them run about naked in the place between the berths? Yes.
3354. Is that done by many? I have seen four or five different men at a time.
3355. *By Mr. Hart:* Were any overtures ever made to yourself? No, they kept all at a distance from me; none of the men like me; they threatened to knock my head off.
3356. How did it happen that the men did not see you when you were coming up with the light? They would not move; they did not care whether I came or not; they knew they could bounce me.
3357. Did you ever report any of these circumstances to the authorities? No, I was frightened.
3358. Is this the first time you have made any statement? Yes, and I would not do so now only I do not want to go with them or to associate with them.
3359. You would sooner be in this gaol? I would sooner be anywhere.
3360. Did you ever see any clergyman at the island? Yes.
3361. What clergyman? Mr. Agnew.
3362. Did you state any of these circumstances to him? No, I never spoke to him on the island; I was afraid to speak to him, or to any free man, for fear they should think I would speak about them.
3363. *By Mr. Walsh:* Were you on the island before _____ came there? Yes.
3364. How soon after _____ came there did you observe anything? About a week or ten days.
3365. *By the Chairman:* Are you a native of the Colony? Yes.
3366. Where do your parents reside? They have both died since I came to Cockatoo.
3367. What occupation were you following at the time you were apprehended? Horse-breaking.
3368. You are not any trade? No; my proper name is Lawry.
3369. You have been brought up to horse-breaking? Yes; I have been among horses and cattle all my life.
3370. Were you ever in a place of this kind before? No.
3371. Were you ever arrested on any charge? No; and my prosecutor told me that when I had done my twelve months he would come and try to get me off.
3372. Who was your prosecutor? Mr. John Linton, of Murrumbidgee.
3373. You had five years sentence? Yes.

George Jones examined:—

- George Jones.** 3374. *By the Chairman:* You came here from Cockatoo Island with the insubordinate prisoners? Yes.
3375. Under what sentence are you suffering? Five years.
3376. For what? Forgery.
3377. Who tried you? Judge Callaghan.
3378. When were you tried, and where? On the 8th November, 1859, at Albury.
3379. You wish to make some statement to this Committee? Yes; I wish to know if they will allow me to remain in this gaol; I do not want to be mixed up with the people on the island any more, for I have had to see things there that it is not fit for anybody to see.
- [The Chairman requested the witness to be specific in his statement—the witness proceeded.]
- I have seen _____ go into a man named _____ bunk, in No. 1 ward, and there commit sodomy—it is about seven months ago now.
3380. Did you ever see that crime committed more than once by those two persons? Yes, once or twice.
3381. Did you ever see that crime committed by any other prisoners? No, not on the island.
3382. You have no doubt that you saw _____ commit that crime on the person of _____? No; I am ready to swear to that.
3383. You would swear to that on oath in a Court of Justice? Yes.
3384. How long ago was that? About seven months ago.
3385. You are aware of all the consequences if you swear falsely—you know the penalty of the crime of perjury? Yes.
3386. Have you ever seen immoralities in the ward which have fallen short of sodomy, such as obscene exposure of the person—obscene talking? Yes; there is always obscene talking in the wards at night.
3387. Have you ever seen the men running up and down the ward naked? Yes.
3388. Obscenely displaying their persons? Yes; just before we came here I have seen the men running about the ward naked.
3389. If it has been stated to the Committee that the men are confined to their berths during the night, and never come out in the space between the berths, that statement is not true? No.

3390. They do frequently come out of their own and go into other berths? Yes. Darlinghurst
Gaol.
1 Mar., 1861.
George Jones.
3391. Have you frequently seen the men go into other berths? Yes.
3392. You have no doubt of that? No; I have seen it every night in the ward.
3393. It would be impossible for men to go into each other's berth naked without their persons coming into close contact, in consequence of the smallness of the space? It would.
3394. The one entering the berth would, in fact, have to pass over the other? Yes. There is one man in the gaol now, who was removed from the island because it was reported people went into his berth.
3395. What is his name? I do not know his name. The lad had an uncle on the island, and he tried to stop it, but could not; and he was removed over here in consequence.
3396. *By Mr. Lucas*: Was he removed from the island some five or six months ago? Yes.
3397. Have you seen him since you have been here? No; but I believe he is in the gaol.
3398. *By Mr. Mate*: He had an uncle on the island? Yes; an old man of the name of _____; he was sent for horse stealing.
3399. Has he not a father on the island? A father-in-law.
3400. *By Mr. Windeyer*: Have you seen any others besides _____ and this young fellow whose name you do not know? I have not myself, but plenty have seen it besides me.
3401. *By Mr. Sutherland*: They have told you so? Yes.
3402. Can you name those who have told you? Whitaker is one.
3403. *By Mr. Hart*: Were you on good terms with _____? Yes.
3404. Were you in the habit of speaking to him? Yes, I was on friendly terms with him.
3405. Did he ever make any overtures to you? No; but _____ wanted me to comply with his wishes, and I repulsed him.
3406. *By the Chairman*: What did you say to him? When we fell out about the bread, we were put into No 3 ward, and there were so many of us that there was not room for all the men in the bunks; the consequence was, that some of us had to lie on the top. I had to lie alongside of _____, not knowing his character, and he wanted to come into my bed, and I repulsed him.
3407. *By Mr. Windeyer*: Is the man Whitaker you mentioned here now? Yes.
3408. *By the Chairman*: Is there anything else you wish to state? No, only that I wish to remain in the gaol.

James Scope, alias Williams, examined:—

3409. *By the Chairman*: You were at Cockatoo Island, were you not? Yes. J. Scope.
3410. What sentence were you undergoing there? Five years.
3411. For what offence? Housebreaking.
3412. Where were you tried, and by what judge? At Quarter Sessions, by Mr. Holroyd.
3413. When did your sentence commence? On the 25th May last.
3414. Were you removed to this gaol among the insubordinate prisoners in January last? Yes.
3415. We understand that you wish to make a statement to this Committee? Not a statement. I wish simply to stay here, and to state my reason for doing so. The reason that I fell out with the mob of insubordinates was the bestiality that was carried on among the men assembled in the wards at night. (*The Chairman requested the witness to be explicit in his statement.*) The only statement I can make, as the reason why I should not like to go back again among the men, is, because I have seen some acts of bestiality at night—acts of unnatural connection.
3416. Have you seen that? Of course I could not swear that the thing was going on; I can mention the name of one—it was _____; and the name of the other was _____.
3417. Are those both here? Yes; after we got our first sentence for fourteen days, this _____ and _____ had gone back again, and were sleeping on the top of the bunks. These men were a short distance from me; we were allowed to smoke there, and there was a light at the end of the place. I went down to get a light; I looked down; I saw this man pretend to be asleep, and this other one shook himself. I stooped down and pulled the blanket off them, and saw this man _____ with his posteriors in the other man's fork.
3418. Have you seen other acts of a similar character? I have seen others.
3419. About what date was this? About the 23rd of January this year. I had only been about two months in the gaol, for I was kept a portion of my time here, as my friends had petitioned that I might be allowed to stay in this place, and I do not know many of the men's names.
3420. Did you see any other similar act? I never saw an act like that; I have seen other acts, but I do not know half or a third of the men's names.
3421. As to the general conduct of prisoners in the wards at Cockatoo Island, is it obscene and repulsive? It is beastly.
3422. Do men go about the ward naked? Yes. Of course people of our class are not much given to religion, but if you take up a Bible, or any other book, you cannot read with any degree of pleasure; you are annoyed by three or four men in the other bunks. These things I have spoken of I have seen through my bunk. All sorts of obscene conduct in one bunk, and in another bunk another nice scene going on.
3423. *By Mr. Walsh*: Have you observed, when you have been shut in your wards during the day _____? No, I have never seen any of those acts in the day.
3424. Have you never been shut up in the wards in the day during wet weather? No.
3425. *By the Chairman*: Have you heard it mentioned among the prisoners that this boy _____ was in the habit of submitting himself to the beastly use of the prisoners? Yes.

- Darlinghorst Gaol.
1 Mar., 1861.
J. Scope.
3426. Have you ever seen prisoners pointed out who submitted themselves in this manner? I have, but these are ones I could not prove. There is one by the names of _____ or _____.
3427. *By Mr. Morris*: Is he an old or a young man? A lad, or a young man, two or three and twenty years of age. Another one—this is an affair I did not see, but it was related to me by three or four of the men, when I was in the hospital last week— _____ and a young man were standing together. I do not exactly know how to express myself, but he was working the other; he had hold of his person, and worked it so as to cause his seed to flow forth, and there was a mob of people round him. In fact, one of the men up-stairs in the hospital saw it, and one of the men has been down to me and told me about it.
3428. Are you a married man? No. It is quite a common thing to hear these people called Judy This, and Lady That, and Miss So-and-so. It is quite a common thing to see the men called "dustmen" catching hold and kissing them before the men publicly.
3429. That you have seen? That I have seen.
3430. What is _____ called? He goes by the name of "Spot."
3431. Has he any feminine name? No.
3432. Can you state what is the name of _____? Lady Godiva.
3433. Have you ever seen any prisoner kiss _____? Yes, I have seen two or three.
3434. What prisoners? I have seen _____ and _____.
3435. Is this _____ who was appointed as a sort of delegate? Yes, the delegate for the old Act men they term it.
3436. Have you ever noticed that the men who are supposed to be in habits of unnatural association with these treat them more kindly? Yes, they give them everything they require.
3437. Treat them the same as they would girls? The same as if they were women; in fact, they will almost go without anything themselves to let them have it. The names these people are called are only used by those they associate with—they only are allowed to call them. For instance, if I or any other man were to call them so we would most likely be mobbed—so that it is not exactly public. This C_____ is called Miss C_____.
3438. *By Mr. Walsh*: Do the other prisoners know them by these names? Yes; I have been there only two months, and when I, who have been there only two months, know, they must know them. The principal reason for my having anything to do with this falling out affair was chiefly that I might get away from the island, for my friends have a promise of mitigation of sentence.
3439. Were you ever in a position of this kind before? Yes, but not in a place of that description.
3440. *By Mr. Hart*: Are you fond of reading? Yes.
3441. What do you usually read? Almost any book that comes to hand.
3442. The Bible? Yes, occasionally.
3443. Are you given to the study of religion? No.
3444. *By the Chairman*: Are Bibles common on the island? If you take them or your friends send them to you. I had not a Bible for a month till I had a Bible sent from Sydney by my friends.

William Thomas M'Gregor examined:—

- W. T. M'Gregor.
3445. *By the Chairman*: You came from Cockatoo Island here in January, along with the insubordinate prisoners? Yes.
3446. How long have you been upon the island? Two years and four months.
3447. Under what sentence? Six years.
3448. Who tried you? Judge Stephens.
3449. Where? At Goulburn.
3450. Of what offence? Obtaining money under false pretences.
3451. During the time you were on the island how were you occupied? As a shipwright and boatman. I had charge of the dock.
3452. What ward were you in? No. 5.
3453. How many slept there? Forty to fifty.
3454. The Committee understand that you wish to make some statements with regard to immoral conduct on the island—you are in no way connected with another prisoner in the hospital named M'Gregor? No, I have not spoken to him three times since I have been here.
3455. Are you a married man? Yes.
3456. Have you a wife and family? Yes.
3457. How many children have you? One.
3458. Have you had more? No.
3459. Were you living with your family at the time of your apprehension? Yes. The statement I have to make is, in the first place, the obscene language and bestiality carried on on the island—the acts I have seen on Cockatoo have been more generally by the "Derwenters," the old hands. As soon as a good-looking young man comes on the island they are all after him—they will do this for him, and they will do that for him, so-and-so. I have seen them run into their berths naked in the night time in No. 5 ward.
3460. You have seen one man go into the berth with another naked? Yes.
3461. Have you seen anything more than that? No.
3462. Have you frequently seen the men go into one another's berths? Yes, at night-time.
3463. As a man somewhat advanced in years, and a man with a family, just state to us what was your experience on a given night, after you were locked up; try and describe—so that we may realize, as well as people can who have not been in the ward—what was the conduct of the prisoners, the state of the atmosphere, whether there were bad smells that were oppressive

- oppressive to you, state whether you could sleep, or, if you could not sleep, state what noises you heard, or if you witnessed unseemly exhibitions on the part of the prisoners— give us, as exactly as you can, the history of one night? I cannot state the day of the month, but previous to our coming here, I should think it must have been three nights before, ———, a young man, and ———, commonly called Curly, and ———, were sleeping on the top part of the bunks—the ward being so warm, there being so many in it. I slept very little, and this ——— says to ———, “We will see by and by, I think he will stand it.” I said, “This is disgusting language; I see what you mean, what you are up to; I shall shift from here.” I did so, and about twelve, or between eleven and twelve, I saw these two men go to this man’s ——— bed, and there they were naked the whole three of them. What was carried on I cannot say, you may judge for yourself what the result was. I went away with disgust to the other side of the ward.
3464. Did you ever see any similar occurrence on any other occasion? I heard of them, and it was known to be the fact that a man named ——— had connection with a man named ———, on the island.
3465. *By Mr. Walsh*: Was ——— a young man? Yes.
3466. *By the Chairman*: Was the conduct of the prisoners in the ward, without going to the extent you have just spoken of, very obscene—characterized by obscene displays of the person? In general, I think most of these men were third or fourth convicted men. There is no classification—if a man wishes to become a good member of society afterwards, he goes there and his morals are corrupted by the manner they go on.
3467. Are you aware whether there are any young men on the island, prisoners, who are known by feminine names, such as Miss So-and-so? Yes, there is one here, Lady Thursting.
3468. Are you aware whether some of the prisoners display an unnatural kindness towards others—whether they try to get little delicacies for them, and treat them as women? Yes, I have actually seen it, even in this yard.
3469. *By Mr. Windeyer*: Do you remember any other cases of men being called by feminine names? Yes, this ———.
3470. What is his name? He has some other name, but ——— is called “Long Sal.”
3471. *By the Chairman*: What have you noticed with regard to their conduct to these prisoners? I have known them to give them tea and sugar, and handkerchiefs, anything they could provide for them.
3472. Have you seen anything in their personal demeanour—have you seen any of the prisoners kiss them? No, I have not; if I said so, I should not tell the truth.
3473. You do not want to go back to the island? No, I do not.

Darlinghurst
Gaol.
1 Mar., 1861.
W. T.
M'Gregor.

FRIDAY, 8 MARCH, 1861.

Present:—

MR. HART,
MR. MATE,

MR. WILSON,
MR. MORRIS,

HENRY PARKES, ESQ., IN THE CHAIR.

John Callaghan called in and examined:—

3474. *By the Chairman*: You have been employed for some years in Darlinghurst Gaol? J. Callaghan.
Yes.
3475. How long? Nine years and ten months. 8 Mar., 1861.
3476. Who was gaoler when you were first employed there? Capt. Webster.
3477. What situation did you fill when you were first employed in Darlinghurst Gaol? I was employed as turnkey day and night.
3478. As ordinary turnkey? Yes.
3479. How long did you act as ordinary turnkey? For three years.
3480. Without any variation or change? Yes.
3481. After the expiration of these three years or thereabouts, how were you employed? I was sent to take charge of the working men in the stockade—masons, stone-cutters, and labourers.
3482. You were, in fact, overseer of the stockade? Yes.
3483. That describes you correctly? Yes, so far as relates to the masons and stone-cutters; not to carpenters and smiths.
3484. But in the place called the stockade? Yes.
3485. How long did you continue in that capacity? Four years and a half.
3486. That is seven years and a half out of the nine years and ten months; what did you do then? As soon as the works were given over at the Colonial Architect's Department I was sent to the south wall, when Mr. Farley was sent there.
3487. You were removed from the situation of overseer of the stockade when Mr. Farley took charge? Yes.
3488. Did this person—Mr. Farley—take the same charge as you had previously? Yes.
3489. He was in just the same position as you were? Yes.
3490. Were his duties in any way distinguished from the duties you had been discharging? No.

3491.

7. Callaghan. 3491. He seemed to be doing just the same? No; I had charge of the work.
3492. Was any reason given for your being removed? No reason. He was sent from the
- 8 Mar., 1861. Colonial Architect's to take charge of the works.
3493. Are you sure that this Mr. Farley took charge under the orders of the Colonial Architect? Yes.
3494. Can you recollect any circumstance that would fix the time when he took the charge? I could not exactly say how many months he was there previously to the other three men coming.
3495. Do you feel pretty sure that it was about seven years and a half after you first went into the gaol? Yes, I should say between seven and eight years.
3496. Where is this person—Mr. Farley—now; is he in the gaol now? Not in the gaol.
3497. Where is he? After he was removed from the charge—sometime after the three overseers came—he was overseer of the quarry, over the prisoners.
3498. However, when this Mr. Farley came to take charge of the stockade, you were removed to some other duty—what was that? I was removed to the south wall, convenient to where the prisoners escaped.
3499. How long did you remain stationed at the south wall without any interruption to your duty? May be eight or nine months; between seven and nine months.
3500. From seven to nine months? Somewhere about that.
3501. What did you do then? I received an order to relieve these men alternately every fourteen days—Mr. Lee and Mr. Rispen—on the wing, and fourteen days on the south wall.
3502. Your next duty was of this character,—that you were a fortnight on the two wings, and then a fortnight on the south wall? Yes.
3503. How long did you continue employed in that manner? About three months.
3504. What followed upon that? I was ordered to take charge of the new wing from that.
3505. You then left the south wall altogether? Yes.
3506. You left the hard labour and committal wing altogether? Yes.
3507. And you took charge of the new wing? Yes.
3508. Is that where the Cockatoo Island prisoners have been confined lately? Yes.
3509. How long did you continue in charge of the new wing? About three weeks, I think.
3510. What followed upon that? I received an order when Mr. Harrison was suspended.
3511. We have not got to that by a year—we have a year to account for yet? I am sorry I have not the dates; that is particularly the way I was employed, only I am at a loss to give the exact time.
3512. You say you have been in the gaol nine years and ten months—about three years a turnkey, and then four years and a half overseer of the stockade, which is seven and a half years out of the nine years and ten months, leaving two years and four months to be accounted for—the duties you have described did not take up a year of the remaining time—when you can tell us so exactly that you were three weeks on one duty and three months on another, how is it that you cannot speak more precisely as to this longer period? I did not keep the dates.
3513. Is it possible that you were more than three years overseer in one place—you might have been four years? I might have been four years.
3514. You cannot remember exactly? No.
3515. You are sure of these facts:—that first you were turnkey, then overseer, then stationed for a time exclusively on the south prison, then alternately on the hard labour and committal wings, and the south wall, and then on the new wing, and were performing that duty when Mr. Harrison was suspended? Yes, I was performing it. (*Vide Appendix A.*)
3516. What took place on Mr. Harrison's suspension? Since then I have done duty as principal turnkey.
3517. You are now acting as principal turnkey? Yes.
3518. You performed that duty this morning? Yes.
3519. Will you describe to the Committee what you did prior to coming here? In the first place, this morning at six o'clock I had the keys from the office—Mr. Read's office; I came from the office to the wing; I saw the warders were present; I gave the keys of the committal wing to the warder in charge of that wing; I gave the keys of the hard labour wing to the warder in charge of that wing; I gave the keys of the new wing to the warder in charge of that wing; and then went round the gaol to see that each man was on his post. When I had performed that duty ———
3520. Who were the men on the several posts round the gaol when you went round? Graham was on the gate, Bickham on the wing, Elliott on the stockade, Gregory on the south wall, Agnew on the north wall, Callaghan on the front, and Carthy on the east fence.
3521. *By Mr. Hart*: Is that the memorandum in which you record each man's daily attendance? This is the memorandum I keep of the duty. I make my entries in the evening of the duties to be performed on the following day. (*Witness handed a small memorandum-book, without cover, to Mr. Hart.*)
3522. When did you make this entry? Yesterday evening.
3523. Is there any other book kept by you, as principal turnkey, in which you record the daily duties of each man—your entries in that book are made in pencil? Yes, at present.
3524. You keep that for your own private information? Yes; and I copy that, when I get time to do so, into another book.
3525. I asked you whether there is any record in the gaol of each man's daily attendance to his duty? No record at present.
3526. Are you sure there is no book? No book.
3527. Where is the book kept now? I will have a book for my own information.
3528. That is a private book? Yes.

3529. *By the Chairman*: Will you state to the Committee whether the arrangement which you have just stated is the same as has existed for the last twelve months in the gaol—the arrangement of these men at their various posts for the night? No. J. Callaghan,
8 Mar., 1861.
3530. Some new arrangement, is it? Yes.
3531. Made when? Since I have been appointed, and Mr. Read came there.
3532. Made in consequence of the attempted escape, I suppose? Yes.
3533. Will you proceed to explain the rest of your duties to-day? After that the next duty was—there were fifty men slept in the new wing last night—I mustered fifty men yesterday evening for the new wing, this morning I mustered the same number, calling the names, and I mustered them into the hard labour yard from the new wing—that was the next duty I did. Then was the next—the prisoners for discharge at nine o'clock. I discharged the prisoners—at least Mr. Read discharged the prisoners—previously to my coming here at ten o'clock this morning.
3534. During the time you have been in the prison, have you ever had any opportunity of observing how the keys of the gaol were kept, prior to your taking charge as principal turnkey, at night? The keys were kept in the charge of the principal turnkey at night.
3535. Was it ever your duty to get the keys in the morning? No.
3536. You never applied for the keys in the morning? Never.
3537. Do you know where the keys were kept? No.
3538. You did not know whether the keys were kept up stairs, or below stairs, during all these nine years? No, during the nine years I never did.
3539. Did you ever hear they were kept on a peg behind the door at Mr. Harrison's? No.
3540. Did you ever see any of the turnkeys drunk? Yes.
3541. Which of them? I have seen Lee drunk.
3542. Any others—did you ever see Harrison drunk? I have seen him very stupid looking.
3543. You mean stupid looking from the effects of drink? Yes.
3544. You have no doubt about it? No.
3545. Did you ever know him drink with prisoners outside the gaol? No, I have not.
3546. Had you ever anything to do with a prisoner named Polack in the gaol—did your duties bring you into contact with him—was he under your charge? He was four days under my charge, when I was in charge of the committal wing.
3547. Is it within your knowledge that he received different treatment from other prisoners? Not when he came under my charge; he received treatment the same as the other prisoners.
3548. Was his dress the same? Yes.
3549. Did he eat the same? Yes.
3550. Was his cell in the same order? Yes.
3551. Did you ever hear of any distinction made in his case? I did not.
3552. Did you ever observe any signs of distinction recently? Regarding clothing—I did not see him till latterly.
3553. Did you see him in other clothes than the rest of the prisoners? Yes.
3554. What clothes have you seen him in? A plain coat and waistcoat.
3555. A black coat? A sort of blue coat. On another occasion I saw him in a suit of plain clothes.
3556. Dressed in the usual manner? Yes.
3557. Did you know him before he was received as prisoner? No.
3558. You have seen him in a dress which would not distinguish him from any other foot-passenger in George-street? On one occasion I saw him in a dress that could not distinguish him from a free person.
3559. Similar to your own? Yes, plain clothes.
3560. There was nothing more in his dress to indicate that he was a prisoner than there is in yours? No.
3561. Where was he when you saw him next? He was standing at the wing.
3562. When was it? About four or five months ago I saw him standing at the wing in plain clothes.
3563. Do you think the Sheriff must have known this—the Sheriff visited the gaol sometimes, did he not? Yes.
3564. And Dr. West, the medical attendant? Yes.
3565. They must have known this? I could not exactly say.
3566. Was it not their duty to visit the part of the gaol where he was? It was the duty of the Sheriff to visit the gaol.
3567. Could he have been in the state you describe without the authorities of the gaol knowing? He could not.
3568. Would it have been possible for him to have received that indulgence without the principal turnkey or principal gaoler knowing it? He could not have received the indulgence without the knowledge of the principal turnkey.
3569. Might he have received it without the knowledge of the principal gaoler? He might.
3570. Did you ever hear any complaints made of the treatment he received—complaints made to the head authorities of the gaol? No.
3571. During the time you have been in the gaol, what steps have been taken for keeping the wards clean—keeping the cells clean? The prisoners in the cells are supplied with rubbing stone, and they rub the floor with that stone; and there are wardsmen appointed to each wing, for the purpose of cleaning the passages, railing, and so forth.
3572. How often were the cells whitewashed? Whitewashed?—I believe that the labour wing has not been whitewashed for some time. When I say some time, perhaps two months, perhaps three months.
3573. What regulation was there for cleansing the bedding, washing the blankets, keeping the

- J. Callaghan. the bedding of the prisoners clean? No regulation that I am aware of, till these few days; the blankets are given to the women to wash now.
- 8 Mar., 1861. 3574. That is very recently? Very recently.
3575. Do you remember this Committee visiting the gaol first? I do.
3576. Is it since then that the blankets have been given to the female prisoners to be washed? Yes.
3577. You never saw them given to the prisoners before to be washed? No.
3578. Has there been much whitewashing going on lately? We shall finish the new wing to-day.
3579. Has there been much whitewashing going on since the Committee visited the gaol? Yes; the female wing has been done since, and the labour wing will be done to-day.
3580. What regulation has there been to compel the prisoners to keep themselves clean? On Saturday now—
3581. Formerly—I am speaking now with reference to your nine years experience? In Captain Webster's time, the prisoners paraded every Sunday morning; they were clean shaved, had their hair properly cut, clean linen shirts on, trousers turned up above the knees, and jackets above the elbows; they held out their hands, and extended their arms full length, and they had shoes on their feet. Captain Webster inspected them on Sunday mornings.
3582. That regulation was in order to enforce personal cleanliness? Yes.
3583. Was that regulation allowed to be discontinued after Captain Webster's death? It was discontinued after his death.
3584. After Captain Webster's death, up to the recent change—of course I allude to the suspension of Harrison and Beverley—was there any regulation to enforce personal cleanliness? No.
3585. Can you state to the Committee, having had so long an experience in the gaol, whether there were cases where the prisoners allowed themselves to become quite filthy in person? I have heard of cases where prisoners were marked out as dirty—vermin.
3586. Lousy you mean? Lousy, I mean.
3587. I suppose you are the father of a family? I have no family.
3588. Do you think that the prisoners were in a proper state of cleanliness all that time—that they were washed sufficiently frequently from head to foot? Not properly.
3589. You must know how necessary it is, for the preservation of health and strength, that persons should be kept clean? I do.
3590. Do you consider that there were sufficient regulations in force to preserve health and physical strength among the prisoners by cleanliness? I think not.
3591. Was it the case that if men of filthy dispositions chose to neglect themselves from one year's end to another, there was no regulation to compel them to clean themselves? There was no regulation; but it was the duty of the warder in charge of the wing to see if any case of that sort came under his observation, and it was his duty to point the man out to the principal turnkey—not even so—to have him removed and cleansed.
3592. Was there any such regulation as the one ordered by Captain Webster, by which cleanliness would be enforced without its resting upon the discretion of a warder? Yes.
3593. Without giving such an extreme case as that just now, suppose a prisoner chose to neglect to wash himself for months—were not even to wash his hands and face; if he complied with the other rules of the gaol, would he be liable to punishment? No; unless the warder chose to take notice of it; he could give a clean shirt and have him washed.
3594. Did it ever occur to you as a serious piece of neglect? Yes.
3595. You who have seen this praiseworthy regulation of Captain Webster—did it not strike you as a grave defect—did you ever mention it? No, Mr. Harrison was principal turnkey—he was well aware of this regulation. Cleanliness is the principal means of keeping health in the prison.
3596. Could this state of things have existed without the knowledge of the Sheriff? It may be possible; the principal turnkey is the principal man in the gaol.
3597. Did not the Sheriff visit the gaol? Yes.
3598. How often? He was there once a week, sometimes oftener; he has recently been oftener than once a week.
3599. What was the character of his visits—what did he do when he came in? He visited the different wings, when he came in at meal time, or would see them at their dinner, or would go into the different workshops if in working hours, or go into the new wing, and all round the gaol—the different parts of it where men were employed.
3600. *By Mr. Hart:* What is Polack confined for—what is his offence? His offence was something in the shape of a fraud.
3601. Is there any regulation by which prisoners, who are confined for matters that are not felony are allowed indulgences, either in the shape of food or clothing, if their friends outside can support them? There is a regulation to that effect.
3602. What is the regulation? If a man is in for trial, he can support himself; if sentenced to imprisonment he can support himself, or his friends can. The exception is, if a man is undergoing hard labour he is not allowed.
3603. Is Polack undergoing hard labour? Yes, he is.
3604. Is there any other prisoner in the gaol at present who is not compelled to wear the prison uniform? There is a man named Garsed, he does not wear the prison uniform; he is undergoing imprisonment.
3605. Without hard labour? Yes.
3606. Is there any periodical examination of the prisoners from head to foot, denuded of their clothing? Not at present.

3607. Do you consider that that would be a salutary course? Yes, I do, very much so. J. Callaghan.
3608. When the prisoner is first admitted to the prison, is he examined by the surgeon from head to foot? He is examined by the dispenser—at least drunkards are—in case a man got other punishment—imprisonment or hard labour—if he has complained of anything they doctor those persons. 8 Mar., 1861.
3609. Is he denuded of his clothing? He is taken to the bath-house and washed. All prisoners, with the exception of the drunkards, are removed to the bath-house, washed, and then from that brought to the barber, shaved, and have their hair cut.
3610. Have you heard any complaints of there not being sufficient facility for using the bath in gaol? No; they come now on the Saturday afternoon; they work till twelve; from one o'clock they are removed by sixes, commencing with the confine yard, till that is completed; then the hard labour, and then the committed yard. So that each man is washed every Saturday afternoon now.
3611. *By Mr. Walsh*: Is the entire body washed? Yes; the man strips, and goes into the bath; there are two baths there.
3612. *By Mr. Hart*: Is there a plentiful supply of water? Yes.
3613. How often is the water in the bath changed? It can be changed after every six men—after every two men.
3614. In point of fact, when is the water changed? When six men have washed in it, the bath—
3615. As the principal turnkey, what is your opinion as to the propriety of changing it oftener? I would change it for every two men.
3616. Would you like to wash in a bath after five men had been in it? Not in one; there are two baths—three men.
3617. Is the water in each bath changed after the sixth man leaves it? It can be changed after each man.
3618. I am not speaking of what can be done? I was not present—I am not able to answer that question—I will tell you the number taken there, but I was not present at the washing.
3619. Is the duty of seeing these men washed confided to a certain warder? To the warder in charge of the hard labour prisoners.
3620. Is he permanently on that wing? Yes.
3621. What is his name? Thomas Lee.
3622. Do you consider that the warders or turnkeys, who are under you now, are fully competent for their duties? I consider there is an exception.
3623. Will you state it? That exception is—there has been a man of the name of Callaghan; I consider him not sharp enough, because when our prisoners are in motion, their action should call the attention of men who can form an opinion of their motives.
3624. *By the Chairman*: That one was on duty when the seventeen prisoners escaped? Yes; prisoners' movements should draw the attention of the turnkey, for they always have some object in view by their actions.
3625. *By Mr. Hart*: Has it occurred to you that the warders and turnkeys appear, in some instances, to be dressed very shabbily? No.
3626. Have they the privilege, or is it their duty, to wear any particular dress, or can they dress as they like? They can dress as they like, so long as they are respectably dressed.
3627. What would you consider if they were compelled to wear a decent uniform, either similar to the police, or similar to that of any other force? I would consider it very good.
3628. Would it not give them an air of authority? Yes; and they would be remarkable—they would be known by the prisoners as such—that they were in authority over them.
3629. Do you know anything about the competency of the female turnkeys? No; nothing at all.
3630. You do not feel competent to speak on that subject? No.
3631. *By Mr. Walsh*: Persons sent in for drunkenness, I understood you to say, were not washed? They are not; they considered that it would not be safe to the health of a man brought in for drunkenness to put him into cold water; under that impression they are not washed.
3632. They are generally confined for forty-eight hours? Twenty-four hours and forty-eight hours.
3633. Do you not find that they generally come into the gaol in a great state of filth? Very dirty.
3634. Are they sent out in the same way? Yes; putting them into cold water it is thought might endanger their health.
3635. After the lapse of forty-eight hours they are sent out as they came in? Just as they came in.
3636. *By Mr. Hart*: Could they not be washed in a warm bath? There could be a warm bath prepared there.
3637. Do you not think that a ducking would do them good before they went out? I think they would be all the better for it; but the feeling was that danger might follow it, the man having been indulging in drink.
3638. *By the Chairman*: Do you remember that on the occasion of the Colonial Architect assuming the superintendence of works in the gaol, there were a number of turnkeys discharged? Yes.
3639. How many turnkeys were there left? I think eighteen, including the six who left.
3640. Six were discharged, leaving twelve? Yes.
3641. Can you tell the Committee upon what principle these men were discharged—whether they were the men who had been there the shortest time, or whether they were peculiarly incompetent men? Among the men who were discharged there were some who were fully competent to do duty, who were good turnkeys, and who had been longer in the gaol than those who were retained—men who had carried out the discipline to its fullest extent.

- J. Callaghan. 3642. On such an occasion we should generally presume that if it was found necessary to discharge some of the officers, those who had been there the shortest time would have been discharged, unless there were some reason of inefficiency for the discharge of the others—that would be a general rule according to your understanding? Yes.
- 8 Mar., 1861. 3643. Is it a fact that some of the oldest turnkeys were discharged while some of those recently appointed were retained? Yes.
3644. And those men who were discharged were men against whom there was no complaint? Not that I am aware of.
3645. Do you remember a man named Frederick Pegg? Yes.
3646. He was discharged then, was he not? Yes.
3647. Was he a man who generally conducted himself well? Yes; a most competent turnkey.
3648. A man in the vigour of life, able and strong? Yes; strict and regular in his habits and attendance.
3649. Were men retained who had been appointed much later than he had received his appointment? Yes.
3650. Do you remember another man named Thomas Johnson? Yes.
3651. Had he been a turnkey several years? Yes.
3652. Was he a man who conducted himself well? As far as I can recollect I never heard a fault against him.
3653. You never saw him drunk? No.
3654. You never saw anything in his conduct——? That I could be prepared to say was faulty.
3655. Was there a feeling of dissatisfaction, as to the manner in which these people were discharged, among those old turnkeys who remained? Yes, that was the feeling.
3656. You, as turnkey—could you understand the principle on which they were discharged—looking at it in this light, that it was necessary to discharge some in consequence of their numbers being too great—could you understand the rule on which they were discharged; some of them having been there many years, being men of good conduct, and yet they being discharged, while others who had been there only a short time, and were in no way more efficient, were retained? I cannot understand why they were discharged—the principle; or, at least, what I heard there was that they were discharged for the purpose of their pay going to pay three overseers.
3657. That is not what we are driving at, but what was the reason for selecting these particular men—you say you have been there nine years and ten months—do not you consider that if you behave yourself that should give you a title to preference over a man who has been there only ten months? I do.
3658. Suppose you were discharged to-morrow, and a person was retained no way better than yourself, who had been there only ten months? Yes, I should feel aggrieved.
3659. Was not that the case with some of the men, only not in so great a degree? Yes.
3660. Was not this man Johnson discharged after he had been six years there? Yes.
3661. Did you hear that he had a high character from the gaoler? I did not hear that; but from my knowledge, I consider him a worthy man.
3662. Among the twelve turnkeys retained, were there not some in no way remarkably efficient, who had been there only a short time? Yes.
3663. While among those who were discharged, were several very efficient? Yes.
3664. Did not that appear very capricious on the part of the authorities? Yes.
3665. You never heard any reason assigned for selecting these six men? No.
3666. Do you recollect the names of any others besides Pegg and Johnson? A man named Donald.
3667. Can you state to the Committee whether among any of the men more recently appointed, and who were retained, there were those who were not so sober as they ought to be? I cannot say.
3668. You are now principal turnkey? Acting principal turnkey.
3669. Therefore you have more authority than usual—if you had authority to discharge six men out of eighteen, were there any of recent appointment retained, whom you would have selected to discharge on account of their inefficiency? I would have selected some of those who were discharged as compared with those who were retained.

APPENDIX.

A.

MEMORANDUM shewing how Mr. Callaghan, Turnkey in H.M. Gaol, Darlinghurst, was employed from the year 1851, to the present time.

From May, 1851, to February, 1856	{ As ordinary turnkey; two (2) months of which was over Insane men.
From February, 1856, to May, 1859	Over the works in Stockade.
From May, 1859, to August, 1860	{ On South Wall. In August, 1860, I was shifted from South Wall to do duty in the Wings, viz:— 14 days on Committed Wing; 14 days on the Labour Wing; and 14 days on the South Wall, alternately relieving Turnkeys Lee and Rispen. I was also employed 14 days on the Gate.

In the beginning of February I took charge of the New Wing, in which was confined the Cockatoo insubordinates, and remained in charge until the 12th February, 1861, when I was ordered by the Under Sheriff to do Principal Turnkey's duty.

Mr.

Mr. William Walsh called in and examined:—

3670. *By the Chairman:* You hold some situation in the establishment of Darlinghurst Gaol? I am dispenser there. Mr. W. Walsh.
3671. Are you a surgeon? I am not a member of a College, but I was educated for a 8 Mar., 1861.
surgeon.
3672. Will you state what experience you have had? I was apprenticed to a qualified surgeon in London, for five years. I attended lectures. I never succeeded in passing a College as I never applied, yet I have acted as surgeon to various ships and public institutions.
3673. What were the ships? Two ships—one a whaler and the other a merchant ship. For five years I was apothecary to the Bath United Hospital. I was also dispenser on board H. M. S. "Defence," which had 700 prisoners.
3674. Prior to receiving your present appointment what situation were you filling? I was two years dispenser on Cockatoo Island.
3675. During the time you must necessarily have had a good deal of intercourse with the prisoners? Yes, I had.
3676. Did you ever hear any allegations that unnatural crime was perpetrated among the prisoners? I have heard such a report.
3677. At different times? Once or twice I have had men pointed out to me as given to those crimes.
3678. Were these reports made to you under circumstances, or accompanied by corroborating facts which led you to believe there was any truth in them? I have received them with doubt. The only case where I had reason to believe such a thing did exist, was this: About two years ago a man named Collins stabbed a man in the head, of the name of Malloy; they were both prisoners, and this occurred between eleven and twelve at night. Collins was tried at the Central Criminal Court in January, I think two years ago, and in his defence he stated that the reason he stabbed Malloy was to resist an attack made upon him. There were two men of the name of Malloy on the island—one named John, who escaped some time ago; that is not the man I refer to. That is the only case I know.
3679. This statement was made in Court? Yes.
3680. Have any circumstances come to your knowledge, professionally, that would lead you to the conclusion that unnatural crimes were committed? No. I have seen two men pointed out to me in the yard as given to that practice; _____ and _____.
3681. Do you know a prisoner who was recently in the hospital at Darlinghurst Gaol, named Frederick Macgregor? I do.
3682. Has he ever made any revelations to you of this kind? No, never.
3683. How long has he been in the hospital? He came over with a gang of men for punishment, and was in the hospital seven or eight days.
3684. Is he in the hospital now? No, he went away to Cockatoo when the men were sent back.
3685. What was the general conduct of this prisoner when under your notice? I have seen him both at Darlinghurst and at Cockatoo, and he seemed quiet and well conducted—I never heard of his being punished.
3686. Do you know a prisoner who was in the hospital about the same time, named George Jones? I do.
3687. Is he still in the gaol? He is still in the gaol, but is not in the hospital.
3688. What is his general conduct? I have no knowledge of the man, because he arrived on the island after I left. I have only seen him while he has been in the hospital.
3689. From the little knowledge you have had of him while he has been in Darlinghurst Gaol? The man's conduct is quiet.
3690. Has he ever made any statement to you of this character? No.
3691. Do you know a prisoner who was in the hospital about the same time, named Scope, or Williams? I know a prisoner of the name of Williams, a native of the Colony.
3692. Have you had any opportunity of observing his conduct? Yes, both at Cockatoo and in the gaol.
3693. What do you think of him? I believe the average of his conduct is good and quiet.
3694. Did he ever make any statement to you of the nature I have alluded to? None.
3695. Was there another prisoner in the hospital at the same time, William Thomas Macgregor, an older man? Yes.
3696. Had you any opportunity of observing his conduct? Yes, both here and at Cockatoo.
3697. Have you had any opportunity of observing his conduct? No, these men were quiet, and remarkably well conducted men.
3698. With reference to all these four men I have named, have you any special reason for doubting their truthfulness? None, that I am aware of—but I should receive these reports with caution.
3699. I wish to know whether there is any special reason to receive their statements with more than ordinary caution? Not that I am aware of, no special reason; but if I might be permitted, I would suggest these men have an object to gain, namely, that they may not be sent back to the island.
3700. Do you know a warder* named Mackie? He is a warder* in the hospital at the present moment.
3701. Is he a prisoner? Yes.
3702. How long has he been a warder there? About fourteen months, I think.
3703. How long have you been there yourself? About eighteen months.
3704. What has been the conduct of this warder, Mackie? Very correct, I consider, for a prisoner.

3705.

* Query (*By witness*): Wardsman.

Mr. W. Walsh. 3705. Do you think him a man of respectable character, using the word in its application to a prisoner? I believe his conduct has been generally very good—his time will expire

8 Mar., 1861. to-morrow.

3706. *By Mr. Walsh*: While you were upon the island did you hear any of the men there called by feminine names, as Lady So-and-so, Miss So-and-so? I have not heard it on the island, but on board H.M.S. "Defence," and in London particularly so.

3707. Is the assumption of a name of that kind indicative of the person to whom it is applied being addicted to those abominable practices? I should consider so. I know such practices do exist in London. I have known cases of persons assuming the female dress.

3708. Are you referring to a case in Beck's Medical Jurisprudence? No, to cases I have known myself. While I was on the "Defence" a young man received seven years transportation for the offence.

3709. *By Mr. Wilson*: Do you prescribe medicines? Yes.

3710. Will you be kind enough to tell the Committee under what circumstances you prescribe? In the morning when the men fall out, or give their names as complaining of being ill, they are brought over to me, and if it is a case which requires it, I prescribe or exempt the party and leave him for the inspection of the visiting surgeon.

3711. How often does the visiting surgeon visit the gaol? Every day, and Cockatoo Island twice a week.

3712. Of course these men who are exempted by you are brought under the inspection of the visiting surgeon? Yes. If it is a case which is not likely to involve anything serious I exempt a man for a day or two, and give simple medicines; if he do not get better I then place him under the surgeon.

3713. You do not in all cases where you exempt a man place him under his inspection? Not in all.

3714. Does the medical attendant prescribe hospital diet, or do you? If the case were left for Dr. West he would prescribe the diet.

3715. In exempted cases? They are only on prison rations, they are not on hospital diet; they do not get hospital diet unless they are taken to the hospital.

3716. How often did the medical attendant visit Cockatoo Island when you were there? Twice a week—Tuesdays and Saturdays are the days for Dr. West to attend.

3717. Is that left to the option of the medical attendant, or is the time specified by the Government? The time is specified by the Government; formerly it used to be Saturdays and Wednesdays, but it was altered in consequence of some fresh arrangement about the boats.

3718. Do you not think it as necessary that he should visit Cockatoo Island every day, as that he should visit Darlinghurst? Sometimes accidents happen at Cockatoo, and of course in those events he goes immediately.

3719. I am alluding to the necessity of his daily attendance? I scarcely think it is quite so necessary, for in Darlinghurst there is a constant shifting of persons, and there are also almost every day lunatics received who require immediate inspection and providing for.

3720. Are these lunatics taken into hospital? In any case where there is the slightest disposition to illness.

3721. On the day when we visited Darlinghurst Gaol, we found a female prisoner said to be labouring from epilepsy, lying in one of the cells in the wing, and not in the hospital? That would be a case where the woman was extremely violent, and where it would have been dangerous to have put her with other patients.

3722. Have you not a lunatic cell? I am sorry to say we have not.

3723. Do you think such a cell as that highly necessary? Yes, I think so.

3724. Are you aware whether this woman I allude to was violent? I think I remember the case, and that she came in extremely violent.

3725. *By Mr. Hart*: Was it not from the treatment she received rather than from any defect in her constitution? I believe she had been ill-treated outside by her friends.

3726. *By Mr. Wilson*: Do you inspect those lunatics who are unwell and confined in the cells in the wing? I inspect them immediately they come in; I get their names and histories, so that I may give them to Dr. West.

3727. Is their general treatment under your superintendence? Not at all; they are under Dr. West, for the object is to get them certified and taken to the Lunatic Asylum as soon as possible.

3728. They are left under the charge of a particular wardsman? Under a wardswoman.

3729. Of course, in the case of a woman, but a man under similar circumstances, would be under the charge of a wardsman? Yes. I am supposed to visit these people in the cells every day at nine in the morning; if I see they are likely to be ill or dangerous, I sometimes, on my own responsibility, order them into the hospital.

3730. You think it absolutely necessary that there should be a lunatic cell connected with the hospital? Yes.

3731. Have you any baths attached to the hospital? Not attached to the hospital, but so close that they can be made use of.

3732. Are they in the same building? Within two or three yards of it, but not attached to it.

3733. If you have a patient very sick who requires a warm bath, have you any means of giving him one? Yes, we have a shoe bath, and we have both shower and plunging baths close to the hospital.

3734. You have only a shoe bath for the hospital? Yes.

3735. *By Mr. Walsh*: In case a patient is not able to go to the bath? We use the shoe bath.

3736. *By Mr. Wilson*: Do you think, as a general thing, sufficient attention is paid to personal

- personal cleanliness in Darlinghurst Gaol? Generally I do not; both men and women come in in such a state of extreme filth, that it is difficult to get them clean for a period.
3737. Does that arise from an inherent love of filth? I believe so.
3738. Are the regulations sufficiently stringent to cause them to bathe themselves? I do not know whether the rules are sufficiently stringent to enforce cleanliness. I believe a good deal rests with the men, but they must undergo a certain ablution daily.
3739. That certain ablution being the washing of the hands and face? Yes.
3740. Are you aware of the number of baths altogether in Darlinghurst Gaol? I think there are six in the bath-house; two of which are generally kept for the private use of Mr. Beverley and his family.
3741. Then there would be only four for the use of the prisoners? Yes.
3742. Have the prisoners access to these baths every day if they choose? I do not think that has generally been so. I think there has been a difficulty about the baths being brought into use on account of the Government not allowing a sufficient quantity of coal to enable us to heat water for the warm baths. No coals have been allowed for the use of the bath-house.
3743. Do you think coals are necessary for the ordinary bath? No, for warm baths only.
3744. But I am talking of cold bathing—the general ablution of the inmates of Darlinghurst Gaol—do you think the prisoners have sufficient facilities for that description of bathing? No, there is not sufficient, for it takes a long time to wash all the men.
3745. You state that there are only four of these baths? Only four of common access.
3746. You are not aware whether they are in general use among the prisoners? They are not in general use; when a man comes in particularly filthy he is taken to the bath.
3747. *By Mr. Hart*: Do you reside in the gaol? I do not.
3748. In the event of a prisoner being taken ill at night, is there not a danger of his suffering very much by not being able to communicate with you? I am in such close contiguity to the gaol that I can be there in a few minutes.
3749. Have any cases occurred where it has been necessary to send to you? I am continually sent to, sometimes two or three times in a night. I do not think a week passes without some such cases.
3750. Are there greater facilities for the ablution of prisoners at Cockatoo Island than at Darlinghurst Gaol? Yes, lately there have been, because they have been allowed the use of the dock.
3751. With respect to the practices which have been alluded to at Cockatoo Island—do you know if any means were taken by the authorities to ascertain the truth of these allegations by watching the prisoners, unobserved, from the roof, or some other portion of the wards? As the wards are arranged at present I think it is almost impossible to do so.
3752. Suppose it is now alleged that there are persons there who are passive agents, could the truth of that statement be ascertained by surgical examination? No, I think not; unless there were disease among them.
3753. Then as the wards are constructed there are no means of ascertaining officially whether these crimes are committed or not? No, for the wards are patrolled by prisoners who might connive at such practices or be afraid to give information, and there is no possibility of the officers seeing them.
3754. Why are not free warders employed in these passages instead of prisoners? I do not know; it was always the case at Home. I think prisoners require more supervision in the night than they do in the day time.
3755. Are the wards lighted up at night? There is a lantern at the end of the ward, but very often the lamp is partially out. I have seen the place in total darkness when I have been called at night.
3756. Did you report that to the authorities? I have made a complaint that there has not been sufficient light.
3757. To whom did you make the representation? I have merely told the head turnkey, Mr. Brown, since dead. It did not come within the catalogue of my duties. I merely had to look after the light in the hospital. I have spoken to the warder of the dormitories.
3758. Is there any light communicated to the cells of Darlinghurst Gaol at night? Not singly to the cells, but the corridors are lighted up.
3759. Are not the doors of each cell closed so as to exclude that light? Yes.
3760. Have you seen any of the prisons at Home recently? Not recently. I have been in this country about five years.
3761. Are you in a position to state whether the cells of prisons recently erected are lighted? Yes, I believe each cell is lighted up.
3762. In winter at what hour are the prisoners locked up at Darlinghurst? About five in the winter and six in the summer.
3763. At what hour are they let out in the morning? At half-past five in the summer and half-past six in the winter.
3764. Then they are in total darkness the whole of that time? Yes.
3765. Might not that tend to depress the mind very much? I have no doubt that upon many men it has an injurious effect.
3766. Is the same system pursued on Cockatoo Island? No; they sleep in dormitories in classes, and every man's bed-place is partitioned from his neighbour's by battens, and in the centre is a passage lighted by lamps in the way I have spoken of. There may be as many as fifty or sixty men in a ward there.
3767. Have any of the prisoners who have been sentenced to solitary confinement shown symptoms of insanity in consequence of their incarceration? I never saw an instance of that kind.
3768. Do you recollect a soldier imprisoned for life, and now in Darlinghurst Gaol, for striking his officer? No, I do not remember the case.

Mr. W. Walsh.
8 Mar., 1861.

- Mr. W. Walsh. 3769. Do you remember a prisoner named England or English? Yes.
3770. Was not he a soldier? I believe he was.
- 8 Mar., 1861. 3771. When did you see him last? This morning.
3772. Did he present any symptoms of insanity? I did not notice it.
3773. Of fatuity? No; I did not take any particular notice of the man. He complained of constipation.
3774. Is he in solitary confinement? He is separate the same as the others undergoing punishment.
3775. Is he sentenced to hard labour? Yes.
3776. With respect to prisoners under medical treatment, and yet under hard labour, have they only hospital diet? They have hospital diet only when they are taken into the hospital.
3777. There is a man in the gaol at Parramatta who complains that, although he is performing hard labour, yet he is compelled to exist on hospital diet—bread and tea; is that according to the gaol regulations? No; bread and tea is only a portion of the diet. The full diet is 12 ounces of meat, 12 ounces of bread, oatmeal, sago, arrowroot, rice, and 6 ounces of vegetables.
3778. If he received only bread and tea for his constant support, do you consider that fair treatment? No; no man could do hard labour on bread and tea.
3779. *By Mr. Walsh:* Have you many malingerers? Yes, many. The disposition of many men is to malingering if they can.
3780. Have you discovered any plan among them to produce sickness? The most frequent attempt is to induce bad legs.
3781. That they do by the application of copper? Yes; sometimes by binding a piece of coin on their legs. The simulation of fits of epilepsy is also very common—some men do it extremely well.
3782. Of course these malingerers are punished when they are detected? There is no actual punishment, except sending them to work. I have reported them for attempting to impose upon me, and the order has been to send them to work.
3783. Do they not get solitary confinement for that? No; I do not think there is any law to that effect.
3784. *By the Chairman:* How many patients have you in the hospital this morning? I am happy to say we have no more than two.
3785. Have the men Scope, or Williams, and the elder M'Gregor gone back to Cockatoo Island? Yes.
3786. Jones is the only man of these four still in prison? Yes.
3787. *By Mr. Hart:* What is your salary? £130 a year, of which I have to pay £40 for rent—so that leaves me but £90 a year to support a wife and family, and, of course, I cannot maintain the appearance it is desirable I should to command respect.
3788. You consider that salary inadequate? I do.
3789. Have you applied to the Government for an increase? I have not.
3790. Do you devote the whole of your time to the duties of dispenser? I am there when called upon, whether at day or night.
3791. Are you frequently called out at night? Yes.
3792. You say you are unable to keep up a respectable appearance on your present salary? Yes.
3793. You, I presume, suppose it is necessary for you to keep up that appearance in order to maintain the respect due to you? Yes.
3794. What is the salary of the visiting surgeon? £200 from the gaol, and £150 from Cockatoo.
3795. Does he hold any other appointment under Government? Not under Government, but he has a good private practice, I believe.
3796. *By the Chairman:* At what time do you attend the gaol in the morning? At eight o'clock.
3797. At what time do you leave? At twelve; I go again at half-past two, and keep there till five, when the vans deliver their prisoners. I am also frequently called out at all hours of the night.
3798. *By Mr. Hart:* I presume you have to keep proper entries, such as are made by medical men, of all the cases that come under your notice? Yes; I have also to keep books shewing the expenditure of the stores, and to serve out the tea, sugar, soap, and candles.
3799. Is it the proper duty of a dispenser to serve out tea, soap, and candles? No; but it appears to have found its way in among the duties there, although I cannot help saying I think it is rather *infra dig.*
3800. Who assigned these duties to you? They were there as part and parcel of the duty when I came. I have had no assigned duties since I first came, they have been left for me to find out for myself. I do not know that any one can specify the exact duties of a dispenser.
3801. *By Mr. Walsh:* Do you know of your own knowledge what dispensers get in other positions? Yes, I believe the dispenser at Parramatta gets £150 a year, and at Tarban Creek the same.
3802. Do you know what the dispenser gets at the Benevolent Asylum? I believe there he lives in the house.
3803. Do you know what salaries are paid to the principal assistants in chemists' shops in town? I do not. I have never been in a chemist's shop; I have either been in a public institution, or on board ship. I may state that the storekeeper at Cockatoo, who is a young man, and whose duties consist chiefly of writing copies of official letters, serving out paint, carpenters' tools, &c., has a salary of £190, with house and rations, and I do not consider that his berth involves the responsibility that mine does; for if a man, while under my care, were to lose his life through maltreatment I, perhaps, might lose my liberty.

TUESDAY, 12 MARCH, 1861.

Present :—

MR. HART,	|	MR. PARKES,
MR. LUCAS,	|	MR. SUTHERLAND,
MR. MATE,	|	MR. WALSH,
MR. MORRIS,	|	MR. WILSON.

HENRY PARKES, ESQ., CHAIRMAN.

[The Committee having assembled at 3.45 A.M., at the Royal Hotel, Sydney, Water Police proceeded to the Water Police Watch-house, the gate of which was opened by Lewis Griffiths.]
 Watch-house.
 12 Mar., 1861.

Constable Lewis Griffiths examined :—

3804. *By the Chairman* : Were you on duty when we came ? Yes. Constable
 3805. What is the nature of your duties during the night ? We have two hours each to L. Griffiths.
 watch round the premises.
 3806. When were you relieved ? I was just about to be relieved ; I was now calling the watch.
 3807. *By Mr. Hart* : Is this the charge book (*referring to a book lying on a desk*) ? It is.
 3808. How many prisoners are here ? Only one—a woman charged with drunkenness.

[The Committee entered the cell in which the prisoner was confined. It was about ten feet by twelve and twelve high ; across one end was a platform raised about two feet from the floor.]

Constable Samuel Haggerty examined :—

[Having relieved Griffiths.]

3809. Are there different cells for males and females ? Yes. Constable
 3810. How many females are usually confined here ? It is not often we have anyone here. S. Haggerty.
 I have had seven or eight prisoners altogether ; sometimes I have had twenty in the other cell.
 3811. *By Mr. Lucas* : How many are the most you have had in here in one night ? Not
 more than eight.
 3812. Were those females ? No, we have never had more than two.
 3813. *By Mr. Hart* : Do you ever confine females indiscriminately with men ? No, never.
 3814. *By the Chairman* : When did the present confine come here ? About three o'clock
 yesterday afternoon.
 3815. And she will be kept here until she goes before the Bench this morning ? Yes.
 3816. *By Mr. Hart* : In case of sickness has the prisoner any means of communicating with
 the person in charge of the lock-up ? Yes, the person who would be on the watch—on his
 round—would communicate with me.
 3817. Are the persons confined here very noisy at times ? Sometimes.
 3818. Have you to use very stringent means to keep them quiet ? No more than bounce
 them a bit.
 3819. How do you act when you bounce them ? Threaten to put them in a worse place if
 they do not behave ; I threaten them that I have got a place underground, where I will put
 them.

[The Committee then entered a second cell, about fourteen feet by twenty and twelve high ; the walls of both this and the cell previously visited were very dirty, and covered with writing.]

Inspector Edward Cowell examined :—

[Having here joined the Committee.]

3820. *By the Chairman* : You have been in the Water Police many years ? Since April, Inspector
 1841 ; but I left and then came back again. I have been in fifteen years the last time. E. Cowell.
 3821. What situation in the police do you occupy now ? Inspector.
 3822. How long is it since this watch-house was built ? About three years and a half.
 3823. Have you been here all the time ? Yes.
 3824. Has this been whitewashed during the time ? Yes, they have been whitewashed
 about three times.
 3825. What means are adopted for cleansing the floors ? They are cleaned every morning.
 3826. Washed every morning ? Yes.
 3827. In a similar manner to a ship's decks ? Yes.
 3828. They are never holy-stoned, I suppose ? No, the floors are sanded ; this place is
 obliged to be whitewashed because the men write names on them.
 3829. This cannot have been whitewashed within the last twelve months ? It has been.
 3830. The woman who is now in confinement was brought here at three o'clock yesterday
 afternoon—in such cases are prisoners ever visited—is any attention paid to them if sick,
 or are they allowed to have any food or nourishment ? Nothing is allowed but watch-house
 rations—bread and water.
 3831. What kind of bread is it ? Dark bread. (*The witness produced a loaf.*) If a prisoner
 is brought here in the afternoon, he is not entitled to receive bread till the following morning.
 3832. Has he water ? Yes, the man on duty is supposed to look in during his watch.
 3833. Who apprehended her ? One of the men who is here.

[Constable Prince Francis Little came forward and said, I arrested her on the charge of being drunk, and Mr. Ebsworth at the wool stores opposite complained of her conduct. I raised her up that she might go home, and not being able to go home I brought her here.] Constable
 P. F. Little.

3834.

- Water Police 3834. (*To Constable Prince Francis Little*):—Are females frequently confined here for
 Watch-house. drunkenness? Very seldom; I do not think above four or five at the outside during the
 12 Mar., 1861. year.
- Constable 3835. Was the woman making a disturbance at the time she was apprehended? She fell
 P. F. Little. down, rolled over, and exposed her person.
 3836. Did you ever see her here before? I do not recollect seeing the woman before in
 my life.
- Inspector 3837. (*To Inspector Cowell*):—Male prisoners are generally confined in this cell? Yes;
 E. Cowell. always.
 3838. Can persons who are confined here have food supplied by their friends outside, if their
 friends apply? Yes; anything but drink.
 3839. They can have coffee or anything of that sort? Yes.
- [The Committee next visited the solitary cell.]
3840. You sometimes use this for desperate characters? Yes.
 3841. *By Mr. Hart*: Have you any rules guiding you as to the kind of prisoners to be taken
 in here, and as to the class of offences for which they are liable to be confined? No.
 3842. Then what have you to guide you as to the propriety of taking in prisoners here?
 There is nothing to guide me further than my own judgment—to know what is to be done
 with them, whatever offences they commit.
 3843. *By Mr. Walsh*: You are bound to take any prisoners the constable brings here?
 Yes.
 3844. No matter what the charge, you take them in? On some charges I do not take them
 in, because they have brought men in and said they were drunk when they were not.
 3845. You decide whether they are drunk or not? We have in cases in the old Water
 Police Office, but not here.
 3846. *By Mr. Lucas*: Do you mean to say that if a man were brought here on a charge of
 drunkenness, you would take him in if he were not drunk? No, I would not take him in
 if he were not drunk.
 3847. Suppose a private party brought a man on a charge of any offence, would you take
 him in for any offence? I would not take him in for drunkenness if he were not drunk.
 3848. Would you do so if it were for using obscene language in the street? We are bound
 to hear it.
 3849. Suppose a person brought another here and said, "This person said so-and-so"?
 Not unless it were a constable who brought him.
 3850. Do you not know that you are bound, under the Vagrant Act, to take such a charge,
 even if brought by a private party? I am not aware that the Act says so, and I often read
 it too.
 3851. Suppose a private person brought another here, and charged him with committing an
 assault in the street, would you take him in? No; we are not allowed to take a person in
 on a charge of assault unless we see the assault committed—unless the person is taken upon
 warrant or summons.
 3852. *By the Chairman*: Suppose the assaulted party were to come here with marks of
 having been beaten—bleeding? We can if we saw the party bleeding, but in other cases
 he would have to take out a summons next morning.
 3853. *By Mr. Hart*: Do you take bail for prisoners? Yes.
 3854. For what offences? I only take bail for drunkenness. I do not for assault, without
 a magistrate's authority.
 3855. Have you any rule as to what cases you should take bail in? No, no further than I
 receive from the magistrate personally.
 3856. *By the Chairman*: Do you often apply to the magistrate during the night to see
 whether you shall take bail for a particular prisoner? I have done so.
 3857. Does that often occur? Not often.
 3858. In what position of life have these persons been respecting whom you have asked
 whether you should take bail? If I know the person, I go to the magistrate and ask if I
 shall take bail.
 3859. *By Mr. Lucas*: Would you take bail for using obscene language? Yes.
 3860. Bail for anything but felony or assault? Yes, that is magistrate's bail.
 3861. *By Mr. Hart*: Have you a book in which the bail was last entered? Yes. (*Mr.*
Hart referred to a book lying on the desk.)
 3862. Is this the book? Yes.
 3863. I see the last bail entered here is dated 16th February, for throwing stones in the
 Domain; has bail been granted to anyone since that entry? No.
 3864. *By the Chairman*: Was that because the book was worn out? No, if there is any
 bail I send up to Cumberland-street watch-house for the bail-book till I get a new one.
 3865. Has there been any bail for felony lately? I do not think there has.
- L. Griffiths. 3866. (*To Lewis Griffiths*):—How long have you been here? Two years this month the
 last time, and I was here three years before.
 3867. During the time you have been here, have the cells at the back ever been white-
 washed? Not to my recollection.
- Inspector 3868. How many have been confined in the largest cell at one time? I think twenty-three.
 E. Cowell. 3869. (*To Inspector Cowell*):—Does any one live in these premises with his family? Yes,
 there are four ————
 3870. Where is the Water Police Barracks? Over-head.
 3871. How many of the Water Police constables are married? All but one.
 3872. How many families live here? Four.

3873. Suppose any female prisoner is taken ill so as to require the attendance of women, can she get it? Yes, they used to have it from my wife before she died. Water Police
Watch-house.
12 Mar., 1861.
3874. If a female prisoner required the attendance which can only be rendered by a woman could she get it? Yes. Inspector
E. Cowell.
3875. Are females searched by any female when they come here? No, they are not; we have no female searcher; we may feel their pocket to see if they have a knife about them.
3876. Has any suicide ever been committed here? Never since I have been here.

[The Committee left the Water Police Watch-house and proceeded to the Police Station in Cumberland-street.] Police Station,
Cumberland-
street.

Sergeant Lee examined:—

[Having admitted the Committee.]

3877. *By the Chairman*: How long have you been in the police force? Nearly six years. Sergeant Lee.
3878. *By Mr. Walsh*: Did you expect a visit from us? No, not so early. Indeed I did not know you were coming. (*The witness produced the charge book.*)
3879. *By the Chairman*: There has been no entry made in this book since Saturday? Since before Saturday. The entries are made on a rough sheet, and afterwards copied into this book.
3880. Have you the rough sheet? Yes. (*The witness produced the same.*)
3881. There appears from this to be no prisoner in the watch-house? There is only one, who has been remanded since yesterday; there was one other, but she is bailed out.
3882. *By Mr. Lucas*: You say there is one who has been remanded since yesterday? The one in now is a man of the name of Cullen, who has been in custody some time.
3883. By whom was he remanded? By the magistrate at the Water Police Office.
3884. I thought when they were remanded they went from the Central Police Office to the gaol? Yes; but this case we knew would be finished to-day, as we only wanted the doctor's evidence. This is the first case of the sort we have had that has been remanded to the watch-house.
3885. *By Mr. Hart*: What is the average number you have here of a night? From eighty to a hundred a month; latterly we have not had so many.
3886. *By Mr. Walsh*: How long has the man in custody been remanded? From yesterday morning; he has been in custody about six weeks.
3887. Has he been remanded during the six weeks to the lock-up? No, he was brought from the gaol and remanded yesterday morning.
3888. Has he ever been more than three days in your custody? No, he has never been more than a day, or from the time he was first locked up until he was sent to the magistrate. At a quarter to ten the prisoners are marched from here to the Central Police Office, and they are conveyed from the Police Office to the gaol in the van.
3889. At what hour of the day are they sent by the van? At two in the day sometimes.
3890. What is the average number of prisoners brought to this watch-house each night? From eighty to a hundred a month.
3891. Is that independently of what come from the Water Police Office? They do not come here; we take them there to be dealt with.
3892. Is this watch-house for males only? No; if we have females we take them from here to the female watch-house if they wish it, or if they are refractory.
3893. *By the Chairman*: You never confine them here against their wish? No; if they are drunk, we confine them until they are sober.
3894. Is there any female to search them, or to attend to them? We send them to the female watch-house to be searched. In cases of felony they are sent to the female watch-house, and are left there.
3895. I presume you have charge of this watch-house? Yes.
3896. How long have you had charge? Ten months; I was previously in the P division.
3897. *By Mr. Walsh*: Which is that? Near Christ Church.
3898. Do you look upon this as promotion? It was so to me—I was acting sergeant there.
3899. *By Mr. Hart*: What division of the city is this prison used for? The C division.
3900. *By the Chairman*: What part of the city does that embrace? The whole of the Rocks, from the north side of Hunter-street.
3901. Miller's Point? Yes.
3902. The watch-house there is not used? No, the inspector in charge lives in that.
3903. Are there any printed regulations for the watch-house? No.

[The Committee visited a cell nine feet by eight and twelve feet high, with a grated opening about three feet six by twelve inches: a prisoner was lying on the floor wrapped in a rug.]

Constable Phillip Sweeny examined:—

3904. How long have you been in the police? Two years and eight months. Constable
P. Sweeny.
3905. How many prisoners have you known to be at one time in this cell? Some nights four or five.
3906. Did you ever see more than five here? Yes, I have, six.
3907. All males, I suppose? —
3908. Did you never see male and female prisoners confined indiscriminately in this watch-house? No.
3909. Where are females confined? In the other cell.

Police Station, 3910. Have you ever known this cell to be whitewashed? Yes.
Cumberland-
street.

12 Mar., 1861. [The Committee entered a cell similar to the preceding.]

Constable 3912. Is this where the females are confined? Yes.

P. Sweeney. 3913. Has it been whitewashed since you have been here? No.

[A third cell was then visited, having a barred window about four feet by three, and two grated openings about three feet six by about twelve inches.]

3914. This is not occupied by prisoners? No. It is used as a lumber-room.

[The two front rooms were lighted by windows about three feet by four, and well ventilated. The Committee next proceeded to the Erskine-street Female Watch-house.]

Female
Watch-house,
Erskine-st.

Constable Levy examined:—

Constable 3915. *By the Chairman*: What situation do you hold? I am in charge of the watch-house.

Levy. 3916. You are the watch-house keeper? I am.

3917. How long have you been in charge? Four years.

3918. Do you reside here with your family? I do.

3919. What family have you? I have no young ones at present.

3920. You have a wife? Yes.

3921. Have you any persons confined in the watch-house to-night? Yes.

3922. How many? Two.

3923. Where is the charge book? (*The witness produced the same.*)

3924. How many had you on Sunday night? One, I think.

3925. Between Saturday night and Monday morning? One, I think.

3926. How many have you had on any one occasion during the four years you have been in charge? Twenty-four.

3927. At once? Yes.

3928. Is that the greatest number? Yes.

3929. How long is that ago? About a fortnight, I think, after I came here.

3930. Have you subsequently had a number at all approaching to that? No.

3931. What is the largest number you have had since the first of January? I think about five.

3932. Never more than five during this year? No.

3933. During last year how many had you? As near as I can recollect about five or six on the average.

3934. Do you mean throughout the year—every night? Yes.

3935. What is the largest number you have had? Six; from five to six during the whole year.

3936. You appear to have had a falling off—what do you attribute that to? We have had a falling off.

3937. Have the ladies in the neighbourhood been better behaved? That I cannot say.

3938. What do you attribute the falling off to? Probably to the dying off of these characters—a great number have died.

3939. *By Mr. Morris*: The same people were constantly here? Yes.

3940. *By Mr. Lucas*: Do you think, owing to the scarcity of money, there is not so much drunkenness as formerly? A good deal is attributable to that.

3941. *By Mr. Walsh*: Then, as I understand you, during the last year the same persons were frequently here? Pretty many of the same characters.

3942. The same individuals? Yes.

3943. *By Mr. Hart*: On what occasion were these twenty-four all here—were they all for one offence? For different offences.

3944. *By the Chairman*: Was there any particular occurrence at the time in the community to account for this large number? I cannot answer that question.

3945. *By Mr. Lucas*: Are the whole of the women taken up in the City of Sydney lodged here, or are they confined in other watch-houses? They are confined in other watch-houses.

3946. Why is this called the females' watch-house? It is principally for this division.

3947. Is there any male watch-house for this division? Yes, the central. A great number of females are detained at the central station, and are not brought down here.

3948. *By the Chairman*: Have you ever received these prisoners ——— and ——— before? Yes, frequently; particularly ———.

3949. *By Mr. Hart*: How many persons have you here in charge of this establishment? Two; myself and wife.

3950. Is your wife the female searcher? Yes.

3951. Has your wife a salary for that? £10 a year.

3952. Does she search every female who comes in? Particularly all for felony.

3953. *By the Chairman*: Do you adopt means to see that they have no means of committing suicide concealed upon them? Yes.

3954. You go through the same search with all of them? Yes.

3955. *By Mr. Hart*: Have you found instruments of destruction concealed? Pocket knives.

3956. Has suicide been attempted by any of the prisoners since you have been here? No.

[Mrs Levy, having been summoned, conducted the Committee to the cell in which the two prisoners were confined. It was ten feet by nine and twelve high, lighted by a barred window three by four feet, and ventilated by an opening about three feet six inches by twelve inches. The walls were damp and dirty, and the atmosphere

atmosphere close and foul. The floor was wet in various parts, although the cell was furnished with a night-tub. Besides this there were two other cells of the same dimensions, but supplied with air and light by means only of an aperture of the same size as in the cell first visited.] Female Watch-house, Erskine-st. 12 Mar., 1861.

3957. *By the Chairman*: With reference to the cells we have just visited, when were they last whitewashed? About six months since. Constable Levy.
3958. How many times have they been whitewashed since you have been here? About twice a year.
3959. What means are adopted for keeping the floors clean? Soap and water.
3960. Every morning? Every morning.

Mrs. Margaret Levy examined:—

Mrs. M. Levy.

3961. Do you act as female searcher in this watch-house? Yes.
3962. Do you search every prisoner who enters this watch-house? Yes, for felony.
3963. Do you adopt any kind of search to see whether prisoners have any instrument upon them by which they might injure themselves? No, except in the case of persons who are of unsound mind.
- [*Constable Levy (to his wife)*—Understand Mr. Parkes' question—do you search every prisoner to see whether they have any instrument upon them to injure themselves? Oh, yes.]

3964. *By the Chairman*: Have the women any bedding at all allowed—the females we have just seen were sleeping upon something, is that allowed them by the gaol, or is it furnished by you? They have rugs.
3965. Were they sleeping upon the stones? No, upon boards.
3966. Are their bed-clothes ever changed? They have nothing but rugs.

[The Committee next visited the Central Watch-house.]

Central Watch-house.

Matthew M'Clure examined:—

M. M'Clure.

3967. *By the Chairman*: Are you in charge of the watch-house? Yes.
3968. How long have you had charge? About twelve months; there are two in charge.
3969. You have charge alternately for twenty-four hours? Yes.
3970. Who is the other person in charge? Acting Inspector Bremner.
3971. Have you the charge book? That is the rough charge book (*handing the same to the Chairman*).
3972. I see you have four prisoners in the watch-house to-night? Yes.
3973. *By Mr. Morris*: Is Ann Flynn, who is here to-night, very often here? Not very often. Some come here two or three times a month, after they have been here that number of times we bring them before the Court as vagrants, and they have three months.
3974. Were you on duty on Saturday night last? Yes.
3975. You had nine prisoners here then I see? Yes, we generally have from nine to fifteen or twenty, and sometimes five-and-twenty.
3976. *By Mr. Morris*: Has the number been less during the last few months than previously? We have had more during the month of January of the present year than during the corresponding month of the past.
3977. *By Mr. Wilson*: What are the principal charges? Generally drunkenness and assault. We had forty-five charges more in January, 1861, than in January, 1860. Generally our females are taken to the female watch-house.
3978. *By Mr. Hart*: Have you a list of the offences for the commission of which persons are liable to be taken into custody? No.
3979. Then you have nothing to guide you as to the propriety of receiving persons who are brought here? No.
3980. *By Mr. Lucas*: If any man were to come here, and give another into custody, would you take him in? Yes.
3981. Would you receive a person on a charge from any one? Yes, if it were a proper charge.
3982. For drunkenness? Yes; if a man were drunk I would receive him from a citizen.
3983. If a man brought up another on a charge of using obscene language would you receive him? Yes, if the language were used in a public place.

[A loud rapping being heard the Chairman directed the cell, whence the sound proceeded, to be opened, and entered with the Committee. It was occupied by a female prisoner, Ann Flynn, and was about sixteen by twenty feet, and twelve or thirteen feet high. Although there were two openings into the hall, and a ventilator in the ceiling, the stench in this cell was sickening.]

Ann Flynn examined:—

3984. *By the Chairman*: Have you been locked up all night? Yes; I was capable of going home if I was allowed. Ann Flynn.
3985. You were rapping at the door just now? Yes.
3986. What for? A drink of water.
3987. Had you no water in the cell? No; there was no water in the kid, and not even a night-bucket. It was not the water I wanted, it was the night-bucket.
3988. You had neither water nor night-bucket until you knocked for them? No.

[After

Central
Watch-house.
12 Mar., 1861.

[After the cell for male prisoners, which was similar to that last described, the Committee inspected a small cell about seven feet by four and a half. It was lined with slabs, and in the floor was a large rat-hole. The atmosphere in this cell was almost stifling, the only means of ventilation being two small plates of perforated iron.]

- Mr. McClure. 3989. *By Mr. Hart (To Mr. McClure)*:—Are those rats I hear? Yes.
3990. Is that a rat-hole? Yes.
3991. Do the prisoners complain of rats? Yes, this place is swarming with rats.
3992. How long are prisoners confined here at any one time? Sometimes they are confined for twenty-four hours. If they come in on Saturday they are sometimes confined here till Monday morning.
3993. Do you consider this a fit place for the confinement of prisoners? I consider it very unhealthy.
3994. Considering the annoyance prisoners must receive from vermin, do you think this a fit place? I do not.
3995. Is there any ventilation here when the door is shut? Yes, there are these. (*The witness pointed to the perforated plates above referred to.*)
3996. Is there any space between that ventilator and the wall? Merely six or nine inches.
3997. Where does the other ventilator lead to (*referring to a perforated plate at the top of the cell*)? To the top.
3998. There appears to be a very bad smell here? It is impossible there should be any other.
3999. What does it arise from? From the prisoners who are kept here.
4000. From any other cause? I do not know of any other cause.

Darlinghurst
Watch-house.

[The Committee next visited Darlinghurst Watch-house. On the walls of this lock-up were hung four placards, the first headed, "Hours on Duty"; the second, "Instructions in case of Fire"; the third, "Day Duty and Night Duty"; and the fourth, "Duty for Out Stations."]

Constable William Cook examined:—

- Constable W. Cook. 4001. *By the Chairman*: Are you in charge of this watch-house? Yes.
4002. How long have you had charge? Since January, 1860. I have it only alternately, day about.
4003. How many men have you had here? One last night.
[The Committee inspected two cells, the first about ten by nine feet and twelve feet high, having two barred openings, about three feet and a half by twelve inches, and the second with similar openings and of the same height, eleven by sixteen feet in extent.]
4004. What means of cleansing the cells do you adopt? They are washed out every morning.
4005. To what division does this watch-house belong? To the D division.
4006. What does the division include? It is bounded by the Woolloomooloo Bay, from that round the Heads, thence to Botany Bay, and parallel with Bourke-street.
4007. By whose directions were these rules hung up (*referring to the rules on the wall*)? By the inspector in charge, Mr. Singleton.
4008. When were they hung up? About March last year.
4009. Are you acquainted with the other watch-houses in the City of Sydney—do you recollect any rules of a similar nature hanging in them? I have seen the like.

Sergeant Nicholas Ryan examined:—

- Sergeant N. Ryan. 4010. How long have you been in the police force? Going on for seven years.
4011. Are you aware whether rules similar to these hang in other watch-houses? There are several rules.
4012. Have you seen rules as explicit as these in other watch-houses? I think not.
4013. How do you account for that? It is owing to the inspector in charge.
4014. How long has Inspector Singleton been in charge of this division? About sixteen months.
4015. Who is in charge of the A division? Inspector George Read.
4016. Do you know how long he has been in charge of that division? About the same time.
4017. Who is in charge of B division? Inspector John Cecil Read, now absent in charge of the gaol. His duties are performed by Acting Inspector Foran.
4018. What portion of Sydney does that include? The southern portion.
4019. Which is considered the head quarters? The central A division.
4020. Who has division C? Mr. Ryland.
4021. Which is the head quarters of that? Cumberland-street.
Mr. Cook. 4022. (*To Mr. Cook*):—How many prisoners have you had at one time in this watch-house? Six or seven; we have had ten, but not lately.
4023. Do you ever have women here? Yes, more women than men.
4024. On charges of drunkenness? Yes.
4025. How long is it since this place has been whitewashed? It has been whitewashed three times within the last three years to my knowledge. It is generally whitewashed about once a year.

[The

[The Committee then proceeded to the watch-house in Parramatta-street, and visited the cells ordinarily occupied by prisoners—one about twelve feet square, two smaller ones, respectively four and a half feet by seven or eight feet, and four and a half feet by twelve. Besides these was a cell eighteen feet by twelve, having three openings in the wall, well ventilated, occupied by a quantity of hay and a chaff-cutting machine. A man was engaged in washing the first cell, and the attention of the Committee was called by Mr. Lucas to the offensive smell arising therefrom.]

Parramatta-street Watch-house.
12 Mar., 1861.

4026. *By Mr. Lucas*: Whose hay is that? It belongs to the inspector of this division.
 4027. Who cuts that chaff? The inspector has two sons who come here to do that; his own boy generally comes with his horse.
 4028. *By the Chairman*: Has that cell been used lately (*referring to the largest cell*)? No.
 4029. Is it not desirable to use the largest cells for the confinement of prisoners? It is.
 4030. *By Mr. Lucas*: How often does Capt. M'Levie visit this watch-house? Generally once or twice a week.
 4031. Does he go through the whole watch-house? No.
 4032. How long is it since he has been here? I do not know of my own knowledge.
 4033. Who is the inspector of this division? The inspector of this division is at present in charge of the gaol. Mr. Foran is the acting inspector.
 4034. Whose chaff-box is that—Inspector Foran's? No, Inspector Read's.
 4035. *By the Chairman*: At what time of the twenty-four hours do you wash out the cells? In the morning about this time (*six o'clock*)—after we get the prisoners away.
 4036. I notice that there is a very strong stench in the cell just washed out? That is where the men were last night, and the man has not finished washing it.
 4037. Have they utensils for cleanliness in the cell? Yes.
 4038. Do they ever dirt the floor? Yes, frequently; there is seldom a morning that we do not find the floors dirty.
 4039. How do you wash the floor—just with a mop? Just with a mop.
 4040. Is it ever scrubbed? It is often scrubbed too.
 4041. When were the cells whitewashed? About twelve months since to the best of my recollection.
 4042. How many prisoners have you had at a time in your watch-house since you have been in charge? On Sunday mornings we may have as many as fifteen or sixteen. Between Saturday and Monday we have had eighteen, but we do not keep them here; they are taken on Sunday morning to the central watch-house.
 4043. For what class of offences are these people chiefly confined? Mostly for drunkenness.
 4044. Where are the drunkards chiefly picked up? Most of them in George or Parramatta streets.
 4045. How far does the B division extend? That I cannot say exactly. Very near to Parramatta—to Cook's River and George's River. In Sydney it extends to Liverpool-street.
 4046. *By Mr. Lucas*: Do you take bail for drunkards? Yes.
 4047. For obscene language? Yes.
 4048. For anything but felony? Yes, and warrant assaults.
 4049. *By the Chairman*: In such cases as this do you ever apply to the magistrate to allow bail? No, I do not; but I allow the friends when they come here to do so if I know the parties.

WEDNESDAY, 20 MARCH, 1861.

Present:—

MR. LUCAS,	|	MR. MORRIS,
MR. MATE,	|	MR. SUTHERLAND,
MR. WILSON.		

HENRY PARKES, Esq., IN THE CHAIR.

Mr. John Page called in and examined:—

4050. *By the Chairman*: Do you possess any trade? I worked as a carpenter on the island. Mr. J. Page.
 4051. Are you a carpenter by trade? Yes.
 4052. How long have you lived in Sydney? I never lived in Sydney above a week or so before I went to Maitland—it was in Maitland I lived. 20 Mar., 1861.
 4053. How long did you live there? About two years.
 4054. You were convicted of an assault? Yes.
 4055. Upon whom? A woman, with attempt.
 4056. Who tried you? Judge Milford.
 4057. What was your sentence? Two years.
 4058. Were you removed at once to Cockatoo? I was tried on the 15th of March, and on the 26th I was sent to Cockatoo.
 4059. Have you served out your full sentence of imprisonment? Yes. I was discharged on the 15th of this present month.
 4060. Are you a married man? Yes.
 4061. Where is your wife? At Melbourne.
 4062. Have you any family? Yes.

- Mr. J. Page. 4063. How many children? Three.
4064. Were your family living with you at the time of the assault? No, I came here for the good of my health.
- 20 Mar., 1861. 4065. You have complained to the Committee of the loss of some clothes—will you state the particulars of that complaint? I came on to the island in March, 1859, and brought two suits of clothing, one of cloth and the other of drill.
4066. What did the cloth suit consist of? A shooting frock of black cloth, a black satin waistcoat, and Parramatta tweed trousers.
4067. Do you remember how often you had used them? I never wore them but two days previous to my arrest? I had recovered my health and was preparing to go home.
4068. They were in a manner new? I have proof to shew that they were new.
1469. You had some other clothes, what were they? Drill trousers and a drill frock; this is the drill frock or blouse that I have on. I delivered these clothes with a cabbage-tree hat I had to the chief warder, Brown; and I missed them previously to Brown's leaving the island. I reported it to Captain Mann, the superintendent, and he referred me to Captain North, the visiting magistrate. Captain North after investigating the case requested Captain Mann would see Mr. Brown and arrange with him about the clothes, as they were proved to be stolen, and told him that if not he would hold him accountable, or words to that effect. Mr. Brown left there about a week after, and Captain Mann never called me in or spoke any further about the clothes to me. I again brought the subject before Captain Mann and asked him, as my clothes were stolen, if I procured clothes would he allow the Government tailor to alter them for me so as to fit me, that I might not have to go out in Government clothes. This he refused, and asked Mr. Taylor, the Clerk of Petty Sessions, if there were any clothes in the store not claimed that he could make me out a rig of—that was the expression he used. Mr. Taylor said there were clothes unclaimed; but when I applied on the 16th February last, I was refused altogether, and was told I might go the best way I could.
4070. You never did get your clothes then? Not a ha'p'orth. I got the trousers I have on from one of the prisoners.
4071. During the time you were on the island, what ward did you sleep in? In every ward on the island. I was shifted from ward to ward, but I was principally in No. 4 ward.
4072. How many slept in No. 4 generally? Generally about 48 or 50. This is a very small ward, there are only sixty berths in it.
4073. Did you ever sleep in one of the large wards? I did.
4074. What state were those wards in when they were filled—as to the atmosphere? Most wretched; if the nights were any way warm, they were the most unwholesome places that ever men were put into. The berths are in two's, one above the other, about twenty inches wide and six feet six inches in length.
4075. Do the men, when the time arrives, all turn in and go to sleep—do they make no noise? They are supposed to turn in at eight o'clock, and then some of the bad characters begin making noises and rioting, and using blackguard language unfit for any father or husband to express, until ten or eleven o'clock at night.
4076. Do they ever continue to make a noise all night? Several times they have done so.
4077. Have you ever been kept from sleeping? Repeatedly, since the men came back from Sydney—for two nights successively they made a great noise.
4078. Have you ever seen any bestial conduct on the island? I have not seen it myself, for I never associated with the men; I kept myself as much to myself as I could.
4079. Have you ever heard any conversation about it? I have heard it of them that have seen it; and they were men as respectable as any on the island.
4080. And you believe it? Before my God I do.
4081. You never saw it yourself? I never got in the way.
4082. Do you know of your own knowledge whether there were young lads on the island who went by feminine names, such as Miss So-and-so—Judy So-and-so? They have been regularly called the same as a woman or wife, So-and-so.
4083. You have heard that? Repeatedly.
4084. Could you mention any names of those who have been so designated? Yes; there is a fellow who has gone out this last time, named _____.
4085. Was he called Poll _____ or Miss _____? Miss _____ he was sometimes called, but he generally went by the name of _____. There was another fellow, a very bad character, he seemed to be guilty of the same offence, his name is _____.
4086. You have heard him called by feminine names? Yes.
4087. Have you ever noticed whether any of the prisoners paid unusual attention to others, such as are bestowed on women, such as getting choice things for them? Yes, repeatedly; there is quite a young chap in the carpenter's shop, and I have heard a blackfellow who is there as a cooper talking to him.
4088. What is the lad's name? _____.
4089. Is this lad one of those who has received unusual attention from others? Yes.
4090. He is treated as if he was a girl? Yes; I have heard the expression, "I have found you in eggs, and butter, and everything, and then"—using the name given to common prostitutes—"you have turned round on me now." I have heard the blackfellow say that to him.
4091. Who was the blackfellow? _____, a cooper by trade. "After having given you 'eggs, and butter, and you took everything from me the same as"—begging your pardon—"a whore in Sydney, you now turn out ungrateful." I said, "Oh, you beast! only my time 'is short on the island I would not hear you use such expressions to a man." I heard no more of it after that.

4092. I will read to you a passage from evidence that has been given by one of the prisoners ^{Mr. J. Page.} on Cockatoo Island.

[The Chairman read extracts from the evidence given by Frederick M'Gregor, 20 Mar., 1861. and continued.]

He then goes on to state deliberately one act of unnatural crime which he himself witnessed, by taking a light to the berth and seeing the men together? I have heard it, and I have heard a man say that he had seen it with his own eyes.

4093. Can you recollect the name of the person who said he had seen acts of this kind? Yes, he is a Jew named Harris.

4094. Is he on the island now? I think so; and several others.

4095. Do you recollect their names? Another man named Murphy said he had seen an act of the kind in the closet in the day time.

4096. Is that man in Sydney? No, he is up at Williams River.

4097. Do you recollect any one else? There were others but I do not recollect their names. I kept myself away from the prisoners. I repeatedly heard conversation about it.

4098. Recollecting the serious character of what you are saying, and endeavouring to satisfy your mind as to the truth, do you think the statement I have read is true? I think it is all true except as to their sleeping as man and wife, from the slight sketches I heard of it.

4099. The man simply means that they had connection of that nature? I believe that.

4100. Not liking to say the thing in unblushing terms, he made use of that form of expression? I believe, before my God, that it is acted in every ward on the island, from what I have heard, and what I have known from conversation with men who were striving to offer prayer for their misery and crime. It is no place for men that desire to reform.

4101. How often were the wards whitewashed during the time you were there? They were never to say whitewashed, there was something of a dab of whitewash supposed to go over them.

4102. Did you suffer from vermin in those wards? They were repeatedly stoved, and then we got a week or a fortnight's ease from fleas and bugs.

4103. What means were adopted to keep the places clean? That was all.

4104. I suppose they were washed out every morning? Yes, a little lime was used along the boards—a little whitewash was smeared over.

4105. The effluvia from the night-tubs, was not that very offensive? Yes, and when they began to smoke at night. I was touched in the lungs and could never sleep till eleven or twelve at night. I had a bunk under a window, and I used to keep that open, as I was almost suffocated; there was no ventilation in the ward.

4106. Was there not a wardsmen whose duty it was to see that every thing was going on correctly? There were two prisoners.

4107. Did the prisoners go out of one berth into another, or walk about in the passages between the berths? Yes, they used to get to the night-tubs to evacuate, sometimes three or four times.

4108. Did they go from one berth to another? There was no hindrance in life.

4109. The wardsmen did not prevent them? No, they could not, for they were generally asleep. The sentry comes in twice or three times during the night, and the moment he goes away the wardsmen generally sits down and goes to sleep, and we never hear him stir, so that the men can go where they like and rob one another. There have been plenty of robberies in Nos. 1 and 2.

4110. Were you satisfied with the men who were appointed to petty offices about the place—were the best men generally selected in your opinion? Quite the reverse; the men who had some little interest with the chief warder got billets.

4111. *By Mr. Lucas:* You say you missed your clothes before Mr. Brown left the island—I understood you to say that you gave them over to Mr. Brown to keep—where did he put them—in the store? Yes.

4112. How could you have an opportunity of missing them before Mr. Brown left the island? I agreed to give a man named _____ a shirt for nothing, as he was going away, and I went with Mr. Brown to the store to my carpet bag; the first thing when I opened my carpet bag I missed my coat; and as soon as I spoke of it, Mr. Brown made me shut it up. There were some of the men going away the next morning, and Mr. Brown said that before they went he would overhaul them, but he did not do so.

4113. If you gave your clothes into the charge of Mr. Brown, or any other person, how could the men get to these clothes? They could not unless when another prisoner is going away to give him some article.

4114. *By Mr. Sutherland:* It was only when Mr. Brown permitted you that you could see your clothes at all? Yes.

4115. *By Mr. Lucas:* There is a wardsmen in each of these wards? Two.

4116. If it has been given in evidence that these people walk the passage in the ward all night, it is not true? It is not true; they are supposed to do so.

4117. According to your evidence they go to sleep the same as the others? They sit down, and generally in the empty berths, and go to sleep. Not more than a week or two since the policeman came in and called out for Waters and another man named Collins, and they were both asleep in bed, and remained there for a long time.

4118. It is not even usual for them to walk the wards all night? No; they may walk for an hour or so when the constable comes in.

4119. How many times during the night do the police in charge of the island visit the wards, or do they visit them at all? I do not know. I have known the police come in there nearly every hour to the door if the lamp was not kept in.

4120. Then the policeman do not come to the ward door and see the wardsmen on duty? He

- Mr. J. Page. He is supposed to come to the passage perhaps once or twice in the night, or every hour or two; he is not very regular.
- 20 Mar., 1861. 4121. Have you heard many of the prisoners complain of losing clothes? No; two or three men who have been going away have brought forward their cases. There was a man named Doran lost £10 worth of clothes, and he had £11 sewed up in them; all was gone.
4122. To whom did he give them? The chief warder. They are obliged to give up every stitch of clothes, to their shirts, to him, and he serves out the Government clothes.
4123. *By Mr. Wilson*: Are the overseers, who are prisoners, treated like the other prisoners, and locked up with them? They have not been for the last twelve months; they have a ward to themselves.
4124. *By Mr. Lucas*: Do the prisoners generally object to their fellow prisoners being selected to overlook them? Generally; it is one of the greatest faults they have. There have been several instances where they have objected to it. One of the men, about six months since, struck the overseer and broke his nose.
4125. Was he a prisoner? Yes, a man of the name of Stone.
4126. You say it is not the best characters who are selected for petty officers? No; if Mr. Taylor puts in a word for any man he is chosen.
4127. *By the Chairman*: Were you ever in prison before? Never in my life.
4128. Were you ever arrested before? No, nor any belonging to me. I never stood before a judge before, except as a jurymen.
4129. Has your wife ever known that you have been on the island? Not at all. I came here for the good of my health.
4130. What was the value of the clothes you lost? At the very lowest, £8 15s.

THURSDAY, 11 APRIL, 1861.

Present:—

MR. HART, MR. LUCAS, MR. MATE,	|	MR. MORRIS, MR. PARKES, MR. SUTHERLAND,
MR. WINDEYER.		

H. PARKES, ESQ., CHAIRMAN.

Cockatoo
Island Prison.
11 April, 1861.

[The Committee having met at the Circular Quay, at 6.30 a.m., proceeded to Cockatoo Island, and assembled in the office; the Chairman took the Chair.]

Frederick M'Gregor called in and further examined:—

- F. M'Gregor. 4131. *By the Chairman*: You were examined by this Committee in Darlinghurst Gaol? Yes.
4132. You were then in the hospital? Yes.
4133. Are you in the hospital still? Yes.
4134. What is the matter with you? Disease of the heart—all of a shiver; whenever the least thing excites me my heart beats very heavy—I get all of a tremble.
4135. You gave certain evidence before this Committee in Darlinghurst Gaol, to the effect that gross immoralities were committed among the prisoners, and, if I remember right, that you yourself on one occasion were witness to an act of sodomy between two prisoners? Yes.
4136. Do you adhere to that evidence now in every particular? Yes; I told it to you for the truth, and it is nothing but the truth. I am not the only man, if he liked to speak the truth, that would say so.
4137. You stated to the Committee that you yourself had gone with a light to one of the berths in one of the wards on this island, and saw two men whom you named in the act of sodomy? Yes.
4138. You still adhere to that statement? Yes.
4139. You said just now that you are not the only man on the island who can say so if others would speak the truth? Yes.
4140. Could you mention the names of any? It is hard to say; plenty of men know it.
4141. Could you mention any of their names? They might afterwards blame me for fetching them into it at all.
4142. There are men on the island who know the same thing, but you decline to mention their names? Yes.
4143. Why do you decline? I do not like to bring any man into it; it is a disgraceful thing, and they might blame me for it.
4144. Have you yourself experienced any ill effects from having made the statement you did make before this Committee? I hear the men railing against it. They saw something in the papers, and threatened to find out who had done it.
4145. They have not connected you by name with it? No, they do not know who it is.
4146. As far as you are concerned, you still believe the crime is committed in this penal establishment? Commonly committed in the wards. I have no doubt, before the Committee go away, there will be men come and speak about it. I wish to say that while I am here the Government may protect me, but after I get out I do not know what the men may do to me —
4147. After your liberation? Yes. I cannot stop in the town but must go into the country.

4148.

4148. *By Mr. Lucas* : You say you have no doubt that before the Committee go away men will come forward and make statements—have you heard any of the men say so? I believe three or four men were brought up before the magistrate, and it was reported that they disowned about the thing; and there are other men who said they would come up and speak to the magistrates about it. Cockatoo Island Prison. 11 April, 1844. F. M'Gregor.
4149. Who are they? Jen Hogan and Hugh Bland. I hear it rumoured among the men.
4150. Any other men? No.
4151. Have you heard them say so? No; I have heard other men say that they said so.
4152. You were not asked to come up and give evidence before the magistrates when they were here? No.
4153. *By Mr. Windeyer* : Do you know how the men who came up were chosen? By the free overseers. They were most of them wardsmen. Many of these men had the name of being guilty of the same actions.
4154. *By the Chairman* : Most of them were men in the condition of prisoners? Yes.
4155. *By Mr. Hart* : Do you know a man named Gilbert Isaacs? Yes.
4156. What is he? An overseer.
4157. Is he free? No, a sub-overseer of the works.
4158. Suppose he says he knows nothing of these practices, is that true? He may not have seen it, but he must have heard it, for it is always talked of among the men.
4159. Do you know a man named Samuel ———, a wardsmen? Yes.
4160. Is he acquainted with any irregularities, do you know yourself? It has been rumoured that he is one of the same kind of men.
4161. Who have you heard say so? Not one, but several—it is the common talk.
4162. Do you know George May? No.
4163. Do you know Robert M'Coy? No.
4164. Is the lad ——— on the island, whom you spoke of when you were in the hospital? No, he is over in the gaol; he is one of the men who got out of the wall.
4165. Is there any means in the wards of detecting these immoral practices, if the free overseers thought proper to do so? I do not know that there is.
4166. Is there any means, by supervision or tact, by which persons could be found guilty of these acts? I do not know that there is. I was here six months before I saw anything of the sort, but it was common talk among the men.
4167. Are there any persons on the island now who go by female names? Yes, there is young ———.
4168. *By the Chairman* : He is on the island now, John ———? Yes.
4169. Is ——— on the island now? No.
4170. Is ———? No.
4171. ———? No.
4172. ———? He is one of the men shifted away.
4173. ———? No.
4174. Is ——— on the island now? No.
4175. Is a man named ——— on the island? Yes.
4176. Is a man of the name of ——— on the island? Yes, ———.
4177. Is a prisoner named ——— on the island now? Yes.
4178. Is ——— on the island now? No, he has got his ticket.
4179. *By Mr. Hart* : Do you know a man named ———, a wardsmen? Yes.
4180. Is he a prisoner? Yes.
4181. Has he the reputation of knowing anything of this matter? He is blamed for being one himself.
4182. Have you any ground yourself for believing that? No; it is commonly spoken of among the men.
4183. Have you been present at any time when he has been accused of it? Never before his face, but you must hear of it.
4184. How does this conversation arise? They get talking of things, and then they call these names.
4185. Is it not more for the purpose of annoying the men than with the view of accusing them of any offence? They have nothing else to talk about.
4186. *By Mr. Windeyer* : Do you think it is done without any foundation for the charge? I have known the men to be on good terms, and talk in this way.
4187. *By the Chairman* : You have heard them talk behind the backs of each other of these things, when there could be no object for annoying? Yes.
4188. *By Mr. Hart* : When you became acquainted with these circumstances, why did you not report them to the authorities? For a good reason—I would have had a knife in me, or a piece of wood about my head.
4189. Even if you had exposed yourself to danger, do you consider it was your duty to expose such practices, instead of concealing them by your silence? I knew that; but still I was not going to run into danger; I was ashamed to tell the truth or speak about it.
4190. To speak about it to whom? To any person.
4191. Why have you spoken about it now? I have thought better of it. I think a man ought to tell, to put a stop to it as much as possible.
4192. Suppose you had evidence of the fact again, would you report it? Yes; but I would not come into the yard among the men; and you do not know where you may meet men again when you leave this island, and they may do you an injury.
4193. *By Mr. Windeyer* : How long have you to remain here? Two years and five months.
4194. *By Mr. Lucas* : You took the first opportunity you had of reporting it to this Committee? Yes; if I had reported it to the authorities of this island it would never have been heard

Cockatoo Island Prison. ———— berth, and ———— was shifted. It got among the men that I had 11 April, 1861. reported it, and the man came in front of my bunk with a knife, threatened me, and called me E. M'Gregor. everything to aggravate me.

4195. You know the names of the persons who made the statements before the magistrates? I know some of them—and others came up to make other statements.

4196. Do you think these men had an opportunity of knowing what took place? They are in the wards.

4197. ————, for instance, do you think that he, being a wardsman, the prisoners would be afraid to say anything against him? Yes.

Henry Carroll, *alias* James Hogan; called in and examined:—

H. Carroll. 4198. *By the Chairman*: You are confined on this island for some offence against the laws of the Colony? Yes, a rape was sworn against me.

4199. What was your sentence? I was cast for death, but I got fifteen years.

4200. Where were you tried? At Bathurst.

4201. By whom? Judge Dickinson.

4202. When? In 1856; the crime was committed in 1850, going on eleven years ago.

4203. How long have you been on the island? Seven years and a half yesterday.

4204. Were you among the insubordinate prisoners removed to Darlinghurst in January? I was removed from here to Darlinghurst.

4205. With that exception have you been on the island all the time? Yes, only when I went to Bathurst to be tried. I got five years for taking the law in my own hands.

4206. What do you mean by taking the law in your own hands? There was a horse stolen from my master, Major Innes, and I saw another man riding it and flung him off it.

4207. While undergoing that sentence you were charged with this crime of rape? Yes.

4208. And you were then removed to Bathurst to be tried? Yes.

4209. Altogether you have been on the island seven years and a half? Yes.

4210. We want to know from you whether, during the time you have been on the island, you have known any immoral practices, such as unnatural crimes between prisoners in the wards on the island? Yes, I have seen it, and I intended to tell you of it.

4211. You are fully aware of the magnitude of a charge of this kind—that it is a most serious offence not only in the eyes of God, but against the laws of the country? Yes.

4212. And that the consequences must be most serious to any one charged with the crime? Yes.

4213. You are also aware that we shall have taken down every word you say? Yes.

4214. Being fully aware of the circumstances under which you are going to make the statement, will you state—without any reserve, confining yourself strictly to the fact, and without any fear of the consequences—what you know of these practices? I will speak the truth, I have seen it more than once.

4215. Will you detail what you have seen? It is the general practice here ever since I have come on the island—when I came here at first it was more carried on than it is now.

4216. *By Mr. Hart*: What ward did you sleep in? No. 2, chiefly.

4217. *By the Chairman*: I suppose you have, at different times, slept in all? In all but one on the island. I was in the overseer's ward for many years; and, in fact, if a man was not one of the same sort he was not likely to get a billet. When I came at first they were all Norfolk Island men, and if there was a boy came they used to manage some plan to get him shifted into the overseer's ward, and there they used to commit this crime—they used to get into the boy's bunk. There was one instance of it tried in the office—it was in the bunk opposite mine. ———— and a soldier chap, ————, but they did not fetch it out in the right form; they bubbled it up. They gave the man seven days for it.

4218. *By Mr. Hart*: Was that for getting into the bunk, or for the offence? They bubbled it up, they did not want to fetch it up right, but I saw it with my own eyes; I saw him in the young chap's bunk. There have been several men brought up for something of that sort of crime; but they have always been slightly punished and let go.

4219. *By the Chairman*: Have you yourself witnessed this crime? I have, more than once. I can mention a married man that has been in another man's bunk.

4220. Can you mention the time you witnessed this? I could not mention the time.

4221. Two years, or eighteen months? It is more than eighteen months since ———— was tried.

4222. Can you mention the names of the parties? ———— and ————, and an old man named ————.

4223. Did you see these men in the act of sodomy? Yes; I was on the top of the bunk.

4224. Describe in language that we can understand what you saw? I slept in the top bunk, and there was a boy in the top bunk just opposite—in a line—and I saw this man get into the bunk of the other and use the lad the same as a woman.

4225. What did he do? There was a blanket over them, and he was in the bunk the same as if he was with a woman.

4226. Can you say what he did? I believe, sodomy.

4227. Can you tell whether his body moved? Yes.

4228. And he worked it as if he were in the act of copulation with a woman? Yes.

4229. You saw that with your eyes? Yes, with my own eyes.

4230. Was he on the top of the man? No, sideways like.

4231. Did you ever see any other case while there of similar conduct? I saw ———— and a sailor boy, I forget his name, in the same ward.

4232. How long was that ago? I should say a couple of years ago or better—I could not say to a few months. There is a servant who is over at Mr. Ball's, he had to be shifted out of the ward for another blackguard affair. Cockatoo
Island Prison.
11 April, 1861.
4233. What is his name? John Smith; and there was another chap, now in the hospital, a foreigner—I forget his name. H. Carroll
4234. Is he a Spaniard or a Portuguese? A Portuguese, I think. There was a blackfellow that he wanted to have connection with against his will; and the blackfellow got seven days for an assault; he blackened his eyes and everything; and the injured party was never brought up to prosecute the other.
4235. Did you ever report these things to the authorities? I have often told the free overseers about such things, that it ought to be put a stop to; but it was tolerated on several occasions, and then we durst not report it for fear we would get punished, and there would be a down upon you. There is Jem Neal, on the works now, who is a married man, and has got a large family at Bathurst, saw it not many weeks ago, I believe.
4236. Do you know a prisoner on the island of the name of Power? Yes.
4237. Have you ever heard that prisoner say anything about it? He knows it is carried on; I do not know whether he ever saw it himself; I have often heard him speak of it.
4238. Do you know a prisoner of the name of Gilbert Isaacs? Yes; he is on the exempt bank.
4239. He has given evidence before the police magistrate that nothing of the kind has occurred? I do not know about that. I swear on my oath that it was so—I have seen it with my own eyes.
4240. You mean that you would be prepared to make affidavit as to the truth of what you state? Yes. I do not see why me or any other young man who is here should get classed up and bear the blame of these things when we are not guilty of them, all for five or six scoundrels. This going about the country is not very pleasant for us.
4241. *By Mr. Hart:* Has any attempt been made by the free overseers to detect and punish this crime? No; it has been hushed up more than trying to keep it down.
4242. Do you think it is more prevalent here than in other prisons? I was never in such a place before I came here. It is very bad here, more than I can tell you.
4243. Would there be any means of detecting this crime by watching the men? Not without you had proper honest men as wardsmen—they could stop it.
4244. That is not the question, I ask you if there were any means of detection? Only by the wardsmen at night; if the wardsmen did their duty it could not be committed. But when the men can get up and rob their fellow prisoners, of course they can do other things.
4245. *By Mr. Windeyer:* Does that happen? Yes; I have been robbed myself in the place, not many months ago, of my gratuity money—9s. 2d. was taken out of my pocket.
4246. *By Mr. Morris:* What are you doing—you are not a wardsmen? No; I never had a billet on the island, though I do not consider that I have committed a crime since I have been on the island, and I have been here seven years and a half.
4247. *By the Chairman:* If you wish to make any further statement you can do so? I had a statement written when I was at the gaol, and I wish to know if you have received it. I presented it to the Sheriff, and he said he would see that it was delivered to you.

James Neal called in and examined:—

4248. *By the Chairman:* You are a prisoner upon this island? Yes. James Neal.
4249. For what offence are you imprisoned? I was found guilty for murder.
4250. Where were you tried? At Bathurst.
4251. When? About thirteen months ago.
4252. By whom? Mr. Justice Milford.
4253. What was your sentence? Fifteen years. I was cast for death.
4254. Your sentence was commuted? Yes.
4255. Any portion of your sentence in irons? Yes, three years.
4256. Have you a family? Yes, I am the father of eight children.
4257. You have a wife and eight children? Yes.
4258. All children by the same mother? Yes.
4259. Was the crime of murder for which you were tried accompanied by robbery or anything of that kind? No, it was a neighbour came and ordered some bags ———
4260. Did it arise out of a quarrel? No, there was no quarrel. I knew nothing about it. The woman was killed about fifty or sixty yards from my house, and I was passing the road with some bags where she was found.
4261. Were you ever in prison before you were tried for this crime? Yes.
4262. How often? Only once.
4263. What was that for? A dispute I had concerning a constable.
4264. Was it for an assault upon a constable? Yes.
4265. During the time you have been on the island have you ever become acquainted with immoral practices in the wards, including unnatural crime between the prisoners? Yes, I have seen a little of it.
4266. As a father of a family you must be aware that that is a horrible offence? Yes, I believe it is; that is no new story at all at Cockatoo.
4267. No new story? Not in the least.
4268. What do you mean by that? Because they generally make a practice of it—a regular habit of it.
4269. Do you mean to say that it is common among the prisoners? Yes.
4270. Have you ever been an eye-witness to a crime of this kind? Never till I came here.
- 4271.

- Cockatoo 4271. Have you been an eye-witness to the crime on this island? Yes.
 Island Prison. 4272. You have seen the act committed with your own eyes? Yes, and shewn it to the
 24 April, 1861. wardsmen of the ward and asked him would he report it.
 James Neal. 4273. State when it was? At furthest about eight months ago.
 4274. What did you see? I saw a man going into the bunk with him, and I saw another
 man waiting at the bunk.
 4275. What man was this? I do not know. I was a stranger at the time, and did not
 know their names.
 4276. Did you know either of the parties—there must be two parties to an act of this kind?
 I do not know; one of them came from Maitland, and the other has been at Woolloomooloo
 since.
 4277. What did you see? A man going into the bunk of another man, and another man
 waiting till one came out again. It was a most rascally affair.
 4278. Will you state distinctly what you mean, as every word you say is being taken down.
 You say you saw a man go into a bunk? I saw a man going into a bunk to another man.
 4279. Did you see one prisoner go into a berth where another prisoner was lying?
 Yes, and he had connection with the other the same as man and wife. I saw another man
 waiting till he came out, and he went in and had connection with him, and then another
 man went in and he would not stand it, and the man said he was in good order and would
 not be long. I asked the wardsmen did he hear that word passing, and he said he did not
 care, and walked away.
 4280. Who was that wardsmen? He got his ticket and went away.
 4281. Did you know none of those four men? I know the wardsmen of No. 2 ———
 4282. You say there were four men, one the submitting party—the one who acted as woman,
 and then there were three men who went to this man—do you know none of the four?
 Yes, I know two of the four men—the four have gone with their tickets.
 4283. What were their names? I am blessed but I forget his name.
 4284. Did you ever see a crime of this kind on any other occasion? I would not say what
 ward is most guilty of this crime—they counted No. 2 the most correct word.
 4285. *By Mr. Lucas:* You were going to say something about one of the wardsmen? Yes;
 one of the No. 2 wardsmen, a man of the name of Yorkey—he was the wardsmen at the
 time; I asked him did he hear the conversation.
 4286. Is he the wardsmen now? Yes.
 4287. *By Mr. Windeyer:* What did he say when you called attention to it? He said he
 did not care. I said it was a most sinful affair—it was a most rascally affair; and I went to bed.
 4288. *By the Chairman:* Are there young men upon this island ———? Old men are
 worse than young men.
 4289. Are there young men on the island who go by female names—are they called Miss
 This, or Lady That? Yes, some used to be called the Bleeding Nuns; they have gone away.
 4290. Why used they to call them that? Because the men used to be with them.
 4291. You said just now that the old men were worse than the young ones? Many of them
 were called the "Sprigs of Fashion." They fought regular for them. If you say anything
 to one of them their fancy-man takes their part.
 4292. The men treat them as they would treat prostitutes? The very same.
 4293. Do they get choice things for them, little presents? I believe so; they are very
 little presents they can get here.
 4294. If they could get delicacies for them would they give them to them? Yes, if they
 could.
 4295. Fruit? If they had the opportunity of getting it they would give it to them.
 4296. You have seen them treat these men as if they were women? Yes, and plenty besides
 me.
 4297. Who else? Power.
 4298. Who else? Jem Hogan, George Hyland, and plenty more besides, only they are
 frightened to tell of it for fear of the authorities of the island.
 4299. *By Mr. Hart:* Are there any men at present on the island who prostitute themselves?
 Not our men, we have cleared out our ward from them, we would not have them.
 4300. Does any improper conduct go on in the day time when the men have opportunity?
 I believe there was some time ago something about it in the mess-shed, but I did not pay
 any attention to it.
 4301. Did you report any of these things to the authorities? No, I did not.
 4302. Why did you not? I left it to the wardsmen, I thought he was the fittest man to do
 so.
 4303. That was to the wardsmen you reported it to two years ago? No, it was not eight
 months ago.
 4304. *By Mr. Lucas:* How long have you been on the island? A little better than twelve
 months.
 4305. Did you not live near Orange? Yes, I did.
 4306. *By Mr. Morris:* Were you at Darlinghurst? Yes, I think I saw you there.
 4307. *By the Chairman:* Do you know a person named Bland? Yes.
 4308. Have you ever heard him speak of these things? Yes.
 4309. Do you know a person named Byrnes, a boy? No.
 4310. Do you know a person named Brennan? No.
 4311. *By Mr. Morris:* Do you know a man named ———? Yes, he is a wardsmen
 now.
 4312. Did you ever hear him speak of these things? No, I believe he was concerned in the
 same thing.

4313. In which he was connected? No, he was kicking up a row about it.
 4314. *By Mr. Lucas*: Where was that? I did not pay any attention to it.
 4315. In the ward where he was wardman? Yes, in No. 4 or No. 5.
 4316. *By the Chairman*: Do you know a prisoner named _____? Yes.
 4317. Is he here now? Yes, he is stone-cutting.
 4318. Did you ever hear that _____ was implicated in these things? Yes, I believe Hogan was taxing him with it.
 4319. Do you know a man named _____? Yes.
 4320. Did you ever hear him spoken of? No.
 4321. What is he doing now? Stone-cutting.
 4322. Do you know a man named _____? Yes, _____, he is in the next bunk to me.
 4323. Did you ever hear him spoken of? No.

Cockatoo
 Island Prison.
 11 April, 1861.
 James Neal.

Gilbert Isaacs called in and examined:—

4324. *By the Chairman*: Are you a prisoner on this island? Yes.
 4325. For what offence are you here? I am here for taking some cheques in the Post Office at Kempsey.
 4326. What is the sentence you are suffering? Four years.
 4327. How much of that have you done? One year and ten months.
 4328. How are you employed upon the island? As a sub-overseer at present.
 4329. What are the duties prescribed to you as sub-overseer? I have no work to do; I look after a gang of men at their work to see that they do their work, and report them if they do not. On Saturday and Sunday I have to be on duty at the gate of the yard.
 4330. What avocation were you following at the time of your arrest? I was postmaster at Kempsey.
 4331. In what part of the island do you sleep? In ward No. 3.
 4332. How many are sleeping in that ward? Sixteen at the present time, merely the sub-overseers.
 4333. They are all together? Yes.
 4334. Are there sixteen sub-overseers? No, there are two wardsmen and a servant besides, a servant who is placed there for protection from the other men.
 4335. Then there are thirteen sub-overseers, two wardsmen, and a servant in that ward? Yes.
 4336. Are all these thirteen sub-overseers similarly appointed to yourself, and have they similar duties to perform? Yes.
 4337. They are placed over the men in the different gangs? Yes.
 4338. How many men have you under you at the present moment? I have sixteen to-day, but there are more in my gang.
 4339. When they are all at work how many have you? Twenty-four.
 4340. Where are the other eight? They are invalids.
 4341. One-third of your gang are exempt? Yes.
 4342. Have these eight men been exempt many days? Yes, some have.
 4343. Were they at work yesterday? None of those who are exempt to-day.
 4344. Have any been at work this week? Yes.
 4345. How long have you been sub-overseer? Seven months.
 4346. Out of how many? One year and ten months.
 4347. For the first fifteen months were you employed as the other prisoners? Yes, at stone-cutting.
 4348. Were you berthed with the men in the same manner as the others? Yes.
 4349. Did you ever notice any immoral conduct on the part of prisoners during the time you were berthed with them in the night time? I never witnessed any.
 4350. Did you ever hear it talked of? I did, to a very great extent.
 4351. Was there frequent conversation about unnatural crime? Not only frequent, but daily, and hourly.
 4352. I should infer from what you say that it was a common topic of conversation? It was a common topic among a certain class.
 4353. What is the conclusion you arrived at from hearing this conversation—have you arrived at the conclusion that the crime is committed? I have arrived at the conclusion I stated to the magistrate, that both from the association I see of certain men, and the language I hear, I am convinced it is so. It was from what I have heard outside, that I wished to be examined. It was stated to me that I had said before the magistrate I was prepared to swear that such crimes were not committed. If that appears in the deposition before you, it is quite in opposition to what I have stated.

[The Chairman read the statement made before the Police Magistrate.]

4354. I should not gather from what you have said here that the conversation to which you have referred was in jest. What I should gather is, that the conversations in which unnatural crime formed the subject, were so continuous, that you inferred the crime was committed? That was what I stated to Captain Scott. He put the question, if I did not think these conversations were in jest, and I said I did not think there could be such an amount of it unless there were some earnest.
 4355. Your evidence will now be taken down word for word; the questions, as I ask them, and the answers too, by the short-hand writer? Yes, I am aware.
 4356. You said that on account of something that had been reported to you, you wished to come before the Committee and make a statement? Yes.

G. Isaacs.

Coakatoo
Island Prison
11 April, 1861.

4357. You are now at liberty to make what statement you think proper? It was through this man saying you had made this remark, which he misconstrued, that I wished to tell you I believe the crime is committed.

G. Isaacs. 4358. You say in your statement that men are called by women's names on the island, and treated as women? Not exactly treated as women, they are spoken of as such among a particular class of men.

4359. *By Mr. Windeyer*: Do you mean a particular set of men? A particular set. Of course there are men above associating or joining in the conversation; but being mixed up as they are in one yard, they cannot be deaf to it.

4360. *By Mr. Hart*: Do you think there are persons on the island now, who are passive agents in this crime—upon whom this crime is committed? I do.

4361. *By the Chairman*: Who are they? One man whose name has been mentioned to me is a lad of the name of _____, if he can be termed a lad, for I believe he is a married man.

4362. A married man? I believe he is married, which makes it _____

4363. Who else have you heard of? No one else I should like to mention.

4364. Have you ever heard of _____? Yes, as in connection with _____.

4365. Have you heard of _____? Yes, I have heard his name mentioned, but I was speaking of those who submitted themselves to the act.

4366. *By Mr. Hart*: Is there no means of stopping this practice by keeping watch and detecting the guilty parties? If you will allow me, before answering that question. After the examination took place before Captain Scott, the subject was spoken of among the men; and, among other things, it was said that men had been known to take the place of wardsmen, appointed to keep watch, for the purpose of committing this crime. Therefore, so far as the watchmen are concerned, they are of little use where the men are determined to commit it.

4367. Then it would be better, I presume, to have free men as wardsmen? I can hardly be supposed to judge.

4368. Do you suppose the wardsmen are afraid of the consequences if they were to make these things known? Yes, I stated that before the Visiting Magistrate when he asked me if I thought any respectable person seeing the crime would conceal it. I said, not only that, but many persons were deterred from reporting these circumstances from fear of the prisoners. About eight months ago I was supposed to have been concerned in giving information to the authorities about the man who attempted to make his escape from the island, and I was beaten within an inch of my life. I had my head split open with a stone.

4369. Do you know instances of undue favour, or of severity, on the part of the authorities towards particular prisoners? I know of none that I can bear testimony to myself since I have been here.

4370. Are there any well grounded complaints by the prisoners generally? I do not belong to the men who fell out at the last meeting. I therefore do not know what they fell out for; but I wish to bring under the notice of the Committee the manner in which the gratuity money is distributed here. I have not to complain of it myself, for while I was at work I was at stone-cutting, but it relates to the men who are employed at the hand-carts. I have first and second class men in my gang, mixed up together, and they are placed on a task. The first-class task is admitted by the free overseers to be more than the men can possibly do, still it is imposed. There are not more than three or four men who can do it. The work is returned in the number of feet they cart away in the day; this is sent up to the office. The first-class have to cart 115 feet, and the second 64. This entitles the men to no gratuity; it is called the Government task. They allow nine feet to a cart for a load; it is therefore necessary for four men to cart fifty loads a day, and in order to get a gratuity of three-half-pence, it would be necessary to put out seventy loads. Now it is possible for four men to do it for one day, but to follow it up and work at it from year's end to year's end is not possible. The third-class man's task is so much reduced, that he can do the Government task by eleven o'clock, and earn three-pence over.

4371. Who has the arrangement of this work? The free overseer places his men upon task-work, and desires me, as a sub-overseer, to keep the tally of the number of carts put out in the day, and which he enters in the office. If you refer to Mr. Fitzgerald, the overseer, he will inform you that the first-class men, working in the hand-cart under me, received only two-pence gratuity for a fortnight's labour.

4372. *By Mr. Sutherland*: What did the second class men receive? One second-class man working at the same cart received nine-pence half-penny.

4373. Have you any third-class men in your gang? Not in my gang; they are men entirely by themselves, called the invalided men.

4374. You say these third-class men could earn three-pence before eleven o'clock? Yes; the stone-cutters have a system of banking, and the men are allowed so much for all they cut over their task; and this, at the end of a fortnight, amounts sometimes to 1s. 9d., sometimes to 2s. This is placed at the bank to the credit of the party, and he receives it when he leaves the island. Before I came here, when this dock was being made, men have banked as much as 30s. or £2 in the fortnight. Now the men came to this conclusion as to where this banking money came from—not that I entertain it myself—they say we cannot get our gratuity, we think this money is retained for refunding to the bank, and they just crawl along and have no heart to work. This money, paid for extra work, goes to supply the men with tea and sugar for their evening meal; but if they receive only two-pence in a fortnight, they can have only cold water to drink.

4375. You think this ought to be reformed? Yes

4376. Who has the arrangement of that—is it the superintendent of the island, or the task-work overseer? The task-work overseer is Mr. Ballis.

4377.

4377. Has he the arrangement of the payment to the first and second class men? He is supposed to have; for the orders are, that every man, where practicable, shall be placed on task-work, and then the duty of the free overseer is merely to return the quantity of work done; and, by a scale in the office, the task-work master returns the amount of gratuity the men have earned.

Cockatoo
Island Prison.
11 April, 1861.
G. Isaacs.

4378. How are they divided into first and second classes? According to their physical capabilities.

4379. You complain that men of different classes are put upon the same cart? Yes; on their arrival here they are classed by the medical man. A man named Fahey, who had been here before, and who was then a first-class man, on his arrival here under a fresh conviction, was classed by the medical officers as a second-class man; but when he was sent to the office to be assigned to a gang he was asked by Mr. Fitzgerald to what class he belonged, and he said that he had been on the first class. His register has, therefore, been allowed to stand good in the office, and his work is returned as a first-class man though he is in the second-class gang.

4380. What is done with the money placed to the prisoner's credit? It is placed to his credit and he receives it when he leaves; but there is only one class that can bank, and that is the second.

4381. There is no reward for the others? No; in fact a man may as well be misbehaved as good.

Edward Power called in and further examined:—

4382. *By the Chairman:* You were examined before this Committee at Parramatta Gaol some time ago? Yes. E. Power.

4383. You were then in solitary confinement? Yes.

4384. While you were under examination you stated that immoral practices, amounting to sodomy in some cases, were carried on on Cockatoo Island? Yes.

4385. The Committee desire to know whether you still adhere to this statement? Yes; since I have returned from the gaol these things have been carried on again.

4386. Have you been an eye-witness? Not an eye-witness.

4387. Have you been an eye-witness to anything preliminary to, or connected with, the crime itself? No.

4388. Will you state what has come within your own knowledge? Since I returned from Woolloomooloo there have been two or three instances in the ward where I sleep. My attention was called one night by a man named Hogan. I was asleep at the time, and when I got out of my bunk to witness the action, the party left the bunk and went to his own again. Since then I have laid awake several nights to see if I could catch the party. They have got information that I intend to put it down if possible, and they have got their eye on me and I have got my eye on them.

4389. What were the names of these men? _____ and _____.

4390. Were these old or young men? Both young men.

4391. I suppose, from what you say, that you have no doubt this crime does take place? Not the least doubt. This is a second Sodom and Gomorrah for any man of feeling to be here and sleeping with men, whose chief subject of conversation, from the time they go into the ward till they come out again, is nothing but sodomy.

4392. This is the chief topic of conversation? Yes, this is the home of many of them, and a man who has never been here before his mind is never at ease with them. You cannot rest or do anything with them. You cannot close your ears to them, for you are all huddled together. There was a case brought before the magistrate yesterday or the day before. I do not know how it was got over. There was a man called a boy a "bloody Irish whore," and then a "bloody Pentridge whore"; and it was brought before the magistrate, but it was hushed up.

4393. What magistrate? Captain Scott. In fact, three or four instances have been fetched to this office, but they have always been hushed up.

4394. You have never been an eye-witness to the crime itself? No; but a man on the ground has seen it from time to time.

4395. Who is that? Michael Doran.

4396. Have you anything you wish to state to the Committee? I wish to be shifted off this ground. I do not care where it is so long as it is off this place. I am a man with a family, and half my time is done, and I would sooner remain in a solitary cell than stop the rest of my time here.

4397. I think you stated that when you were at Parramatta? Yes. They are going to break out here immediately, and a man is in danger of his life. They say they are only waiting to see whether the Council will do any thing for them. Only the day before yesterday there was a man stabbed in his arm.

4398. Who was he? Patrick Byrnes.

4399. Who stabbed him? This man, Michael Doran.

4400. Why did he stab him? He said Byrnes gave information against him.

4401. Is Byrnes hurt? Yes; the knife went right through the muscle of his arm.

4402. Has Doran been tried? Byrnes declined prosecuting when the magistrates were here.

Michael Doran called in and examined:—

4403. *By the Chairman:* You are a prisoner upon this island? Yes.

M. Doran.

4404. How long have you been here? I came here the 28th day of May last two years.

4405. You have been here nearly three years? Yes.

4406. For what offence did you come here? For a horse.

4407.

- Cockatoo Island Prison. 11 April, 1861.
- M. Doran.
4407. For stealing a horse? No, not for stealing him.
4408. That was the charge? That was the charge.
4409. Where were you tried? At Maitland.
4410. By what Judge? By Judge Callaghan.
4411. During the time you have been confined on this island have you ever seen acts of gross immorality among the prisoners? I have.
4412. You have seen them yourself? I have been called in the middle of the night by a man of the name of Neal.
4413. In what ward were you at that time? No. 2 ward.
4414. How many prisoners were there sleeping in that ward? I dare say there may be such a thing as sixty; there may be more or less.
4415. How long ago was that? Better than two years.
4416. You say that Neal called your attention to something? Yes; he called my attention to look at such parties, naming them; not merely me, but a great deal more men as well as me; and I have seen frequently two and three persons going into one bed; it was quite usual in that place; he got his liberty to Moreton Bay afterwards. There was another case, quite similar to it, that was brought up for it.
4417. What did you see on that occasion? I only saw two men in the bunk; it was night, and that was all I could see—their nakedness—anything more I could not see.
4418. You did not see them in the act of sodomy? No, I would not go so close to them, but they were both together under the blanket.
4419. Did you see them acting in any manner indecently towards each other? Yes.
4420. What have you seen—you must speak out in plain terms, for your language is being taken down as you speak? I have seen one man on the top of another.
4421. Treating him as though he were a woman? Yes, I have seen that.
4422. Have you seen that more than once? Yes, and more than half-a-dozen times.
4423. Will you state the names of any of the men thus acting? Yes, I will; a man of the name of _____.
4424. Is he on the island now? No, he was invalided from here to Parramatta.
4425. Who else? He was with a man named _____, he got his liberty from this island by Dr. West, for the good of his health.
4426. Anybody else? Yes, a man of the name of _____, and quite a young boy—a growing up slip of a man—quite a youngster—had connection with him.
4427. Did you see that? Yes; Neal called me to watch both these parties, and with that I did.
4428. You have seen the men having connection with this boy? Yes.
4429. Do you mean that you saw them in the act? I see him lay on the top of him, that is all I can say any further about it, in that uncertain time of the night.
4430. What was the boy's name? His name was Jemmy something. He was sent to Moreton Bay to a ticket-of-leave better than two years ago now.
4431. How long is it ago since you saw the last act of this kind? I have not seen it since I left No. 2. I left it about two years ago. I was in the mechanics since then, in the blacksmiths' shop.
4432. That ward is better conducted? Yes; I am in a small ward, No. 4, where there is a proper wardman—a man of the name of Macdonald; he would not allow such a thing at all, by no means. The greater run is among the old prisoners, aiding one another and increasing such a thing; for if a man wanted to put it down, and exposed it, I do not know what would become of him. There is a youngster who is a servant of Mr. Balls at present, I was not in No. 2 when he was shifted, but I know he was threatened by the wardman what he would do if he would not stand it, and the youngster was shifted out of his ward and the man was left in his billet as wardman, and this treatment is allowed. There are other people on this island, if they were closely examined, would tell that they reported these circumstances to free people, who took no notice of it. There is another man named Mason that I am informed has reported these things to some free people on the ground.
4433. *By Mr. Hart:* Supposing the authorities had been desirous of repressing this crime, and had kept the same watch as you did, would they not have been able to have detected this crime? If free people would bring these parties to justice it would not take place so often as it does; but when men are pulled to this office, for justice, to be tried, they would not try for such a case, they would try for a different light, and book it in a different light. I went to Sydney Gaol in another case as a witness, in February two years, and for telling the truth in Sydney I got punished. I got three months solitary confinement for it every night; and another man when he saw the treatment I got for telling the truth would not do it. The bigger the ruffian the more encouragement, the more fair play he gets. That is the treatment I got, and every free man on the ground would shew me a cold reception.
4434. Was a court held on your conduct when you came back? No; but the superintendent said he would bring me to trial, and he took it upon himself. Mr. Forbes was the Visiting Magistrate at the time, and when he knew it he said he had no business to punish me for giving evidence in a court of justice. On the Queen's Birthday afterwards I got liberated, after going on for three months solitary confinement.
4435. Would it not be a satisfaction to you to have solitary confinement instead of being in the company of these men? Yes; but the vermin is eating a man in some seasons of the year.
4436. Are the cells dirty? Yes, for there is wood there that has been there for twenty years, and it is eaten with all sorts of vermin, and on the wall you will see the vermin, half-a-dozen in one spot, and when a man wants to lie down at night they swarm about him. There are other parties I have seen taken to sleep in the cell for having to do with a native black

black of this Colony—a man of the name of ————. He was confined for some time to the cells, and was never fetched out to justice. They do not want these things under the notice of the magistrates, and when they bring a case it is not as such they try it. From what I have known of it it is more encouraged by the authorities than tried to be kept down. I do not know this man Mason, but some one says that he reported to the free people that he caught two men in the act and they told him to shut his eyes. What are the prisoners to do if the free people who are paid to put a stop to it will not look at it.

Cockatoo
Island Prison.
11 April, 1861.
M. Doran.

John Mason called in and examined:—

4437. *By the Chairman*: You are a prisoner on this island? Yes. John Masen.
 4438. For what offence are you here? Stealing a horse.
 4439. How long have you been here? Since August, 1858.
 4440. During the time you have been here, have you ever had occasion to report to the authorities immoral conduct on the part of the other prisoners? I have.
 4441. You have made reports of this kind? Yes, I have.
 4442. The Committee wish to know the nature of the report, when you made it, and to whom you made it? I believe it was in May, 1859, that a boy received some injury or assault from a person in the ward, and in the morning when he came out he was crying. Several of the men asked him what he was crying for, and I heard the boy tell Mr. Brown that a man had made an attempt to beastly assault him; in fact, the boy wept most of the night. Mr. Brown said, "Why can't you men let one another alone? it is very odd you men will not let each other alone"; and no more was said about it. The boy was shifted out of No. 2 to No. 4; there was no more about it. The boy is here now.
 4443. What is his name? I believe, John Smith; he is servant to Mr. Balls.
 4444. Have you ever noticed acts of immorality? I have never seen them.
 4445. Have you ever heard of them? Plenty.
 4446. Are you yourself a married man? I am.
 4447. Have you a wife and children living? Yes.
 4448. Are you of opinion; from what you hear, that sodomy is committed on the island? I am almost certain, although I have never seen it, that it is very common.
 4449. It has been represented to us that it is the chief topic of conversation among the prisoners in some of the wards? The conversation goes when they fall out; the first words are "you whore," or "you so-and-so," something of that sort—in fact one will publicly before the whole call others such names as these.
 4450. Have you any other statement you wish to make? I have a little to say with regard to myself. Some time since I wrote to Mr. Justice Callaghan, asking him if he would be kind enough to look at the heavy sentence I had—I had a higher sentence than any other man for the same offence; and I prayed that I might have the same sentence as another prisoner. He answered me and said, he would recommend me to the Government for a commutation of sentence, and to make my sentence seven years. I came here to Captain Mann, and he read the recommendation to me, and advised me to write to the Colonial Secretary and enclose this recommendation. I wrote, but I do not know whether the recommendation went or not, and received an answer that no part or portion of the sentence would be remitted. Now I think this is unusual where a Judge makes such a recommendation.
 4451. Was this your first offence? Yes.
 4452. Where were you sentenced? At Parramatta.
 4453. You say Mr. Callaghan actually recommended a commutation of sentence? Yes.

John Smith called in and examined:—

4454. *By the Chairman*: How long have you been on the island? Nearly fifteen months. John Smith.
 4455. For what offence were you sent here? On account of some jewellery.
 4456. You mean on a charge of stealing jewellery? Yes.
 4457. What sentence did you receive? Two years.
 4458. What Judge sentenced you? Judge Milford.
 4459. Have you ever had occasion to complain of an indecent assault having been made upon you by any prisoner? I have; when I first came here, a man attempted to come into my bunk one night.
 4460. Will you state to us what took place—make your own statement, adhere strictly to the fact, disguising nothing, abating nothing—state where you were when the assault was made, in what manner it was made, who made it, what you did afterwards, and what was the consequence? The only thing that took place was this—after I had been on the island a few days the wardsmen in No. 2 came to my bunk about one o'clock in the morning.
 4461. *By Mr. Winleyer*: What was his name? I forget his name; but he had the name of Spring-heel Jack. While I was asleep he came to my bunk and began to feel in the blanket. I felt him feeling in the blanket, and accused him of it. I awoke all the men, and told Mr. Brown, the Assistant Superintendent, of it.
 4462. *By the Chairman*: What did Mr. Brown do? He removed me out of that ward into another.
 4463. This person who interfered with you in the manner you have described was acting as wardsmen? Yes.
 4464. When you say he commenced feeling about the blankets, did he place his hands in an indelicate manner about you? He did.
 4465. Under the blanket, in an indecent manner, as if you were a female? Yes; and I jumped up and accused him of it before all the men. I disturbed all the men.

- Cockatoo Island Prison, 11 April, 1861. 4466. Have you heard of similar conduct on the part of others? I have, several times.
4467. Have you ever seen anything? I have not.
- John Smith. 4468. Do you suppose from what you have seen that unnatural crime is committed on the island? That I could not say.
4469. I only want to know what your impression is? My impression is that such things are done. As soon as I came on the island I was told to be aware, and of course I took care of myself.
4470. How old are you? Just about twenty.
4471. *By Mr. Mart*: Have any overtures been made to you since then? No.
4472. *By the Chairman*: Did this man say anything to you when he attacked you in this way? He never spoke.
4473. Was he an old or a young man? An elderly man.
4474. *By Mr. Windeyer*: Did you ever hear young men called by female names? No.
4475. *By Mr. Sutherland*: Was the man you speak of still kept on as wardman? Yes, until he went to his liberty; that was some months afterwards.

Gother Kerr Mann, Esquire, called in and examined:—

- G. K. Mann, Esq. 4476. *By the Chairman*: Is there any general map of the island with which we can be supplied? Yes, there is; but it was made some time ago, and since that the general outline of the island has changed by filling in, and by the progress of the works.
4477. Can you and the officers under you prepare a map shewing the outline of the island, its features generally, and all the buildings upon it, which can be conveniently folded with a foolscap publication? I can. I will see that it is forthwith put in hand.
4478. This Committee has been appointed with unusual powers, such as the power of visiting public prisons, and also of receiving any statements from prisoners, and we are anxious to know whether statements from any prisoners addressed to the Committee have been forwarded to you, which have not reached us? I have some statements which have been forwarded from prisoners. They have come up to me in the first instance, and asked permission to write to the Committee, and I have given it. These statements should be in the office—but I do not know that they are at this moment—in order to be handed in.
4479. Perhaps you will forward them to us to-morrow morning? I believe they are here at this present moment. (*The witness referred to some papers lying on the table.*) I know these are some, but I am not quite sure whether these are the whole.
4480. Was there a prisoner on the island named David Clarke, recently tried before the Chief Justice, whose case has attracted some attention? There was.
4481. Do you recollect whether a letter was received on the island from Sir Alfred Stephen with reference to the prisoner, as he himself alleged in the dock? I am not aware of one.
4482. Did you read the statement published in the newspaper, where the Chief Justice, Sir Alfred Stephen, acknowledged having sent a letter of that kind, and explained to the prisoner why he sent it? I have no recollection—but so many letters come here of a similar description. I think I can answer positively that no letter came in my time. There may have been a remark on the warrant, but Clarke's character was well known at this establishment.
4483. Is it customary for you to receive letters from the Judges, relative to persons they have sentenced? No, it is not customary, nor do I believe a letter was written; but in the warrant there is a column for remarks, and the Judge's remarks are generally entered in that. I know of no instance of a letter having been written directly to the establishment respecting any prisoner.
4484. Is this man David Clarke on the island? He is not. After the disturbances that were going on here, I recommended that a certain number of those who are urging the men on to misbehave should be removed from this establishment, as there were no means of separation, to some establishment where they could be placed by themselves, and among them this same man, David Clarke.
4485. Then he will undergo his sentence in some other prison? I am not aware of that. I reminded the Government, when I heard he was sentenced, that he was one of the twelve men who were included in the list to undergo his sentence at another establishment. While here he made a desperate attempt to escape, but by keeping all the free officers on guard night and day for some days we frustrated the intention.
4486. The greater number of the men who were sent from Cockatoo Island for insubordination have been returned? Speaking from my memory nearly all; some two or three are still at large. Another man who was tried in company with Clarke, a man named Cavanagh, is not recommended to be removed.
4487. Is he here? He has not returned to the island.
4488. Have the men behaved in a more orderly manner, or, in other words, have they shewed any signs of insubordination since their return from Darlinghurst to the island? There has been only one instance of overt insubordination, but the men are in a very unsettled state—their demeanour is not what I conceive the demeanour of prisoners ought to be; still, I cannot say they have committed any actual act of insubordination. On Sunday morning they refused to receive their bread; I examined it, and was satisfied I should not be justified in condemning it; I therefore ordered them to receive it. I heard that, although a great many ate it, many did not receive it, or threw it about the yard. The next morning, at six o'clock, when they were rung out, they said they could not go out of the yard to work as they were hungry. I went down to the yard and ordered the men to fall in. I then ordered a man from each gang to come forward, and told him they might speak to me as to their cause of complaint. I heard what they had to say about this bread, but still refused to condemn it. I said if I had considered the bread had I would have condemned it; but, as I considered it good, I was bound to protect the interest of the contractor. The men then spoke to me
in

- in a remarkably orderly manner, and, if I may use the term—the only one that will express my meaning—there was no rowdyism about them; they were perfectly civil; their demeanour was correct towards me. I said, on account of their demeanour being correct, I would allow them to have their breakfast of hominy, and they must then turn out immediately. They had their breakfast at seven o'clock, and they then turned to their work.
4489. All has gone on smoothly since? All has gone on smoothly since.
4490. We understand that there was an assault committed yesterday, when a man named Michael Doran stabbed another man named Byrnes? I think it was on Monday the occurrence took place.
4491. We are told that this man Byrnes was stabbed right through the fleshy part of the arm? Yes.
4492. The knife went in on one side and came out of the other? Yes, I believe the intention was to inflict a mortal stab, and that it was the man's arm that saved his life.
4493. Were no steps taken in the matter? It was brought before the magistrate yesterday. The man Byrnes came up, but would not give evidence, and the case was dismissed. It was a very serious stab indeed. I immediately reported the circumstance to the Visiting Magistrate, and stated that I had placed the man in the cells, waiting his next visit.
4494. Is this man Byrnes in the hospital? Yes.
4495. Receiving treatment for his wound? Yes.
4496. Is the wound going on all right? Yes, it is merely a flesh wound through the muscles of the arm.
4497. Have you held an inquiry on the island, in consequence of the inquiry conducted by this Committee, to ascertain whether the crime of sodomy existed on the island? The Visiting Magistrate did so at his last visit.
4498. Did you sit? I am not a magistrate.
4499. Were you present? I was present among others who were present; I was not aware that it arose out of the visit of this Committee; Captain Scott came with a list of names of men on the island, and a large number were taken indiscriminately before him and examined.
4500. Was Mr. Agnew examined on the island? Yes, he was present.
4501. Have you seen his deposition? I think I was present when he made it; it has not made any great impression upon my mind, for I was part of the time engaged on the business of the island and was running in and out.
4502. You did not pay much attention to what he said? No, I could not speak positively as to the facts he stated.
4503. Was there not some charge brought before the Visiting Magistrate a day or two ago of immoral conduct? Not of immoral conduct, one of the men accused another of using very obscene and disgusting language to him. That case was brought before the Police Magistrate.
4504. What was the result—was the case dismissed? I think the case was dismissed. I think the man who had made use of it had never been punished on the island.
4505. *By Mr. Hart*: Do you apprehend an outbreak on the island? I am very careful to look out to prevent it. I cannot say that it amounts to an apprehension, but I should not be at all surprised if the men did strike work again in the same way that they have done. They have threatened violence to me, and say that the only thing to do is to knock the superintendent on the head in the same way that they did at Melbourne, and that then they should get their rights. I do not think anything of that circumstance.
4506. *By the Chairman*: Do your family live on the island? Yes; I have no fear in that way; the only object of the men would be to gain their liberty.
4507. *By Mr. Hart*: Have you applied to Government for liberty to use other coercive measures than at present you have power to use? I have applied for additional sentries, and have recommended in my general report that I should be allowed to inflict a certain punishment upon the men. At present I have no power to punish the men at all; all I can do is to put a man in the cells, awaiting the visit of the magistrate. I have the power, as every officer in my position should have, of taking summary steps in case of violence being shewn to me, and I have told the men clearly—and I believe on a former occasion I saved my life by it—that if they shewed me any violence I would shoot them immediately.
4508. Have you applied to the Government for permission to flog the men? I have not.
4509. *By Mr. Windeyer*: How often are the sentries changed? I am speaking now from hearsay, for I have nothing to do with the police; I know nothing of the details. Since the police guard has been here I believe the police sentries are on four hours. I do not know; it has been given into the hands of the inspector, and he reports directly to the Visiting Magistrate.
4510. *By Mr. Morris*: That would have been just the same if the soldiers had been here? But the soldiers never changed any sentries without my knowledge, and when the soldiers were here there was a portion of the police force, consisting of one sergeant and thirteen men, exclusively belonging to the island. These men reported directly to me. They are now placed under an inspector, who is under the control of the Superintendent of Police, and who reports direct to the Visiting Magistrate; and unless I hear indirectly of some irregularity through him I am kept in ignorance of what goes on. It is a matter I have complained of.
4511. *By Mr. Sutherland*: Do you mean irregularities on the part of the prisoners, or on the part of the police? Of any irregularity that occurs in the course of the police duty. I think there ought to be an island guard—an island police—they were here formerly, even with the military.
4512. Are they paid out of the police funds? They are paid by this department. I pay them myself—their abstracts come before me.
4513. *By Mr. Windeyer*: What was the old military guard? An officer, two non-commissioned officers, and thirty or thirty-one men.

Cockatoo
Island Prison.
11 April, 1861.

Mr. W. A.
Cabill.

Mr. William Augustine Cabill called in and further examined :—

4514. *By the Chairman*: It has been alleged to us that there has been considerable misappropriation of material, especially in the construction of the dock, and we want to know from you whether you have seen any kind of material which has come here for the dock applied to another purpose? It is difficult to tell whether there has been any misappropriation or not, for timber is used indiscriminately for anything that may be wanted—if you allude to timber.

4515. Or any other material—lime, or iron? They are used indiscriminately, as they are wanted; they are not laid by for any particular place.

4516. It has been alleged to us that a large quantity of material sent for the construction of the dock, and buildings in connection with the dock, have been, in reality, applied to the erection of private accommodation of the family of the superintendent? There has been a great amount of timber used for it, no doubt; but I cannot say whether the timber was specially ordered for it. I made out the calculations of the quantity that would be required, and supplied Captain Mann with them; but whether more than that has been supplied I have not the means of knowing.

4517. You are overseer of the works? Yes, I am principal foreman of works.

4518. Have you served your time to any trade? Yes, to a carpenter and joiner; I was a contractor in Sydney for many years.

4519. Then I suppose you can state what really has been done in the preparation of accommodation for the superintendent? A house has been built consisting of ten rooms.

4520. Since Mr. Ormsby left? Yes, the house is 84 feet in length by 35 in width, and consists of nine or ten rooms, I am not certain which—not less than nine—with two kitchens under one roof, but detached from the main building. There has been a good deal of work besides in connecting the new building with the old one, in breaking through the walls for doors and windows, and making them good again.

4521. The material and labour also, I suppose, have been used indiscriminately for this private dwelling, and for public works on the island? Yes, for a period of twelve months.

4522. That is, the material has been used in common for all purposes on the island? Yes.

4523. Has anything been done during this time for the accommodation of other officers on the island? There may have been some trifling repairs. The accommodation, in general, of the other officers is very bad.

FRIDAY, 12 APRIL, 1861.

Present:—

MR. MATE,
MR. MORRIS,

MR. SUTHERLAND,
MR. WILSON.

HENRY PARKES, ESQ., IN THE CHAIR.

Mr. Thomas Harrison again called in and further examined :—

Mr. T.
Harrison.

12 April, 1861.

4524. *By the Chairman*: You desire to supplement your former evidence in some particulars? Yes, there are some matters I left out.

4525. Before you go more particularly into what you wish to state, I understand you have a diagram by which you desire to represent to the Committee how the turnkeys were placed in Darlinghurst Gaol by you? Yes; that is one I made when I was first appointed principal turnkey. (*The witness produced the same. Vide Appendix A.*)

4526. Will you explain the intention of the diagram before you? There were three posts for night duty; one the gate, one the stockade, and one the wings. Three men were on these posts every day and night for twenty-four hours. The man who was on day duty at the gate, we kept the name and date that he was on that particular post; and by turning that man's name to that post you would at any number of years after tell who was on any post, if anything occurred. Suppose a man was on each of these posts; the following day, when the centre of the circle was turned round, they were off duty, having been up day and night for the previous twenty-four hours. Then the following day they would come on to a post for day duty for twelve hours. That would leave them two nights in bed. On the following night, after doing twelve hours day duty, they would come on to the wing, that is, twelve hours day duty and twelve hours at night. I will commence with a man named Armstrong. He is on the wing; he is off duty the next day, in consequence of having been on duty the previous night. The following day he goes to the north wall (a day post) for twelve hours; from that he goes on to the stockade, that is as a post for twenty-four hours; that is night duty again. After the stockade he gets off duty again; then he gets on to the bell for twelve hours; from the bell he goes on to the front of the gaol inside for twelve hours, and then he comes back to the gate again; so that he has three nights in bed.

4527. Were there any printed regulations issued to the turnkeys during your time? Yes, they were written by me; they were revised, and were afterwards printed and posted up.

4528. About what time was that? As nearly as I can recollect, about two years ago.

4529. At whose suggestion? I was asked by the Sheriff to make some regulations; I did so, and they were modified by him.

4530. They were written by direction of the Sheriff? Yes.

4531.

4531. And were posted up in the gaol? Yes.
4532. Do you hand in a copy of those regulations? Yes. (*The witness handed in the same. Vide Appendix B.*)
4533. When do you say those regulations were posted up? As nearly as I can recollect about two years ago or better. 12 April, 1861.]
4534. You can now make what statement you wish to the Committee? It is in consequence of a question that was put to me when I was last before the Committee, that I desire to relieve myself of what would be considered a great dereliction of duty. It is in reference to the statement that I have been on many occasions drunk in gaol. That would have been almost impossible, from the number of gentlemen who visited the gaol daily, hourly, and almost half-hourly. I beg to hand in some documents from various gentlemen, some of whom have known me for the last twenty-three years, and others from gentlemen who have known me since I have been in Sydney, and who have visited the gaol at all hours and seasons, and not one of them will charge me with ever having been guilty of such a gross dereliction of duty.
4535. You wish to hand in these testimonials of character? Yes.
4536. I presume you will be satisfied if the names are enumerated—if they are admitted as testimonials of good character? Yes.
- [The witness then handed in testimonials from W. V. Wild, barrister-at-law; D. H. Deniely, solicitor; Jas. Greer, solicitor; Jas. Carroll, solicitor; W. B. Dalley, barrister-at-law; W. P. Moffatt, solicitor; Robt. Burdett Smith, E. J. Cory, solicitor; George Hill, M.L.C.; also from Frederick Becke, Clerk of the Bench, Newcastle, 1845; George Brooke, Newcastle, 1845; A. W. Scott, Newcastle, 1846; J. Reid, Newcastle, 1845; Wm. Brooks, Lochhead, 1845; Simon Kemp, Newcastle, 1845; J. Lawson, Newcastle, 1845.]
4537. Do you wish to make any other statement? With respect to the manner in which the inquiry was conducted by Captain M'Lerie, at Darlinghurst Gaol. When the man Banks gave evidence about Polack's case, he said another prisoner, named Obeaten or Chisholm, would corroborate his statement. Captain M'Lerie had this man brought to the office, and he was then told to make his statement. He did so, and when his statement was opposed to Banks' statement,* I asked Captain M'Lerie to call some witnesses, some of the turnkeys, as evidence for me, and he refused to do so. I was then prepared to disprove the charges.
4538. Do you say that you were not allowed to bring evidence which would have invalidated this man's testimony against you? Yes; the clerk will prove that. I was repeatedly told by Captain M'Lerie that there was no charge against me. Dr. West said he made no charge against any one.
4539. Is there anything else you wish to state? There is another matter—I have heard that it has been said I was too lenient towards the prisoners in the gaol, that I did not do my duty in that respect. For that reason, I got a copy of the entries in the book in the gaol, from which it will be seen that, from January, 1860, to February, 1861, I punished 113 prisoners; 50 of those prisoners the principal gaoler wished to have put on bread and water, but, as Captain M'Lerie did not attend, they were released.
4540. When you say that you punished the prisoners, do you mean that they were punished by your sole direction, or at your instance, in consequence of your having applied to the principal gaoler—what I want to know is whether you had power to punish without reference to Mr. Beverley, the principal gaoler? If I saw them committing a breach of the regulations of the gaol, I locked them up, and reported them to the principal gaoler; and it was at his option whether he would release them or keep them in separate confinement till he got the Visiting Magistrate's authority to punish them.
4541. Do you wish to hand in that list? Yes. (*The witness handed in the same. Vide Appendix C.*)
4542. Have you any other statement you wish to make? With reference to Polack, I believe that a very different opinion was given by Dr. West of Polack's health in 1854, from what he has lately given. That is the affidavit which he then gave. (*The witness produced a paper.*)
4543. Is this the original certificate? No, it is a copy from the Supreme Court.
4544. This is inconsistent with the last certificate Dr. West gave as to the state of Polack's health? Yes. (*The witness handed in the same. Vide Appendix D.*) I was asked when I was here before as to the duties of the turnkeys after the change took place. I got this paper from the clerk, showing how the duties were conducted. That is now replaced by my own system.
4545. Does the paper you wish to hand in shew the alteration in the system as to the duties of turnkeys explained in the first part of your evidence? It does.
4546. Up to the period when this change took place the turnkeys were placed as you have described to the Committee? Yes.
4547. Then they were altered and were appointed according to the statement which you now hand in? Yes. (*The witness handed in the same. Vide Appendix E.*)

Mr. T.
Harrison.

APPENDIX.

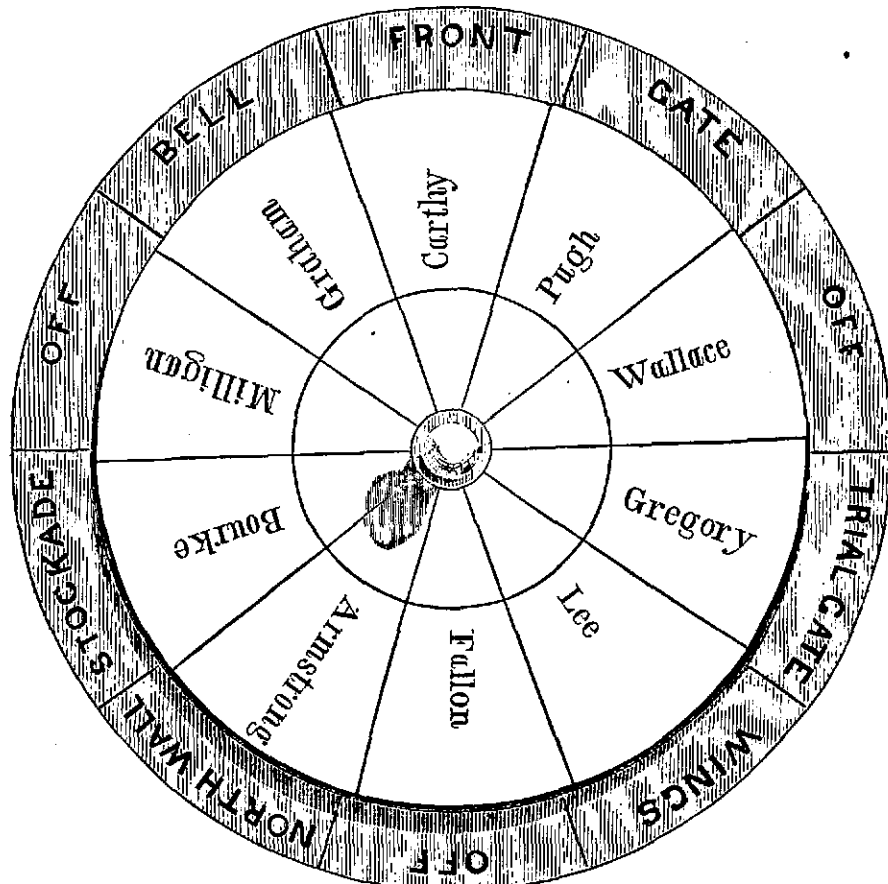
* NOTE (*Insertion by witness on revision*):—Mr. M'Lerie would not take it, and the Clerk tore it up.

Mr. T.
Harrison.

12 April, 1861.

APPENDIX.

A.



EXPLANATION.

The names are supposed to revolve within the outer circles: the inner portion of the diagram being attached at the centre.

B.

DUTIES OF THE TURNKEYS

AT

H. M. GAOL,

- 1.—They are to obey all the orders of the Principal Gaoler and the Deputy Gaoler.
- 2.—They must not give to, or take anything from a prisoner, or allow any person coming into the Gaol to communicate with the prisoners without the knowledge of the Principal Gaoler or Deputy Gaoler; neither are they to employ any prisoner without the consent of the Principal Gaoler or Deputy Gaoler being first had and obtained.
- 3.—They are to be regular in their attendance from 6 o'clock in the morning until 6 o'clock in the evening daily—to keep a strict watch and due surveillance over the prisoners, and not hold any communication with them further than duty requires; they are to keep the hard labour prisoners diligently at their work, and to report any prisoner who idles, or does his work in a careless or slovenly manner, immediately to the Principal Gaoler or his Deputy, and they are not to allow any prisoner into the cook-house or workshops excepting those employed there.
- 4.—They will not be allowed, when on duty, to read or employ themselves in any way likely to draw their attention from their duty.
- 5.—Whilst on duty, at night, they must call the hours and the half-hours from 9 o'clock P.M. to 6 o'clock A.M.; the Turnkey at the Gate is first to call, to be answered in succession by the Turnkey at the Wing, and the Turnkey in charge of the Stockade; should either neglect to call or answer in his turn, one or other will proceed to ascertain the cause, and report such omission to the Deputy Gaoler.
- 6.—The Turnkeys in charge of the Wings and Stockade are to walk round every half-hour, and should they hear any unusual noise, or become acquainted with any case of sickness, or any other unusual occurrence, they must report the same immediately to the Deputy Gaoler.
- 7.—They must challenge all persons walking through or about the Gaol after dark.
- 8.—The watch-boxes are only to be used in rainy weather, and then in such a manner that the Turnkey may have a view of the Wing Gates, the Stockade, and the Yards, respectively.
- 9.—Any Turnkey sleeping on his post will be reported to the Sheriff.

- 10.—The Turnkeys in charge of each Wing are to examine daily the Cells, Cell-doors, and Windows, in order to ascertain whether any attempt has been made to escape; and should any of them discover such attempt, or any tool or implement likely to be used for that purpose, he must report it immediately to the Deputy Gaoler. They are to make all the prisoners attend Divine Service on every Sunday, in a clean and becoming manner, and to report to the Principal Gaoler or his Deputy, any prisoner who absents himself, and who does not attend in clean attire. They are to carry out, to the fullest intent, the 5th, 6th, 7th, 8th, 9th, 14th, and 24th clauses of the General Rules for Gaols, which are to be hung up in each Wing.
- 11.—All the Turnkeys for the day duty are to be present when the prisoners are let out in the morning.
- 12.—When occasion requires that a Wing should be opened at night, two Turnkeys should always be present, one is to go in and the other to remain outside to lock the Gate.
- 13.—The Turnkey on duty at the Gate must not open the wicket after 9 o'clock at night, without first ascertaining who it is that seeks admission, and must report to the Principal Gaoler any Turnkey who is half-an-hour late in the mornings, and under no pretence to allow any Turnkey to enter the Gaol upon duty while under the influence of drink.
- 14.—Any Turnkey leaving his post of duty, either day or night, without leave of the Principal Gaoler or his Deputy, will be reported to the Sheriff; and no Turnkey, under any pretence, is to absent himself without sending word to the Principal Gaoler as to the cause of his absence.
- 15.—The Turnkey at the Gate is not to allow any Turnkey to pass through the Gate after going on duty, without leave of the Principal Gaoler or Deputy Gaoler.
- 16.—The Turnkey on duty in the hard-labour yard is not to leave the yard, during the hours of work, without special permission from the Principal Gaoler or Deputy Gaoler.
- 17.—It is the especial duty of every Turnkey to report any and every irregularity he may see or hear of on the part of any prisoner or Turnkey, and should it be discovered by the Gaoler that a Turnkey has neglected his duty, in this particular, he will be instantly suspended and reported to the Sheriff.

By order of the Sheriff,

Gaoler.

C.

LIST OF PRISONERS locked up for offences committed in Her Majesty's Gaol, Darlinghurst, from the 1st January, 1860, to 11th February, 1861.

No.	NAME.	OFFENCE.	DATE OF PUNISHMENT.	DATE OF RELEASE.
1	John Gary	Idling	January 5	January 9
2	John Clifford	Ditto	" 5	" 9
3	John Sullivan	Obscene language	" 7	" 17
4	Charles T. Winslow	From the "Herald"	" 9	Ten days.
5	Jonny	Idling	" 18	January 23
6	William Mackey	Refusing work	" 25	" 31
7	John Clifford	Ditto	" 25	February 3
8	John Fitzgerald	Fighting	" 31	" 3
9	John Murphy	Ditto	" 31	" 3
10	Henry Smith	Refusing work	February 1	" 10
11	John Sullivan	Disobedience of orders	" 5	" 7
12	Thomas Watson	Refusing work	" 6	" 10
13	Roderick McGregor	Fighting	" 7	" 9
14	Thomas Rice	Ditto	" 7	" 9
15	Alexander Boyd	Assuming madness	" 9	" 13
16	John Geary	Idling during work hours	" 14	" 18
17	William Thompson	Striking a prisoner	" 16	" 18
18	Moses Benson	Concealing tobacco	" 16	" 16
19	Edward Dunn	For drunkenness	" 18	" 19
20	Henry Heyman	Refusing work	" 20	" 23
21	Alexander Smith	Idling	" 21	" 25
22	Charles Rodger	Obscene language	" 23	" 25
23	Richard Overs	Singing in the cells	" 24	" 25
24	W. Simmons	Ditto ditto	" 24	" 25
25	Thomas Knight	Ditto ditto	" 24	" 25
26	Thomas Fairbrother	Ditto ditto	" 24	" 25
27	James Baker	Ditto ditto	" 24	" 25
28	George Cummins	Refusing work	March 5	March 10
29	Henry Hughes	Ditto ditto	" 6	" 20
30	Thomas Watson	Ditto ditto	" 9	" 16
31	John Borch	Shouting, &c.	" 11	" 13
32	George Cummins	Fighting	" 15	" 20
33	John Thomas	Ditto	" 15	" 16
34	Thomas Watson	Refusing work	" 16	" 31
35	David King	Light in his cell	" 21	" 22
36	John Burtenshaw	Stealing books	" 27	" 29
37	Edward McGee	Refusing work	" 27	" 31
38	Thomas Watson	Ditto ditto	April 2	April 6
39	Charles Seymour	Ditto ditto	" 13	" 21
40	Joseph Bridle	Leaving his work	" 16	" 20
41	Patrick Brady	Obscene language	" 23	" 26
42	Charles Seymour	Refusing work	" 24	" 29
43	Henry Prescott	Fighting	May 2	May 3
44	Charles Abbott	Ditto	" 2	" 4
45	Henry Hyman	Refusing work	" 25	" 29
46	William Dally	Refusing to go to Church	" 27	" 28
47	James M'Manus	Insolence	" 30	June 8
48	Jackey Weymouth	Refusing work	June 5	" 8
49	John Gallagher	Disobedience of orders	" 16	" 26
50	William Pike	Absent from his cell	" 24	" 26
51	William Mackey	Obscene language	" 28	July 1

LIST

Mr. T. Harrison.

LIST OF PRISONERS—continued.

No.	NAME.	OFFENCE.	DATE OF PUNISHMENT.	DATE OF RELEASE.
52	Thomas Thornton	Drunkenness	July 9	" 13
53	Edward Dunn			
54	George Stevenson	Refusing work	" 17	" 19
55	Geo. Edwards	Ditto ditto	" 24	" 24
56	Alexander Smith	Refusing to pick oakum	" 25	" 26
57	Patrick Kelly	Refusing work	August 4	August 6
58	James White	Knocking Mr. Beamish's hat	" 6	" 6
59	James Daley	Idling	" 6	" 6
60	William Thompson	Ditto	" 6	" 6
61	William Reilly	Striking a prisoner	Sept. 4	Sept. 6
62	William Almack	Fighting	" 5	" 11
63	Thomas Thornton	Ditto	" 5	" 9
64	Nathaniel Poole			
65	Alexander Smith	Breaking out of gaol.	" 6	" 6
66	John Davies			
67	Edward McKenzie	Fighting	" 11	" 11
68	Geo. Stevenson			
69	James McDonald	Insolence (Mr. Peters)	" 13	" 18
70	Robert Hunter	For being at the back of bath-house	" 13	" 18
71	John Nichols	Fighting	" 18	" 20
72	Golph (Chinaman)	Stealing bread	" 24	" 24
73	Charles Seymour	Striking prisoner with stone	" 26	October 5
74	Thomas Coss	Refusing work	October 2	" 8
75	John Pole	Ditto ditto	" 2	" 10
76	William Palmer	Absent from work	" 13	" 13
77	James Reilly	Giving a light into the yard	" 23	" 27
78	Patrick Roach	No religion	Nov. 7	Nov. 10
79	Charles Seymour	Lies	" 7	" 10
80	William Holstein	Having a light in his cell	" 11	" 11
81	Henry Smith	Smoking	" 15	" 19
82	William Smith	Concealing tobacco	" 20	" 20
83	John Booth	Disobedience of orders	" 25	" 28
84	John Jones	Ditto ditto		
85	John Williams	Ditto ditto		
86	Robert Hunter	Refusing work	Dec. 3	Dec. 10
87	Joseph Clarke	Ditto	" 11	" 11
88	Nicholas Swan	Refusing to pick oakum	" 12	" 12
89	Richard Rutter			
90	Patrick Ringwood	Cursing and improper conduct	" 14	" 14
91	Edward Cooney			
92	Hope (Chinaman)	Refusing work	" 14	" 14
93	Youch ditto	Refusing to pick oakum	" 19	" 24
94	Hugh O'Donnell	Refusing ditto	" 19	" 24
95	Joseph Clarke	Refusing work	" 19	" 24
96	Joseph Clarke	Ditto ditto	" 27	1861. February 1
97	John Harrington	Noise in his cell	" 29	" 1
98	Patrick Ringwood	Fighting, &c.	" 29	" 1
99	Alexander Smith	Throwing his dinner away	1861. January 1	" 1
100	George Edwards	Refusing work	" 8	January 18
101	John Jones	Ditto ditto	" 8	" 16
102	Hugh O'Donnell	Ditto ditto	" 10	" 10
103	Edward Farlington	Breaking garden fence and stealing fruit	" 17	" 18
104	John Cousins			
105	John Carroll	Fighting	" 21	" 24
106	William Daley			
107	Thomas Allen	Ditto	" 25	" 25
108	John McMahon			
109	Francis Press	Refusing to work	" 30	" 30
110	James Reilly	False representation	February 2	February 4
111	John Reilly	Abusive language	" 5	" 5
112	John Seymour	Striking prisoner with a kid	" 5	" 13
113	William Almack	Refusing to pick oakum	" 9	" 15

D.

In the Supreme Court of New South Wales.
Criminal Jurisdiction.

THE QUEEN against ABRAHAM POLACK and WILLIAM HENRY WELLS.

On this fifth day of October, in the year one thousand eight hundred and fifty-four, George West of Sydney, in the Colony of New South Wales, Doctor of Medicine, being duly sworn, maketh oath and saith as follows:—I hold the situation of Surgeon to Her Majesty's Gaol at Darlinghurst, in the said City of Sydney; I have seen the abovenamed Abraham Polack, almost daily, since he has been confined within the said Gaol, under the conviction against him herein, and I have been on several occasions consulted by him, and find that he is afflicted with lumbago, which I am informed is of long standing, and also that he is of a very gouty diathesis; in consequence thereof, as well as from his age and general debility, I am of opinion that he is an unfit person to undergo a sentence of hard labour without seriously injuring his health, and that the undergoing such a sentence would, in all probability, materially endanger his life.

GEO. WEST.

Sworn by the Deponent, on the day first abovementioned,
at Sydney, aforesaid, before me—

AUGUSTUS CARTER,
A Commissioner for Affidavits.

E.

E.

(August 1st, 1860.)
 Rispen Gate
 Bourke Front Wing
 Lee Labour Wing
 O'Callaghan Assisting at Wing

(August 15th.)
 Lee Gate
 Callaghan Front Wing
 Rispen Labour Wing
 Bourke South Wing

(August 29th.)
 Callaghan Gate
 Rispen South Wall
 Bourke Labour Wing
 Lee Front Wing

(September 12th.)
 Rispen Front Wing
 Callaghan Labour Wing
 Lee South Wall

(September 26th.)
 Lee Labour Wing
 Rispen Front Wing
 Callaghan South Wall

(October 9th.)
 Lee Labour Wing
 Callaghan Front Wing
 Rispen South Wall

(October 24th.)
 Callaghan Front Wing
 Rispen Labour Wing
 Lee South Wall

(November 1st.)
 Milligan Gate } Night
 M'Carthy Stockade } Sentry.
 Whiddon Quarry West
 Smith North Wall
 Keogh Gate
 Wallace Stockade
 Armstrong and } Quarry
 Graham }

(November 7th.)
 Rispen Trial Wing
 Lee Labour Wing
 Callaghan South Wall

(November 21st.)
 Lee Trial Wing
 Callaghan Labour Wing
 Rispen South Wall

(December 5th.)
 Lee South Wall
 Rispen Labour Wing
 Callaghan Trial Wing

(December 18th.)
 Rispen Trial Wing
 Lee Labour Wing
 Callaghan South Wall

(January 2nd, 1861.)
 Callaghan Trial Wing
 Lee Labour Wing
 Rispen South Wall

(January 16th, 1861.)
 Callaghan Trial Wing
 Rispen Labour Wing
 Lee South Wall

Mr. T.
 Harrison.

12 April, 1861.

Mr. Christopher Rispen called in and examined:—

4548. *By the Chairman*: How long have you been in the Colony? I came here in 1841. Mr. C. Rispen.
4549. What employment have you followed since? I was first in the Parramatta police five years. 12 April, 1861.
4550. Have you been in the Government service all the time? Nearly.
4551. You were turnkey in the Darlinghurst Gaol lately? Yes, I had been for twelve years.
4552. You were dismissed lately? Yes.
4553. I believe you have petitioned the Legislative Assembly, have you not, for redress of what you consider a grievance in your dismission? Yes.
4554. And have also applied through me, as Chairman of this Committee, to be examined respecting the same subject? Respecting my own subject.
4555. You wish to hand in to the Committee some testimonials of character, do you not? Yes.
4556. Do you hand them in? I hand them in to the Committee. These are some I brought from home; others I have collected from time to time in this country.
4557. They represent your conduct over a long series of years? I may say from my childhood. (*The witness handed in the following testimonials:—*) From John Henry, dated July, 1841, Richardstown Castle, Dunlear, County Louth, Ireland, stating that he had "known Rispen for many years to be a regular, well-conducted young man." From Thomas Parkinson, Vicar of the united parishes of Stabannon and Richardstown, dated July, 1841, stating that "Rispen has always lived in my parish. I have known him from infancy, and "I can say he has always been a sober, quiet, well-conducted person, the son of respectable parents."
- The Chairman* stated that the other testimonials, which he had read through, described general good conduct on the part of Rispen. They were as follow:—From Gilbert Elliott, Police Magistrate, 1847; W. A. Miles, about the same date; George Langley, 1847; John Ryan, Chief Constable, Parramatta, 1847; Gilbert Elliott, 1855; James Greer, no date; Henry Beverley, Gaoler, Darlinghurst, 1855; Gilbert Elliott, Police Magistrate, 1846; Francis Macarthur, J.P., Goulburn, 1849; John M'Levie, 1850; William Forster, Gaoler, Goulburn, 1849; and one from Henry Beverley, 14th February, 1861, stating that "Rispen as a turnkey has uniformly been attentive to his duty, and has given satisfaction "to both the Sheriff and myself. He has been employed in various offices of trust, such as "escort duty, taking prisoners on habeas to the Courts, and so; and he ever acquitted himself perfectly well."
4558. You may make what statement you desire to the Committee, as to your dismissal? My dismissal was on account of a letter that a prisoner's wife sent to her husband. Mr. Polack was a prisoner in the gaol, and his wife was in the habit of sending letters regularly to her husband while Mr. Beverley and Mr. Harrison were there. When they were suspended she sent a letter to me. This letter, as her writing was known at the gate, was sent to Mr. Read, and from him it was sent to Captain M'Levie. I believe that was the course it took. The first I heard of it was my dismissal from Mr. Cowper on account of this letter coming.
4559. Were you dismissed without any inquiry? Without any inquiry.
4560. Has there been any inquiry? There came a letter on Friday directed to my wife. I got this letter at the gaol, and brought it to her. She said, "This letter I will destroy, and make no use of; there is enough got into trouble on account of this man and his wife."

Mr. C. Rispen. That evening I was determined to go out to see her and to stop her writing; but the evening was so bad that I could not go out. The next morning, Saturday, I went; and it appears that before I went she sent another letter, and this letter was detained and stopped at the gate. I went to let her know the nature of the harm she would do to me. If the Committee would be pleased to hear her, I suppose she would give the same declaration herself.

12 April, 1861.

4561. Had she sent letters to you or your wife before? Never.*

4562. Had you any personal knowledge of her? Yes, from seeing her come to the gaol.

4563. Except from her coming to the gaol? No.

4564. The only knowledge you had of her was obtained from her coming to see her husband? Yes.

4565. How did you know where she lived? From seeing letters coming out to her from her husband. They would come to Mr. Beverley or Mr. Harrison, and would be given to me to forward to her if I was in.

4566. Was it explained to you when you were dismissed that it was for allowing these letters to be addressed to you clandestinely? Yes.

4567. As I understand you the letter was really intended for Polack, but was addressed to yourself? The first letter was addressed to my wife.

4568. And the other was addressed to your wife with the intention of its being conveyed to Polack? Yes; the last letter I never saw at all.

4569. You never saw the letter for which you have been dismissed? No.

4570. Do you deny distinctly that you ever communicated the substance of any letter to Polack from his wife? I deny distinctly that I ever conveyed any communication between Polack and his wife.

4571. Do you deny that you ever in any way, directly or impliedly, gave permission to Mrs. Polack to address this letter to you? Yes.

4572. You never had any communication with her upon the subject? I did not see her for six months previous.

4573. You knew nothing about it till you were dismissed? I knew nothing about it till the Under Sheriff came and brought my dismission.

4574. Have you represented this to the authorities? I have represented it to Captain M'Lerie; I laid my statement before him.

4575. What did Captain M'Lerie say? He said I had better see Mr. Cowper and explain. I went to Mr. Cowper, and he said, "Well, what do you want now?" I said, "I have my grievance of being dismissed on account of a letter, and I have a very large family, and have been a very long time in the service—nineteen years." I explained all this, and he said, "Well, I can do nothing for you; for, besides this, the Sheriff says you deceived him." I said, "If you believe Banks' evidence, given in gaol"—Banks is a man who came from Cockatoo to give evidence relative to Polack's clothing—"If you believe Banks' evidence you must, of course, believe I have deceived him." Because I gave evidence some three or four months ago, when there was a talk of Polack's wearing his own clothing, that I never saw him, from the time of his leaving the debtors' prison, wear any clothing but the prison clothing, except an outside coat. It appears that Banks gave evidence that he wore his own clothing, so that if Mr. Cowper believed that evidence before mine, he might suppose that I had deceived the Sheriff. As he had such confidence in me, had known me so long, and as I had been recommended by Captain M'Lerie, Mr. Gilbert Elliott, and many more others, if I deceived him it would be very strange. So, in the latter end, by explaining these circumstances, Mr. Cowper said he would look into it, or give me a thought—he would consider me. I was there twice previous to that, and could not see him. I managed to see him this time, that was all.

4576. *By Mr. Morris:* Have you had no communication from Mr. Cowper, or from Captain M'Lerie since? No.

4577. You knew Mrs. Polack's handwriting, I suppose, well? I do not know. This man on the gate knew her handwriting well, for she was sending letters two or three times a week. I did not see the insides of the letters, I only saw the directions on the outside.

4578. Did Mrs. Polack send her letters addressed to her husband, or to Mr. Beverley, or to Mr. Harrison? She used to send direct to Mr. Beverley or Mr. Harrison; at times without Mr. Polack's name on the letter, and Mr. Harrison has sent the letter by me to Polack.

4579. Mr. Harrison would send these letters by you to Mr. Polack without sending them first to Mr. Beverley? He would if Mr. Beverley were out at the time, but if he were in he would send them to him.

4580. *By the Chairman:* During the time you were turnkey was any complaint made against you? Yes, there was one.

4581. What was that for? It was on account of a piece of sheet-iron.

4582. What was the circumstance? I wanted a piece of sheet-iron for the back of a fire-place, and I spoke to the man who was in charge of the blacksmiths' shop, and said, "could you let me have a piece of sheet-iron for the back of a fire-place?" and he said, "Yes, there are plenty of waste pieces, you can have any that will suit you."

4583. Was it old sheet-iron? It was waste iron.

4584. Had it been used? No; the part required for use had been cut off, and this was a piece that remained. I carried this out when I was going to my dinner at twelve o'clock, and when I came back the man at the gate said they had reported against me to the Sheriff. The Sheriff came up in an hour or two, and I then explained to him that I had had the piece of iron given me by Mr. M'Coy. He said he did not see that I had any felonious intent, but

* NOTE (*Addition by witness on revision*):—And the one letter sent addressed to my wife I reported to the chief turnkey, as was my duty.

- but that I had no business to take it away, and that the other had no business to give it ^{Mr. C. Rispen.} to me. 12 April, 1861.
4585. Were you punished? No.
4586. Is that the only complaint that has been made against you? Yes.
4587. Has there been any complaint of drunkenness at any time? No.
4588. You say "No," sharply, as if you were indignant at the suspicion? Yes.
4589. Are you a very sober man? Yes, exceedingly so.
4590. A teetotaler? No. I do not think any one in the Colony ever saw the appearance of drink upon me. You must consider that I have lived for nine years within the walls of that gaol with my family.
4591. What family have you? Six children.
4592. Were you married in the Colony? Yes, in Parramatta.
4593. *By Mr. Morris:* Were you aware that the prisoner Polack was treated differently from other prisoners? No.
4594. Were you not aware that he received comforts, and different kinds of food from the outside? He has received nothing that I know of. When he came from the debtors' prison I suppose he was about three weeks under my charge, during this time his clothing was got ready, and then he was removed over to the new wing, and then he was away from me. Of course I saw him pretty often.
4595. You had no charge of the wing in which Polack was placed? Not chiefly. I had charge of him, I suppose, for three weeks after he left the debtors' prison.
4596. Then Polack might have been treated very differently from the other prisoners without your having been aware of it? Yes.
4597. *By the Chairman:* Some time ago you addressed this letter to me, dated the 9th March (*handing a letter to the witness*).
4598. Is that your handwriting? It is not my handwriting, it is writing I got done.
4599. That letter states your complaint at some length; do you wish to have it appended to your evidence? If you please. (*Vide Appendix A.*)
4600. During the time you were turnkey, how did you obtain the keys to unlock the wing in the morning? I several times got them from Mr. Harrison; at other times when he would not be on foot, I would go to his door, and he would come down and hand me the keys.
4601. Did you ever take them off a peg behind the door? I did; I took them off a peg behind the door some few mornings that he was up, and had not the opportunity of handing them to me; he told me to take them.
4602. Was Mr. Harrison's house ever in this state that you could open the door and take the keys? No, he always had the door fastened.
4603. Did he always unfasten the door himself? Yes.
4604. You never found the house in that state that any one could have gone in and taken the keys of the wings off the peg behind the door? Never.

APPENDIX.

A.

23, Denham-street, Surry Hills,
Sydney, 9 March, 1861.

Sir,

The great anxiety I feel in my present predicament (being the father of a large and helpless family) will, I hope, be a sufficient excuse for thus intruding myself on your notice.

I am now nineteen years in Government service, and have never been one single day off duty for a fault, or under the displeasure of my superiors. On the contrary (as you may see by the accompanying testimonials), wherever I have been stationed I won the respect and esteem of those whose duty it was to be intimately acquainted with my character and conduct.

About six years ago I was appointed principal gaoler at Moreton Bay *vice* Sergeant-Major Feeny dismissed—but who (through the intervention of the Governor General, then passing through Moreton Bay) was reinstated. I was afterwards appointed principal turnkey in Darlinghurst, in room of Mr. Harrison, who was appointed to Goulburn. In this I was also disappointed, and had to return to my former position.

I have frequently applied to the Sheriff for promotion, but the invariable reply was that, under Responsible Government, the appointments lay entirely with the Prime Minister. Now, under all these disappointments, and this want of acknowledgement for past services performed with uprightness, sobriety, and steadiness, I was still content as long as I could rear my family in respect; but, at the eleventh hour, to be dismissed from a service in which I have spent the best years of my life is heart-rending—is maddening.

Leaving myself entirely in your hands, and trusting to your generous consideration and advocacy, and also hoping you will pardon the great liberty I have taken,—

Henry Parkes, Esq., M.P.

I have, &c.,
CHRISTOPHER RISPEN.

TUESDAY,

TUESDAY, 16 APRIL, 1861.

Present:—

Mr. COWPER,
Mr. MATE,Mr. MORRIS,
Mr. WILSON.

HENRY PARKES, Esq., IN THE CHAIR.

The Honorable Charles Cowper, Esq., M.P., examined in his place in the Committee:—

The Hon.
C. Cowper,
Esq., M.P.
16 April, 1861.

4605. *By the Chairman:* You are Colonial Secretary? Yes.

4606. And, with the exception of a short interval when you were out of office, you have been so for some years? Yes.

4607. How many years? Four years next September, with an interval of about five months.

4608. You have been a Member of the Legislature for some seventeen or eighteen years? Yes, since the first introduction of representative institutions, with some short intervals.

4609. Previous to your taking office in the government of the country, you had paid considerable attention to the subject of prison discipline? I had.

4610. You have been Chairman, I think, of two Committees, at different times, to inquire into the subject? Yes; besides investigating the state of the Darlinghurst Gaol and Cockatoo Island with other Committees.

4611. Soon after your assumption of office, you issued certain regulations affecting the treatment of prisoners at Cockatoo Island principally or exclusively—will you be good enough to state to the Committee what those regulations were, under what circumstances and from what considerations they were issued? For some time previous to my being called to office, very general complaints were made as to the ill effect of the operation of the regulations then in force for the remission of the sentences of the Judges. Papers printed by order of the Legislature will show that the Judges had thought it necessary to remonstrate upon the subject to the Government, and had drawn attention to the unsatisfactory operation of what were called the ticket-of-leave regulations. There were also other modes in which public opinion was expressed as unfavourable to these regulations. Their working may be forcibly put in this way:—An individual practically guilty of murder, but from some technicality found guilty of manslaughter, or having judgment of death recorded against him, or if reprieved from the gallows, would be sentenced to Cockatoo for fifteen years. But by these regulations he would get a ticket-of-leave in four years; that again could be reduced, by marks and other modes, to about three years and three months. It was felt that this system of remission—of, in fact, sending back into the community these men who had been convicted of such serious crimes, was having a most mischievous operation. The subject was brought by me under the consideration of the Chief Justice, and of Captain M'Leerie, then Inspector General of Police. I also consulted Captain Mayne, who had been Inspector General of Police, and whose opinion upon such matters was I thought entitled to weight. The subject was also frequently matter of conference between His Excellency Sir William Denison, who himself was an authority upon the subject of prison discipline. The result was, that we arrived at the conclusion that it was desirable at once to put an end to the existing system. There did not appear to be in this course any injustice to any criminals, because the notice expressly guarded any promises that might have been supposed to have been conveyed by existing regulations to those convicts whose sentence had been subject to remission previous to this date. The notice runs thus:—

*Colonial Secretary's Office,
Sydney, 1st June, 1858.*

“ REMISSION OF SENTENCES.

“ His Excellency the Governor General, with the advice of the Executive Council, has been pleased to direct that the Regulations now in force for granting Tickets-of-Leave, and for shortening the periods of servitude of Prisoners under sentences of Courts of Justice, by a system of Task Work, shall be cancelled from this date.

“ 2. Those Regulations will, however, be acted upon in the cases of all Prisoners now undergoing sentences passed while they were in force.

“ 3. Visiting Magistrates, and Superintendents of Gaols, or other Penal Establishments, will not in future forward to the Government Petitions or applications from Prisoners in their charge, unless some fact is brought forward which was not produced at their trials, or some special circumstances unconnected with their conduct in Gaol.”

It will be seen that the hopes of remission of sentence of these convicts sentenced previous to that date were not in any way affected by these regulations. An intimation was also given, before their publication, to their Honors the Judges, and to all others invested with the power of passing sentences, in order that they might, if they thought it right, be affected by the new system to come into operation from that date. The last clause of the regulations had reference to what had become a very serious grievance. Persons either in the gaols, or in the neighbourhood of gaols, were in the habit of writing petitions by the half dozen at least, sometimes by the half score, and these, although refused, were constantly coming into the Government, and were generally referred to the Judges. This not only kept up a bad system among the prisoners, but caused great labour to the Judges, as well as a considerable amount of additional labour among the public offices. A rule, therefore, was laid down, that unless there were some new features in the history of the case these petitions should not be forwarded. That rule has not been very rigidly adhered to, I believe, but it has had so far a beneficial influence as in some degree it keeps down the immense number of petitions previously sent in. I might state, too, that while it has been objected to the new regulations

regulations that no hope is held out to the convict, the exercise of the prerogative could always step in, and it has done so whenever, either from the recommendation of the Judge, or other consideration, the Governor thought a case was made out for such interference. Perhaps I may also say that the regulations were not passed with the determination of their being final, but more with the view of enabling the Executive to consider and determine whether some modified system of remission might not afterwards be introduced. The question was a very difficult one to decide, and there did not seem to be any serious hardship in leaving those convicts who were sentenced by the Courts to such remissions of their sentences only as the Governor in the exercise of the Royal prerogative might, from time to time, determine. And when we consider that the very large proportion of these men are sentenced for not longer than three or five years, and a comparatively small number only for longer periods, and those only for the most serious crimes—committed too by hardened offenders—it can hardly be objected that there was any great severity in introducing the system even though no more lenient system were introduced.

The Hon.
C. Cowper,
Esq., M.P.
16 April, 1861.

4612. These regulations have been in force now nearly three years? Yes.

4613. Have you taken much trouble to ascertain the practical working of these regulations by inquiry or otherwise—what I desire to get from you is, whether your opinion, at the time of issuing these regulations, has been in any way modified by your experience since, or whether you consider that these regulations have been completely successful? I think the principle laid down in these regulations is a correct one, and I have no ground for thinking that the time for issuing them was inopportune. They, no doubt, as might have been expected, have created a good deal of dissatisfaction, and one great evil was that the convicts under the old system had to be kept in the same establishment with the convicts under the new; but I am not quite satisfied that the officers intrusted with the management of these convicts have acted as faithfully as they ought to have done, in carrying out the views of the Government. There seems to have been rather a leaning on the part of some of the chief officers to the objections of the prisoners, and I think the prisoners have understood there was that leaning, and this has perhaps increased the feeling of opposition which has given the Government, more especially of late, a very considerable amount of trouble.

4614. I believe the mutiny, if it may be so called, on Cockatoo Island at the beginning of this year, was avowedly in consequence of these regulations? It was.

4615. Were there other reasons stated for the insubordination of the prisoners in general? I am not aware of any, at least none were stated with any force. There have been occasional suggestions that the officers themselves were capricious, and that partiality existed; but I have never heard these complaints urged on the part of many.

4616. You say that the Judges remonstrated against the old state of things prior to the issue of these regulations—can you state at about what time, and in what form, these remonstrances were put forth? You will find a letter from Sir Alfred Stephen, dated 24th May, 1855, addressed to the Board of Inquiry, in the Votes and Proceedings for 1856-7, vol. 1, p. 1050.

4617. Can you find the passage in his letter which refers to this subject? He says, "One of the objects in sentencing desperate or abandoned criminals for long terms is the necessity of keeping them for the stated period from repeating crimes. Another object is, the inflicting of wholesome warning and dread on those who might otherwise (if tempted to suppose that criminals of that character escaped with a slight or short punishment) follow their example. Both these objects are defeated, exactly in proportion as you reit part of the term awarded, and enable the criminals to return to their old residences among their companions, and in the immediate neighbourhood of the persons whom they have robbed or otherwise injured. Another mischief is, that the sentence of the Court itself is brought into contempt, and regarded as an unmeaning threat. As things now stand it does not express the truth to the criminal; he may nominally be sentenced to ten years, but he knows that, unless he very much misconducts himself, he will be set free in five or six."

4618. You also say that the Judges were notified of this change in the general discipline of prisoners? Yes.

4619. Are you aware whether the Judges took that into consideration sufficiently in awarding sentences? I have understood they did, although Captain Mann, the Superintendent of the island, has written a communication to the Government, in which he considers, from a calculation of the sentences passed before and since their publication, that that is not manifest. I am not, however, prepared to admit the force of Mr. Mann's reasoning, or the conclusion at which he has arrived by his figures.

4620. Have you any objection to give the Committee this communication of Captain Mann? No. I will furnish a copy to the Committee. (*Vide Appendix A.*)

4621. If the facts should shew that there were similar sentences for similar crimes afterwards as before, that would go a long way towards establishing the fact that no difference was made, would it not? A great deal would depend upon the figures which may shew different results from taking a series of years. I am not prepared to say that Captain Mann does shew accurately the result. As far as I can see, there is little to complain of. The return is only a comparison during a short period previous to the new regulations coming into force. With regard to the number of sentences exceeding five or six years the number is very small indeed. I do not see much force in the objection that has been urged that the insisting that sentences shall be carried out leaves no hope to the prisoner; because if the judge considers that according to law a crime requires the punishment of three, four, or five years, upon the principle laid down by the Chief Justice, that it is desirable such a criminal should be kept away from the people he has been in the habit of associating with, and with whom he has been in the practice of committing crimes—that for a serious crime the term is not so long as to justify the objection that "the door of hope is closed."

The Hon.
C. Cowper,
Esq., M.P.

16 April, 1861.

4622. Do you not think the reason of the ill working of the mark system which existed at Cockatoo Island, especially before the issue of your regulations, might be attributed to the inefficiency of the persons in charge of that penal establishment, and the consequent liability to abuse of the system from persons being able by various sinister influences to awaken interest on their behalf, apart altogether from the merits of their case—the inefficiency of their gaolers assisting that abuse? I do not understand that the system of marks of itself has been so much objected to, but there was a regulation by which very long sentences—sentences of ten or fifteen years—could be practically put an end to by tickets-of-leave in four years or less, and that that time could again be reduced by the system of marks, which made the objection to the system the more forcible; but the system of marks itself was not so much objected to.

4623. With regard to the principle involved in your regulations, I think, so far as I am acquainted with the subject, that the general opinion of persons in England is, that the measure of the sentence is more properly labour than time—that opinion is the opinion of thoughtful men, who have thought a great deal on this subject? Yes; but if you make it merely a question of labour, a very clever convict of bad character, with physical capacity, may be enabled to claim a remission sooner than a better man who does not possess his physical strength—unless you attach the condition of good conduct.

4624. I was going on to say, taking labour as the main measure of the sentence, would it not be necessary to combine with it some system of arriving at good conduct on the part of the prisoner. The writers to whom I have referred argue thus: two men might meet at the same Assize, be indicted for the same offence in point of law; they might be at the same point of age—say forty; one of them might, up to that period, have never offended against the law, but have been driven by a combination of circumstances to this offence; while the other might have been a violator of the law all his life—yet, they would stand on a level before the Judge who tried them on this occasion, for the same crime, with the same evidence against them. And the persons who take this view go on to argue—if one had, up to that period, been a good citizen, and shewed a desire to retrace his steps, and shewed a desire of obedience to those who were placed over him, and wished to redeem himself as early as possible, while the other continued to manifest an ill frame of mind, it is evidently unjust to treat the two alike if any means could be devised for opening the door for the reformation of the one, while it was closed, for the protection of society, against the other; and they have arrived at the conclusion that the most just and the safest mode is to measure the sentence mainly by labour, taking conduct in connection with labour. I think this is the opinion of Mr. Hill, of Lord Brougham, and a good many persons in England who have paid great attention to this subject? No doubt the whole question of secondary punishment in this Colony is in a very unsatisfactory state, and it is, perhaps, one of the most important questions to which any public man could devote his time and attention, but it is surrounded by great difficulties. Practically, I do not think so much injustice arises, as appears from the case you have put of the position of two culprits; because, as a matter of fact, I know that in sentencing particular persons for the same offence the Judges endeavour to ascertain, and they generally do learn with some accuracy, the previous history and character of the men who come before them, so that while they would give one, two, or three years punishment only to a man of previous good character, to the other person who had been convicted before, and who had pursued a long course of crime, they would give the longest sentence the law would allow, and the law does generally allow a discretion to a Judge. There is another point to be taken into consideration, that these unhappy men generally have friends, and they are unquestionably, as I have reason to know, very active in their behalf. If there is any mitigating circumstance, the case is in a short period brought under the consideration of the Executive, and the application goes to the Judge almost invariably. Good conduct is never lost sight of, when these petitions are considered by the Executive, even though there is no particular date fixed under the present system, when the prisoner can *claim* remission. The great difficulty in the way of treating prisoners is no doubt the want of proper buildings, and the peculiar circumstances of the Colony. For instance, if a Judge sentences a man to imprisonment, he is sent to the gaol; if to hard labour on the public works of the Colony, he is sent to Cockatoo Island; and the Government of this Colony have always kept in view, in addition to the punishment of the criminal, the completion of that great public work the Fitz Roy Dock. So that men, instead of being sent to hard labour on the roads or other public works, are sent to that island, which was never intended to be permanently used as a prison, but has buildings of only a temporary character, and it was hardly desirable to go to a large expense for prison buildings in a locality which it is intended to appropriate at no distant period exclusively to another object. Therefore, while it is absolutely necessary, in treating criminals, to have the means of classification, those who go to Cockatoo Island can never be treated effectively, with a view to their reformation or their punishment.

4625. With regard to the discretion of the Judges, does it not strike you that it is manifestly wrong, if it could be avoided, that the Judges should exercise this discretion; the crime being the same in the eye of the law, as well as upon moral principle. Take the case of burglary, for instance: two men break into a dwelling-house in the dead of night and rob the inmates, the evidence is clear and conclusive. Is it right that the Judges should exercise a discretion in such a case as that, even though it may be shewn that one man was a much worse character prior to his conviction than the other? Does it not seem more reasonable that the question of character should be determined by the behaviour after, rather than by that before the trial, that the proportion of punishment ought not to be measured at the time of the sentence, when both prisoners are fresh from crime—when there has been no intermediate period to test their character—when there is nothing to shew that although one may have borne a good character up to that period, he may not for the future be better than the other—that

fact

fact can only be proved by subsequent conduct? I am hardly prepared to admit the principle. As a close observer of the proceedings of Courts in different parts of the world, with a view to make myself practically acquainted with their operation, I have remarked, both in the smaller and larger Courts, that the previous history of the individual is taken into consideration. You will find a Judge sentencing two criminals—as in the case you have supposed, where one has been convicted for the first time, having, perhaps, been seduced into it by his more experienced and depraved companion—the one for a longer and the other for a shorter term, and it has never struck me that the principle is incorrect.

4626. Have you never been struck, on referring to the annals of crime in this country, with the amazing inequality in the sentences passed? I have, and that has been especially manifest since the establishment of District Courts—I have observed that, since that period, the difference in the sentences has been startling.

4627. I may say, that while making some inquiries, particularly at the gaol at Darlinghurst, I think every member of the Committee was startled by what appeared to them to be the shocking inequality in the sentences, and I think it was principally with regard to the sentences of the District Courts Judges, as you have observed? Yes; at the same time, it is difficult to determine such cases. To enable you to do so, you should know all the circumstances at the time in the mind of the Judge, you must almost be in a position to try the case over again before you can do it.

4628. Going back to my former question: do you think it would be possible to determine safely the history of a prisoner—whether he deserved a mitigation of sentence, or whether he did not, by good conduct—unless we had a very different system of classification in the gaol so as to enable every man to follow the bent of his own disposition——? Without means of classification we can have no efficient prison discipline, or system of secondary punishment.

4629. Must not this entire absence of the means of classification, which I believe characterizes all our gaols, greatly interfere with the prisoners behaving even as well as they otherwise would do? No doubt it is a great drawback to their pursuing what in their calmer and more sober moments they would desire to do if they were cut off from their depraved companions.

4630. Supposing we had a large model prison, erected at great cost, even say £50,000, or £70,000, with workshops and means of thorough classification, and an industrial system were established, by which these persons, according to their physical strength and previous habits and training, would be appointed to different kinds of labour—do not you think such an establishment might be made, to a very great extent, self-supporting as well as reformatory in its effects? I have no doubt it might; and I have thought of such a plan as the following:—Supposing the present site of Darlinghurst Gaol were considered unobjectionable, there is vacant ground where a prison building such as you speak of could be erected. It was for some time under my consideration whether we might not remove all the females from Darlinghurst to Parramatta, and put all the males at present at Parramatta into the Darlinghurst Gaol, near which there is a large quarry. In this quarry the men might be employed, as well as in other works necessary for the completion of the buildings on the plan you have suggested. I believe in that way the labour of the prisoners might be turned to as much account as if Government received money for what they do; and I have also been of opinion that the best mode of employing the convicts would be in the completion of this building. When you see the fine buildings erected within the walls of Darlinghurst Gaol by convicts, it is a proof against the assertion that we do not get value from the labour of these men. It is true that Government do not get money, but these buildings have been erected in a very creditable manner, without any great cost, and I think the men have been better employed than the convicts at Parramatta, who have been engaged in making barrows and hats for sale. By the latter means a certain sum of money has been produced which has been quoted in favour of this mode of employment; but I believe if these men were employed in stone-cutting, building, in completing the gaols, you would make them valuable mechanics, and that it would be a better mode of carrying into effect their sentences than plaiting hats and making hand-barrows and articles for sale. What we do want now is one gaol that could be used as a model gaol.

4631. You are aware, I presume, that there are loud complaints against this system of making articles in the gaol to come into direct competition with the tradesmen of Parramatta? Yes.

4632. These complaints you will think with me are just? I have often thought, while so much has been said in favour of the system at Parramatta, that the one adopted at Darlinghurst is better, that the labour is more suitable to the sentences of convicts, although the money earned did not tell as in the case of Parramatta.

4633. With regard to Cockatoo Island, I should think that a most eligible site for a gaol, considering its isolation, and the additional means of security that isolation supplies, and also the healthiness of the site, and that it might be carried on beneficially in connection with the docking establishment for long future years? I have always looked upon that as the proper site for a naval arsenal, and should be sorry to see that appropriation interfered with; and I am of opinion that a better site might be found for a model prison. I am not prepared to say, except that the town has extended towards it, that you could have a better site than Darlinghurst; a large sum of money has been laid out upon it, which would have been uselessly expended if its present purpose were abandoned. It is certainly better than the site of the Parramatta gaol, which is low, and I should think unhealthy.

4634. Has your attention been called to the fact, that very few persons in Sydney interest themselves in the condition of the gaol and prisoners; that very few private ladies and gentlemen visit them? Very few indeed. I ascribe it to the fact that almost every body is occupied with some business which engrosses his time.

The Hon.
C. Cowper,
Esq., M.P.

16 April, 1861.

The Hon.
C. Cowper,
Esq., M.P.
16 April, 1861.

4635. More especially as respects female prisoners, they do not appear to be visited by benevolent ladies? No; I think the position of those females is very lamentable.

4636. *By Mr. Wilson:* You are aware that other benevolent institutions are visited by ladies? I am afraid not to any extent. I believe the Benevolent Asylum and Infirmary are very little visited. With regard to the women confined in Darlinghurst Gaol, it should be borne in mind that a large portion are abandoned drunkards, who are sent in for short sentences only, who come and go rapidly; they are sent to the gaol, and after a short time they come back to town, where they remain but a few days, perhaps, and then return again. I am afraid there is very little hope of doing any permanent good with them.

4637. *By the Chairman:* There are a number of young girls also? Some small number.

4638. Have you any personal knowledge of the condition of the gaols in the country—at Berrima, Goulburn, and Bathurst? Of Goulburn and Bathurst I have not; Berrima I examined the other day when I was passing by, but it is only just re-occupied. The gaol itself is a fine building, though some of the work is disgraceful.

4639. You are aware that there is no attempt at classification in those gaols? I believe none whatever; I doubt whether the formation of the gaols admits of it. Although the gaol at Berrima is a large building, there is no means of keeping one set of prisoners away from others. There are no yards or means of classification, and then I believe it is the general system, where the men are under long sentences, to send them down to Parramatta or Darlinghurst. There is a great deal of difficulty in attempting any system of reform except with long sentenced men; and when you come to take out the long sentenced men from the others in this Colony, the number is not very great.

4640. *By Mr. Wilson:* Have you paid any attention to the necessity of educating prisoners, principally the juvenile portion of them, in gaols? Yes; there is the means of carrying on a school, but then again the number of juvenile convicts is very small.

4641. Do you not think even adult prisoners might very beneficially be instructed and educated in gaols—that a general system of education might be established, and every man who goes to gaol be made to go to school? I think that would be very desirable indeed; but I would rather attract than force them. That might be one of the features of good conduct, that might entitle them to consideration for remission of sentence. I may perhaps here remark, that I have been very much surprised to find so few re-convictions in this Colony. Mr. Mann has supplied me with a return shewing this, which I beg to hand in to the Committee. (*The Colonial Secretary handed in the same. Vide Appendix B.*)

4642. *By the Chairman:* With regard to the establishment of a large central gaol, is it your idea to have a gaol to contain the whole of the men undergoing sentence from all parts of the Colony—all sentenced for a certain period? Yes; I think that would be desirable, but it should be confined to prisoners sentenced for not less than six months.

4643. It is exceedingly difficult to subject these men in the country gaols, with short sentences, to any industrial discipline? Very.

4644. For that reason it seems desirable that all should undergo some process of labour? It has been suggested to me, that attached to Darlinghurst Gaol might be a building called the House of Correction, to which short sentenced men—men sentenced for three or six months—or juvenile offenders, might be sent. For instance, there are a large number of sailors who, from time to time, have to undergo short sentences, and if there were a particular wing set apart to them, we should find the total number of prisoners very much reduced.

4645. I apprehend there should be a combination of utility and profitableness with the labour inflicted upon the prisoners, and that they should not only be punished, but that their labour should be profitable to the State; that could not be effected unless they could be assembled in one place where, by a division of labour, they could have employment suited to their tastes, habits, and stamina. Their labour would be greatly wasted unless it were brought under some general system, where it could be turned to account, according to the character of the prisoner? Yes; if Cockatoo Island were so far completed, that it was necessary to provide for these convicts, then I think the whole question would be fairly before the Government; but there is such a desire to get every able-bodied man to that island, to complete the work, that the question of reformation, and even of punishment to the prisoner, is quite secondary to that of the completion of this dock. With reference to this subject I may say, that I am by no means favourable to sending these men to be worked on the coast, at the various harbours. I think there is plenty of employment for them close at hand, where they are subject to more inspection and supervision.

4646. *By Mr. Wilson:* When do the Government expect the dock at Cockatoo Island may be finished? I should suppose the convicts may be removed in a couple of years; still so long as Government think it desirable to employ them, there is a good deal of work to be done. I think, however, it is very desirable to remove them so soon as the dock is so far completed as to be generally occupied by ships.

APPENDIX.

A.

The Engineer-in-Chief and Superintendent of Cockatoo Island to the Principal Under-Secretary, reporting on that Establishment.

Cockatoo Island, 10 September, 1860.

Sir,

It is now twelve months since I assumed the entire control of this establishment, and the insight thus afforded me of the detail of the penal department, coupled with the many years' experience derived from my previous duties as Engineer-in-Chief of the important public works of this island, comprising the construction of a Dry Dock and the erection of extensive workshops and machinery by
means

means of prison labour, places me in a position to lay before the Government the following Report and suggestions.

The Hon.
C. Cowper,
Esq., M.P.

16 April, 1861.

2. I find that this establishment was originally formed during the Government of the late Sir George Gipps, for prisoners undergoing minor punishments, or such as might have completed satisfactorily a probation at other penal settlements; it has, however, gradually become the extreme penal establishment of the Colony, and for some years past culprits of every diversity of character, and for every grade of offences, have been sent here to serve their penal sentences.

3. It might from this be inferred that the prison accommodation was sufficient to meet this new order of things, but such is far from being the case; these buildings, originally primitive, incomplete, and defective in design, remain to this day with no material change, the same as when first erected for the more lenient purpose.

4. The dormitories, hospital, and cook-house, intermixed, form three sides of a quadrangle, the fourth side being closed in by the mess-room, and an iron palisading; on the northern front there are two wards, each 52 x 19 x 14 feet, fitted with sleeping bunks, separated merely by open batten partitions, together capable of containing one hundred and four prisoners; the cook-house forms a portion of this face; on the east front there are two wards, 53 x 20 x 14 feet, with bunks similarly fitted, capable of holding one hundred and seventy-six; on the south front there is a similar ward for forty-eight prisoners, and a hospital for fourteen patients; making in all, room for three hundred and forty-two prisoners.

5. Besides these, there are twelve punishment cells; but these are so badly constructed that the confines therein can communicate with one another through the drains, or by calling out. There is one mess-room and one yard for all indiscriminately.

6. Each sleeping-bunk contains 47½ cubic feet of space, and the average of the total space of the dormitories gives 152.66 cubic feet to each prisoner, or a little more than one-third of that of the Pothill Fields cells, and only about one-sixth of the model cells at Pentonville, in the Mother Country.

7. It will thus be seen that the accommodation here detailed is totally inadequate for the present purpose; in no instance does it possess any of the modern gaol improvements or appliances; it has no proper provision for coercion, nor does it afford any means whatever for separation or classification. It thus follows, that from the time a prisoner arrives on the island to the time of his leaving it, he is necessarily mixed in the one common lot—has not a moment to himself for reflection, but, on the contrary, is subject to the full blast of demoralization, and may as a matter of course be expected to pass from under control, at the expiration of his sentence, a more debased and depraved man than when first apprehended. It is distressing to contemplate the evil arising out of this fact, a prolific source of second and repeated convictions.

8. By regulations of the 30th August, 1851, the Government sanctioned the introduction of a general system of task-work, by which means prisoners were enabled, by extra labour, to shorten the period of probation required to be served by them for the indulgence of a ticket-of-leave, and also to earn a small money gratuity, a portion of which is allowed to be expended for the augmentation of their ration, and the remainder placed in the Savings' Bank for their use when leaving.

9. I here note, under the impression that a misunderstanding exists in this respect, that this system did not absolutely reduce the period of sentence of a prisoner, but only his period of probation at the penal establishment for a ticket-of-leave, and that in districts having efficient chief constables, and where the ticket-of-leave holder was properly looked after and kept up to the Government regulations by the magistracy, he remained under complete control and surveillance during the whole period of his sentence.

10. By the Regulation of the 1st June, 1858, prisoners are required absolutely to serve their entire sentences, the system of probation and ticket-of-leave being thereby rescinded.

11. The abolition of this indulgence has had a most marked effect on the general conduct of the prisoners; they argue amongst themselves that it places those men who are disposed to work on the same footing with those who are not, and that it holds out no inducement to industry and good conduct; the hitherto industrious man now only exerts himself to an extent that will avoid punishment, and the entire energies of others appear bent upon devising means for effecting escape; the result is an inordinate amount of insubordination, and that work requiring care and skill cannot as heretofore be intrusted to them, it having become altogether impossible to perform some description of labour, such as diving operations for instance, and the like, which cannot be coerced.

12. It is the impression of many, and the same has been stated in the public prints, that the Judges have of late passed more lenient sentences in consideration of the existing regulations. An analysis of the records of this department does not confirm this statement, the average duration of punishment to every prisoner being, under the old regulations, 5 years, 3 months, and 26 days; and since the new, 5 years, 2 months, and 2 days. See Appendix A. See Appendix B.

13. I have hitherto always found a proportion of the prisoners disposed to conduct themselves well, and desirous of performing their allotted task, and many others who might be induced to do so if they could be separated from the contaminating influence of the more depraved. Amongst the former class are generally to be found many anxious to be taught some trade as a means of obtaining a livelihood on their discharge. I need hardly say that it is my invariable practice in this respect to afford them every encouragement and assistance, and I have the satisfaction of knowing that these endeavours have not been without beneficial results. I note this desire to learn as an important element, and one that should be taken full advantage of in any penal regulations.

14. It will be readily perceived that under these circumstances the inadequacy of the prison buildings of this establishment becomes pressingly more apparent.

15. I advert to my previous communications bearing on this subject, particularly to that of the 17 October, 1859, as the opinions therein recorded were penned in perfect ignorance of those of Captain Whitty, Governor of Pembroke and Director of Public Works, expressed as follows, pages 5 and 6—Colonel Jebb's Report, 54 and 55:—

14 Sept., 1859.
17 October, 1859.
13 Dec., 1859.

"Hitherto the moral influence of the system in force, by which reward for good conduct and improvement has been combined with due punishment for the reverse, has enabled the prison authorities to employ the convicts on the public works with confidence and good effect; but if the fear of punishment alone is to be the motive to obedience and exertion in the mind of the convicts so employed, an entirely new system of guarding and coercing the prisoners will become necessary, and it is much to be apprehended that any such system, though necessarily expensive in its machinery, would be unprofitable in all its results.

"The amount of labour performed by large bodies of convicts associated on public works must depend on the willingness with which they engage in it. It may not be very difficult to compel an individual prisoner at crank labour, or a certain number of prisoners on a treadmill, to perform a fixed amount of daily work without the motive of any reward; but it would be next to impossible to carry on the varied labour of many hundreds of associated criminals on public works on such a principle with any effective result, and it would be hopeless to expect to produce, by such means, habits of industry, or individual moral improvement—each prisoner would rise from his hammock in the morning in an irritated state of mind, which would be kept alive throughout the day by the driving and urging that would be inevitable under such circumstances, and at the end of four or five years (or more, according to his sentence) he would be discharged, in all probability, with a hatred of work and regularity, which he would regard as the characteristic of a prisoner, instead of being led (as under the present system) to regard them as the means of obtaining an earlier liberation and a future respectable livelihood."

The Hon.
C. Cowper,
Esq., M.P.

16 April, 1861.

16. The Ticket-of-Leave and Task-Work Systems, fully in force up to the 31st of May, 1858, were, doubtless, open to objections. In many instances, I think, too much was required of the Ticket-of-Leave holder—petty offences that would have rendered a free man liable to a fine of five shillings at the utmost, subjected the former to re-imprisonment for an indefinite period; and, again, the system could not be effectively and fairly worked without the cordial co-operation of the magistracy throughout the Colony, which it had not, and which perhaps never can be relied on; a revision of the system became consequently a matter of necessity.

17. It is my firm opinion that it is quite practicable to devise, and put in practice a system of prison discipline that shall be capable of deterring and reforming the criminal, and rendering his labour profitable to the State, and I sketch the following as an outline of such a system.

18. Every convict, during the term of his sentence, should be required to pass through three distinct grades of punishment—the first period must be served under most stringent and extreme regulations, during which no indulgence whatever is to be permitted, the culprit being removed only on the completion of the allotted term served without punishment. The second grade should comprise employment on certain public works; still, however, under strict confinement, but with moderate indulgences, such, for instance, as the allowance of a gratuity for extra work, as at present, and power to reduce the term of probation fixed for this grade, within prescribed limits, by a system of credit in time for extra work performed beyond a penal task. In the third, or last grade, the prisoner is still to be employed exclusively on the public works for the remaining portion of his sentence, and under surveillance, with a fixed amount of wages, below the current rates, but sufficient to support him; this class to be allowed full liberty, within certain limits, and their wives and families to be permitted to dwell with them; any breach of discipline or disorderly conduct subjecting the offender to be degraded to the first or second class, there to undergo repeated probation, as in the first instance.

19. Proper and efficient prison arrangements are necessary to insure success in any penal system, and indispensably so in particular for the first class here proposed, which would need the means for perfect separation and coercion.

20. The second grade prisoner might be employed on works such as are in progress at this establishment, and the like; and the third, or last grade, on the roads, bridges, and harbour improvements, and where it is necessary to employ men in detached bodies.

21. As a rule, labour, to be reformatory, should be useful; of a description, if possible, to engage the mind and attention of the convict; but this desideration would not always be attainable in the prison arrangements for the fresh grade, where, for punishment, crank and other irksome employment would have to be enforced.

22. It will be observed that this scheme makes employment on the public works a reward for steady conduct, and such employment might be made the means of imparting instruction in some useful trade.

23. Under the impression that this island is destined to become a dockyard and arsenal, for which it is so admirably adapted, I do not feel justified in recommending an expenditure on the present buildings, sufficient to put them into a perfect state of efficiency for prisons, for which neither they nor the locality are adapted; but as there is much work here upon which prison labour could be profitably employed for many years to come, I again draw attention to my recommendation to provide a properly fitted-up prison hulk.

I have, &c.,

GOTHER K. MANN.

P.S.—A similar Report has been furnished to the Secretary for Public Works.

APPENDIX to Report, 10th September, 1860.

A.

COMPARATIVE RETURN of Punishments of Prisoners at the Penal Establishment, Cockatoo Island, prior and subsequent to the Regulations of the 1st June, 1858.

NATURE OF OFFENCE.	NUMBER OF PUNISHMENTS.		REMARKS.
	From 1st June, 1857, to 31st May, 1858.	From 1st June, 1859, to 31st May, 1860.	
Insubordinate and disorderly conduct.....	111	24*	* In the column for 1859-60, only those prisoners serving under the new regulations are taken into the account.
Assaults.....	13	10	
Attempts at escape.....	.....	6
Refusal to work.....	8	73	
Total for the 12 months....	132	113	
Average daily number of prisoners..	308	143	

The ratio of increase of punishments since the 1st June, 1858, being as 1 is to 2½.

GOTHER K. MANN.

10 September, 1860.

B.

ON THE PUBLIC PRISONS IN SYDNEY AND CUMBERLAND.

147

B.

COMPARATIVE RETURN of the Sentences of Prisoners received at the Penal Establishment, Cockatoo Island, prior and subsequent to the Regulations of the 1st June, 1858.

The Hon.
C. Cowper,
Esq., M.P.

16 April, 1861.

NUMBER OF PRISONERS RECEIVED.		DURATION OF SENTENCE.		
From 1st June, 1857, to 31st May, 1858.	From 1st June, 1859, to 31st May, 1860.	Passed in Period 1857 and 1858.	Passed in Period 1859 and 1860.	
		Years.	Years.	Months.
....	1	....	....	3
....	1	....	....	6
1	....	1	....	....
....	1	....	1	6
5	5	2	2	
29	25	3	3	
6	5	4	4	
30	32	5	5	
8	1	6	6	
16	11	7	7	
1	2	8	8	
6	4	10	10	
1	....	13	....
1	....	14	....
3	4	15	15	
....	1	....	Life.*	

* Taken as 20 years in his calculation.

Average duration of Punishment of each Prisoner, 1857-58=5.31 years; 1859-60=5.23 years; the difference of period, .08 being no more than what may be attributable to ordinary fluctuation.

GOTHER K. MANN.

B.

NUMERICAL RETURN of Prisoners on Cockatoo Island, under Sentence to the Roads or Public Works, on the 11th of October, 1860.

Colonial Prisoners.

Serving Sentences under 1st Convictions at this Establishment	218*
Serving Sentences under 2nd Convictions at this Establishment	32
Serving Sentences under 3rd Convictions at this Establishment	4
	<hr/> 249

Imperial Prisoners.

Serving Sentences under 1st Colonial Conviction	3
Serving Sentences under 2nd Colonial Conviction	8
	<hr/> 11

Total number of Prisoners on the island

260

Of those under Colonial Sentences, the following have been returned to the island with Tickets-of-Leave cancelled:—

Serving Sentences under 1st Conviction	16
Serving Sentences under 2nd Conviction	2
Serving Sentences under 3rd Conviction	1
	<hr/> 19

Imperial Prisoners serving Sentences under 1st Colonial Conviction.....

1

20

* Many of these men are known to have served sentences at other establishments, which of course the records of this office do not show.

GOTHER K. MANN.

Cockatoo Island, 11 October, 1860.

Mr. John Matthews May called in and examined:—

4647. *By the Chairman:* You fill some situation in connection with the Asylum for Destitute Children? I am at present Superintendent of that institution. Mr. J. M. May.

4648. What are your particular duties? I have the immediate charge of the institution, under the orders of the Directors. 16 April, 1861.

4649. You have nothing to do with the education of the children? Nothing whatever; I merely exercise a general supervision.

4650. Do your duties as Superintendent extend to the complete care and management of the children, with the exception of their education? With the exception of their education; still I have a general supervision over the schoolroom; the schoolmaster and teachers are also under my orders.

4651. How long have you been in the Colony? I have been in Sydney nearly six years.

4652. You arrived, I think, from Tasmania? Yes.

4653. What situation did you fill there? Superintendent of the convict establishments; that was my designation in Hobart Town.

4654. What were your duties in connection with that situation? I resided at the Male Penitentiary or Prisoners' Barracks, which comprised also the House of Correction; and I had the supervision of the female prisoners at the Cascades, about two miles from Hobart Town; and also the Buckfields House of Correction for females.

4655.

- Mr. J. M. May. 4655. You had the superintendence of those three institutions? Yes.
4656. Were there any other officers holding analogous positions to yours on other parts of the island? Not similar to mine.
- 16 April, 1861. 4657. You had not under you all the prisoners who were in confinement? I had charge of all the prisoners in Hobart Town.
4658. *By Mr. Cowper*: That is, within the city? That is, within the city. The penal establishment at Tasman's Peninsula I had nothing to do with; that was under the Commandant; nor had I with the gaol at Launceston or at Hobart Town.
4659. *By the Chairman*: How long did you hold that situation? Three years in Hobart Town.
4660. Was that the last situation you had previous to arriving here? Yes.
4661. What was the system of discipline observed under you when you were in that situation—state how the prisoners were accommodated, how employed, and then what discipline they were subject to? At this establishment a uniform system of classification was adopted; the prisoners were employed upon the public works of the Colony, about Hobart Town; and, as far as practicable, they were kept under separate treatment when not at labour.
4662. What do you mean by a uniform system of classification? According to a prisoner's sentence, when he came in, he was sent to a certain division of the prison, and clothed in a distinct dress. Each prisoner wore a dress which shewed the class to which he belonged, and you could distinguish by the dress whether he was under remand, or awaiting trial; sentenced to solitary confinement, or to hard labour.
4663. Were the men worked together, and was there classification confined to their dress? As far as practicable they were housed in separate apartments.
4664. Do you mean in separate cells? In separate cells.
4665. Each man in a separate cell? Each man in a separate cell.
4666. *By Mr. Cowper*: How many convicts had you in the establishment at the time? Between seven and eight hundred.
4667. Had you 800 cells? No. They were not all in separate cells. Separate treatment was only adopted as far as it could be carried out, but some were under association, but not more than half.
4668. Had you 350 cells? Yes, in Hobart Town.
4669. *By the Chairman*: You say some were under associated treatment, what do you mean by that? We endeavoured as far as possible when the prisoners entered to bring them under separate treatment when they were not at labour, and if their conduct was good they were removed from separate treatment to association—that is, instead of taking their meals and sleeping in separate apartments, they took their meals in the general day room, and slept in wards with others. Each ward accommodated from 100 to 150 men. Each berth was separated entirely from the others; it was battened off, and perfect silence was observed in the wards, as if the men had occupied separate apartments.
4670. *By Mr. Cowper*: What sort of cells were these 350; describe them? There was a front range, a cell at the front, and another at the back. They were not double cells, but two tiers top and bottom.
4671. *By Mr. Morris*: What was the size of these cells? Seven feet by four or five, and about ten feet high, with arched ceilings.
4672. *By the Chairman*: How were they situated in the building—was the building more than one story? They were separate apartments; there were two wings.
4673. Were all these cells on the ground floor? No, they were in double ranges top and bottom.
4674. *By Mr. Cowper*: What was the building; stone or brick? Stone.
4675. Substantial? Substantial; but much had been added to it. It had never been regularly laid out as a prison, but from time to time it had been added to.
4676. *By Mr. Morris*: What was done with the cells under Trinity Church? We seldom made use of them; they were recently broken into, and turned into washing apartments. That was our reception room.
4677. Were not those cells extremely small? Yes.
4678. Not more than three or four feet in height—some were not? Some were not.
4679. *By the Chairman*: Since you have been in this Colony has your attention been turned at all to the subject of prison discipline? I may say I have always taken a deep interest in the subject. Before I had charge of the convict department at Hobart Town I was superintendent of the convict establishment at Launceston.
4680. How long were you at Launceston? About five years.
4681. Was your situation there similar to the one you held at Hobart Town? Yes.
4682. Was the mode of treatment of the prisoners similar? Very similar; the separate system of treatment was carried out as far as it could be.
4683. You say you have taken an interest in the subject—have you ever visited the gaols in this Colony? I yesterday visited Darlinghurst for the first time. Since I received the summons to attend this Committee I also applied for authority to visit Cockatoo, but had not time to visit it.
4684. What is your opinion of Darlinghurst Gaol? What particularly struck me was seeing the prisoners classed together; they were not individually classed, and the non-employment of a great many I saw.
4685. You refer to their being together without classification—messed together? Yes, messing together, and amalgamating in the different yards.
4686. You could not arrive at any definite conclusion as to the state of the gaol? I could scarcely venture to do so from such a hurried visit.

4687. *By Mr. Morris*: Have you visited Tasman's Peninsula? Yes, and am aware of the perfect system of separate treatment there carried out. Mr. J. M. May.
4688. Is it found efficient as a reformatory establishment? Yes. 16 April, 1861.
4689. *By the Chairman*: What do you mean by "separate treatment"? Prisoners on admission would not be shut up in a yard, but removed to a separate apartment where he would be locked in, and he would then be allowed an hour for exercise during the day, but would take his meals and sleep in this apartment.
4690. The prisoner could not be employed in this apartment? I am speaking of prisoners sentenced to imprisonment, without employment? It appeared in Darlinghurst that prisoners sent to be imprisoned, without employment, were allowed to assemble in the yard.
4691. *By Mr. Morris*: Have you ever had any opportunity of observing at Tasman's Peninsula the effect of imprisonment in the cell from which light is totally excluded? That is solitary confinement.
4692. There is one cell from which the light is entirely excluded? That is used only for very insubordinate and refractory prisoners. There is what are called "dumb cells," for the very insubordinate; they are put in these dumb cells till their tempers are tamed down.
4693. Have you been in this one peculiar cell? Yes.
4694. What have been the effects produced by putting prisoners into that? They have been very glad to get removed from it. It was very seldom necessary to send a person to it; they had a dread of it.
4695. *By Mr. Wilson*: Were they kept there long? A few days, probably, if the prisoner were a very violent man. At Darlinghurst Gaol, I may observe that the cells I visited were only light cells, and not cells adapted for solitary confinement. If a man misbehaves there he can only be shut up in one of these; there are no dark cells which are generally used elsewhere as places for solitary confinement.

FRIDAY, 19 APRIL, 1861.

Present:—

MR. HART,	|	MR. MORRIS,
MR. MATE,	|	MR. WILSON,
MR. WINDEYER.		

HENRY PARKES, ESQ., IN THE CHAIR.

The Honorable Edward Deas Thomson, Esq., C.B., M.L.C., attending by permission of the Legislative Council, examined:—

4696. *By the Chairman*: You filled the office of Colonial Secretary for some years? I did, for a number of years. The Hon. E. D. Thomson, Esq., C.B., M.L.C.
4697. Do you recollect at this moment the number of years you filled that office? Nearly twenty, including a period of twenty-three months I was absent in England.
4698. Your attention would necessarily be a great deal directed to the subject of the management of the criminal population of the Colony during that period? Very constantly. 19 April, 1861.
4699. Do you remember the circumstances and considerations which led to the establishment of what is known, or what was known, as the mark system, on Cockatoo Island? I do.
4700. I think the system was established in November, 1851, or about that time? Yes, I have a tolerably distinct recollection of the circumstances under which that system was introduced. I had occasion to make a visit to the neighbouring Colony of Tasmania for the benefit of my health, and I took the opportunity of visiting several of the penal establishments in that island. My attention was particularly directed by the then Governor of the island, Sir William Denison, to a system that had been established there. It was formed upon a scheme originally introduced, I believe, into Bermuda, and which had been found to operate very beneficially there. I examined into the scheme, obtained the general regulations, and on my return here the matter was submitted to the Governor, and by the Governor to the Executive Council, and a code of regulations, founded upon the same principle, was established and carried into effect at Cockatoo Island. I think myself that the principle of those regulations was a sound one, if they had been perfectly carried out; but the great difficulty we always experience in prison discipline is its due, and just, and complete administration. There was no question, during the whole period of my tenure of office as Colonial Secretary, that I found more perplexing or difficult to place upon a satisfactory basis. To establish a system of penal discipline which shall adapt itself to all the wide ramifications into which the question extends in its effects upon the criminal population, as well as upon society generally, is one of the most difficult problems that have engaged the attention of statesmen, legislators, and philanthropists, in all countries, from a remote period to the present time, and one which can scarcely be said to have been satisfactorily settled by any of the numerous systems, so various in their principles, which have been introduced into Great Britain, America, or any of the Continental States. One of the greatest difficulties arises from the variety of human character to be dealt with. It may appear just to fix an equal amount of punishment for each particular offence, but the effect may be very different indeed upon different individuals. What may operate most severely on one class of prisoners may not be felt as a punishment at all by others. The degradation consequent upon a conviction operates very differently upon an offender who for the first time has incurred the just penalty

The Hon. E.
D. Thomson,
Esq., C.B.,
M.L.C.

19 April, 1861.

penalty of the law, from its effect upon the hardened criminal who has frequently been convicted and punished. So, in carrying out sentences, some consideration must be given to the character of the individual in order to place criminals of different character upon an equal footing. In this point of view classification becomes most important. No more degrading or severe punishment can be inflicted upon a convict who has committed a first, and comparatively trivial, offence against society, than to associate him in undergoing his sentence with men of hardened character—whilst in many instances it may have the effect of demoralizing rather than reforming the individual.

4701. Could you state succinctly what were the main features of that system. I will explain to you, if you will allow me, that my object is to get from you, in as few words as possible, what the system was—we know generally, from the printed papers, what the features of the system were? The truth is, that the short period that has intervened since I was summoned to attend the Committee, and the important public business to which I have had to attend, have not left me sufficient time to prepare myself so fully as I could have wished. I have had time only to refer to certain documents connected with the subject, but not to read them over; and in a complicated matter of this kind, involving a great variety of details, I should scarcely trust my own memory to give a correct account of it. But I can refer you to documents that will give you full information on the subject. They were all printed and laid before the late Legislative Council, and will be found in a volume of the proceedings of that body, the second volume of the Session of 1851, pp. 443 to 461. I can state in very general terms what was the object of the regulation. It has always been found in forced labour almost impossible to carry it out, unless some expectation was held out to the prisoner himself, that he would benefit by it. You must operate upon his mind to induce him to labour; that being merely watched and supervised by an overseer has never been found efficient for the purpose. The general principle of these regulations was, that by means of labour, and an overtask of labour, the prisoner was enabled to shorten the period of his sentence. The means adopted for that purpose was this: there was a Board appointed, consisting of the Superintendent, of the Visiting Magistrate, and of the Medical Officer; it was their duty to classify the prisoners according to their physical strength, and according to their skill in a particular species of labour; then a certain task was assigned to them—a fair day's labour—a note was taken of all the labour performed above that, and under certain limits the excess beyond the regulated task was carried to their credit. At the end of the month it was summed up, and according to their skill and industry they were allowed credit for so many days in reduction of their sentence. The obvious operation of that regulation was beneficial, because, suppose a man had a period of eight years to serve before he would be entitled to a ticket-of-leave, if he laboured most industriously during the whole of that period, so as to reduce his sentence perhaps by several months, he must have acquired such a habit of labour that there would be a guarantee to society, when he should be thrown loose upon it again, of two things: first, that he had learned to be industrious himself, and would be able to acquire the means of subsistence without having recourse to habits of vice as he had done before; and secondly, that society would not again be exposed to a repetition of the depredations committed by him. I believe that, on inquiry, it will be found that the system of *marks* proved practically so efficient as a punishment, and so reformatory in its effects, that very few prisoners who passed their servitude under it were reconvicted. The system would have been still more beneficial if it had been properly administered and fairly carried out; but there were occasionally great abuses. The Ticket-of-leave Board sometimes recommended a man for special services, and that upset the whole matter. If it had been fairly, justly, and properly carried out from beginning to end, I am quite sure the objections to it in the public mind, the objections made to it by the press, and by public men, would not have arisen, and the system would not have been set aside. I am quite sure it is necessary, in any system of prison discipline, that hope should be held out to the prisoner. If you put him in a perfectly hopeless condition you make a wild beast of him. He recoils against society and becomes perfectly reckless. Reformation under such circumstances is impossible. We have seen the fruits of that in the recourse to the system now in operation, and which has superseded the mode of discipline which I have now very briefly described. I would by no means wish it to be understood by the Committee that I have given a full and perfect account of the whole of that system, and therefore I would call their attention to the details which will be found in the documents I have mentioned.

4702. Did you experience much abuse in the administration of this system, arising from persons of influence exercising that influence with Government, in the mitigation of sentences, without reference to the merits of the individuals concerned? I am not aware of any. I do not call to mind at any time any such influence being attempted to be exercised upon the Government.

4703. I mean more particularly by way of memorial—where the memorial has arisen from special knowledge of the prisoner and sympathy for his misfortune, rather than any desire to promote his case on any ground of justice or merit in his case? I am not prepared to say such cases may not have arisen, but I do not recall them to memory at the present time. It is possible, or not improbable, there may have been such cases, but they cannot have been numerous, because I should, in that case, have a recollection of some of them. I do not recollect one at the present time.

4704. *By Mr. Windeyer:* I thought you said just now that abuses arose in that way; that the Government made exceptions in special cases? No; from the Board recommending men who had made themselves exceedingly useful on particular occasions. I recollect a particular case, that I consider rather a flagrant one. A man who had committed the awful crime of murdering his wife was sent to Cockatoo Island. His life was just spared by one of those considerations which can only be understood by those who have the painful duty to determine

mine in cases of this kind, on the condition that the next greatest punishment should be inflicted; that was fifteen years penal discipline, with the first three years in irons. I forget the period, but a very short one after that, he made himself very useful indeed upon the island, by building some chimneys for the steam boilers, and other works of that kind, and he was recommended for a ticket-of-leave. I think perhaps scarcely caution enough was used in acting upon the recommendation of the Board, for I was as much shocked as any one could be when I found that the man was liberated. The remission of the sentence after so brief a period of servitude was entirely contrary to the regulations, and subversive of their principle.

The Hon. E.
D. Thomson,
Esq., C.B.,
M.L.C.
19 April, 1861.

4705. *By the Chairman*: You are aware that regulations were issued by the Government, dated 1st June, 1858, entirely abrogating this system? I understood there were, and I recollect seeing them in the newspapers. I anticipated from that measure an outbreak amongst the prisoners to whom it would be made to apply, and, in fact, I publicly stated that I believed that would be the effect.

4706. Do you not recollect those regulations that came in force at that date? No; I read them at the time. The truth is I know of no subject on which so many regulations have been made, and so many views have been taken, both in England and in America. My attention was first called to the subject in America, in the year 1826.

4707. In pursuance of the regulations all prisoners sent to Cockatoo Island since June, 1858, have had no consideration whatever for good conduct or for labour; their sentences are to be strictly carried out, in the case of good and bad alike, strong and weak alike, and they are left to work alongside of, and intermix with, those who received sentence prior to that date, and who are still under the mark system—what is your opinion of the state of things where two sets of prisoners are working together at the same kind of work, and the one who is the best-behaved, in many cases, gets no mitigation of sentence, while the other, who, in some cases, is not so well-behaved, makes eight or nine days in a week? It must necessarily create great discontent, and not only that, but a sense of injustice which makes them reckless. As I said before, a system that holds out no hope—one in which neither good conduct, nor industry, nor labour, can tend to mitigate the sentence, or mitigate the circumstances of their position—must be an erroneous one, and lead to very unfavourable results. (*The Chairman handed a copy of the regulations to the witness.*)

4708. Will you notice the last paragraph of that, in which you will see that persons in authority are directed not to transmit petitions from prisoners to the Executive? I think that is scarcely consistent with the usual practice of the British Government, not to receive a statement from every one, whether suffering from penal servitude or otherwise. I think it is the duty of Government always to receive remonstrances, complaints, or petitions, and to examine into them—it does not follow that they are to be acceded to.

4709. I should infer from what you have stated that you are in favour of what I believe is a very prevalent opinion among persons who have attended to this subject in England, that penal sentences should be measured more by labour and good conduct than by time? Yes; but there should always be sufficient time as a terror to evil doers, and an efficient manner of carrying out the sentence for the protection of society.

4710. I find in a treatise on prison discipline in America, by Francis C. Gray, some propositions which appear to me to be exceedingly correct, and well expressed, will you have the goodness to read them and see if they have the sanction of your experience? "That stinted food, constant confinement, total privation of social intercourse, should form no part of any system; that all systems should provide for entire separation at night, and for vigorous exercise and useful labour, instead of the fatiguing and unprofitable toil of the treadmill, by day; and that no more nor greater punishments should be inflicted than are necessary for the attainment of those objects, and for the preservation of order; these and other propositions, once doubted or even strenuously denied, are now admitted by all." I think the result of my experience enables me to give my entire adherence to these propositions—I am totally opposed to treadmills and punishments of that kind.

4711. You are decidedly of opinion, without any qualification, that the system of management should admit that the prisoner might by good conduct and industry emancipate himself in course of time? Undoubtedly, I think it is the very essence of every good system of penal discipline, and that without it none can be carried out with success.

4712. You will be acquainted with the locality of Cockatoo Island? Yes. I have not visited it since my return from England, but I am very well acquainted with it. I first suggested that the Dry Dock should be formed there.

4713. You have inspected the dormitories? The dormitories were entirely altered on my return from Van Diemen's Land, and put upon the system I saw established there. Previously, the men were huddled together like pigs—I can compare it to nothing else—they were lying on platforms all together without the slightest separation.

4714. *By Mr. Windeyer*: Like the places in soldiers' guard-rooms? Yes, on platforms, without the slightest separation.

4715. *By Mr. Morris*: As they are in the watch-houses? I do not know whether they have such platforms in watch-houses in the present day—I hope that is altered. I had the system adopted which I had seen in Van Diemen's Land—a separate compartment for each prisoner, so that he could not communicate with his neighbour, and of course it put an end to all those frightful crimes which were said to exist—whether they did exist or not it is difficult to say. At all events it was quite impossible, under the old system, that there could be any feeling of penitence. Men cannot become penitent or pray in a position such as they were placed in; it was perfectly impossible, if a man desired to fall back upon better thoughts, by isolation from his bad associates, to do so. There were lights suspended in these dormitories, and watchmen were stationed there, so that the men never could leave their particular beds.

The Hon. E.
D. Thomson,
Esq., C.B.,
M.L.C.

19 April, 1861.

beds. The discipline was maintained more perfectly in that way. But owing to the climate a very considerable inconvenience arose, and I feared at one time I should be compelled to abandon the arrangement. It was the creation of vermin to a degree that it became almost a plague; the men complained most bitterly that they could not sleep at night. I tried chloride of lime, chloride of zinc, and various other remedies, but in vain. It so happened that at the time there was a very intelligent surgeon resident on the island, and I recommended him to try the fumes of sulphur. All the windows and doors were closed up with blankets, and a quantity of sulphur was burned. The result was, as it was described to me, that buckets full of bugs and other insects were taken out from the bed places in the dormitories. They were completely destroyed, and the men were so well pleased with this, that they no longer made the slightest complaint against the separation; on the contrary, they found the great advantage of it. Of course it was necessary, after a time, to have the process repeated, so as to keep the insects down, and now there is not the slightest difficulty in doing so. I am quite certain that separation at night is necessary; of course I should desire a more perfect separation if it could be carried out—as separation in cells—that each man should be locked up in a cell—in a perfectly solitary cell. I think that would be more calculated to lead men to reformation and repentance than any other system which could be devised; but I see great difficulty in acting upon a suggestion of that kind, from the very heavy expense that it would entail upon the public treasury. To carry out penal discipline in a proper, philosophical, humane, and Christian manner must be attended with most enormous expense to society in general. I am certainly opposed to the *silent system*; in fact, it was found it could not be carried out properly. I was at first much taken with the papers I read upon the subject of the *solitary system*, and thought a great discovery had been made at last; but I believe from the accounts I have received subsequently that it was a failure. Men in solitude become reformed because they have no temptation, but when they return to the social world, and temptation is offered to them, all they have learned in solitude will not enable them to refrain from a return to those evil ways that have brought them into disgrace and trouble.

4716. In fact, though deprived of their liberty, and punished for the crimes committed against society, prisoners should still be treated as human beings, and upon those general principles by which human beings are governed? Yes, and it is the duty of every Government to see that while they are punished means of reformation are held out to them.

4717. It may be as well you should know that this Committee have visited Cockatoo Island on two occasions since their appointment, and that we find, unfortunately, there has been a want of administration in carrying out what you intended in these dormitories; there is no effectual watch, nothing to interrupt promiscuous intercourse, and we have a very serious amount of evidence before us to shew that crimes of the most enormous character—unnatural crimes—are still perpetrated on the island? That could not have been if the regulations I established had been fairly and properly carried out. That leads me to recur to what I have said before, that the best regulations are useless unless you can have a proper and efficient administration of them.

4718. If you recollect the particulars of these dormitories—which possibly you do not, at this distance of time—in some there are eighty berths, forty on each side, the berths being in double tiers, the ends of which only are exposed—something like coffins—so that the prisoners have to creep into them on their hands and knees; and it has been stated to the Committee that, on some occasions, prisoners have had to sleep on the top, above this double tier of berths, so that more than eighty men were crowded into one ward, and that the state of the atmosphere from such a number of human beings close together, and also from the disgusting effluvia arising from the night-tubs, is most painful and oppressive, especially in summer time—and it can be easily imagined to be so. I think you will see, in such a state of things as that, there could be no effective system of classification carried out? Quite impossible; and I think that is one of the first things that ought to be done, to classify the prisoners. Referring to that subject, there is one class of prisoners most difficult to deal with. They are persons who have been for a long period of their lives forming part of the criminal population; they have gone through a great number of punishments, and are almost hopelessly irreclaimable. I allude more particularly to those who commit robberies with violence, burglaries, and other crimes dangerous to society, and who, from the violence of their characters, ought to be placed in a position where they cannot again commit similar depredations. It is necessary that they should be removed to some distance, far apart from society. I do not think Cockatoo Island is suitable for them. When Cockatoo Island was first thought of, it was the desire to establish a dock there for the benefit of the port, and of the shipping and commercial interests, and it was thought a desirable mode of employing the prisoners. It was this that induced the Government of that day to select Cockatoo Island as a penal establishment, but I do not think it a proper place for men of desperate character, such as I have now described; as already explained, I think they should be removed to a distance. The difficulty of disposing of prisoners of hardened and incorrigible character was so strongly felt by Government, that means were taken, about ten years ago, to ascertain whether a penal establishment at a distance could not be formed, and a communication was made to the neighbouring Governments to ascertain whether they would be willing to join in the formation of such an establishment, to which incorrigible prisoners from all the Colonies could be sent, so that there would be perfect security that they would not again be thrown loose on society. Capt. Denham, who was then in command of H. M. S. "Herald," and employed upon the hydrographical survey of the neighbouring seas, was requested to undertake the examination of Howe Island, with a view to ascertain its fitness for a purpose of this kind. He visited the island, made plans of it, and gave a most interesting and elaborate report upon

upon its position, upon its capability, and its size—upon everything, in fact, that it was desirable to know, in order to determine the question. The island is situated about 400 miles E N E. from Port Jackson, and about 300 miles from the nearest land, which is at Port Macquarie. It measures seven statute miles in length by one-third to one and three quarter mile in width, and presents, independent of its mountain slopes, 2,500 acres of land capable of culture. A portion of it is now under cultivation by settlers, who have gone there without the authority of Government, but of course there was no intention, and I hope there would not be now, so long as the island is not required for any purpose of Government, to disturb them. The island is represented to be very fertile, to possess an abundant supply of water, and to be otherwise remarkably well suited for the purposes of a penal establishment. The papers relating to the subject, with full particulars, will be found in volume 2 of the proceedings of the late Legislative Council of 1853, at page 715, to which I would beg to refer the Committee. If that question should be again mooted, I think all the necessary information could be found in the paper to which I refer. No proceedings were taken by the Government at the time. I myself proceeded to England in the January following. When I say no proceedings, I mean nothing further was done than to bring the matter before the Executive Council, who recommended that the whole of the documents, relating to the subject, should be laid before the Legislative Council on its re-assembling at the next Session, with a view to the appointment "of a Select Committee, to report on the expediency "of forming, at Howe Island, a penal settlement for the reception of such convicts as it may "be considered prudent to transport thither from this Colony, and from the neighbouring "Colonies of Victoria and South Australia." I am not aware whether that Committee was appointed, but I believe the matter was allowed to drop. I believe till some such measure is established no perfect system of penal discipline can be carried out in this Colony for that particular class.

The Hon. E.
D. Thomson,
Esq., C.B.;
M.L.C.

19 April, 1861.

4719. You said, I think, in the course of your evidence this morning, that you had paid attention to this subject as it is treated in America? I did, a great many years ago. It is now some thirty-four or thirty-five years since I was in America, but the subject was then exciting a great deal of attention among the Quakers at Philadelphia, which place I visited. The system of solitary confinement was then under discussion, and I believe very much good has arisen from improvements in that system, although it has not been carried out in its entirety.

4720. Did you visit any prison in the State of New York? No, I did not visit Sing Sing; but I visited the prison at Baltimore, where the silent system was in operation, and where the prisoners had their heads half-shaved. It was a barbarous system, I consider, and could only result in failure, as it did.

4721. The system in Sing Sing, and Auburn, is mainly distinguished by its industrial character, by appropriating the prison labour on economic principles, apportioning to those of weak constitutions such labour as they can physically undertake, and to those who are stronger, labour where greater physical strength is required; turning their labour to account and advantage, and bestowing among the prisoners some means of earning their living when liberated? I think that very necessary in all systems of prison discipline.

4722. Here is a rough plan of Sing Sing, shewing the different industrial compartments, from which you will see the great variety of labour carried out in that prison. You will perceive that there are the means of carrying on nearly all kinds of trade, including stone-cutting, burning lime, &c.? (*Handing the same to witness.*) I think it would be found very difficult, if not impossible, to carry out such a system here; and it would be found extremely expensive, because mechanical overseers must be found, who would require to be paid at a very high rate to undertake a duty of this kind. I do not think the number in this Colony sufficient to enable you to carry out a system such as this. I would not employ any man, as a mechanic, unless he had been bred up as a mechanic originally, except, for instance, at stone-cutting, and things of that kind, obviously useful, and particularly within the means of being carried out in a penal establishment. At Cockatoo Island, many men have been taught trades in that way, and also in the gaols.

4723. In Darlinghurst Gaol, at the present time, there is an attempt at a division of labour, and there are overseers; for instance, there is an overseer of the carpenters' shop, an overseer of the blacksmiths' shop, and an overseer at the stone-cutting stockade? Generally speaking, they were to overlook the mechanics who were employed at those several trades. I am not aware that these trades were taught—they were not in my time.

4724. To some extent they have been taught; so far as stone-cutting is concerned, nearly the whole of the workmen are taught? I made that an exception; I think they may be taught stone-cutting.

4725. Even in the blacksmiths' shop, if I remember rightly, there are persons who have not been reared to the business of the forge who are now following it? They might learn to sharpen picks, and to do some other operations of that kind, but I think it would be very difficult to teach them the real art of a blacksmith; they are seldom in prison a sufficiently long time. With respect to the employment of persons in prisons, some useful suggestions were given to the Government some years ago by Mr. David Forbes, when Police Magistrate at Parramatta and Visiting Justice of Parramatta Gaol. He introduced a system there which I believe was attended with considerable advantage. I would refer to the Votes and Proceedings of the Legislative Assembly, volume 1, 1856-7, where a number of very valuable documents will be found in reference to this subject, and particularly the reports of Mr. David Forbes to which I have referred. He lays down certain rules, in almost all of which I concur, for the classification of prisoners, and founded on the mode of conducting prisons on the English and Scotch systems. I think it would be very desirable, with reference to gaols, if some means could be devised for having a gaol for women, where long sentences

The Hon. E.
D. Thomson,
Esq., C.B.,
M.L.C.
19 April, 1861.

passed upon women should be carried out. But I do not believe myself that a proper system will ever be carried out in gaols unless you have a paid inspector; some person of high character, and also of experience and knowledge in matters of the kind, whose duty it should be to visit the gaols, to inspect them periodically and frequently, and to make reports to the Government on the subject; to assure himself that the subordinate officers carried out the instructions of the Government in all respects, and to see that no abuses occurred, such as have recently, and no doubt formerly have occurred.

4726. Do you not think, if we had a large central prison in this country, sufficiently spacious to accommodate all the prisoners of the Colony, and where workshops might be erected, that, in the case of long sentenced men in particular, their industry might be turned to so much better advantage than at present; that instead of being an expense, they would to a large extent become self-supporting; and that while the Government would thus possess better means of classification and of testing the character of the prisoners, they might, by teaching these men some trade, give them the power of acquiring an honest livelihood when they left the prison? It would be most desirable if it could be carried out, but such a system would be extremely expensive, and great jealousy would be created as to the productions of the prisoners, as coming into competition with the productions of free labour. Even the small amount of manufactured articles that were made at Parramatta created quite a sensation in the town when offered for sale there.

4727. That is the case now, as we are aware that the tradesmen of Parramatta complain loudly of articles being made in the gaol and sold at a much less price than that at which they could be produced by free labour, and it seems hardly just that such articles as shoes and boots, for instance, should be made by prison labour, and sold at a price which a tradesman, under ordinary circumstances, cannot meet? I think it would create great dissatisfaction, and is scarcely just.

4728. Might not many articles be made by prison labour which cannot be made in the Colony otherwise, so as to obviate this ground of complaint? No such articles at the present moment occur to me.

4729. A great many articles are now imported because they cannot be produced here on account of the wages which generally rule? Some of these might.

4730. Domestic utensils which are now imported from America, and are made in their prisons, might be produced in our gaols without coming into competition with our own artizans? I think they would come into competition rather with imported articles, and the feeling would be against it. I do not say that that would be a just and proper feeling—I believe that feeling was shewn in America with respect to the productions of their prisons, and exportation was therefore resorted to. I do not say that it is an insuperable difficulty, but I point it out as one likely to create discontent.

4731. The present state of things is one that requires some alteration with reference to the state of our gaols. No doubt of it; although I ought not to speak too confidently, as I have not visited the gaols lately. I speak merely from general rumour.

4732. You are aware from public reports that there has been a riot, or something approaching to it, at Cockatoo Island? I am quite aware of that, but I said before that I attributed that in a great measure to the regulations.

4733. There do not appear to be means of classification in any of the country gaols; for instance, at Bathurst and Goulburn, persons committed for grievous offences may be confined with persons taken up for drunkenness, or some trifling offence? I think that creates grave injustice. Men who commit trifling offences are put in gaol with men hardened in crime, and I think it injurious to society, for when criminals meet together they are not likely to reform each other. The man who is a bad and hardened character is more likely to corrupt the other than to be improved by associating with one not so corrupt as himself.

4734. *By Mr. Hart:* With respect to prisoners who have been sentenced to death for the greatest crimes, would you afford them the opportunity of emancipating themselves under any system of discipline? I must answer that question somewhat cautiously. If I found he belonged to the incorrigible and hardened class, I would not; but it sometimes happens that the most serious crimes against society are committed by men who are by no means bad characters, who give way to feelings of revenge, commit murder from some sudden impulse, and who are, perhaps, as repentant of the crime as any man can be; they are not the most hardened men, but feel as great a horror of the crime, when they have time to fall back upon their own consciences, as society itself does. I think such men as these ought to have an opportunity of retrieving their position after sufficient punishment; but, at the same time, the interests of society must not be disregarded in this matter. While humane to the prisoner, we must not be cruel to society at large—we must see that it is duly protected; still we must temper justice with mercy in cases of that kind.

4735. Might not that view be carried out by granting them tickets-of-leave, so as to leave them, during the term of their natural life, under the surveillance of the police? I think they might have tickets-of-leave for a long period before they were absolutely emancipated; but I think there ought to be hope even then that a long period of good conduct, whilst holding a ticket-of-leave, should entitle the man to consideration in acquiring a conditional or absolute pardon.

4736. *By Mr. Windeyer:* From what you have said I should infer that you consider the reformation of criminals the real and great object society should have in view in framing its punishments? No. I think there is a double purpose to be kept in view. The severe punishment of the criminal as a warning and terror to the evil-doer; and, combined with that, it becomes the duty of the Government to see that there are proper means of reformation.

4737. I presume you hold that that end ought to be kept in view at all times? Most assuredly. I say it is one of the main features that ought to pervade every system of penal discipline.

discipline. It is the bounden duty of every Government to see to the reformation of offenders, and I think it is also to the interest of society that they should do so.

4738 *By Mr. Hart*: With respect to your suggestion as to the appointment of an Inspector of Prisons, do you think, in the event of Government obtaining the services of a competent individual, the whole management of gaols might be placed in his hands irrespective of the Sheriff? I think the law is faulty at the present time. In a paper which I was requested to draw up, on the subject of administrative arrangements, I suggested that the Sheriff should be relieved from all duty connected with prisons. "Resident in Sydney, he can only exercise a nominal control over the establishments. It would be far preferable, I think, that the Visiting Justices should be constituted the legal custodians of the prisoners, and that the establishments should be placed entirely under their direction and control." I still think, in country districts where they have no Sheriff, and where a Sheriff is not likely to be appointed for a number of years to come, and where it is necessary there should be some resident Visiting Justice, it would be desirable to carry out that arrangement; but I think that should be supplemented by the appointment of a General Inspector, whose duty it should be to visit all the gaols periodically, to see that the rules were properly carried out.

The Hon. F.
D. Thomson,
Esq., C.B.,
M.L.C.

19 April, 1861.

4739. The jurisdiction which the Sheriff exercises over gaols is, I believe, by virtue of a provision in the Charter of Justice which was issued in the reign of George the Fourth, and I presume the custody and control of prisoners was committed to the Sheriff in this Colony by reason of the analogy his position was supposed to hold to that of Sheriff in the mother country? No doubt that was the case.

4740. Do you see any reason for the analogy? None whatever. The analogy does not hold; the position is totally different. There you have local Sheriffs, who reside in the immediate vicinity of the gaols where the prisoners for whose custody they are responsible are confined.

4741. Might not the duties of Sheriff be advantageously confined to the execution of civil processes? I am scarcely competent to answer that question, as it involves so wide a departure from the present practice; nor am I so well acquainted with all the duties of the Sheriff as to say they should be confined simply to the matters you propose. *Prima facie*, I think it desirable; but I find a difficulty in answering the question.

4742. *By the Chairman*: A Committee of the Legislative Assembly, appointed last Session, and that reported upon a very similar subject to the present, recommended that in the case of all the country gaols the Government should appoint Visiting Committees consisting of persons of known reputation in the localities, whose position should be honorary, to insure the inspection of gaols? I am not favourable to a proposition of that kind; I think it would entirely fail. In the first place, I think it would be extremely difficult to find any number of persons qualified and willing to undertake a duty of that kind; and secondly, wherever the system has been tried in other matters it has failed. For instance, the supervision of schools by local committees is not, I believe, so satisfactory as it ought to be, although there are exceptions, no doubt. There is a great deal of technical knowledge necessary with reference to prison discipline, and a great deal of experience necessary. I think you would find a sort of interference with the regulations likely to occur from the establishment of local Boards of that kind, of persons little qualified to understand or carry them out. I think the system would not be found an advantageous one as regards the public interest.

4743. Are you aware of what appears to be the fact, that no persons in the Colony appear to interest themselves in the condition of prisons—no one appears to visit the Sydney gaol? I believe very few.

4744. It is the case in England that benevolent ladies and gentlemen make it their business to visit the various gaols in the country? I think visits of that kind to the gaol are the exception and not the rule.

4745. There appear not to have been any, as far as we can learn? There were none in my time, as far as I am aware.

4746. There were none who took an interest in the welfare of the prisoners? No.

4747. We have found even in the case of Darlinghurst Gaol that there were no regulations to secure the cleanliness of prisoners since the death of Captain Webster—if a prisoner thought fit to go in a state of personal filth from one month's end to another, or even from one year to another, there was nothing to prevent, except the complaint of his fellow prisoners—do you not think if there were such a Visiting Committee as I have suggested, such a state of things would be prevented? It is to be supposed they would interfere in a matter of that kind. I think it is the duty of the Visiting Justice to see a regulation of that kind carried out, and certainly if there were an Inspector of Prisons such a state of things could not last for a day. I lay great stress upon the recommendation that there should be an Inspector of Prisons. I have thought the matter over very frequently, and I am satisfied we shall never have a proper system of prison discipline until we have a properly qualified Inspector of Prisons. The great difficulty would be to get a suitable man for that office.

4748. I was going to say it would be of little use without we got a properly qualified man? All depends upon that.

4749. *By Mr. Hart*: Would it not be possible to get a properly qualified man from the mother country? I am certain that, for a moderate salary, you might get a person of great experience, and of character, who would be invaluable.

4750. One who would have had an opportunity of making himself acquainted with the reforms which have been carried out in prisons in the mother country? No doubt that would be another great advantage.

Mr.

Mr. Thomas Allen called in and examined:—

- Mr. T. Allen. 4751. *By the Chairman*: You are gaoler of Parramatta Gaol? Yes, I am.
 4752. How long have you filled that situation? Nineteen years.
 19 April, 1861. 4753. You have been nineteen years over the same prison? Yes; this is my twentieth year.
 4754. How many prisoners have you in the gaol at the present time—how many had you this morning? Two hundred and thirty-six.
 4755. Of what classes do they principally consist, with regard to the sentences under which they are suffering and to their criminal character? With regard to their sentences there are only two classes, those who are sentenced to hard labour, and those who are confined without labour.
 4756. What length are their sentences? From twenty years downwards.
 4757. You have prisoners of all classes? Yes.
 4758. *By Mr. Hart*: You have some for life, have you not? *No; for twenty years, that is the longest.
 4759. Have you not a man named Macdonald? Yes; he is for twenty years.
 4760. *By the Chairman*: Have you a copy of any regulations? No.
 4761. Have you any regulations for your prison? †No. There was a small blue book we had containing about half-a-dozen leaves; but the regulations are so often changed.
 4762. Is there at the present time any set of regulations posted up in the prison? I have those referred to posted up, but there are no standing regulations to go by. When the Sheriff visits the prison and directs certain regulations to be observed, they are posted up; but there are no specific prison regulations at all.
 4763. Are there any regulations for the turnkeys? Yes; the regulations made from time to time by the Sheriff.
 4764. At this time are there any? Yes; written regulations which are posted in conspicuous places.
 4765. In what parts of the gaol? In two or three parts—at the entrance gate and in the office.
 4766. What are those regulations? As to the different duties of the turnkeys.
 4767. *By Mr. Hart*: Are they not the regulations of 1853? They are ‡the same.
 4768. *By the Chairman*: Will you explain to us the duties of the turnkeys—how they are appointed, and how many are appointed? They are appointed by the Sheriff.
 4769. To what duties are they appointed? To the regular routine duties; every turnkey takes them alternately. He commences at No. 1 and goes round the whole establishment; taking a separate duty every day—doing duty in a prison to day and in a yard to-morrow, and so on.
 4770. When does he come back so as to repeat any one duty? Generally about once a week.
 4771. How many turnkeys are there? Thirteen.
 4772. Then there must be about two upon every kind of duty every day to look to the same duty once every week? Yes.
 4773. What means do you resort to in Parramatta Gaol in the treatment of prisoners for the due suppression of turbulent or insubordinate prisoners—do you resort to physical punishment? To solitary, or separate confinement.
 4774. Are the prisoners ever struck? On very rare occasions, unless in self-defence, or something of that kind—it is very rare indeed.
 4775. The means of punishment within the discretion of the persons in charge do not extend beyond solitary confinement? Solitary, or separate.
 4776. For what length of time do you ever confine prisoners for unruly conduct? The utmost I can confine, without the authority of the Visiting Magistrate, is three days.
 4777. Who is the Visiting Magistrate? Dr. Greenup.
 4778. Any one else? No.
 4779. I suppose he is sometimes accompanied by other magistrates? Frequently.
 4780. How often does he visit the gaol in the capacity of Visiting Magistrate? Generally twice a week; he is sent for if anything serious arises between his regular visits.
 4781. How often have you to bring any prisoners before the Visiting Magistrate for improper conduct? There may be about a dozen refractory men who generally keep the prison annoyed, some of which are, in consequence, generally undergoing punishment.
 4782. What number of cases are brought before Dr. Greenup, as an average? Perhaps from three to four per week.
 4783. Are these cases confined to this dozen of refractory men? Chiefly.
 4784. Then I presume your books would shew these men's names, and the number of times they were brought up? Yes, the books would shew everything, and by referring back it could be seen how many times any man had been punished—every punishment is entered.
 4785. What is the order of treatment of the prisoners in the gaol—at what time are they let out in the morning? At six in the morning the bell rings, the turnkeys all assemble, their names are called out, and their various posts of duty assigned to them. The prisons are then unlocked, and the prisoners allowed to wash themselves. After they have washed they are sent to the separate work they are told off to; at eight o'clock the bell rings for breakfast.
 4786. What different kinds of work are carried on in the gaol? Stone-cutting, wheelwrighting, carpentry work, blacksmiths' work, shoemaking, and hatmaking; and needle-work for the female prisoners.

4787.

* NOTE (Correction by witness on revision):—Yes, onc.

† NOTE (Revised thus):—There are regulations which have been framed from time to time as occasions required such, but these regulations are often changed.

‡ NOTE (Revised thus):—Not (the same.)

4787. *By Mr. Morris*: Tailoring? I have no tailors now; when I had tailors they were employed to make clothing for the Orphan Schools, and Lunatic Asylum. At eight o'clock the bell rings for breakfast, for which the prisoners are allowed an hour, while the turnkeys go home to their breakfasts. At nine the bell rings again to resume work; they then work till one. At one o'clock the bell rings again; they then get an hour for dinner. At two the bell again rings, when they resume their work, which is continued until 6 P.M. in summer, and until 5 P.M. in winter.

Mr. T. Allen.
19 April, 1861.

4788. *By the Chairman*: How is the work of the prisoners, in excess of what is required for the Orphan Schools and Lunatic Asylum, disposed of? There is no other needlework done, except for private individuals, which is paid for according to a fixed scale, and of which proper accounts are kept.

4789. Is not some of the work sold? Boots and shoes and hats are sold.

4790. How are they sold? By auction.

4791. In Parramatta? They are now sold in Parramatta; they were sold in Sydney until the last few months, but the Visiting Magistrate made application to the Colonial Secretary, and got an order to sell them in Parramatta. Formerly the Parramatta people objected to their being sold there, and they were then sent to Sydney.

4792. Have the people of Parramatta withdrawn their objection to these articles being sold in the town? I have heard no objection lately.

4793. When the Committee visited Parramatta Gaol, a prisoner named Driscoll made complaints of beastly conduct on the part of some of the prisoners, and also of not having proper means of attending Divine Service on Sundays? There are two services performed there every Sunday: the Protestant portion is locked up in the morning, whilst the Catholic Priest holds service; and in the afternoon, at two o'clock, the Protestant Chaplain holds service, the Catholics being locked up.

4794. I am speaking from memory, but if I recollect rightly, the prisoner's statement was that they were locked up, four or five men in, and that all kinds of noises were made during the greater part of Sunday? Such is not the fact; there is the strictest silence observed, not a word is heard; and if any man made a noise, and it were noticed, he would be at once put in the cells. The general behaviour of prisoners is strictly proper.

4795. With regard to the other part of the man's statement that there was beastly conduct in some part of the prison—beastly exposure—what have you to say with reference to that? There was one case made known, and the man accused of the offence was kept in separate confinement.

4796. What kind of character is this man Driscoll? He is very troublesome, and is frequently punished for bad behaviour. He is a very fluent spoken presuming fellow, who has put himself forward as spokesman for other prisoners who conceived they had cause for complaint, or suffered under any grievance.

4797. *By Mr. Windeyer*: Do you attend either of the services yourself? Yes.

4798. Which? The Protestant.

4799. There is no noise at that time? Not the slightest.

4800. *By the Chairman*: What regulations have you for enforcing personal cleanliness among such of the prisoners as are not disposed to be cleanly? They are brought before me on a charge of neglect to keep their persons clean, when they are compelled to clean themselves, and warned that neglect to attend to cleanliness for the future will be followed by punishment, with which they are visited should occasion require. They have clean clothing twice a week, and they have half of every Saturday for mending their clothes and cleaning themselves. In the middle of the week a gang is told off to wash all the prisoners' clothes, so that the remainder shall not have to leave their ordinary work.

4801. Suppose a prisoner chose only to wash his face—to keep his face apparently clean—but neglected to wash his body, from one year's end to another, until he was in such a state of filth under his clothing as to be unhealthy, what regulations have you that would step in and prevent his continuing this neglect? Personal examination. When a prisoner is brought to the gaol he is deprived of his own clothing, is stripped naked, his hair is cut, and he has to wash himself all over; he then has two suits of clothes given to him, one for working days, and one for Sundays.

4802. Is he ever inspected afterwards? Every Sunday.

4803. Let us know what course of inspection you pursue on Sunday? The prisoners are all ranged in the ward at eight o'clock A.M., and I go round and inspect every man. I stop short at each, examine him, and make him pull up his trousers.

4804. How far? Above their knees.

4805. Have they to turn up their sleeves? Yes.

4806. Is that done every Sunday? Every Sunday, except when I may have been unwell.

4807. And that regulation applies to all the prisoners without exception? To all the prisoners.

4808. Is any similar means adopted with regard to the females? Yes, the very same.

4809. Generally speaking do you believe this is quite effective to preserve a pretty good standard of personal cleanliness? Yes; unless I had means to stove the clothes I could not make them more cleanly. There are large tubs for the prisoners to wash in.

4810. How often do you cause the floors of the cells to be cleansed? Two or three times a day.

4811. How often are the walls whitewashed? Once a month, perhaps oftener.

4812. *By Mr. Wilson*: It was stated to the Committee that in some cases night-tubs were the only utensils in which the prisoners could wash their clothes? It is quite false; there were upwards of fifty large wine hogsheds supplied some years ago, which were cut in two and then bound and coopered newly, and they must wash in them and in nothing else.

4813.

- Mr. T. Allen. 4813. Is it their bodies you allude to? To their bodies and clothes both.
4814. It has also been stated that they have had to wash not only their clothes but their bodies in the night-tubs? I heard them state that, but I did not think it was my place to contradict them then.
4815. Such is not the case? Quite the contrary.
4816. You say that every Sunday morning you examine their persons to see that they are in a state of cleanliness? Yes.
4817. Is there any regulation by which the men are obliged to wash their bodies whether apparently clean or not? There is not.
4818. *By Mr. Windeyer*: When prisoners are in solitary confinement, is it ever, as a mode of punishment, the practice to take away their beds from them? Yes; if a man when he is so confined shouts, curses, or swears, as prisoners frequently do, he is cautioned if he does not conduct himself he will be deprived of his blanket.
4819. Sometimes they have a board to sleep on? Yes.
4820. Is that also sometimes taken away? Yes; because by means of it they climb up to the window, and call out to the people in the yard. When they do so, they are cautioned that if they do not desist their boards will be taken away.
4821. *By Mr. Wilson*: In cases such as these you have alluded to, have you known water to be thrown over the floor of their cells by way of punishment? Never.
4822. You do not think it can have taken place without your knowledge? No; they often spill water for the purpose of annoyance; in fact, they even upset their night-tubs, and smear the filth over the walls from downright wickedness.
4823. How is Parramatta supplied with water? There is a large tank, from which the water is conveyed all over the gaol by pipes.
4824. Is that sufficient for the supply? Not in dry weather.
4825. Then it must be a consideration with you to see that too much water is not used? Yes; I do not let any go to waste if I can help it.
4826. *By Mr. Morris*: Could you collect more water if you had larger tanks? Yes. There have been so many buildings erected within the walls that the place is too confined—there is not half sufficient room to carry out the labour system—the yards are altogether too small for the purposes required.
4827. *By Mr. Windeyer*: Is there any stream in the neighbourhood of Parramatta from which water could be laid on to the gaol? Yes; the river is close to the back—about 200 yards off.
4828. Is there a constant supply of water? Yes. It was intended to supply the establishment with water from the dam at the Rocks, but the work there is in abeyance.
4829. How far is the dam from the gaol? Nearly a mile.
4830. *By the Chairman*: What do you think of the healthiness of that gaol? I think it one of the most wholesome places I ever heard of.
4831. Are all your family there? Yes.
4832. Have they good health? Yes. I never saw prisoners kept in so small a place so healthy.
4833. What is the sentence of the man Wilkes, who is confined there for murder? Life.
4834. Is that the only life sentence there? Yes.
4835. *By Mr. Windeyer*: What is Mrs. Perry's sentence? Fifteen years.
4836. *By the Chairman*: Is your prison ever visited by ladies, who are induced to visit the establishment from motives of benevolence? I am sorry to say very seldom. Formerly the Sisters of Charity visited it regularly, and sometimes other ladies. Lately the Sisters of Charity have only visited it a few times.
4837. If I recollect rightly, the female turnkey, Mrs. Freeman, stated that there had been no visit paid by any lady during her time, with the exception of the Sisters of Charity? No, lately there has not.
4838. You have a number of female prisoners? Yes.
4839. Some very young—girls confined for prostitution, and such offences? Yes.
4840. Girls whose condition should naturally enlist the sympathies of benevolent ladies for their reformation? Yes.
4841. But they are never visited by any? Never, except by the Sisters of Charity.

SATURDAY, 20 APRIL, 1861.

Present:—

Mr. MATE,		Mr. SUTHERLAND,
Mr. MORRIS,	|	Mr. WILSON,
	Mr. WINDEYER.	

HENRY PARKES, ESQ., IN THE CHAIR.

Sir Alfred Stephen, Knt., C.J., examined:—

- Sir A. Stephen, Knt., C.J. 4842. *By the Chairman*: How many years, Sir Alfred, have you been a Judge of the Supreme Court? Nearly twenty-two.
4843. A considerable period of that time you have been Chief Justice? Ever since 1844, Chief Justice.
4844. Your attention must necessarily, from the nature of your duties, have been directed to the general management of the criminal population during that time? It has.

4845.

4845. Have you had occasion to consider the system known, I believe, as the mark system, which prevailed principally on Cockatoo Island for a number of years—for about six years I think—by which the prisoners, according to conduct and the amount of labour they got through, were enabled to abridge their sentences? I have.

Sir A. Stephen,
Knt., C.J.

20 April, 1861.

4846. Would you be kind enough to state to the Committee the conclusions at which you arrived with respect to the working of that system? My opinion was that it was a bad system.

4847. The system arose, I think, in November, 1851; perhaps you do not recollect under what circumstances it arose? I do not know the date of the initiation, nor its reasons. I have no recollection on the subject.

4848. Could you state to the Committee in what way this system presented itself to you, to lead you to the conclusion that it was bad in its working? My objection to the system was, and is, that the main test and guide, in respect of remissions, was simply the convict's success in the performance of work, and that considerations of real or apparent reformation of character became subordinate, if at all inquired into, which I doubt. If the convict had been punished, then no doubt that circumstance operated adversely to him, but I mean that the great question of reformation of character was lost sight of. Whereas I am of opinion that the amount of work done by a man is no test whatever of good conduct, or of his fitness to be let loose again on society. My further objection was, and is, that it brought all the convicts under one general system and set of rules, whereas I am of opinion that no system of convict discipline can be good which does not individualize, that is to say, distinguish man from man, and case from case. I know the difficulties and expense of carrying out such a system, but I am quite sure that no other can be depended upon. A further objection was, that every sentence passed by the Courts became a mere nominal thing, the term of sentence never being carried out; but all persons who had done the prescribed amount of work, without extra punishment, were sent out among the community, however unsafe in particular instances it might be. Thus, I have known a murderer, under the most barbarous circumstances, released because of excessively useful workmanship as a bricklayer; and I have repeatedly noticed, and have given in former times the instances, that men whose sentences have been thus remitted have returned very speedily, and not unfrequently before the terms of their original sentences have expired, to exactly the same course of crime.

4849. I understood you to say, that you should consider no system good that did not individualize, or, in other words, distinguish man from man, and case from case, in the treatment of the person under punishment? I do not think I said the treatment of the man under punishment.

4850. I use those words, as I think that is what you must have intended—do not you think the system introduced by the regulations of 1st June, 1858, which abolished this mark system, by which the time of sentence is indiscriminately and inexorably adhered to, is more opposed to that which you indicate as the only good one than even the system previously existing, because there is no discretion allowed, if these regulations are strictly adhered to without reference to reformation of character, goodness of conduct, or any consideration? I did not know that the new system involved as a consequence the absolute enforcement of every sentence without any exception whatever, and I should have hoped that such was not the system. I think, that however hopeless the reformation of a convict is in the vast majority of instances, hope should never be abandoned, and if there be good reasons for belief that a man is really reformed, the prerogative of mercy should generally be exercised in his favour. I understand the system to lay down a general rule in exact opposition to the former general rule, but I did not understand that it was one to be rigorously adhered to under all circumstances, and I do not wish to be understood that I think a separate treatment of each man is practicable, for there must always be some general system; but what I meant was, that every man's case and character will be found to differ more or less from that of another, and that there should be discrimination exercised.

4851. What I should understand from the general expression of your opinion, in your answer last previous to this, was, that this discrimination should be carried out by a judicious classification of prisoners, not that men should be treated individually, but that they should be classified according to their general character? I think, no doubt, that there should be minute classification, and that as a matter of course very many persons will be classed together. But I mean something even further than this, I mean that each man's character, and habits, and hopefulness, or the like, will be found to differ from those of others, and that as far as is possible there should be an individualization of cases.

4852. Suppose a case, Sir Alfred, of two persons appearing in the dock at the same Assize convicted of the same crime in the eye of the law, by evidence equally clear, ought not the Judge to award the same sentence in each case, though it may appear that one of these men has been habitually, from the cradle almost, an offender against the laws, and the other has never been known to commit an offence before—still, as they appear there offenders against the law, in the same particular, with the same degree of crime, with the same evidence against them, should not the Judge, having to attend to the evidence brought before him in the Court, and to nothing else, administer the law with strict inexorable justice in the same way in both cases; and if that were so, and he were to administer the law in that manner, ought there not to be some means by which the man who became, from some combination, an offender against the law in this one case, and who afterwards manifested a desire to reform, who evinced this by uniform good character—when this was proved in the only way in which it could be proved, by his subsequent conduct, could abridge his sentence. If that were necessary, would it not be an indispensable condition of any prison management that there should be some means of remitting the sentence in such cases? There are two questions here, the one as to the duty of the Judge, and the second as to the duty or power of the Executive.

Sir A. Stephen,
Knt., C.J.
20 April, 1861.

Executive. They are, of course, quite distinct. I say as to the first, that, as a general rule, two men convicted of the selfsame crime in all its features should receive the same punishment; but I think that the object of punishment would not be duly met by such a course, and that it is not, and never has been, the practice of Judges to disregard the prisoner's previous character and habits. Quite the contrary. One principle may safely be laid down: that each man is liable to the maximum punishment prescribed by the law, and where there is a discretion left in the Judge, I think that his discretion should be exercised by making a decided distinction between the hardened and desperate offender and the man who may be shewn to have been probably led into crime, or whose character up to that period has been uniformly good. I think that the exercise of a wise discretion in that way has a beneficial operation upon the community. I think further that it is almost a necessary discretion to be vested in a Court. I conceive the difficulty to be, to be quite sure of the truth of the case as to the previous character. And here is often the great practical difficulty. I endeavour, in my own case, to overcome it by examining persons on oath.

4853. As to character? As to character, which the Judge has clearly a right to do, before proceeding to punishment; and I believe that Judges will be found generally to have a remarkable faculty of discriminating aright in such cases. Secondly, as to the power of the Executive. I have already expressed my opinion, by implication, that the power of pardoning should be occasionally exercised by the Executive in such cases as this suggested. All that I protest against is, a *general rule* of pardoning without any efficacious or sound test of reformation. I could give illustrations easily of the kind of process which I refer to, in ascertaining the truth on this point.

4854. In the case I supposed, it does not appear to me that the consideration that should be paid to good character so much depends upon what the conduct had been previous, as to what it shall be subsequent to the sentence, and that is a thing that can only be proved after the sentence of the Court is awarded. Thus, there may be a person who has been a uniformly good character up to a certain period, and he may have fallen away altogether, and become an abandoned character. We know abundant instances of such cases, and it cannot be proved whether a person has entered upon a course of crime which he will still pursue, or whether he will retrace his steps, till after the period of sentence; and thus it seems necessary that this prerogative of remitting a sentence should be exercised by some power after the sentence of the law has been passed upon the prisoner. The Judge, it is certain, cannot have the experience which can only be gained subsequently; he can only be guided by what the character of the prisoner has been up to that time, and therefore is not in a position to consider the case. To illustrate further what I mean, instead of two, I will suppose that there are three prisoners, one who has been a hardened offender up to the time of trial, and who continues a hardened offender; the second, one who has been a good artizan up to the time of trial, but who has fallen away into a state of crime, and who continues to follow an abandoned course; the third, one who in like manner offended against the law, but who is afterwards anxious to retrace his steps, and to retrieve his position in society. I think those three cases illustrate actual occurrences which will be familiar to you as a Judge. In the last case, the real character of the prisoner cannot be ascertained till after the sentence, and therefore no Judge can consider his case properly; it is morally impossible for him to do so? The real character of an offender is much more difficult to ascertain after punishment than before. The instances of pretended reformation accompanied by hypocrisy are numerous; and it has often been found that the most hardened offenders are those who impose readily upon the persons in charge of them. The men are here in a state of coercion from which they wish to escape; but the same men when at liberty follow the bent of their propensities, whatever they may be; and I cannot admit the principle that a Judge is to sentence three men exactly in the same manner, of whom he can almost certainly predicate that one will continue a ruffian to the end of his days, while another may probably be safely sent into society again in a short period. The hardened offender, moreover, in point of justice, deserves a severer punishment, and the interests of the community require that severer punishment. If the Judge is not to discriminate between the cases of prisoners, I do not know why he should be allowed to discriminate at all as to the extent of the term of punishment in any case. His discretion is always exercised by reference to, first, the circumstances of the crime, and then by other circumstances attaching to the prisoner as an individual; although his great object should be, in every case, by adequate punishment, whatever the character of the prisoner, to deter other men from committing the same crimes.

4855. My questions have not so much applied to whether the Judge should or should not exercise a discrimination in awarding sentences, as to whether there should or should not exist the power to mitigate those sentences afterwards, according to the conduct of the prisoner; and I think I gather from your evidence that you think, in cases where they are wisely and well considered, such power should exist. If I have not mistaken you, you are of that opinion? I think that, as a general rule, sentences should be carried out; but I distinctly think, as you suppose, that there should be occasionally, though rarely, instances of remission of punishment, founded upon real change of character; the great difficulty will always be, to know when that change has taken place.

4856. Coming back to this regulation of the 1st of June, 1858, you will see, if you will be good enough to read them, that they do two things of a tremendous character as affecting prisoners; and, at the same time, they bring into existence an entirely new, and, as I think, very anomalous consideration. They do away at once with the system which previously existed, without any qualification whatever, leaving in its place an inexorable adherence to the time of sentences; and they then prohibit the Visiting Magistrate, the Superintendent, and
all

all persons in authority over the penal establishment, from forwarding petitions from prisoners, so that they shut the gate to every statement, well founded or not, that the prisoner may make. We know that gaolers, in all cases, are not desirous to have more trouble than is necessary, and the Government, by these regulations, really prohibit persons placed in authority like these from forwarding petitions to the Government. While these great changes are made the regulations continue the mark system to prisoners who have received sentences previous to that date, and leave these men to work side by side with prisoners sentenced after that date, whose sentences are inexorably carried out. This Committee found at Cockatoo Island men working side by side excavating rock, and engaged in other work, some of whom make nine days a week, while others could make only six—some of those making nine days a week not so well-behaved as others who were making only six days a week. This, if, under any conceivable circumstances, we ourselves were placed in such circumstances, would irritate us almost to insubordination; and the result—and, as I think, the natural result—has been insubordination on that island. I think, if you look over these regulations, and see that they do these three things—that they make this change, revoke the system which previously existed, without any qualification in any case—that they shut the door of hope, stifle the voice of complaint, whether well founded or not, of every man in the condition of a prisoner, and, at the same time, create two classes who work in the same gangs in the manner I have stated, under such vastly different circumstances—I think you must be of opinion that it is a most undesirable state of things? I cannot, of course, tell what may have been the cause of irritation in the prisoners' minds; but, as a matter of justice, nothing can be clearer than this, and it might have been explained to the prisoners, that those men who were sentenced, and, probably, with additional severity, nominally because this remission system was in force, and who were entitled by existing regulations to remissions under certain conditions, could not be subjected without oppression to an *ex post facto* law. They were sentenced on a system of indiscriminate remission, the test of which was task-work, and they were entitled to have the benefit of that system continued to them. To have acted otherwise would have been worse than to have repudiated a contract of an ordinary kind. It was a contract with the men. The Courts sentenced prisoners knowing that, after a certain period, they would probably obtain a ticket-of-leave, or the like, but the moment that that system was put an end to, the men who came under the new system had no right to complain that justice was done to their predecessors in crime. It was easy to tell them that they had been sentenced under a different state of things, known to the Judges, and that they could have no claim, merely because others had a claim. If it be the fact that every sentence passed under the new system is carried out inexorably, I unquestionably think it bad, because it destroys hope in every mind; but I have always regarded it as merely establishing a general rule, admitting of exceptions, though in rare cases, and I then understood that prisoners were not to be allowed to send in petitions for remission unless there were new circumstances of some kind to be represented worthy of inquiry, such as the discovery of new evidence, or of excessive good conduct, and probable reformation in the prisoner; and, as a matter of fact, there are now petitions before me from persons sentenced under the new regulations, which I have yet to consider and report upon.

4857. The Colonial Secretary, who was examined before the Committee, has handed in a return, carefully prepared by Captain Mann, shewing that sentences have been as severe since the change as previously; he has carefully compared the sentences awarded to certain classes of crimes, and shewn that the Judges have awarded as severe sentences since the date of these new regulations as before? I can of course only answer for myself individually, and during the whole of the last year I have been absent from the Colony; but during the time of my passing sentences, since the commencement of the new regulations, I have always borne them in mind, and have endeavoured to pass sentences for less terms than formerly. I may have departed from my intention unconsciously, in some instances, but it has been unconsciously if at all; and it is possible that severer sentences have of late been passed, because it has been found that former sentences have had no apparently beneficial effect, and so the Judges may have been led to think that long terms—in other words, severe punishments—are imperatively called for. It is a well known principle, that as the object of punishment is the prevention of crime, severer punishments are always inflicted whenever the offences to which they are applied are common in the community. In other words, if a severe punishment will not deter men from crime, as experience has shewn, then the Judges resort to a still severer one.

4858. During your recent residence in England, did you pay any attention to this subject, as it is considered in the Mother Country—what I mean more particularly is, did you come in contact with any of those public men who have paid attention to prison discipline in the Mother Country so as to be led to discuss the question? I did not. With the exception of a short correspondence with Captain Maconochie I had no communication with any person on the subject of prison discipline.

4859. I believe, among men who have paid great attention to the subject for years past in England, including Mr. Recorder Hill, who is quite an authority on the subject, and I think also Lord Brougham—Mr. Thompson, a Scotch gentleman who has paid great attention to prison management—they appear to have arrived at the general conclusion that sentences should not be measured by time, but by labour, combined with the consideration of conduct under a wise and effective system of criminal administration. The conclusion which seems to have been arrived at by public men in England who have paid the most attention to the subject is clearly stated in the work I have before me in a number of simple propositions. Perhaps you will have the kindness to read them, and see if you assent to them? (*The Chairman handed to the Chief Justice a treatise on prison discipline, by Francis C. Gray,*

Sir A. Stephen, referred to in the evidence of the Honorable E. Deas Thomson. The Chief Justice read the
 Kn., C.J. extract.) I do not receive as certain the statement that these general conclusions have
 commanded universal assent. That is the statement of the pamphlet here.

20 April, 1861. 4860. Do you, yourself, generally concur in the propositions there laid down? I will take
 them separately. I do not think that "stinted food" should take part in any system, because
 I regard that as simple cruelty; and, on the other hand, full feeding, accompanied by the
 concomitant comforts, will be highly prejudicial, as leading the struggling, and hard working,
 and honest poor to envy the condition of the well-fed convict; and I think there have been
 errors in this direction. There is a medium. As to "constant confinement," if that implies
 the perpetual shutting up in a cell of a prisoner, without labour in the open air, that I con-
 ceive to be equally injurious to mind and body, and to answer no useful end, although as a
 portion of severe punishment and for short periods I do not think it could safely be
 abandoned. "The total privation of social intercourse," I also think undesirable in any
 system; but this social intercourse should be restricted to working in company with strict
 silence, except at stated times. I believe that the conversation which takes place between
 prisoners generally is more demoralizing to the less hardened individuals than any other
 source of deterioration. Every writer on prison discipline I observe notices this: that
 prisoners comparatively innocent, or disposed to reform, are demoralized, and often shamed
 out of their repentant dispositions by more hardened criminals conversing with them. With
 the rest of the propositions I agree, qualifying my statement by this, that I acknowledge the
 wisdom of no universal rule as applicable to all individuals, and insist upon this; that there
 must be occasional deviations from a general system in particular instances, although those
 instances may be rare.

4861. Have you visited Cockatoo Island at any time? Yes.

4862. Frequently? No.

4863. Is it long ago since you visited the island? I never was at Cockatoo Island more
 than twice. I was there several years ago, when I had more leisure than I have had during
 the last three or four years.

4864. Have you visited Darlinghurst or Parramatta Gaol? It is also several years since
 I have inspected, or visited for the purposes of observation, either of those gaols. I used to
 visit them several years ago regularly and examine the prisoners, but my judicial duties of
 late years have fully prevented me from doing anything of the sort.

4865. I might mention one or two facts discovered by this Committee as to the state of our
 prisons, with a view of getting your opinion upon the subject in evidence. It does not appear
 that, for some years past, there has been any regulation which would compel the prisoners
 to observe bodily cleanliness, nor does it appear that there are any means of instruction
 for adult or juvenile prisoners. With respect to the first allegation it would appear from
 the evidence given before this Committee, that if a prisoner chose to neglect washing his
 skin from one month's end to another, or even for three or six months, he would not be
 compelled to do it, unless it were from the complaints of his fellows? Few things can be
 worse in any convict establishment, in my opinion, than permitting personal uncleanness.
 I look upon habitual cleanliness, in all classes, as of great importance, in every point of view.
 I believe it has a moral effect.

4866. With respect to the absence of any means of instruction? It is impossible to estimate
 too highly the importance of instruction and the means of intellectual employment, in the
 case of every person. However hopeless the case of a man may be, I conceive that effort
 should still be made to improve him, and that one great means of improvement will be
 inspiring or encouraging a habit of reading, and not always, or, as a matter of course,
 religious books. I think that one great evil in any system is short punishments. I think
 it is far better not to punish at all than to punish by a very inadequate short term of punish-
 ment. And I think further, that no system of convict discipline, or improvement in a convict
 system, can be deemed complete, which leaves unprovided for the great want of having some
 kind of refuge for the prisoners when they come out of confinement, or some means of imme-
 diately resorting to honest employment. I have seen, with pain, in scores of instances, that
 persons are discharged from gaol, who are almost driven into crime again, because they have
 no means, when they come out of gaol, of getting honest employment.

4867. You will have noticed in these propositions, to which your attention was directed just
 now, that stress was laid upon the entire separation of prisoners at night. In Cockatoo
 Island the dormitories have no means of separating the prisoners at night; for instance, in
 the largest dormitories there are berths fitted up for eighty persons; there is a kind of
 passage down the middle of the dormitories, and on each side there are two tiers of berths,
 one above the other; and the prisoners have literally to crawl on their hands and knees into
 their bed-places? The berths are like a hen-coop.

4868. It has been given in evidence that these dormitories have sometimes been so full that
 the prisoners have had to sleep on the top, above the second tier. The means of ventilation
 are very inadequate; I think there are only four small windows to each dormitory, two on
 each side; and it has been represented to us, that in the summer months the stench arising
 from such a number of human beings, not over clean probably, crowded together, and from
 the heated matter in the night-tubs, was so intolerable that sleep was quite impossible; and
 that in consequence there were all kinds of noises, singing, and frequently the most disgusting
 immoralities. You will, I presume, be of opinion that such a state of things is calculated to
 prevent, almost to render impossible, reformation? Few things can be worse than the state
 of things described, which certainly I know to have prevailed at Cockatoo Island, and also
 in the gaols to some extent, within my own observation.

4869. Within the gaols the cells are built for three prisoners, and although it appears that
 five are sometimes crowded into them, still, there are something like the means of decency,
 which

which absolutely do not exist at Cockatoo Island. Some of the prisoners whom this Committee have met with, and who have described themselves as having wives and children, and who, although in that condition, as fathers of families, express themselves as greatly shocked at the proceedings there; and several have preferred only one prayer, to be removed to some other prison on account of these indecencies; they do not complain of their sentences, or seek for any other mitigation, than to be removed to some other place where they may escape these enormities? I remember well the appearance of these places at Cockatoo Island, and the state of the gaol rooms both at Bathurst and Sydney before the recent improvements, and nothing could be more shocking. I conceive that the ribald conversation, and worse, which goes on in these places, must be highly deteriorating, and that separate confinement at night, or of not more than three in each cell, would seem to be an almost indispensable improvement. The frightful stench which must arise from such a congregation of many persons in one room, not perfectly ventilated, is shocking to think of. I know that in one of the long rooms at Cockatoo Island, there are open gratings at each end, and a lantern or two in the centre of each room, and forty or more men are confined within the same apartment, with no restriction upon their intercourse beyond that of the palings between the various berths, and it is quite possible for one man to enter his neighbour's berth, or even a berth two or three distant, without much chance of observation.

4870. I wish to state to you, Sir Alfred, the nature of some very startling evidence given before this Committee, nearly the whole number of the Committee being present, eight or nine out of the ten, and they were much impressed with its truthfulness—I state it not in the form of a question, but to hear your opinion upon it as Chief Justice of the Colony. This evidence, given with all the appearance of truth and concurred in by six or eight different persons, who, as far as we can form an opinion, had no means of concocting the story, goes to the effect that acts of sodomy are constantly committed. Some of these persons stated that they were eye-witnesses of this act, that they saw men go into a berth and act with other men just as man and wife; and they state that there are young men on the island who are known among their fellow prisoners by female names, who are treated as men treat prostitutes, anything they can get in the form of delicacies is carried to them, and they are treated as females with whom they have general intercourse, and that in the case of two or three of these persons they would appear to be passive instruments almost in common to those who choose to traffic with them. I may as well state that I have made this statement to you after having obtained the concurrence of the other members of the Committee? Then the question is whether I have ever heard of it.

4871. I state the information we have received to hear what you think of it, leaving you perfectly free to say what you choose, or nothing? My evidence on your former question has already intimated that I think these horrible acts of unnatural crime may be committed without much chance of detection, and I have before heard that such things are said to be not uncommon on the island. I certainly know that the same things were said, and I believe were true, of Norfolk Island. I was intimate with the chaplain of the latter place, and I have heard from him that such cases as you speak of were undoubtedly well known and authenticated at Norfolk Island. Such dreadful practices which can only send a man out in society a demon in human shape can only be restrained by the constant presence of a sentinel or by a system of separate confinement, either of one man in each cell or of neither more nor less than three men in each cell. Now at Cockatoo Island, and at the stockades in this Colony which I have visited in former days, observation by the one or two sentinels in each apartment is quite out of the question; a man cannot be, and is not expected to be, always looking into the apertures leading to the apartments; and as a matter of fact, the men pass out of and into the bed-places of others without the possibility of observation, unless some fellow prisoners happen to be awake and observing, or unless the sentry happens at the moment to be passing by.

4872. At Cockatoo Island there does not appear to be any sentry near the prisoners at night; and it is the fact that the wardsmen of these large dormitories are prisoners; prisoners also are appointed to act as sub-overseers? The wardsmen of whom you speak are not the same of whom I speak as sentries. I inquired, and was told one or two men were appointed to these places, and that their business was, now and then, as officers in charge, to peep into the dormitories, and that they would at all times go into them.

4873. *By Mr. Wilson:* At Cockatoo Island these wardsmen are locked up in the dormitories with the prisoners? These are not the people I speak of; there used to be, at the time I went over there, sentries.

4874. *By the Chairman:* At the present time the arrangement appears to be this: the dormitories form three sides of a square, and I do not think there is any sentinel in the square—within the dormitories there is a wardsmen, who is supposed to pass up and down this passage; but he is a prisoner; and the question I wish to ask you is, whether you consider it right or safe, that prisoners should be appointed to a post of that kind, or to the post of sub-overseer? I do not think, under any circumstances whatever, a prisoner should be appointed sub-overseer or wardsmen; and I think it impossible to expect good results from a system of observation by a fellow prisoner within the sleeping apartment itself. There should be the means of observation from without, and there should be few in each apartment; but nothing will be effectual but the system I have already spoken of.

4875. Having glanced at the actual state of our prisons at the present moment, and keeping in view the great importance of the proper management of the criminal population, are you of opinion that it is necessary for the Government to go at once to a large expense, for the purpose of having some great general prison, where the proper means of classification, where the proper means of applying the labour of the prisoners to the best and most profitable ends, could be secured, and where all other necessary steps in order to make the establishment self-supporting

Sir A. Stephen,
Knt., C.J.
20 April, 1861.

Sir A. Stephen, Knt., C.J.
20 April, 1861.

self-supporting, at the same time to preserve morality, to carry out an effective punishment, and if possible to restore the prisoner as a reformed man to society could be provided. If you look at the plan which I hold in my hand of the great prison at Sing Sing, in the State of New York, you will see that there is in that prison provision made for carrying on nearly every description of labour, so that persons physically weak could be put to light employment, persons of greater physical strength to work for which they were fitted, persons who had acquired some trade to follow that trade, and persons who shewed an aptitude for a particular trade to learn that trade, and thus have a means of earning an honest livelihood on leaving the prison? This is a question of policy, upon which I do not know that I am competent to give an opinion. Its solution will depend upon the estimate formed of the enormous cost of a natural and efficient new system, as compared with the results to be gained by it, contrasted with the present bad and incomplete system. On this every man will entertain his own opinion, but I will say that I think the question of the profitableness of labour in a prison which is, I know, one great end of economists, and is one grand feature in most of the American systems, is in my mind a matter of comparative unimportance. I value not the profitableness of such an establishment at one straw as compared with the grand end of benefit to the community, which might reasonably be hoped for in a really good system. But a really good system, which would single outclasses and cases also, would cost much more money than any economical Government in these days will care to expend.

4876. Would you be in favour of the creation of a new office, such as that of an Inspector of Prisons, with the view of securing some person well fitted for the business, to inspect the whole of the prisons in the Colony, instead of having them as at present under the Sheriff? As to the Sheriff, I conceive that he has so much to do in the civil department of his office, and in executing writs, civil and criminal, that he cannot possibly exercise any more than a very general and loose supervision over any gaol, even if one alone be intrusted to him, and I dare say that much good might result from the appointment of a competent and highly energetic person as an Inspector of Prisons. But a vast number of useful reforms might be carried out without any such officer at all; as for instance, labour might be provided in most of the gaols, whereas in some of them I certainly know there is no labour provided whatever, so that the men remain in a state of idleness, which is the worst state next to that of actual abomination which a prisoner can be left in. I think that much good might result from the occasional visits and inspections of the Judges, either of the Supreme Court or of the District Court, or both, if they have time to devote to such a duty, because they are the men who would be most likely to have formed a sound opinion on the subject generally.

4877. You desire, I think, to recur to the subject of the regulations issued by Mr. Cowper? I perceive that the regulations of the 1st June, 1858, do not prevent the recommendation of prisoners on grounds connected with conduct after conviction, but merely prevent petitions from the prisoners themselves on that ground, and this strengthens my impression that it never was intended that no conduct after sentence, however good, should be considered. It is one thing for a prisoner to apply, stating his good conduct, and a very different thing indeed for the chaplain or superintendent to make such an application on his behalf, on the ground of good conduct. What I mean here is good conduct, not tested by the old, incorrect, and unsatisfactory mode, of so much labour done.

4878. *By Mr. Wilson*: It has been represented to this Committee that the prisoners on Cockatoo Island receive, in some instances, pecuniary rewards for extra work done; this money they are allowed to spend as they choose; and we find that it is generally expended on tobacco, so that the unlimited use of tobacco is allowed on the island, more especially in the dormitories at night. It has been stated to this Committee that it is sometimes carried to such an extent that the lamp hanging in the dormitory is not to be seen. Do you think such a state of things should be allowed, or that tobacco should be allowed to the prisoners at all? I am by no means prepared to say that indulgence should not be allowed to the prisoners for good conduct, and I suppose that the use of tobacco, to some extent, is not a vicious indulgence, but its excessive use in the way spoken of I should certainly think was very undesirable; and I think, further, that if a prisoner has time, he should, as a general rule, employ it in something better than mere work, with the object of getting indulgence for it.

APPENDIX.

A.

Monday Evening, 22 April.

MEMORANDUM.

In reference to the evidence given by him before the Committee on Prisons, Sir Alfred Stephen solicits permission to supplement what he said by the following paper:—

1. The sole object of all punishment by the law for crime is, as he conceives, the protection of the community at large from similar outrages. And with that view, he thinks two things are—in determining the sentence—to be aimed at in all cases. First, adequate terror to the ill-disposed; so as to deter others from committing the like crime. Secondly, the prevention of any repetition of it (absolutely, or for some considerable period) by, at all events, the same individual.

2. Bearing in mind the one principle here enunciated, the sentence in each case will depend on various considerations. The nature of the crime, the aggravations (if any) attending it in the particular instance, the consequences of such a crime to society, if extensively prevalent, and the degree, therefore, in which it is important to the general safety, or the general welfare, to prevent it; the probability of the recurrence of the crime, the temptations to it, and the facilities which exist for its commission. Lastly, with respect to different individuals, convicted of the same species of crime, or of precisely the same crime, regard should be had to the antecedents, and, so far as they can be ascertained, the tendencies of each prisoner; since the probabilities of its recurrence, in each instance, will vary according to those circumstances.

3. On no other principle than the one announced, it is conceived, can the punishment of death be justified. As the preservation of life, and the security of the person from gross and brutal outrage, are the most important objects in every community, murder, rape, wounding with intent to murder, and robbery on the highway, or burglary, accompanied by injury to the person, are subject to that punishment, as the one most likely to inspire terror—and therefore to deter other men from such crimes; while it is the only known punishment, which can with certainty prevent their repetition, by the same criminal. Such at least, we must infer, are the grounds on which this awful penalty is prescribed. But, in any event, the considerations for the Judge, in determining whether its actual infliction ought to ensue, in any given instance, will be those which have been indicated.

4. It by no means follows from what has been advanced in this paper, that the task of attempting to reform the criminal (in every case, but especially in cases where it is contemplated, or is possible, that he may one day again return to society) ought not to be undertaken, or that it is not a duty, equally to the prisoner himself and to the public. All that the writer maintains is, that the object neither is nor can be one aimed at by, or connected with, any end or aim of legal punishment. Nor, as he apprehends, is that reformation properly the end or object (in any other than a very subordinate degree) of convict discipline. If the object of punishment for crime be that which has been stated, convict discipline—which is only the carrying out of the punishment—should be so regulated as best to effect that object. And in whatever proportion you diminish the dread and terror of punishment, as such, in the minds of those who may be tempted to crime, in that same proportion will you inflict evil on the community.

5. Nevertheless, if the discipline be such as continually to inspire that dread which is its object, the reformation of each criminal will be of vast importance, even on the principle contended for. Much will have been accomplished, in the way of protection from the recurrence of crime, by those who become released from the state of suffering, if they return with changed tendencies and dispositions—no longer the unwilling violators, but the supporters of decency and the laws. The difficulty lies, on the part of the authorities, in not being deceived; in having some safe test of this change; and, above all, in reconciling the two objects, of rewarding a criminal for good conduct by indulgences, and finally by remitting his punishment, and yet affording by that punishment the necessary warning and dread, which, if endured, it was calculated to inspire.

MONDAY, 22 APRIL, 1861.

Present:—

MR. MATE,
MR. MORRIS,

MR. SUTHERLAND,
MR. WILSON.

J. B. WILSON, ESQUIRE, CHAIRMAN *pro. temp.*

[The Committee having met at 8-30 a.m., on the Semi-circular Quay, proceeded to Cockatoo Island, and assembling at the Superintendent's Office, the Chairman (Mr. Wilson) took the Chair.]

Cockatoo
Island Prison.
22 April, 1861.

Gother Kerr Mann, Esq., called in and further examined:—

4879. *By the Chairman:* You received last Saturday a letter from this Committee in reference to taking the evidence of certain persons selected from the body at Cockatoo Island, as to any grievances of which they might consider they had cause to complain? I received a letter from the Committee here at nine o'clock, of their intention to examine and hear any complaints that any prisoner might wish to make, provided these complaints were confined to their general treatment, their accommodation, and the quality of their provisions; that the Committee would not entertain or enter into anything relative to their judicial sentences. A paragraph of this letter I read to the body of men, in accordance with the request of the Committee, this morning at six o'clock, when they were turning out to work.

4880. *By Mr. Morris:* Did the letter say it was to be read this morning? No; the letter said to inform the prisoners if I considered it judicious to do so, or words to that effect.

4881. *By the Chairman:* There was no mention in the letter that prisoners should select certain individuals of their number to represent them? No, I think not. (*The letter was here produced.*)

G. K. Mann,
Esq.

4882. What followed the reading of that letter? The men proceeded out to work quietly and orderly, and at the usual hour of eight o'clock they were called in to breakfast. When the bell rang at a quarter to nine, the principal warder came up to me and reported that the men had refused to go out to work, because they wanted to see the Committee in a body. I immediately went to the yard, and ordered them to fall in in their gangs, which they did. I then addressed them, saying that they had committed an act of insubordination, and that it rested entirely with the Committee how they would see them, and that if they persisted in their insubordination I should know what steps to take, and that it was my impression that when the Committee heard they had been guilty of such insubordination they would get into their boat and go away without hearing one of them. Some of the men called out that they wished to see the Committee in a body; but at length one or two spokesmen came forward and said they wanted to see the Committee about this new Act, alluding to the recent regulations of the island. I told them I would not stand parleying with them—that it was their duty to fall in forthwith, and if they did not I should take other steps. I then ordered the wardsmen to tell the men to go to work, which they did. I gave directions to the free officers of the gangs to take notice of any men who wanted to see the Committee and to bring the names up to me in order that I might lay them before them.

4883. A list has been handed to you of certain persons who wished to communicate with the Committee? Yes. (*The witness handed the list to the Chairman.*)

4884. I see there are about ninety names in this list? Yes. If the Committee would allow me to suggest, I think it would be well that I should muster the men in the yard and order them to fall in according to their ward muster. Perhaps the Committee would then explain to them the utter impossibility of examining the whole of them, and direct them to select two delegates from each dormitory for examination.

[The

Cockatoo
Island Prison.
22 April, 1861.

[The men having been assembled, the Committee proceeded to the yard,—
inviting the occupants of each dormitory to select two delegates. Having returned],—

James Arnott and Henry Clarke called in.

[Delegates from No. 1 Ward.]

Henry Clarke examined :—

H. Clarke. 4885. *By the Chairman*: What we wish to get from you is any evidence you may have to give with regard to the treatment you receive on the island, or as to food, or accommodation. On the general subject we have as much information for our guidance as you can give us? There is one observation I wish to make—one great complaint—the men being detained on the island after the Judge's warrant has expired; and another complaint I have to make of men receiving the indulgence of a ticket-of-leave, and for merely leaving their district to go to see their wife or family, being sent back here under the new system, which it might be only four months, or it might be four years; so that a man who is sent back for four years is punished twelve times worse than the other. Here is another thing. Two men receive a sentence from a Judge. They both receive a sentence from the same Judge. One man will receive a sentence of fifteen years, with the first three years in chains; the other man will receive a sentence of fifteen years, without any chains. The man that received the fifteen years—not considering the real period of wearing these chains for three years—his probation is not allowed to commence until his chains are struck, which will take this man two years and two months, with ten months credit for extra work; which will cause the man to do eight years actual time, with three years credit for actual work. The other man who received no punishment of chains, will get the indulgence of a ticket-of-leave at the expiration of five years and eight months. There are some of these men who are allowed by a little meritorious conduct, as it is termed here—that is, by giving up his fellow prisoners; first, he is the man that gets up any little plot; then, he gives information to the authorities of what is going on, and he may have the indulgence for this of having his chains taken off, and get his ticket-of-leave; but the man who does not give information may stop here till his whole sentence is expired. For instance, I received a sentence from Mr. Justice Therry, in 1857, of eight years, the first three years to be served in irons. I came on the island and completed two years and two months. My chain time was struck then, and I had to commence a probation for eight years, whereas, if a man had come on the island for eight years without any irons, he would have to serve three years and three months, with fifteen months credit for marks. I have got 569 days credit, making, in all, five years and nine months, where a man would only have had probation for only four years and a half. I have not committed the slightest offence on the island, and was never brought to the office previous to the 23rd January last, when I fell out with the mob to represent the old system, thinking to see you if I was sent over to the gaol. I ought to have had my ticket-of-leave last June, which they tell me in the office—which they even tell Capt. Scott. Capt. Scott says when he was here, "What is the reason he has not got his ticket"; they said, "Because he received the punishment of chains." Now the Government are not aware of this punishment of chains higher than Capt. M'Levie. When Capt. M'Levie was here I complained to him, and he said, "Well, send a petition to me." I did send a petition, but I have no doubt the petition did not go to him. I was the only plasterer then on the island, and I was plastering the house of Capt. Mann.

4886. Try and make your statement as general as you can; the Committee do not wish you to go into these particulars? I wish to shew you how many are detained on the island after the Judge's warrants are expired. There are several men kept in this way; there is one man by the name of William Thomas; he receives a sentence of five years in the year 1848; he obtains his ticket-of-leave; he receives a similar sentence of five years in 1851; he obtains a ticket-of-leave for that sentence; he then receives a sentence of three years in March, 1857;—the whole of these three sentences expired in March, 1860. The man comes up here to know the reason he is detained on the island, and they tell him at this office that he is not free till the 29th July, 1861, making him do seventeen months after his Judge's warrants are all expired. I can quote more cases of the same description. There are several more on the same system as myself, with respect to the iron time—twelve or fourteen—who have selected me to represent them.

4887. *By Mr. Sutherland*: Is a man named John Torpey on the island? He has gone; he was kept here fourteen days after his sentence expired.

4888. Is there a man named Conolly? Patrick Conolly; he has left.

4889. How did Conolly get away before his time? He did not get away before his time, he went away when the Judge's warrant was expired. He received a sentence of fourteen days solitary for the outbreak, similar to the rest. One man is allowed to leave the island, Patrick Conolly, when his two years sentence has expired; the other's two years expires in about a fortnight afterwards—he comes up to the office, is taken into the store, and has put on part of his clothes, when the Clerk of Petty Sessions, Mr. Taylor, says, "You are not a free man, you had fourteen days in the cells." The man says, "What is the reason I am detained, and the other men let go?" "Oh, it is a mistake," and he receives fourteen days. Not only Conolly is let go, but an aboriginal that committed a rape at Bathurst; he received six weeks solitary, and he was allowed to go when the time was expired. They will let any man go that they like, and will keep any man from going they think fit.

4890. *By the Chairman*: Have you any other grievance to complain of? Concerning the sleeping apartments, they are very bad indeed. Such a night as last night several men had to leave their sleeping bunks and get into any they could get into. The place is very bad.

4891. Is it leaky? Yes, the rain comes through. Not only the sleeping apartments, but the

- the mess-shed ; it looks very well such a day as this, but on a wet day you cannot stand in it for the rain coming through. And the ration is very bad at times.
4892. Is the ration generally bad, or is it the bread of which you complain ? Generally the bread ; where the meat is bad once, you will find the bread bad four or five times.
4893. Who examines the bread ? The delegate who is appointed every Monday morning.
4894. Is his recommendation generally acted upon by the authorities on the island ? It is not. There is a sort of what they term a Board—the superintendent, Mr. Taylor, and the dispenser, they will sit upon it—and if the delegate says, “ I do not wish to take this bread,” Capt. Mann will perhaps say, “ I think it is fit for use,” and will make the man take it. Two or three times after it has been taken Capt. Scott has come and condemned it, and the superintendent has written about it to the contractor ; but what is the good of that if he does not represent it to the Government. If he was to do so it would soon be put a stop to. It is the ration causes a good deal of disturbance on this island.
4895. Do the men complain much of the manner in which the food is served to them—for instance, of the meat being placed on the boards ? There is a great rumour amongst them of it, and it looks some way unnatural to see the meat taken out and placed on the table without plates, knives, and forks. If a man has not a pocket-knife, he must gnaw it like a dog ; he is supplied with a spoon and dish for soup, but the messmen will throw it down on the table if they have not got a fork. At Darlinghurst, the men have plates, knives, and forks.
4896. *By Mr. Mate* : Are the men allowed to have pocket-knives ? If they have got them.
4897. *By Mr. Morris* : Is the bread good this morning ? We do not see it till dinner time, when it is served out. There is another thing—I do not know whether it is worth while bringing it under your notice—the way the men are discharged ; some of them are sent out destitute, with Government slops on them, branded with a felon’s brand, without a penny in their pockets, just the way this man (*pointing to his fellow prisoner*) is now branded. Now I would ask you gentlemen, even if a man was reformed, would you give a man employment if he came to you in that suit—would you not sooner call a constable and give him in charge, thinking he was coming to rob you. If a man leaves in that state, will it not cause him to commit a crime that he had not the least thought of doing, in order to supply himself with other clothes. There are several men who have brought good clothes with them to the island, and they have been abstracted from the stores.
4898. *By Mr. Morris* : Has that occurred since Captain Mann has been superintendent ? No ; because no prisoner could have recourse to the stores without a free officer being with him—but it used to be so.
4899. *By Mr. Sutherland* : You say you are the only plasterer on the island ? I am not at the present moment ; there is another man now, of the name of Knowles ; he came here on the 23rd of January last, but I had been the only one on the island for four years.
4900. You have been employed in plastering Captain Mann’s house ? Yes.
4901. How did you get materials for that work—lime, laths, and so on ? It was forwarded over here, the same as other stores that came to the island.
4902. There was no difference between the materials that came for that and for any other work ? No ; the lime was all shell-lime for the plaster. I think there was about sixty weight of plaster, just enough to run the cornice. In fact, I did not have sufficient for it.

James Arnott examined :—

4903. *By the Chairman* : Have you anything to add to what has just been stated by Clarke ? James Arnott
The bedding here is never washed ; a man receives his blankets when he comes here, and they last the whole of the time without seeing any water ; there are no facilities for cleanliness in any way.
4904. What is the size of the utensils you have to wash in ? They are very small ; I should say about two feet six by fifteen inches.
4905. Are they of stone or of wood ? They are stone sinks ; it is very probable that only two or three times a week clean water goes into them. On Saturday afternoon we are kept on the works till two o’clock, contrary to the Government regulations.
4906. *By Mr. Sutherland* : Without getting any dinner ? We have no dinner till we come out ; it is merely done to enable the men under the old system to get their half-mark.
4907. *By the Chairman* : Have the new-sentenced men no benefit from it whatever ? No benefit whatever. Some of the men have not time, from two to five o’clock, to get shaved, and they have to shave on Sunday morning.
4908. *By Mr. Sutherland* : What time have they to wash their clothes ? There are washer-men on purpose, who are supposed to wash their shirts.
4909. *By the Chairman* : How many of these washing basins are there ? Six, in the yard.
4910. And these six have to be used by all the prisoners ? With the exception of the servants.
4911. *By Mr. Morris* : Would the whole of the men in the dormitories have to use these basins for their ablutions ? On Sunday morning they bring two or three tubs of dirty water from the well at the back.
4912. On week days ? Some of the men wash on the works.
4913. *By the Chairman* : Is it fresh water or salt ? It is fresh, but it is very dirty, being taken from the old tank where they are extending the works. The troughs are filled on Saturday night, and some of the men there wash their feet in it and it is left for the men to wash in on Sunday morning.
4914. The water in these troughs is not renewed every day ? I can answer for Sunday, by being all day in the yard and it is not renewed then.

- Cockatoo Island Prison, 22 April, 1861. 4915. *By Mr. Sutherland*: These troughs are in the open yard? Yes.
4916. There is no place for a bath? No, except the hospital.
- James Arnott. 4917. *By Mr. Morris*: How have you to wash on a rainy day? There is no place to wash in when it is raining, there is no place under cover. In fact, the yard is a filthy place altogether. The water-closets are close to the cook-house, and there are no doors to them or anything else, and in hot weather the smell is filthy. Another matter is the distribution of the gratuity money here. If a man gets severely injured here, and is sent to the hospital, from that he is sent to the exempt bank, and he may be kept there from six to twelve months. All that time his gratuity money is stopped, and he has no means of getting tea, sugar, or tobacco.
4918. Will you state what is the amount of the gratuity? I understand it is threepence a day, but there are only a few men on the island who receive threepence; there are men who receive as low as a penny or a halfpenny, and what is curtailed from them goes to the bank for the stone-cutters. They receive threepence a day for cutting twelve feet six inches, and for any over they get a halfpenny a foot. So that a penny from one, and a halfpenny, enables the stone-cutters to bank money, and they alone are allowed to do so. Again, there is a great deal of partiality shewn on this island; the oftener a man has been on the island—the greater scoundrel he is—the more fair play will they shew him. In fact these are the only men who can do any good.
4919. How do you account for it? I cannot account for it. Since I got my six weeks addition for insubordination, since I came back here, there was an application made for me to go as toolman to the gang to which I belonged and I was not allowed, for having done six weeks. A few days after Mr. Broderick made an application for a man of the name of Johnson, and there was no objection made to him; he was allowed to go, although he had done six weeks.
4920. *By Mr. Mate*: Was he a mechanic? He is a painter by trade, but he was wanted in the capacity of a servant.
4921. *By Mr. Sutherland*: Does he continue in that capacity? He does. I spoke to the superintendent and requested to see the Visiting Magistrate about it. I saw Captain Scott, and he said he had nothing to do with the internal management of the island. The superintendent said he would use his own discretion as to whom he placed in billets. The only reason I can assign for it is my seeing the Committee at Darliughurst Gaol; there is nothing else against me in the office.
4922. Is that against you in the office? Yes.
4923. *By Mr. Morris*: Were you applied for? I was, by Mr. Easton.
4924. *By Mr. Mate*: You say that was against you in the office—giving evidence before this Committee? That is my supposition, because there was nothing else against me in the office, only my six weeks solitary confinement. The conduct of the free officers to the prisoners generally is sarcastic and taunting; there is no incentive to industry or good conduct. If you speak of good conduct you are only laughed at.
4925. *By the Chairman*: Do the prisoners generally object to prisoners being placed over them as overseers? They do.
4926. Are there many overseers prisoners now? Yes, a great many.

Frank Somerville and Edward Power called in.
[Delegates from No. 2 Ward.]

Edward Power examined:—

- E. Power. 4927. *By the Chairman*: Will you state what complaints you have to make against the general management of the island, the nature of the food, or of the accommodation? With regard to the sleeping dormitories we have, they are very badly ventilated, and also the rain comes in. The last shower a good many of us had to remove from our allotted posts, taking our beds and blankets, and trying to get a dry place to lie down upon. Likewise, these roofs, you can see daylight through the whole of them. The bedding and blankets we get are very dirty, they are never washed; and likewise the eating place. Yesterday, when the Catholics were there at church, all the men had to stand outside in the rain when they came from prayers. Likewise, about the way we get our grub served out to us. The provisions at present we cannot complain of them; they are served out in a very bad way—thrust on the table without any knives, or forks, or plates. We have dishes to get our soup in, that is all.
4928. *By Mr. Mate*: A dish to each man? Yes.
4929. *By the Chairman*: A soup dish only? A soup dish. And there is another affair they have got up there lately. On the original system, I believe, at one time the men were allowed to work till twelve o'clock on Saturdays; but, in regard of there being an alteration some years back in the system, they have altered the time to two o'clock, so as to give these old Act men overtime, which we have to work the same time and get no benefit at all by this. Likewise, if a man gets accidentally hurt upon the works, he has to see the doctor and is put upon the bank; perhaps he is kept there two months, and his pay is stopped all that time, and he is obliged to drink water at the water-cask at night. His gratuity money is stopped. There is a gratuity served out here, and the men are not classified; they are huddled all up together, the first, second, and third-class men; and a second and third class man is perhaps working with a first-class man, and they do not any of them get their pay. Plenty of men do not get a farthing, while other men, stone-cutters, are allowed to bank money here. Likewise the manner the men are discharged from this place—they are discharged destitute, without clothing or money; they are sent away in Government clothing, branded—they have no way of getting away, some of them, but with convicts' clothing on them. At times here, we want to see the superintendent or the Visiting Magistrate, and we cannot

cannot get to see him without we put down our name to see him before Saturday, we cannot see him till the Saturday following. If we want to see the Visiting Magistrate, we cannot see him unless we tell the superintendent what we want to see him for; then it is at the superintendent's option whether he will allow us to see the Visiting Magistrate or not. The general body of these new Act men object to act under prisoner overseers.

Cockatoo
Island Prison.
22 April, 1861.

E. Power.

4930. *By Mr. Morris*: Why do they object? They seem to say they have no right to work under the jurisdiction of another prisoner. It is not at all times the best characters are appointed to be overseers; the biggest part get appointed by rascality and roguery, which the records of this office will certify.

4931. Have you anything to complain against the fairness of these overseers, either as regards the measuring of work, or the recording of good conduct? A good many do not know the nature of this work—they never worked a day in their lives; they want to get unnecessary work out of the men, and they tantalize you to say something; and then they take you to the office and get you punished for it.

4932. *By Mr. Sutherland*: They do not understand the work? They do not understand the work at all. There may be one or two that do.

4933. Can you give any instances of men who have been punished, and then placed as an overseer over the rest? Yes; there is an instance just lately, six weeks or two months ago. One of the overseers had been broken by the magistrate for communicating with the prisoners in confinement, and giving them provisions not allowed; and a day or two after, he received his blue jacket. Another instance, there was a man in this office of the name of Townsend, as a clerk or messenger, he commits a felony by taking some man's clothing and making away with them. Well, he is discharged from here, and then some time after he is placed upon the work here. He is at present in a situation here.

4934. The prisoners believe that it is not good conduct that gets a prisoner into a billet? Yes.

4935. And they object to working under them on that account? Yes.

4936. *By the Chairman*: Have the prisoners any complaints to make with regard to the means afforded them of keeping their persons clean? Yes.

4937. Have they not proper facilities for washing their bodies? There is no place at all for keeping a person clean here.

4938. When you are allowed to wash, have you invariably clean water to wash in? No; it is nasty, thick, scummy water.

4939. Are two men allowed to wash in the same water? It is only a tub, and a hundred men are all rushing to see who shall get the first to it and wash themselves.

4940. Have you anything else to state? No, I do not think of anything.

4941. (*To Frank Somerville.*) Have you anything you wish to add to Power's statement? F. Somerville. No, I think not.

Gilbert Isaacs [Delegate from No. 3]; William Sampson and Henry Carroll [Delegates from No. 4]; William Thomas Macgregor and Lawrence Cowan [Delegates from No. 5 Ward] called in.

Gilbert Isaacs examined:—

4942. *By the Chairman*: What we wish to get from you is, any complaints you may have to make as to the general accommodation, the food, and treatment you receive here. We wish you to keep yourself to principles and general statements, without instancing any particular cases; particular cases we cannot enter into? When I was before the gentlemen on a previous occasion, I was speaking in reference to the appropriation of the gratuity money, and though I gave some information upon that head, I did not enter into it so fully as I would wish to do. I am now seven months an overseer, having had charge of men and seen how they have been treated in the gang, and I am sure, if you will listen to me, you will say the money is appropriated in a manner the Government never intended. In the first place, when the cabbage-tree was taken away from the prisoners the pay money was substituted, and the prisoners always understood they were to receive threepence a day—all the men on the works. The men are all classed here when they arrive by Dr. West, according to their physical strength, and not according to their character, in the first, second, and third classes. In my gang I have first and second class men, men mixed indiscriminately. Now there is a scale of task-work used here—mine is a hand-cart gang—by which the first-class men are required to put out 115 cubic feet of stuff a day, 100 yards—for this no gratuity is allowed; the second class have to put out 64 feet, and the third class 32 feet. These are facts which can be corroborated by the free officers. I have two classes of men in my gang, the first and second mixed together. The men of the second class have just about half the work to do that the men of the first have, and the consequence is, that the second-class man may earn 2d. a day, while the first-class man will not have completed his Government task; therefore, at the end of the fortnight, when the gratuity money is paid, the second-class man receives in proportion to the work done, and the first-class man receives nothing. He is not placed in a gang where he can work with men classed with himself, but in a gang where he cannot do more than the men who are working in the same cart with him. The last pay we received, a first-class man, working with my gang, for ten days' labour received twopence, and a second-class man, working in the same cart, received 1s. 2½d. This first-class man was under the old system, receiving marks, and his marks were stopped, in addition to his pay being stopped, because he had not performed his Government task. This 115 feet of stuff, it is admitted by the free officers themselves, to be more than the men can do, and yet it is imposed. There are a class of men who receive threepence a day; these are the cutters; they have to perform the Government task of seven feet a day, and five feet four

G. Isaacs.

Cockatoo
Island Prison.
22 April, 1861.

G. Isaacs.

extra entitles them to threepence a day; and for anything above that they receive at the rate of a halfpenny a foot. This is banked for them, and when they receive their pay they get 3s. 3d. for thirteen days' labour, besides so much in the bank; and when they were on the dock they were known to have banked as much as 25s. or 30s. in a fortnight. Now these men received their threepence a day for doing this twelve feet four, and if any other man is exempt from illness, he gets no gratuity; but if a cutter is exempt for six days, and during the remaining six goes to work, and chooses to do double quantity of work, he will get paid for those days when he was exempt through illness. Now if a man is ill in any way, slightly indisposed, the custom is, when the men are mustered in the morning, to call upon those who are sick to fall out and go to the hospital to receive a dose of medicine, and they are then sent on to the works. In nine cases out of ten these men arrive at the works by going a shorter road, before the men are done washing their hands and faces, and yet a halfpenny is deducted for staying to take medicine. In wet weather there is no gratuity allowed; on a foggy morning, when the men are kept in, the pay is deducted for that; when there is any irregularity in serving out the rations, in consequence of their having been bad and rejected, and the men are rung in before twelve o'clock; when a vessel is going out of dock, and the men are rung in for safety, they deduct a halfpenny for that, although only ten minutes may be lost. So that it actually appears to the prisoners that the island authorities strive in every possible way to impose upon them for these odd halfpence, which is their maintenance; for they receive meals only twice a day, and there is no provision made for supper; this gratuity provides them with it, and unless they receive it they must take cold water for supper after a hard day's work. If any man were to go to the yard in the evening, when they knock off work, he would find fifty or sixty men standing there with a piece of crust, the remnant of his dinner, in one hand, and a pint of cold water in the other. There is another subject I should wish to speak upon. We have the indulgence of writing to our friends once a month, and we are made to pay for these letters ourselves. Now I have been here myself two years; and during the whole of that time I can safely say with truth that I have paid but for three letters, and each time one penny each. My letters have always gone regularly and reached my wife in safety; other men have paid for their letters, and this makes me think—finding that my letters go regularly, and having no difficulty about it—that we are not bound to pay for them. It is not so in Government establishments; it is not so in the gaol; during the time of my committal, I was always supplied with stamps. Now if a man has to pay for his stamps here, and only has two-pence to receive for a fortnight's labour, if he wants to send a letter to his friends in England, he has to wait six weeks before he can send it. Not only that, but letters that are written on the Sunday do not go away till the middle of the week following. Some time ago I wrote to my wife one Sunday, and she was here to see me on the Sunday following, and my letter was not received by her till the following Monday. I have received letters three weeks after date which have been posted in Sydney. The rations we receive are very inferior; in fact, during the last month there have been incessant complaints, and it has been a constant occurrence for bad rations to come here and to be refused.

4943. *By Mr. Mate (handing a loaf to the witness):* What do you call that? This is rather better than frequently comes here. If you had not been here no such bread would have come. It is a common remark here that we can know when any one is coming. There is a mess-shed; I dare say some of the gentlemen have seen the line of tables there. One side is used for dining off, and the men have only the table to place their meat on; and after they have finished, a couple of buckets of water are thrown over it to wash it down; but on Wednesday, when we expect the Visiting Magistrate, the clean side of the table is turned up and the dirty side is turned down. Then again, the boards in the dormitories are particularly well-cleaned out on Wednesday morning, for the magistrate's visit, and this cleanliness consists in rubbing over a coat of whitewash; if he took the trouble to look underneath the bed-places he could find cart-loads of dirt. Washing convenience we have none; there are about four or five stone troughs in the yard, about two feet long, and eighteen inches wide, for a number of men to use. The water is not brought from the tanks, but from the coppers in the cook-house, and sometimes the men turn up their trousers and wash their legs there, and that water remains the remainder of the day.

4944. Have the men any towels? Twelve or eighteen months ago they were each supplied with a towel, and having once been supplied, that towel may be supposed to last for ever; the same with our frocks, the men are allowed only one duck frock, and all through the summer they are never supposed to have that washed. We are allowed two pairs of duck trousers, which are supposed to be washed once a month, but they are occasionally thrown. Our shirts get a sort of wash twice a week, and come back as dirty as ever, as may be supposed when I state that the whole of the shirts for 250 men are washed by four men in one day. If men who wear flannel shirts or flannel socks wish to have them washed, they must pay the prisoners who do the washing a penny or two-pence for them. Then as regards the beds, the straw we are supplied with is supposed to last for ever, and the ticks are never washed, and during the two years I have been here I have had only one pair of blankets.

4945. Are they never washed? No such thing is known, you must pay sixpence to a fellow prisoner if you want them washed.

4946. *By the Chairman:* With regard to the dormitories, are there many vermin in them? Yes. In summer time to keep them properly clean they require to be stoved once a month.

4947. Are these dormitories ever fumigated? Yes, once in the summer with brimstone, and by the wards, if I may use the expression, torturing the chief warder with our complaints, he will promise to see about their being stoved again. This "seeing about it" occupies a month, and during the whole of that time we have sleepless nights. I myself have
taken

taken my bed off my bunk, and dragged it on to the flags, and then I have had the bugs drop from the ceiling on me. If you could see the men when they come out of the wards in the morning you would say that they were more like men who had been out drinking all night than men who had had rest; they look more haggard coming out than they do going in at night from work. There is no ventilation; the men are confined in a ward constructed for eighty-eight men sleeping on the top of one another, their breaths mingling, and the smell from the conveniences for nature, three or four of them in each ward, without any cover, and men performing the offices of nature, if in any way indisposed. Another complaint: in wet weather if it should rain for a week, as it has done for three days successively, we are confined the whole of the time in the wards, which are as bad as the yard; the floor is worn into holes, and the roof leaks like a sieve.

4948. These wards are also the dormitories? These are the dormitories. The last wet weather we had we were in a dreadful state; going into the mess-room we had to turn up the bottoms of our trousers, the room was under water, the table and the forms we sat upon were wet. The men wanted the superintendent to come down and look at them and to see them while they were in that state—for it is all very well for people to come down on a fine day to see them when they are expected—but the superintendent did not come down when they wanted him. The next morning, when the rain had ceased, he came down and the ward was shewn to him. He said, "I am sorry for you, but all the free officers are just as bad." Shingles are continually coming here, but they never go on our ward.

4949. *By Mr. Sutherland:* Where do they go? I do not know where they go. A long time ago the state of the roof was spoken of, and shingles have everlastingly arrived, and some little patching has been done from time to time, but the shingles have been on so long that patching is not the thing. A most flagrant act of injustice in my mind, and I think it must be in yours, was committed here. I refer to the treatment of two prisoners who lately left this place—one man being sent away at the expiration of his warrant, and the other having an addition of fourteen days. The men were Conolly and Torpy. In fact, the men were inclined to refuse work till this thing was settled, for the men could not but feel that it was unjust.

4950. Who was this man Conolly? He was a sawyer, and the other man during the whole time I have known him has never been punished once. He is a quiet, harmless, inoffensive little fellow. When the men are sent away from here there is no provision made for them, and if they have no friends to look after them, the only description of clothing they can depend upon when they go is either a shirt or a coat, or something from the prisoners arriving, or else they have to extort money from others to get a few articles of clothing; men have been even refused a blue jacket belonging to the Government to go away with. Another remark I wish to make. I am a sub-overseer, and have a gang under me, and it is the custom of the free officers to throw the work as much as possible upon the sub-overseers. One of them will come to me and say, "Isaacs, get so-and-so done," and then go away to a little distance; if he sees one of the men idle, he does not complain to the men, it is only the sub-overseer he looks to. During the time the large number of men were at the gaol for insubordination, I was required to draw a number of stones from the quarry, and, as I had not enough men in my own gang, I had to take fifteen men from different overseers to perform the work. As it was a very hot day, the men worked very slowly; my overseer never came down to them, but I saw him at a distance looking on. At the end of the day he called me to him, and said, "These men have done very little to-day." I said the day had been very hot, and he replied, a man would be damned to enter anything for these men—that was his expression—"I will enter nothing, I will leave them for Mr. Broderick." Mr. Broderick might not have been there and have seen the men at work, and therefore he might have decided against them, but, on the representation of the free officer, he might have been disposed to enter the work. "Mr. Fitzgerald," I said, "if you will not go down among the people, I will not abuse or bully them into work; I have only to see that they do not leave off their work, and I shall not subject myself to the abuse of the men. You see one man has been struck by another and mutilated for abusing him, and I shall not expose myself to the same thing." He said, "I never heard you abused, and if I heard you abused, it would only shew you were doing your duty." So that a prisoner is constantly placed between the other prisoners and the free officer, and he keeps on the safe side. On Saturday the men have to work till two o'clock, to enable the men under the old system to get half a mark, and it is very hard upon men, who have only had a few ounces of hominy in the morning, to be kept working five hours without their dinner. Then again the men employed in the lumber yard, in the carpentering sheds, and engine-house, have to work during wet weather; they are under cover, and go out to work while the others are confined in the wards the whole time. In fact the whole of the regulations want reforming, everything is done in the most slovenly and careless manner. The officers shew a great amount of partiality. Some men are allowed to do anything they like, and the officers will stick to him; while if another does not please a free officer he will say, "Place him at the jumper," and there he will keep him. At one time they will joke and talk with you, at another you must not look at them. If I may be allowed to judge, they hardly know their duty, or they would treat all alike, and keep all the men at a distance. It is very hard if a man is playing at chess or draughts, which are harmless games, to be ordered to put them away from him, and then for him to see another allowed to play with them. One of the men spoke of the Clerk of Petty Sessions as "bloody Taylor," the free officer in charge only said, "Don't talk in that manner," and took no further notice of it; if another man had said it he would have been taken up and punished. Further than this I do not know that I have anything to complain of.

Cockatoo
Island Prison.
22 April, 1861.

G. Isaacs.

William

Cockatoo
Island Prison,
22 April, 1861.

William Simpson examined:—

W. Simpson. 4951. *By the Chairman*: Have you anything to add to what Isaacs has stated? One thing I have to complain against. If the free officer has a down upon one man, he punishes the whole gang; if he finds one man idle he stops the pay of the whole gang, and that is a punishment for men who are getting only 2d. or 3d. a day.

4952. *By Mr. Morris*: Are the whole of the men punished, although the rest of them are all at work at the time? The whole are punished. There is a great deal of class favour among the officers; there are some five or six, or nine or ten men who receive favours from the free officers, and become pets, because they run and tell all little tattling tales, and these men get billets. Men who arrive on the island, and who it is known will tell all the little occurrences, get billets directly. There is the case of White; he came here the other day, and he had not been on the island twenty minutes before he got a billet as a painter. Other painters have been on the island for years who have not got billets.

4953. *By Mr. Sutherland*: What is White doing now? He is painting the police boat. Another thing with regard to Captain Mann. If you have any complaints to lay before him with regard to the free officers, Mr. Byron will ask you what you want to see Captain Mann about, and unless he is satisfied with your statement he will not put your name down. There is more difficulty in seeing Captain Mann, under general circumstances, than in seeing Queen Victoria.

4954. Do you not see Captain Mann every day? You are not allowed to speak to him, if you speak to him on the works you are punished. He is only to be seen on Saturday. If you wish to see him on Saturday you have to place your name down on Friday, unless you do that, however important it may be, you cannot see him till the following Saturday.

4955. *By Mr. Morris*: If the complaint is frivolous, is there any punishment for making a frivolous complaint? No, I never knew a man to be punished for making a frivolous complaint. It is seldom a man gets redress here for making any complaint. In the case of Cowan he complained to Captain Mann about Mr. Fitzgerald not measuring his work properly, and Captain Mann turned round to Cowan and said, "I will not have complaints brought against the free officers by the prisoners," and he turned away without listening to the grounds of the complaint.

L. Cowan.

[Laurence Cowan said: I am about the best stone-cutter on the island if I am fairly dealt with, and when I made a complaint to Mr. Broderick about the free officer, Mr. Fitzgerald, and said he did not bring out the work right, and Mr. Broderick imposed silence and said, if I made a complaint he would have me sent to the cells.]

W. Simpson.

[William Simpson said: It is almost a moral impossibility to lay a complaint at times unless you have the ear of the authorities.]

4956. *By the Chairman (to Simpson)*: If the gratuity is not given to a man for a particular days work are his marks stopped? He has to do the Government task independently of the work for the gratuity; if he does only the Government task he has the mark but not the gratuity.

4957. *By Mr. Morris*: How is it possible for the overseer to know whether a first-class man has done the amount of work allotted to him if he is mixed up with second-class men, and supposing the total amount of work done by the men when the average is struck is not sufficient? The overseers have been told by Captain Mann, in my presence, when complaints have been brought here about the gratuity, when they have spoken about the quantity of work done that they had nothing to do with the task or gratuity, that all they had to do was to return the quantity of work done, and the task-work overseer was to make it up.

L. Cowan.

[Lawrence Cowan said: There is a lot of self-taught stone-cutters here, one learns the other. There is one by the name of Mr. Fitzgerald, a free officer, he never served an hour to the trade in his life; he was in the police boat before he was placed over us, and he does not know whether a stone is cut right or wrong, unless he is told by a prisoner in the gang. When an order is given for a stone for the building, there is one or two spoiled by each man before he can get it right, or fit for the building. When he finds the stone is wrong, he gives an order for it to be broken up and cast into the sea, so that no one shall see it. I wish to shew that the labour of all hands on the island is lost on this stone. There is the quarryman, he has to jump it and quarry it; the hand-cart mob have to drag it from the quarry to the stone-cutter's gang; then there is a man a day or two or three cutting this stone; there is the blacksmith sharpening picks, jumpers, and crowbars; so that all this work is destroyed. There is never one building put up on this island that has not had the material for two buildings spoiled on it, and all this for want of a free man that understands the trade, to give the lines to the men. The men may learn to draft, but take them off from ashlar or a header and they will spoil the stone. This is the way the work has been carried on for years, and thousands and thousands of feet of stone have been destroyed. There are thousands of mouldings now destroyed not fit to put into the building, and condemned on the wharf, and all this destruction for want of a free officer to shew the men how to do the work. If there was a man like this, the prisoner would get his pay. This man gives orders to cut a stone well, when he sees it on the bank he finds it will not do, and he gives orders to break it up, and the man loses his pay.]

4958. *By Mr. Morris*: Does he lose his marks as well as his pay? No, he does not lose his mark but his pay. When you go to him and ask him the reason, telling him it is unfair, he tells you to be off to your work. If you complain to Mr. Broderick, he says, "Bring it under Captain Mann's notice."

4959. *By Mr. Sutherland*: Have you no free officers to teach the men? No, there is not a free officer on the island now that knows how to take the stone out of the windings,
and

and dozens of feet are broken every day. There are scores of poor men who come to this island who take a fancy to the business, and who would earn an honest livelihood when they go outside if they had any one here to teach them, but they never get past a header or ashlar. 4960. Were you under the old regulations? Yes.

Cockatoo
Island Prison.
22 April, 1861.

L. Cowan.

4961. Are you now? No, I am under the new.

4962. You are serving a second sentence? Yes. I knew that man when he was taken out of the police boat, and if there had not been some men like me, who do know a little about stone, he could never have got on at all.

[William Thomas Macgregor said: Since I have been on the island I have placed all the bedding and beam-work for the engine, and I have placed all the pulleys, brackets, shafts, &c. I have known Mr. Broderick to come into the room, and say to me, "You can put three inches under this pulley." I have done so, and I have had eight bolts fitted for it; he has come and tried it, and it has been wrong; I have put nine inches under it, and it was wrong; then I have put half an inch plate in. I have known upwards of fifty bolts destroyed under one pulley. Then there is the bedding of the new pump, which is not solid; the beam is wedged up with slips of iron. This was done while I was ill, by a man of the name of Scrimmes. While I was working on the dock I have seen thousands of feet of shoring cut up for Mr. Mann's house; likewise, I have seen deals come for planking to go round the ships for making stages; I have seen 10,000 feet of that cut up.]

W. T.
MacGregor.

4963. Has that been replaced by other? Not that I am aware of; there had been no draught for it. Another thing I wish to draw attention to—I invented a serving machine, for serving ships on blocks; it is for getting them on the blocks; it is a tell-tale, and as soon as the ship gets on the block it rings a bell. I shewed this to Mr. Broderick, asking him if he would shew it to Mr. Mann, and have it sent to the Government for their approval, but he would not hear tell of it. I have also invented a patent block, which would save the Government from seven to eight hundred feet of planking every time a ship comes into the dock; it would be a saving to the Government of £500 a year if ships were continually coming in.

4964. Is the block to be seen? No; I gave the design to Mr. Brennan, at Woolloomooloo Gaol.

4965. *By Mr. Sutherland:* Were you working in the carpenters' shop at the time the boat was made? No, I was sick at the time.

4966. Have you been in the habit of repairing private boats for the officers of this island? I have.

4967. Will you state when, and how often, and what you have done to them? I have repaired a boat for Mr. Broderick.

4968. For any other officer? Yes, for Captain Mann, four or five times.

4969. *By the Chairman:* Where did you get the material? In the boat-shed here; it was boat planking belonging to the island. I put seventy feet in Mr. Broderick's boat the last time I repaired her. Likewise I built a punt in the dock, and I was given to understand that a sum of money was granted for two punts for the island. She did not cost the Government above £22, if she cost that.

4970. Including timber? Including everything.

4971. *By Mr. Sutherland:* Have you done any private work for the officers at their houses? I never go to their houses; I am not a joiner.

4972. When you say you have repaired Mr. Broderick's private boat, does he keep any boat now? I have not seen any lately. I believe there is one moored off the landing-place; but it used to be hanging on the davits.

4973. How many boats had he at any one time? Only one that I am aware of.

4974. Had his son any? His son had a small boat, which the prisoners got away with.

4975. Did prisoners get away more than once? No, I think only once.

4976. Were boats allowed to come at any time to the island? Mr. Broderick could come at any time.

4977. Then I suppose it would have been easy for a prisoner to get away at night? At that time.

4978. Is that regulation altered now? Yes, the boats are all moored off at the buoy.

4979. Are you aware who altered the regulations? No, I am not.

4980. Do you know anything of the punt belonging to the diving bell? Yes; she was wrecked here by the neglect of the officer. I broke her up.

4981. There was a punt and a small schooner called the "Bell"? Yes; she, by negligence, got ashore. The punt got adrift from the dock. I believe it was made fast to the wharf by a piece of spun-yarn—a piece of an old brace. Mr. Kelleher made it fast. A breeze of wind came from the south-west, and she broke away and went ashore by the landing-place on the other side, and before they got to her she was on a rock. They got her off, and moored her off here, and she then broke away again. Likewise the "Bell" was brought up there and moored with her stern-post about two feet off the rocks; a breeze of wind came from the southward, she heeled round, and struck upon a rock, knocked a hole in her bottom, and settled down. They never troubled themselves about it, and I received an order to break the pair of them up.

4982. Without trying to raise them? We tried to raise the "Bell," but we could do nothing with her.

4983. Who had the charge of the "Bell," and of this punt? Mr. Kelleher.

4984. What was he on the island? A free overseer.

4985. Is he on the island now? Yes.

THURSDAY,

THURSDAY, 25 APRIL, 1861.

Present :—

Mr. MATE,
Mr. MORRIS,MR. SUTHERLAND,
MR. WILSON.

HENRY PARKES, Esq., IN THE CHAIR.

John M'Lerie, Esq., called in and examined :—

- John M'Lerie, Esq., 4986. *By the Chairman*: You are Inspector General of Police? I am.
4987. And have been for some time? Yes, upwards of five years.
4988. You have been connected with the police of the Colony for a longer period? Since 25 April, 1861. the beginning of 1847.
4989. What was your first office? Paymaster and Adjutant to the Military Mounted Police.
4990. Your next? Governor of Darlinghurst Gaol. I was appointed after the investigation by the Committee of the late Legislative Council.
4991. You succeeded Mr. Keck? Yes.
4992. What was the next office you held? I was appointed from the gaol to be the Metropolitan Superintendent of Police.
4993. And then Inspector General? Yes, which office I have held since October, 1856.
4994. You were requested a short time ago to hold some inquiry at Darlinghurst Gaol arising out of the dissatisfaction with the state of that prison entertained by Government? I was.
4995. Did any other gentleman act with you? The Sheriff took a part in the investigation to a certain extent. I was appointed by the Government, at his request, to hold an investigation, and he was to be present and assist.
4996. Did not that examination result in his dismissal? He has been dismissed, but there was nothing in the proceedings recommending his dismissal.
4997. Practically the examination was conducted by yourself, singly? By myself, in the presence of the Sheriff.
4998. Can you state to the Committee what course you adopted in that examination—whether the officers were permitted to be present while it was going on, whether they were called upon for any explanation at any point of the examination, or in other words, whether the officers had an opportunity of explaining anything that arose, or of adducing evidence to disprove statements made against them? The first witness I examined gave such evidence as, in my opinion, reflected very much upon the conduct of the principal turnkey. Finding that to be the case, I said to the Sheriff, "It is but fair to this officer that he should be present, as these statements are prejudicial to his official character." The Sheriff concurred with me, and Mr. Harrison was called in, and remained during the whole investigation.
4999. What witness was this—the first witness? I think Dr. West was the first witness.
5000. What was the nature of his evidence—of that part which reflected upon the principal turnkey? Relaxation of the discipline of the gaol, as regarded one of the prisoners confined there—Polack.
5001. Favouritism towards the prisoner Polack? Precisely.
5002. Did Dr. West say anything of Mr. Harrison's general conduct, as to his sobriety or punctuality in the discharge of his duties? He said nothing relative to his sobriety, but in the course of the statements made before me he said he had on more than one occasion called the attention of the principal gaoler to the lax manner in which, in his opinion—from his experience, having been surgeon in a gaol in Ireland many years—the discipline of the gaol was conducted. He also said that he had cautioned Harrison himself.
5003. What other witnesses did you examine? I examined the gate-keeper, Burke; I also examined the principal gaoler, Mr. Beverley, the gaol dispenser, and also a prisoner of the name of Banks, who had been confined in the gaol.
5004. Was the evidence of this man Banks of an important character? It was.
5005. What was the nature of the evidence he gave? His evidence went to shew the undue indulgence given to Polack, as to his dress, his having the use of two cells, one of which cells was set apart for keeping his stores in, as he called them, as tea, sugar, pickles, and other indulgences which the gaol regulations do not admit, and also as to Polack being in possession of certain articles of valuable jewellery.
5006. Was your inquiry directed chiefly to the relaxation of discipline in the case of Polack? No. I was also instructed to inquire into the escape of two prisoners, and in the course of our inquiry as to their escape we examined other witnesses.
5007. Your inquiries were confined to those two heads? Entirely.
5008. Where is this man Banks now? On Cockatoo Island.
5009. Do you know his character as a prisoner—for what offence he is confined there? At present for cancellation of his ticket-of-leave.
5010. Do you know what character he bears? I am not aware that his character is of a more atrocious kind than the characters of prisoners on Cockatoo Island generally are.
5011. I presume they are not all on a level there—that there are some much worse than others? He is an old English prisoner, and they are generally the worst; he is either a Van Diemonian or an English prisoner.
5012. You are supposed to have the police history of most of these men? Yes, of all. I can furnish the police history of Banks to the Committee. (*Vide Separate Appendix, II. E.*)
5013. Do you not find from the police histories that some of these men are much better than others? Yes; but I find from the police histories of those who are what I may call the sediment

sediment of the old convict population of men—from Van Diemen's Land, from England, John M'Levie, and from Pentridge—that the lives of these men have been a constant career of crime. Esq.

5014. Was Banks a man of that kind? I would not go so far as to say that without reference to his police history.

25 April, 1861.

5015. He belongs to that class? Yes.

5016. Did your report to the Colonial Secretary attribute blame to any particular persons for the escape of the prisoners? It did, to a turnkey named M'Coy, and to the lax system which prevailed in the prison generally. One of the principal duties of the principal turnkey of the gaol was to see every cell locked.

5017. Did you censure any person? I simply reported the facts that came out during my examination.

5018. When you were principal gaoler at Darlinghurst, after Mr. Keck, can you at this distance of time recollect what system of discipline you established? I took charge of the gaol under peculiar circumstances, and everything was in a state of disorganization.

5019. How long were you there? Twelve months; and the nature of the duties I performed there was of that kind, that during the whole period I was only three times out of the gaol on my own business.

5020. I presume you found the gaol in a very bad condition? Very bad; everything was in a state of disorganization.

5021. Do you remember whether you established any regulation for enforcing personal cleanliness among the prisoners? We did; but we had not the same means of enforcing it as there are now, there being no baths in the gaol at that time.

5022. What I mean is, had you any periodical muster to inspect prisoners, to see whether they were in a state of cleanliness? During the whole twelve months I was in the gaol I saw every prisoner daily. In giving that answer, I mean to shew that I had an opportunity of seeing the state of cleanliness in which the prisoners were.

5023. Was there any regulation by which each prisoner would be compelled to cleanse himself, if he were disposed to go in a state of filth? Of course, if I found a prisoner did not perform his ablutions like his fellow prisoners, I had him forcibly cleaned. There were many instances of old crawling creatures who would not wash themselves unless they were compelled by force.

5024. There was no periodical inspection of them all at once? Not at once; except on Sunday morning, when I saw them before they were marched in to Divine service.

5025. In what manner were they inspected? They were all paraded in a rank, and I saw that they had clean shirts on.

5026. Were they required to turn up their trousers or sleeves, or had you any means of inspecting them to see that their skins were clean? They shewed their hands, necks, and faces. I cannot at this distance of time recollect whether I made what is called the military inspection and required them to turn up their trousers.

5027. Was there any system of prison labour at that time? Merely stonework.

5028. Has it been any part of your duty since then to visit any of the prisoners? Not to visit the prisoners. I am at the present moment Visiting Magistrate of Darlinghurst Gaol, but I have no control there. I have no right to go there except to punish refractory prisoners. I am appointed merely to carry out two clauses of the Gaol Act.

5029. Have you in any way been called upon to visit Cockatoo Island or other prisons? I was Visiting Magistrate to Cockatoo Island for five years.

5030. Were your duties the same there as at Darlinghurst? No, they were more responsible. I visited the island twice a week. All the accounts of the establishment passed through my hands, and all the correspondence with the Government passed through me.

5031. Had you anything to do with the discipline of the prisoners at Cockatoo Island? I received all complaints against the officers, and complaints against the prisoners, and if necessary I punished them. I also made a monthly report to the Government of the state of the establishment.

5032. That would be during the time that Mr. Ormsby was superintendent? Yes, he was there the whole time I filled the office.

5033. Did you ever inspect the prison buildings during that time? Twice a week—every time I went over.

5034. Was it not the fact that during that time a large number of the prisoners had no beds to sleep upon? No; at that time every prisoner on the island had a bed.

5035. When did your duties as Visiting Magistrate cease? When I was appointed to my present office.

5036. How long is that ago? It was in 1856.

5037. You say all the prisoners had beds? I can explain that. From the time when I took charge of Cockatoo Island until a few months before I ceased to be Visiting Magistrate the prisoners were allowed to make cabbage-tree hats, by the sale of which they made money, and every prisoner was then in a position to provide himself with a mattress. I found so many abuses arising from this hat-making that I suggested to the Government that it should be discontinued, and my suggestion was acted upon. After it was discontinued the prisoners had not the means of providing themselves with mattresses, and it was found after I had ceased to be Visiting Magistrate that many of the prisoners had no mattresses. The Colonial Secretary mentioned the circumstance to me. I explained how it arose, and recommended that they should be provided with them.

5038. It is only a few months since that that was done? It is a considerable time ago.

5039. Not more than ten months ago? It may be perhaps ten or twelve months; it was after a visit of the Committee.

- John McLerie, Esq.
25 April, 1861.
5040. At all events, the sleeping apartments were in the same state as now? Yes; the fitting up of the bunks was done just before I took charge of the island.
5041. Did it ever attract your notice that the sleeping apartments were very insufficient? It could scarcely escape the notice of any one—I have always looked upon that establishment as being of a temporary kind, and liable to be broken up in a short time. The Government were perfectly aware of their condition. Before I took charge, the prisoners had a long sloping sort of guard bed.
5042. Similar to that used in the watch-houses? Precisely; the present mode of fitting up the dormitories was introduced from Van Diemen's Land.
5043. Did you ever represent to the Government the state of these dormitories, and the extent to which they were calculated to increase, unreasonably, the discomfort of the prisoners? The Government were perfectly aware of it; the place was frequently visited by a member of the Government.
5044. Were complaints made to you of immoralities practised on the island? During the five years I was Visiting Magistrate, I had two complaints made of prisoners who were suspected of being addicted to disgusting practices; but I can remember only two cases.
5045. What became of those cases? There are three places as you enter the main dormitory, for the confinement and separation of those who are supposed to be addicted to disgusting and unnatural practices, and these men were kept in two of those places.
5046. During the long period in which you have been connected with the police of the Colony, has the subject of prison discipline generally attracted your attention—in the abstract I mean? It has, very frequently.
5047. Are you satisfied with the system which prevails in this Colony? Far from it.
5048. Will you have any objection to state, at your own leisure, and with that deliberation with which a man thinks when he sits down to write, what improvements you suggest in the prison discipline of the Colony, and what arrangements in respect to buildings, and otherwise, are necessary for carrying out such improvements? I will do so. (*Not furnished.*)
5049. *By Mr. Morris:* Were you satisfied by the evidence of Banks alone, as to the laxity in the discipline exercised towards Polack? Certainly not; if his evidence had not been otherwise supported, I should not have relied upon it. I took his evidence in connection with evidence derived from more reliable sources.
5050. *By the Chairman:* Do you think it would be a prudent course for the Government, whatever the cost might be, to erect a large central prison, with sufficient buildings for a proper division of labour, so as to apply the labour of prisoners according to their previous habits, physical strength, and in which those who had previously had no trade might be taught trades, so as to be fitted to obtain a livelihood for themselves when they left the prison? I am quite satisfied, until such a building as you allude to has been constructed, the prison discipline of the Colony will never be carried out effectively either for reformatory or deterrent purposes.
5051. I mean a prison where the whole of the prisoners above three or six months' sentences should be assembled, where they should be classified according to their conditions in life—their reputed characters—their means of labour—and their physical strength—and where their labour could be turned to the best account towards their own support, and also they themselves be managed so as to secure the best means of reformation? I think the erection of such a building most desirable.
5052. *By Mr. Sutherland:* Cockatoo Island is under the charge of the police, properly speaking, now, is it not? No, certainly not; it is under the charge of the Visiting Magistrate, and the superintendent of the island. The police are merely an auxiliary force to carry out the discipline and security of the prisoners.
5053. They are under Captain Mann and Captain Scott? They are under Captain Scott and Captain Mann, for all purposes of the island; I do not interfere with them except in matters affecting their own discipline. There is a code of instructions approved by the Government for their guidance, by that they are bound to act.
5054. They are under your charge so far as their own discipline is concerned, but not as relates to the discipline of the island? Yes, there is a code of instructions, and these the police are bound to see carried out.
5055. *By Mr. Morris:* Suppose the police observed any breach of the regulations, either by the prisoners or by the officers, would they report these breaches to you or to the superintendent? Breaches of prison discipline they report to the superintendent direct, but I call upon them for a periodical report, and all these incidents are mentioned in my report. That report is merely a check upon the manner in which the duty is carried on by the police. I do not interfere at all in any infringement of the rules by the free officers.
5056. Is it or is it not the case that there is some difference between yourself and the superintendent of the island, as to the management of the police? No difference at all that I am aware of. The superintendent claims the right, or did claim the right of entire control over the police; I of course reported the matter to the Government, and represented that as long as they formed part of the body of police for whom I am responsible, they must be under my control.
5057. You exercise no greater control over them than the commander did over the soldiers when they were there? For all purposes of island duty they are under the surveillance of the island authorities, Captain Scott and Captain Mann. Captain Mann, since his appointment, has assumed a control the previous superintendent never attempted to assume. It appears to me, that Captain Mann tries to act to a certain extent independently of the Visiting Magistrate.
5058. *By the Chairman:* Since you held the inquiry at Darlinghurst Gaol, Mr. Beverley, the

the principal gaoler, and Mr. Harrison, the principal turnkey, as well as Mr. O'Neill Brennan, John McLevie, Esq. who was then Sheriff, have been dismissed from office? Yes.

5059. Who has been appointed principal gaoler? Mr. John Cecil Read, formerly one of my inspectors. At the time of the suspension of Mr. Beverley, I was called upon by the Government to select some responsible person. 25 April, 1861.

5060. And you recommended Mr. Read? I recommended Mr. Read.

5061. Before the final decision for his permanent appointment, were you again consulted as to his fitness for the office? I was asked by the Chief Secretary as to my opinion of Mr. Read as a public officer, and as to his experience.

5062. With a view to his appointment? As principal gaoler; and Mr. Cowper told me that, among all the applicants, he considered him to be the most eligible. I told him what I knew of him as an officer of police.

5063. Did Mr. Cowper tell you how many applicants there were for the office? He did not.

5064. And you never heard? No.

5065. Will you state what experience you have had of Mr. Read? He came out here in the "Exodus," six years ago, with the rank of inspector, having been appointed by the Colonial Agent in London, and on the passage out he, with the other inspector, who has since died at Queensland, had charge of a notorious offender from Melbourne, who was apprehended in London; and the manner in which he performed the duty on the passage out gave me so high an opinion of him that I took the first opportunity of confirming his appointment as inspector. Subsequently, when the charge of a division became vacant, I gave him that; and during the whole time he has been connected with the Sydney Police, I have never on one occasion had reason to find fault with him. I have found him a man in whom I could place the most implicit confidence. I have given my orders to him, and no matter what they have been they have been carried out.

5066. He obeys orders? He obeys orders.

5067. That is a military virtue, at all events? It is everything in discipline.

5068. Can you state what were the principal features in Mr. Read's character that attracted your attention, besides his obedience to orders and trustworthiness? His general intelligence, his coolness, and firmness.

5069. Is he a man of good judgment? I have always found him so.

5070. Has he ever been placed in difficult circumstances, where he has had to decide upon one course out of several that have presented themselves? Yes, he has, in the course of his police history in Sydney.

5071. Do you think he has acted wisely, discreetly, according to sound discretion and judgment? Yes.

5072. Has he ever exercised a responsibility apart from instructions from head-quarters? Yes; at the time the rush took place to Rockhampton I was called upon to select one of the best officers I could find, and he was sent down there, and was under the orders of Captain O'Connell, who gave both officially and privately the most undeniable character as to every thing that constitutes a good police officer.

5073. Are you aware whether he is a man who has seen much of the world? I saw among the despatches which accompanied the body of police from London, one having particular reference to Mr. Read, written by one of the Under Secretaries, giving him the highest character as an inspector of the London Police, in which he had served fifteen years, and from which he draws a pension; and stating that he was a man of good family.

5074. *By Mr. Sutherland:* He is a married man and has a family? Yes, he has a large family; his eldest son commenced in the lowest grade at the railway, and he is now station-master in Sydney, having had some previous experience in England.

5075. *By the Chairman:* You believe Mr. Read to be a man of high moral character? None more so that I know.

5076. What was Rispen at the gaol? A turnkey in charge of the wing—he was there when I was there. At the time Mr. Keck was dismissed he was brought up from a country gaol.

5077. Was it in consequence of evidence taken before you that he was dismissed? I took no evidence in relation to Rispen at all; I took action afterwards with respect to him.

5078. Was it what came out afterwards that caused you to take action? Mr. Read sent one evening to my house a letter addressed to Rispen, with a statement that it had been stopped by the turnkey at the gate, who had informed Mr. Read that two nights before a letter addressed in the same handwriting had been brought by a postman; and that letters in the same handwriting had previously been brought to the gaol, but addressed to Mr. Harrison, who was then under suspension; that the turnkey at the gate had reason to believe that the letter was intended for a prisoner, Polack. On looking at the letter I could see nothing of a suspicious nature; but from the statement of the turnkey I took upon myself to open the letter, and found it was intended for Rispen, but was written by the wife of Polack to her husband. On looking at the envelope I saw that the handwriting was Polack's; that he had, in fact, addressed the envelope to Rispen, and had sent it out of the gaol for his wife to enclose a letter in it to him. The next morning, as the Sheriff was under suspension, and an officer had not been appointed in his place, I at once placed the letter with the report in the hands of Mr. Cowper, who took action in the matter, and I believe dismissed Rispen. I have reason to know he did.

5079. Have you heard anything of Rispen since? I may state that Rispen called upon me afterwards, denied most positively that he knew anything of this letter, and said that it was sent to him without his knowledge. I said I was sorry he was in such a position, as I had known him so many years, and had entertained a high opinion of him, but that I could not see how he could reconcile the fact of this envelope being addressed by the prisoner in the gaol to his wife without his connivance. He had admitted previously that he had received

John M. Leric, a letter two nights before, and I asked him why he had not placed it in the hands of the gaoler at once; however, he still persisted in his denial. That is how the case stands, and Mr. Cowper thought the case so flagrant that he dismissed him.

Esq.
25 April, 1861. 5080. *By Mr. Wilson*: What did he do with the letter he had received two nights previously—did he state? He said he had taken it back to Mrs. Polack, but that I had no proof of. He admitted that he had done wrong, and that he ought to have taken it to the gaoler.

5081. *By the Chairman*: He denied that he knew anything of either letter, and denied also that he had communicated with Polack? He could not deny that he had received the previous letter.

5082. He denied that he had delivered it to Polack? Yes; but he did not do what he ought to have done. He should have given it to the gaoler.

5083. There is no proof that he did deliver it to Polack? No. The Government are inclined to reconsider his case as a man of large family. The proof is not strong again, and I shall be glad if they again give him employment, and send him to a country gaol. There is another fact in connection with this case: the turnkey says that when Rispen saw the letter he said, "This should not have been delivered here; it should have been taken to my house."

5084. *By Mr. Sutherland*: Is it not likely that this man did not do this with any bad intent—that there had been lax discipline in the gaol, and that, therefore, he thought he might do this? I should scarcely admit that as an excuse for a man who had been so many years in a gaol. Instead of allowing the laxity of discipline to influence him in that direction it should have made him more vigilant.

Mr. John Cecil Read called in and examined:—

Mr. J. C. Read. 5085. *By the Chairman*: You are at present principal gaoler of Darlinghurst Gaol? I am.

Esq.
25 April, 1861. 5086. When did you receive this appointment? On Friday last I received the official notice of it.

5087. You have been in charge of that establishment for some time? Since the 15th February last.

5088. Had you any intimation before Friday last that you would be permanently appointed? A few days before I received the official communication I partly expected I should get it.

5089. Have you, during the time you have been in charge of Darlinghurst Gaol, taken upon yourself to make any more than temporary alterations in the management of the gaol? Yes, I have, with the approbation of the Sheriff.

5090. Will you be good enough to explain to the Committee in what state you found the gaol when you took charge, more especially in reference to the discipline of the establishment, and also explain what alterations you have made, at what time these alterations were made, and what is the present condition of the gaol? I do not know that I shall be able to tell the exact duties of the various alterations, but they were made from day to day. When I first took charge of the gaol I noticed that some of the officers of the gaol—the warders—were rather slack in the performance of their duties, and I also found that two of them had been in communication with the prisoners, bringing them different things that were contraband, and against the prison regulations. These men have since been dismissed from the gaol.

5091. What are their names? One is Whiddon. I found he had got money and a coat from a prisoner named Mayne in the gaol, and I also caught him sitting down in familiar conversation with a prisoner named Garsed. These things I brought under the notice of the Sheriff. I afterwards found that man asleep on his post, for which I suspended him, until the Sheriff gave him permission to resign. There was also a man named Rispen, who was dismissed. A letter was brought to me by one of the turnkeys at the gate, who told me he knew the writing, and that he believed the letter came for the prisoner Polack. I immediately impounded the letter and sent it to the Visiting Justice, under cover. The letter was opened, and I have understood since that this letter contained information for the prisoner Polack. Rispen said, when he was brought before the Sheriff to answer for this, that the letter was sent for him but that he had no knowledge previously of its contents. He acknowledged at the same time that he had received a letter previously, from Mrs. Polack, and said that although he did not report it to the authorities at the gaol, he went to the house of Mrs. Polack to ask her why she had sent the letter in that manner to him for her husband.

5092. Did he say what he did with the letter? He said he gave it back to her.

5093. It has not been traced to Polack? No; but on his own acknowledgment he had received the letter without reporting it.

5094. Still it does not appear that he need to have acknowledged it? I should consider it my duty to report any warder if I found he had received such a letter without reporting it to me immediately.

5095. No doubt it was very wrong not to report such a circumstance to you, still it would appear to tell in his favour, as to his innocence of complicity in the matter that he voluntarily acknowledged receiving the letter—unless it can be proved that he was an assenting party? The reason he acknowledged it was, that Burke said that he noticed the last letter because a similar letter had come to Rispen previously. Rispen then said, "That letter I took to Mrs. Polack." The evasive manner in which he admitted that he had received the letter struck me.

5096. Have you heard anything about wine being conveyed to the gaol in which Rispen was concerned? There was a report that bottles of pickles had been brought in by Rispen in a basket,

basket, but that was before I took charge. I do not think he has done anything of the kind since I have been there. I think tobacco has been brought in. I believe Gibson, a prisoner from Cockatoo Island, received tobacco from turnkey Whiddon, because he offered money to another turnkey to bring him more, and when Whiddon was spoken to about this, he said, "For God's sake do not tell anything about it inside the gaol."

5097. There is no material alteration in the general discipline of the gaol? I have altered some of the duties. I have told the men off to particular posts in the gaol, and at nights in particular; I have numbered the posts, and I intend after this to enter in a book each day the name and number of each warder.

5098. For better security? Yes. I give each man a particular post every night and make him responsible for a certain distance. Formerly they walked indiscriminately about the yard, and passed each other on their posts at night.

5099. My question had reference to the discipline of the prisoners—you understand it as having reference to the discipline of the officers—have you made any alterations in the treatment of the prisoners? Yes, so far as cleanliness is concerned; there are now baths for the whole of them, and every man gets fresh water.

5100. How often do they bathe? Every week unless they are in delicate health, and are exempted by the medical man.

5101. You see once a week that they are thoroughly and perfectly clean? Yes. Every Sunday morning I have their legs bared, and see that their breasts, necks, and arms, are thoroughly washed and cleaved. In fact last Sunday I put a man in the cells for being dirty after having told him to clean himself. He treated the matter lightly when I told him he was dirty, and as he did not clean himself I put him into the cells as a punishment.

5102. In what condition did you find the cells as to cleanliness? I found some of the cells very dirty, the female wing in particular; in fact they were swarming with bugs.

5103. What have you done in that respect? I had them thoroughly cleansed and white-washed, and I am now having a great deal of the whitewash removed; there had been so many coats laid on that I believe it afforded a harbour for bugs.

5104. When the Committee visited the gaol we found a great want of discrimination in the confinement of prisoners; for instance, in the hard labour wing we found some of the insubordinate prisoners from Cockatoo Island confined opposite to prisoners confined simply for debt, or men who had been taken up for running away from Her Majesty's ships, and who stated that they had been confined on repeated remands for six months—shut up in cells with men charged with larceny or felony? That is not so much in the hard labour as in the confine yard.

5105. I am talking now of the building—is there any better means of separation now? There is about to be, there is to be another yard in which the boys are to be kept.

5106. Are those sailors still in the gaol? No; they went away sometime ago, about a month, I think.

5107. Have you paid any attention, since you have taken charge, to the better classification of the prisoners, so far as the accommodation afforded by the building will permit? I keep those who are committed for trial in the centre of the wing when the other prisoners are in the yard, and I am obliged to allow them to take exercise in the yard for an hour or two.

5108. Are there any boys of tender years there now? I have two boys at present who were sentenced yesterday to six months each at Parramatta Gaol.

5109. Where have you confined them? I have been obliged to keep them in the same place in that instance. I regret that I have not another yard to put the men into, but in this case the boys are as wicked as the men. I have often thought it was a great pity the boys should be allowed to be in the same department with hardened criminals, but it is difficult, as there are but three yards—the trial, the confine, and the hard labour yard—to make a separation. The prisoners for trial I shut up two hours a day, while the Cockatoo Island prisoners take exercise in that yard.

5110. Since you have been in gaol, have you found that the rations have been generally wholesome and good? I have returned a great deal to the contractor.

5111. Who is the contractor? Mr. Kidman.

5112. What part of the rations have you returned? Bread in particular; I have also latterly returned five chests of tea.

5113. You inspect the bread? Yes.

5114. You are, of course, aware, that bad bread is a very unwholesome thing? Yes, Mr. Kidman does not now supply the bread, and the new contractor has given us excellent bread, except on one occasion, and the men were then willing to make allowance; they sent their delegate, who said, that the bread had been so invariably good since this man had had the contract, that they would not require it to be changed. I had a great deal of trouble, also with Mr. Kidman about the vegetables. By his contract he has to supply half potatoes and the remainder of other vegetables, as cabbages, onions, turnips, or carrots; but he sent at one time potatoes only, and I bought mixed vegetables to the amount of 17s. 6d., and afterwards stopped it from his account. I have also had the hominy bad on two mornings.

5115. Have you looked over the collection of books in the gaol? Yes; they are a very poor collection indeed.

5116. Does it embrace chiefly books that are suitable to prisoners? No, they are not the sort I should select.

5117. I suppose you would not confine their reading to religious books? Certainly not; I think books of a similar character to Chambers's Educational Tracts would be very suitable; they are moral, without being religious, and would be a very appropriate style of literature.

5118. How are the books distributed? Under the direction of the Rev. Mr. Agnew; a prisoner named Ainsworth acts as librarian and as clerk on Sunday.

5119. Does the prisoner Ainsworth act as clerk? Yes.

5120.

Mr. J. C. Read.
25 April, 1861.

- Mr. J. C. Read. 5120. Do you know anything of his police history? I have heard a great deal of it; I have heard he is a very bad man. I believe he has been in gaol the greater part of his life.
- 25 April, 1861. 5121. Have you any means of instruction for the younger prisoners, or for those who desire instruction? None whatever.
5122. Since you have been in charge have you tried to make yourself acquainted with the characters of the various prisoners? I have known the greater number of them before they came into the prison; the greater number of the lads.
5123. Do you think if there were any means of instruction the men would avail themselves of it as well as the children? I think they would; I have known several instances where they have attempted to instruct themselves by writing on a slate.
5124. Would it not be a means of employing their minds and thus keep them from concocting mischief? I think a great deal of good might be done; the chief difficulty would be to cultivate a taste among the prisoners; I think the first difficulty overcome they would progress very rapidly.
5125. Supposing there were any means of imparting instruction in the gaol, what hours could be devoted to that purpose? I think from half-past four to half-past five.
5126. Could not a longer period be allowed; would there be any objection to continue the instruction up to the time of locking up? They are now generally locked up at half-past five; it would be dangerous to leave it to the last minute.
5127. Suppose an hour were taken from their labour time, do you not think if that hour were devoted to their mental improvement, they would do as much work in the shorter as they now do in the longer period? Yes, and those who took a delight in it might be given to understand that they would be expected to make up the time by greater application to their work.
5128. I suppose there is room in the gaol for a school? The place where they go to church would, I think, be very suitable for it.
5129. How often is Divine service performed? Once a week for the men, and twice for the women.
5130. Have any private persons visited the gaol, while you have been in charge, from motives of benevolence? I am not aware of any. I think those who have visited it have come from motives of curiosity more than from anything else.
5131. Have any ladies visited the female department of the gaol? No.
5132. Have you a visiting book? Yes.
5133. Do you inspect the visiting book? Yes; daily.
5134. Have you looked back for any period prior to your appointment? Yes.
5135. Have you seen any ladies names down? No. Two clergymen's wives visited the prison; one was a Presbyterian and the other of the Church of England; they merely walked round the gaol, but they did not appear to interfere in any way. I do not think they looked into the female wing.
5136. Did they go into the wings where the prisoners were? Yes.
5137. Had they any conversation with any of the prisoners? They merely passed two or three words.
5138. Were they in charge of gentlemen? Yes; of their husbands.
5139. *By Mr. Morris:* You said that the prisoner named Ainsworth was a very bad character; I believe he has been in a great many prisons during a large portion of his life? I have heard so.
5140. What is his character while he is in prison? He is a most excellent person, and is, I believe, a very clever man.
5141. He conducts himself in every way satisfactorily? Yes. I have also noticed that many female prisoners, who are excellent characters in gaol, are the most dreadful characters when out.
5142. *By Mr. Wilson:* Could the confines—those who are not at hard labour—be kept at school the greater part of the day? Nearly all day; those who are fed under the prison regulations have only 2 lbs. of oakum to pick, and a great many of the hard labour prisoners are exempt by the medical man from hard labour; so that they have the whole day in the yard. If religious people would not make any objection, a great deal might be done with them on Sunday.
5143. Suppose a schoolmaster were appointed, his time might be occupied the whole of the day? I think if he were able to lecture it might tend to cultivate their taste. I remember a person who used to lecture at Egyptian Hall, in London, and many boys from the Ragged Schools went to hear him, and he exercised a good influence upon many wicked boys.
5144. Do you find among many of the prisoners a great desire for instruction? Yes, several have applied to me for slates.
5145. And this desire might become more general? Yes. It depends upon the skill of the schoolmaster; the first thing is to cultivate their taste by amusing them.

APPENDIX.

A.

ON the 1st of the month I caused a school to be established in the corridor of the new wing, under the tuition of a German prisoner, named Holstein, *alias* Myers, who seems to be a man of some ability, and what is very desirable, he seems to have a fancy for this sort of employment. The scholars I allow one hour each from work; from (10) ten to (11) eleven o'clock every day; and from (1) one p.m., to (2) two p.m., their attendance is voluntary; and for the short time that it has been established it seems to progress. Its numbers are increasing daily.

I stated before the Committee that the gaol was not visited by ladies, except two. I should have made an exception to the Sisters of Charity, two of whom attend once a week, or once a fortnight, and remain for about half-an-hour. Very few of the female prisoners attend them, and they do so very unwillingly.

4th May, 1861.

JOHN C. READ, Principal Gaoler,
H.M. Gaol, Darlinghurst.

(H.)

(H. Parkes, Esq., here vacated the Chair, and J. B. Wilson, Esq., was moved thereto.)

J. B. WILSON, ESQ., IN THE CHAIR.

Gother Kerr Mann, Esq., called in and examined:—

5146. *By the Chairman:* You are Superintendent of Cockatoo Island? I am, and Engineer-^{G. K. Mann,}
in-Chief. ^{Esq.}

5147. How long have you held that situation? Not quite two years.

5148. Will you be good enough to state to the Committee what was the general condition ^{25 April, 1861.} of the island, with regard to its prison discipline, when you took charge? I had for some time previously had charge of the engineering works there, which were carried on entirely by prison labour, and it was only so far as the labour of the island was connected with the works that I can speak of my own knowledge. The penal department I had nothing whatever to do with. The establishment, if I may express an opinion, always appeared to me to be a very incomplete one, arising from the accommodation that was required for such an establishment, and also from its having grown up from a mere stockade into, in fact, the penal establishment of the Colony. I do not think the improvements, or any attempts at improvement, the buildings, or that the general arrangements of the island have kept pace with the growing importance of it. When I first took charge of the works there was no general system of working the prisoners. I had to go down and shew what work was to be done, and it was left to the authorities of the island to carry it out. Subsequently I was appointed to take more immediate charge, and to direct the work of the prison labour, and then I proposed a system of task-work, which was put into practice as a trial for a short time. I afterwards prepared a general scale of work which was authorized, and the prisoners have been working upon that scale to the present time.

5149. Has any improvement taken place in the accommodation afforded to the prisoners since you have taken charge of the island? There has—a slight improvement. When first I went to the island the prisoners slept upon one large platform, similar to a military guard room bed, there was no dining hall for them; they all dined and took their other meals in an open wing, which now forms one of the wings of the prison. Subsequently I drew a plan by which each man might have a separate sleeping cell; that was submitted to the Executive, and approved of; but, at the same time, I should remark that His Excellency the Governor General, Sir Charles Fitz Roy, wished to try the plan which had been followed out at Van Diemen's Land, and which I had obtained from that Colony, of having separate bunks for the prisoners—the old sleeping places were therefore taken down, and the arrangement which the Committee have seen was adopted. These separate bunks were put up, the dining hall was built, and the old dining hall converted into a ward. The new arrangement took up more room than was originally required, and an additional room was thus provided.

5150. Were there any improvements suggested by you with regard to prison discipline? I have mentioned about the task-work, that has remained in force up to the present time. There were no other official suggestions of mine till lately. Shortly after I took the entire charge of the island I wrote a report recommending that the system of task-work, of remission of sentence, and of reward for good behaviour should be continued, and that at the same time the scale should be reduced, so that a man should be required to perform a larger amount of work than formerly.

5151. That he should be required to do a larger amount of work before he should be entitled to consideration? That he should do a larger amount of work, and get a less allowance of time than was permitted under the regulations that were annulled by the order of the Executive in 1858. By those regulations the men were enabled to shorten their time, provided they did the work required by the scale, to the extent of half-a-day. I considered half-a-day, as a maximum, was too much, and proposed that it should be reduced to a quarter of a day, as a maximum, although I recommended that they should still be paid the gratuity in money for the full work they might perform over their task.

5152. Do you not think it would be an improvement to allow every prisoner on the island a small sum of money daily, for good behaviour, which might be banked for him, so that when he left the prison he might have a small sum to take him to any part of the Colony, and not be turned loose upon the world without means—to become a thief and a vagabond? I think it is very desirable that prisoners should have some means when they leave the establishment. Under the old system a large proportion of the men used to bank considerable amounts. I have paid as much as £6 from the Savings' Bank to prisoners on leaving. I may explain what that system was. The prisoners were required to do a certain amount of task-work per day that was set down as a penal task, and for all beyond that they were entitled to be paid at a certain rate, so that if a man did, within a day, as much as two days' task he was paid for one day; if he gained two-quarters he got two-pence, if three-quarters threepence. The men were not allowed to expend more than threepence per diem, the remainder if any was banked for them. Many of the stone-cutters, setters, and men who worked hard, at that time banked in a month as much as five or six shillings after having received the small gratuity which they were allowed to expend in tea, sugar, and tobacco. At the present time, the regulation with respect to the money allowance is still in force, though that which refers to time is not; but the men do not work as they used to do.

5153. Are not some of the prisoners, on account of their poverty, obliged to leave the island in their prison clothes? I have never seen any instance since I have been there.

5154. If they had no plain clothes of their own, they would have to leave the island in the prison clothes—there is no arrangement on the part of the Government to find them in other clothes? There is not; but I have never seen an instance of a man leaving in prison clothes, excepting, perhaps the trousers, which have been given him. The clothes they have

G. K. Mann, on when they come in, are tied up in bundles and given to them when they go away; and sometimes, if a man has not a jacket, a comrade on his going away will give him one.

Esq.
25 April, 1861. 5155. The buildings in which the prisoners are accommodated at Cockatoo Island are, I believe, in a very bad state, and admit the rain? The roofs are in a very bad state of repair. I put on the estimates last year, or two years ago, a sum of £200, for re-shingling them. I have lately had authority to expend that £200, and part of the shingles for repairing them are now on the island. In fact, if the men had not struck work, I believe the buildings would have been re-shingled by this time.

5156. If part of the labour of the island were applied to the extension and improvement of the prison buildings, would it not have a beneficial effect upon the prison discipline? I think the buildings on the island are so defective in construction and arrangement, that it would be throwing labour away to attempt to improve them.

5157. Might not other buildings be erected, even of a temporary character, to improve the accommodation? I do not think the island is properly situated for a penal establishment, and therefore it becomes a question whether it is advisable to expend money in improving the buildings. That question made me, in two or three reports I have sent in, suggest the propriety of fitting up a hulk to lay alongside the island. I was of opinion that one of the old men-of-war might have been got from the Home Government, brought out here perhaps with immigrants, and be fitted up very efficiently for a prison. It would have been capable then of being moved to any part of the harbour in the event of prison labour being required for the erection of forts, or for other improvements.

5158. It has been stated to the Committee, that in all probability the improvements on Cockatoo Island will take several years to complete; is it not your opinion that something should be done to improve the accommodation of prisoners during that length of time? Yes, but I think not the buildings; it was that opinion made me recommend the fitting up of the hulk.

5159. Do you think the present system of lodging prisoners, so many in one ward, is not only demoralizing to them, but injurious to their physical health? I think it is exceedingly wrong in every way, and must demoralize the men. It is a decided bar to efficient discipline, and, with regard to health, I believe that, were not the situation of Cockatoo Island most healthy, serious illness among the prisoners would have shewn itself before this. It is my firm opinion that no proper system of prison discipline can be carried out that does not provide a separate sleeping place for every prisoner. I have always entertained the opinion that each prisoner should be locked up by himself at night, and my experience confirms me more on that point.

5160. Are there any regulations on Cockatoo Island making personal bodily cleanliness compulsory on the prisoners? It is not mentioned in the general regulations; but it is carried out, as far as possible, as a matter of course. The men's hair is kept out close, and the men are obliged to be properly shaved; there are barbers for the purpose of shaving them twice a week.

5161. I was alluding more particularly to the washing of the body as a sanitary arrangement? The washing arrangements are very defective indeed; and since I have had charge I have on several occasions, when I could do it without risk, permitted the prisoners to bathe in the dock; but there are really no proper arrangements for washing. The men are allowed ten minutes to wash after they go out upon the works, five minutes are allowed when the bell rings to dinner, and a quarter of an hour in the evening before leaving the works.

5162. Have they a plentiful supply of fresh water? On the works they have, but not in the prison; there is a large supply there, but not as I conceive sufficient. There is no proper lavatory.

5163. Could not a plentiful supply of water be obtained upon Cockatoo Island for this large number of prisoners? Not at all times; water has been scarce there at times; and, in fact, I remember some time ago seeing water brought from Sydney to the island.

5164. Still a great deal might be done to improve the present state of matters in that respect? I think so; the establishment has not any modern appliances or arrangements; in fact, the prison was originally a stockade, and it has remained a stockade.

5165. When the Committee were at Cockatoo Island a few days ago we examined several prisoners—men who were sent as a deputation from the general body of prisoners—as to any complaint they had to make as to their general treatment; and the first complaint made was with regard to the chain system, or iron time; it was stated that a man sent for ten years under the old regulations, the first three years to be worked in irons, did not commence his probation time till he had worked out his three years in irons? That is the case, and that is the regulation. (*The witness produced the same. Vide Appendix A.*)

5166. Do you not think the additional punishment of causing a man to work three years in irons is sufficiently severe, and that his probation time, if he is to have probation time, should commence from the beginning of his sentence? I am not prepared to say that, the punishment of irons is one which is generally given only for some serious offence, and should carry a very serious punishment with it. If the men know beforehand that it entails this extra service with it, I think it more deterrent than it would be otherwise. Many of these men get accustomed to the irons, and in a little time think very little of them.

5167. Another grievance of which the men complained was, that several men were kept on the island after the Judge's warrants committing them to the island had expired; they also complain that favouritism was shewn to some of the prisoners—that supposing two men had been sent to the cells for solitary confinement for fourteen days each, when the Judge's warrant expired in one case the man was set free, while in the other he was retained on the island until he had served out the additional time for which he had been confined? I do not think there

is any ground for making that charge of favouritism. With regard to detention, the regulations prescribe the following scale as an addition to the time to be served as probation:—

For a sentence of 28 days, an additional probation of	60 days.
” 21 days, ” ”	45 days.
” 14 days, ” ”	30 days.
” 10 days, ” ”	21 days.
” 7 days, ” ”	15 days.
” 4 days, ” ”	7 days.

G. K. Mann,
Esq.
25 April, 1861.

I believe the Classification Board have always acted upon that. When a prisoner is due for a ticket-of-leave, the whole detail is forwarded to the Classification Board, of which Mr. McLerie, the Principal Superintendent of Convicts, is Chairman. The matter is then considered, and recommended to the Executive, as the case may be. If there have been instances of men going away before their time, they have arisen out of some special recommendation. There is, however, one instance which I may mention, and which, perhaps, has given rise to this assertion. A short time ago there were two men due to go away, they were neither of them really bad behaved men on the island, but they had each received fourteen days punishment for one of these recent outbreaks. The time of one of these men was up, and he was forwarded to Sydney to the Inspector General of Police; by some mistake the fourteen days punishment had not been noted on the return, but it had been booked against him, and he thus escaped the extra fourteen days detention. I found out the mistake, reported the circumstance to the Government, and asked for authority to send the other man away upon the same terms; however, I did not get the permission, and the one man remained fourteen days longer than the other. That is the only case of the kind I recollect. Torpy was the man who remained fourteen days after he came up and claimed to be sent away. When he came to me I said I did not feel justified, because I had made one error, in committing another without the authority of the Government.

5168. Another grievance complained of by the men was this—they stated that the prisoners on the island were divided by the Visiting Magistrate, the medical man, and yourself, into three classes; that the first-class men in the hand-carts had to draw 115 feet a day; in the second 64 feet; and in the third 32 feet; that it was customary to work men of the first and second classes in the same gang, consequently, that the men of the first class could not do more than the second, for which amount of work the second class received indulgences, while the first received none? It is not customary to put men of different classes together to work in that way. In fact, my strict orders are to work the men of each class as much as possible together. It does occur, nevertheless, sometimes, that men of different classes do work together; but far from its militating against the advantage of the men, it very often turns out in their favour. For example, to take hand-cart labour, each man has to move a certain number of cubic feet in a day to a certain distance; the aggregate labour required of a gang if composed of men of the second and third classes is so much less than when composed entirely of first or second class men; and an average is struck of the labour of the whole, credit being given for the difference.

5169. It was stated that unless a first-class man moved his 115 feet of stuff, although working with a second-class man, he got no indulgence? Not unless the men averaged the necessary amount.

5170. It was stated that it was impossible, from the circumstances in which he was placed, for such a man to do his task? That is not the case; the amount of work required at the hand-cart can be done by any men if they choose to work; and men can and do earn a very good gratuity at it.

5171. Do you think any good results from putting prisoners upon a stinted allowance of food—by giving them only two meals a day, breakfast and dinner, and not giving them supper? I think the men are exceedingly well fed at Cockatoo Island, and that they have no reason to complain of the quantity of rations they have. I go further on that point, and I think if any system could be devised, making the amount of food depend upon the amount of labour the man performed, it would be a correct one for prison discipline.

5172. It is stated that at Cockatoo Island the men receiving no supper are often obliged to go from dinner-time of one day to breakfast the next without food—I am alluding to men who receive no indulgences, and who can lay out no money in providing food for themselves? The rations* the men get is 1½ lbs. of bread, and, I believe, it is quite the exception where men have not some of that left from their dinner. The men who are industrious, and who earn a gratuity, have always the means of purchasing some little addition of tea, sugar, and tobacco, and, in some instances, they purchase extra bread.

5173. If a man is supposed on the sick list, even though he is not confined to the hospital, but is merely exempted from work, he is not allowed any gratuity whatever? That is, he is not in the way of earning any gratuity, and, I think, it would not be advisable to allow him any gratuity; for there is, no doubt, a large amount of malingering, and this would tend to increase them. It often happens that when a man is ordered to do a particular work he does not like, he goes about it sulkily, and says, “Take me to the doctor.” The doctor is, perhaps, puzzled, and puts him on the exempt bank, when I am convinced the man is malingering. If the men, in such cases, received gratuities, it would be an extra inducement to evade work.

5174. It was also stated to the Committee that the prisoners had very great difficulty in communicating with the authorities—that they were only allowed to see the superintendent, whatever the complaint might be, once a week; therefore, a case might arise on Monday, and on the

* NOTE (by witness on revision):—Daily ration for a prisoner on Cockatoo Island:—1½ lb. bread, 1 lb. of meat, ½ lb. maize meal, 1 oz. sugar, ½ oz. salt, ¼ oz. soap; vegetables, if ordered by the Medical Officer, not to exceed ¼ lb. per man.

G. K. Mann, Esq.
25 April, 1861.

the Saturday, following, when they saw the superintendent, it might be too late? That statement is wrong, and very highly coloured indeed. The regulation I have established since I have been superintendent is, that any man who wants to see me is to put down his name, and that I will see him, as a rule, on a particular day in the week, when I am prepared to take down all their complaints in writing. I make a practice of taking down the names of all persons making complaints, and opposite their names to set down their complaints. I have also informed the men that in any case of emergency, they are to be brought up to me at once; but I have opposed, and it is necessary that I should do so in order to carry out my duties on the island, the reception of complaints at all hours when I am engaged upon other duties. It was the practice, formerly, to take the officers off their duties in order to accompany a prisoner to the office to make some frivolous complaint which might have stood over until the proper time for hearing them.

5175. The prisoners also state that even when they offered to make complaints against the free officers, and they especially alluded to Mr. Broderick, they were threatened to be sent to the cells—has any such complaint reached you? No man has ever made such a complaint to me. I have never heard it before, and I do not believe it. I am sure Mr. Broderick never threatened to send a man to the cells for making a complaint to me; he has no such authority.

5176. You think every facility that is required is given to prisoners for lodging complaints? I am thoroughly convinced of it, that every facility has been given them. I do not allow them to come up to me and make complaints on the works, that is contrary to the regulations; their duty is to give their complaints to the free officers, and they are bound to send them up to me, and in no instance has that been omitted.

5177. Have you any means of informing the Committee what proportion of the men on the island have been re-convicted, after receiving tickets-of-leave? I have prepared a return, which I beg to hand in. (*The witness handed in the same. Vide Appendix B.*)

5178. From this return it would appear that out of 258 prisoners now on the island, only 34 are fresh convictions under tickets-of-leave? Yes, exclusive of those who have been returned in consequence of the cancellation of their tickets-of-leave.

5179. Looking at the small proportion one would at first sight suppose that system must have worked well? It is difficult to say that. I have no means of knowing what proportion there may be at other penal establishments.

5180. It shows, so far as Cockatoo Island is concerned, that the bulk of your prisoners are not those hardened offenders who are constantly in prisons? It is 14½ per cent., exclusive of those returned by cancellation of tickets-of-leave.

5181. Are there any other papers or returns you have prepared which you think will be of service to the Committee? I have been asked for a return of the comparative sentences passed by the Supreme Court, and the Courts of District and Quarter Sessions, prior to and subsequent to the 1st of June 1858. I beg to hand them in. (*The witness handed in the same. Vide Appendices C and D.*) It has been currently stated that the sentences passed by the District Courts and Supreme Court have been lighter in consequence of the more stringent regulations of the Executive. I think these returns will hardly bear out that assertion.

5182. *By Mr. Sutherland:* What is the duty of the Assistant Superintendent Clerk of Works under you? He has the management of the machinery and current works; he superintends the works in progress on the island, under my direction. He is Assistant Engineer in fact.

5183. The whole of the works are more immediately under his control, and being clerk of the works I suppose he is constantly on the works? Yes.

5184. By whom are the plans drawn for the works? He assists me in preparing plans, and has the general management, under my directions, with regard to the works.

5185. He gives instructions to the various foremen under him for carrying out the works? Yes.

5186. How many foremen have you on the island? I have four, one senior foreman and three others.

5187. What I wish to know is, what particular branches they are over? I have a senior foreman, who is a practical man, and I have placed him over the general building arrangements; he has charge of the carpenters, mechanics, and building arrangements; then the other foremen are employed superintending such works as may be going on. They each have a certain number of prison gangs under them, and it is their duty to record the work of each prisoner.

5188. What is the name of the foreman over the buildings you refer to? Mr. Cahill.

5189. Is Mr. Cahill a practical man? He is a carpenter by trade, and was engaged as a builder before he came to me. He has done his work very efficiently, and has been eight years on the island, I believe.

5190. What is the name of the foreman over the masons and stone-cutters? I think the foreman over the stone-cutters at the present moment is Mr. Fitzgerald.

5191. How long has he been on the island? He has been in my department, I think, about seven years.

5192. As foreman of works? Yes. He was on the island before in some capacity—not under me.

5193. Are you aware what office he held on the island before? I think he was a sergeant in the police.

5194. Is he a practical mason or stone-cutter? He understands it very well. He is a very good man at keeping the record.

5195. What I wish to know is, whether he is a practical man who can direct other men how to do their work? I think so; he never takes any bad work from the men; he turns out very good work.

5196. The greater part of the men are those who have learned what they know on the island—is there a tradesman among them? There are some tradesmen; but the majority of the stone-cutters have been taught on the island. G. K. Mann,
Esq.

5197. Do you think the foreman capable of teaching them? Quite capable of teaching stone-cutting; it is plain work. All his duty is to take charge of the men, to measure the number of superficial feet of work done, to record it, to see that the stones are cut square and not in wind, and not to accept them if they are. 25 April, 1861.

5198. Is it his duty, if the men are not able to take lines, to shew them how to get the lines? Yes, he shews them.

5199. Is there not a quantity of wrought stone lying on the island now that is condemned for the purpose for which it was prepared? I do not think there is a single stone. If the stone is improperly cut, or cut into wind, the man who cuts it is not allowed measurement for it. They know that, and they are very particular about it.

5200. Has it come to your knowledge that a quantity of stone has been improperly cut by these men, and that they have not been paid for it? There have been occasionally complaints made to me on Saturdays that the foreman in charge of the stone-cutters has not allowed for work done; but it is not always Mr. Fitzgerald's duty. I have gone down in those cases and examined the stones myself, and in some instances I have refused to allow credit unless the men faced over the stone again, which they have done. In other instances I have conceived that the work might have been passed, and have passed them.

5201. What I wish to know is, whether it has not come to your knowledge that stones have been cut wrong and broken up at various times? No, it could not have taken place without my knowledge, and I have never heard of it. I remember an instance of one particular bed of stone which after it had laid a little while began to laminate, and that was condemned as not being fit to go into the building, but that was not the fault of the cutter, and he had been paid for it.

5202. What is the name of the third foreman, and what is his duty? Mr. Easton, he is superintendent of the quarry gang at this present moment; and there is Mr. Kelleher, who superintends the gangs that are employed more generally in moving timber, moving stones, and in other general work.

5203. How long has Mr. Easton been on the island? He has been many years upon the island as superintendent of the quarrymen. He was employed in former times under the Royal Engineer Department. He afterwards came to the island in the same capacity as an overseer, and when I took charge he was transferred to my department as a foreman.

5204. Then he has practical knowledge of quarrying, or of whatever duty you require of him? Of excavation and quarrying, a very good knowledge.

5205. By what means did the prisoners Johnson and Ferris escape from the island? A man-of-war was in the dock, and they were employed at night at the engine, pumping the dock dry; about twelve o'clock they slipped away from the island. I was not on the island at the time, but I understand that they went to the police wharf, unhooked a boat that happened to be there, and went away in it.

5206. To whom did the boat belong? To Mr. Broderick.

5207. Was Mr. Broderick or the officers of the island allowed to keep boats for their private use? Yes. There was nothing in the regulations against it.

5208. Do they keep boats now? For the last eight years, since I have known the island, boats have been kept there, but have lately been removed.

5209. You say the prisoners were pumping at night—is it usual for prisoners to be kept working at night? This was a special case, and a special authority had been given to keep out prisoners in cases of emergency of this sort. Since then no prisoners have been kept out.

5210. Was it not frequently done before that time? Yes.

5211. Could not the dock be employed in the daytime? If we had time to do it, but in this case I believe they were anxious to have the ship dry early in the morning.

5212. Are the pumps you have in working order, and fit for the work they have to perform? They are double-action pumps, and they have been working unsatisfactorily, but I have new pumps in course of erection; one set is already completed, and the other is nearly ready to be erected. These I shall work in addition to the double-action pumps, and we shall then have very increased facilities for pumping the dock.

5213. When will the pumps now in course of erection be completed? One set is completed, the other is in a forward state, and I should hope that in from two to three months it will be completed.

5214. Where were the prisoners Landells and Hughes concealed at the time they were missing for two days or more? We found them in the store for the engine work, over the engineer's office. There is a door leading from the passage into the engineer's office; this had been locked, but the key had protruded a little way through, and Landells with a pair of pincers had seized hold of the end of the key, unlocked it, and gone in. The pair of pincers was found in the store over my office.

5215. Where was the boat made in which they attempted to escape from the island? It was made in the carpenters' shop over the beams; it was a small boat—called a boat because there is no other name to apply to it—formed of a number of half-inch planks which the sawyers were cutting at the time, and which were being stowed over the beams in the carpenters' shop. Landells was employed to stow it away, and he spread them out so as to hide what he was doing from the view of any one in the shop below, and there he constructed this boat. At that time nearly all the carpenters were employed in putting the roof upon the other wing of the large workshop, and Landells was in the shop by himself for some time.

- G. K. Mann, Esq.
25 April, 1861.
- Mr. Cahill was also a good deal engaged about the roof, and only went into the shop from time to time, and during this time Landells knocked this boat together in the way you saw.
5216. Who had charge of that shop when this boat was made? It was under Mr. Cahill's charge, but he was engaged among the mechanics who were putting on the roof.
5217. Was Landells in Mr. Cahill's charge at the time? He was one of the mechanics under Mr. Cahill's charge.
5218. What has become of the vessel you had for your diving bell? She is partly broken up.
5219. And the punt belonging to her? And the punt belonging to her is also partly broken up. I had a vote to build a new vessel and some new punts, these being entirely rotten and unsafe to be used, and I propose to use as much as I can of the old material in the construction of the new punts.
5220. In whose charge was the vessel at the time it was broken up, or how came it to be broken up? She was in my charge.
5221. I mean the person under you? Mr. Kelleher.
5222. By whose negligence was she lost? I can hardly say she was lost by negligence at all; I do not consider that the vessel is lost. The vessel was taken round there, and intended to be hauled up as high as she could be, for the purpose of breaking her up. I think she might have been got up higher. I think Mr. Kelleher had charge of her at the time. She went down in deeper water than I intended; she was a very rotten old vessel, not fit to be continued for a diving craft.
5223. Then I understand from your answer that you had decided previously to her being lost or wrecked to take her there and break her up? I had decided previously to break her up.
5224. Then she was not in working order or fit to be used? Not at all, she was unsafe; in fact, I was afraid she would not have held out to let me complete the operations at the entrance of the dock.
5225. Was there a vessel employed to lift her? I tried to lift her, and to put her up on higher ground.
5226. What did it cost, or about what did it cost to try to lift her? I do not think it cost anything at all. The vessel with which I tried to lift her was one I borrowed for the occasion.
5227. There was nothing paid for the vessel? Nothing.
5228. Nor to the men working her? It was convict labour we used.
5229. Who has charge of the stores belonging to the engineer's shop? I have a clerk there in charge. Mr. Broderick superintends it principally; and there is a clerk and storekeeper there who issues the stores, and keeps an account of the details of the expenditure.
5230. Have not stores been often given out by prisoners without a free man having been there? That was the case formerly; but I represented it, and I think for some years past nothing has been given out by the prisoners.
5231. Upon whose recommendation was the old system altered? I believe upon mine. I do not remember at this present moment—at all events, I saw the necessity of having a free officer as a storekeeper, and also as clerk to check the gratuity payments, instead of a prisoner clerk as formerly. I have not employed a prisoner clerk since I have had the control of the island. With regard to the issue of stores, I believe the stores are as carefully issued and recorded as in any department of the Government. In issuing oil, no doubt the clerk employs a prisoner, but I believe every item issued is recorded by him.
5232. Can you furnish a return of the number of prisoners now on the island? I beg to hand in a statement of the number on the island this day. (*The witness handed in the same. Vide Appendix E.*)
5233. Have you not sent a number of men to Berrima lately—men who are not fit for hard labour? There are nine now on the island who are to go, but they have not gone yet. There were five or six sent to the Darlinghurst Gaol at the time of the insubordination, and I understand to-day, from Mr. Read, that they have gone. I have had some correspondence with the Inspector General lately, to learn when he will be prepared with an escort to convey them, but it is not yet decided. There are nine under orders, but there is a larger number who, in my opinion, ought to go.
5234. Will you furnish the Committee with a return shewing the number of men on the island during the past month, how they have been employed, the quantity of work they have done, the amount of gratuity they have earned, and the number of days they have obtained credit for? I will. (*Vide Appendix F.*)
5235. *By the Chairman:* Can you explain what appears to be a discrepancy in the paper you have handed in (*Appendix E*)—in the day description you say "cells 1," and in the night muster "cells 10"? In the night muster, the men referred to are those who sleep over the cells, not for punishment.
5236. With regard to the supervision of the police—are the police of the island under your supervision or control? Not at all.
5237. Have you no authority over them? None.
5238. Have you no authority, as far as the discipline of the island is concerned, to see that they do their duty? I have not; they do not report to me in any way. Formerly there was a police force which was considered an integral part of the establishment, consisting of a sergeant and twelve men. Since the military guard has been replaced by a detachment of the metropolitan police, I as superintendent have ceased to have any control whatever over these police; they have been removed entirely from under me, excepting that I pay them; they are nominally under the Visiting Magistrate according to the regulations, and are ordered to report to the superintendent, and all orders to be issued to them by the Government or Visiting Magistrate were to go through the superintendent only. That has not been

been the case of late, since the military guard has been replaced by a detachment of the metropolitan police. G. K. Mann, Esq.

5239. You think it would be an advantage to the discipline of the island if that were the case? I am thoroughly convinced it ought to be the case, that is, the permanent island guard of one sergeant and twelve men. My opinion is, that the establishment ought to be placed under one head; under one officer, who should be responsible for the due performance of the duties of the establishment. Until that is done the establishment can never work smoothly and properly. 25 April, 1861.

5240. *By Mr. Mate*: Suppose anything occurred on the island, which, in your opinion, rendered it necessary that the police should be called upon to act, should you feel that you had authority to call upon them? I should call upon them, and I have no doubt they would act; but if they said, "No, we do not choose to act," I could not order them. The regulations of the military were, that I was to apply to the officer when I wanted their assistance, and they were bound to give it. I suppose they would have used their own judgment in such a case, but I always found them most ready. In fact I have no complaint to make against the police; the men are apparently very willing to do their duty, but I think the inspector takes more authority upon himself than he ought to do. I have had occasion to report the inspector, who does acts which I consider exceedingly wrong, and without my knowledge. In fact I am kept in ignorance of what he is doing. Reports are made to the Visiting Magistrate, of which I know nothing until two or three days after, reports which ought to be made to me at once, that no time might be lost. In fact I consider that the superintendent ought to be responsible for the entire establishment, and if he does not do his duty the Government know what to do with him. At present the establishment is under the Visiting Magistrate, under the superintendent, under the Inspector General of Police, and I may say under the inspector of police in charge. All appear to have something to say, though I must say that the Inspector General has not interfered, beyond removing the permanent island guard from under the control of the superintendent.

5241. *By Mr. Sutherland*: What was the nature of the cases you had to report against the police? In one instance I ordered a sentry to be placed upon the prison yard gate, on Saturday afternoon and Sunday, when the men were locked up, in order that they might be some assistance to the free officers in charge, and also to prevent the prisoners coming out without due permission. That order has never been carried out. That was one of the instances in which I reported them.

5242. Have you police regulations, or regulations for the general government of the island? There are the regulations that were published I think in 1855, before the dock was completed, and which, in my opinion, are quite inapplicable to the present state of the island.

5243. Are you working under those regulations at the present time? Yes; they are obsolete, and there are consequently constant misunderstandings.

5244. By the regulations then the police are properly under your charge? The regulations say they—the island police, viz.: 1 sergeant and 12 men—are to be under the Visiting Magistrate and the superintendent, and that they are to report to the superintendent, but the regulations are not distinct and clear. I have sent in two codes of regulations for the sanction of Government.

5245. They have not been acted upon? They have not been sanctioned.

5246. Did the inspector on the island give any reason why he did not accede to your order with respect to the police being placed on the gate? No, I do not think he did; he wrote me a peremptory note, of the tone of which I complained to the Government, that his policemen were not to be put there to shut the gate when prisoners came out, and that if I did not put a free man there he would remove the sentry. I wrote to him not to remove the sentry without instructions, and then I reported the matter to the Government, and the sentry has never been there since. There are two warders inside the yard whose attention is taken up by the prisoners, and some of the prisoners were in the habit formerly of slipping out of the gate and roaming over the island, and I placed a sentry there and gave orders that no prisoner was to be allowed to pass without the permission of the principal warder inside.

5247. The men, I believe, are now kept at work on the island until two o'clock on Saturday afternoon? Yes.

5248. Is that in accordance with the regulations of the island? That, I believe, is the general regulation of the island, as far as I can remember.

5249. Your instructions are, that they are to do so? Yes, I think I have instructions; it has been the custom, I think, for some years.

5250. *By the Chairman*: Did the men work until two o'clock on Saturday before the new regulations were issued? As well as I can remember for the last six or seven years they have worked until two.

5251. It has been stated by the prisoners that before the new regulations were issued they worked only until twelve o'clock, and that now they are kept at work until two o'clock to enable the men under the old system to get half-a-day? I think in former times they did work till twelve o'clock, and that then, when the system was adopted of allowing them to earn half-a-day's remission, they were kept on until two o'clock to enable them to do so much work as would entitle them to a mark.

5252. This is a grievance which the men under the new system say they labour under? It is a very recent idea, they never complained to me of it as a grievance, excepting one man who, just before the last strike, said they had no right to work after twelve o'clock. I think myself they are bound to work until two.

G. K. Mann,
Esq.

25 April, 1861.

APPENDIX.

A.

CODE OF REGULATIONS.

1. The periods of probation to be served by prisoners to entitle them, in the first instance, to tickets-of-leave, and subsequently to conditional pardons, will be proportionate to their sentences according to the following scale :—

LENGTH OF SENTENCE.	TERM OF PROBATION TO BE SERVED.	
	On the island, for a Ticket-of-leave.	With a Ticket-of-leave for a Conditional Pardon.
15 years	8 years.....	4 years.
14 "	7½ "	3½ " "
13 "	7 "	3 " "
12 "	6½ "	2½ " "
11 "	6 "	2 " "
10 "	5½ "	2 " "
9 "	5 "	2 " "
8 "	4½ "	2 " "
7 "	4 "	2 " "
6 "	3½ "	2 " "
5 "	3 "	} The full unexpired term of the sentence.
4 "	2½ "	
3 "	2 "	
2 "	1½ "	
1 "	1 "	
9 months	} No reduced period of probation.	
6 "		
3 "		
2 "		
1 "		

2. No portion of the time during which a prisoner may be worked in irons will be counted as part of his period of probation, but on his release from irons he will be required to serve the full period of probation affixed to his sentence by the foregoing rule.

3. The period of probation to be served for a ticket-of-leave can be shortened by extra work under the task system, but not the period of the original sentence. By extra work under the task system a prisoner will be able to shorten the period of his servitude in irons, and also the period of his probation for a ticket-of-leave, but the term of the sentence passed on a prisoner cannot be shortened otherwise than by the pardon of the Governor General.

4. Prisoners under cumulative sentences will be required to serve for their tickets-of-leave a period of probation equal to the sum of the periods of probation fixed for each sentence according to the above scale, and a similarly prolonged period of probation as ticket-of-leave holders to entitle them to conditional pardons. Thus, a prisoner under two sentences, the one of fifteen and the other of ten years, will have to serve a probation of thirteen and a half years for his ticket-of-leave, and a probation of six years as a ticket-of-leave holder for his conditional pardon.

5. Prisoners received on the island under second sentences for felony or any transportable offence will have one-fourth added, and prisoners under a third or any subsequent sentence of the same nature will have one-third added to the period of probation fixed for sentences of the same length by the above scale.

6. A prisoner sentenced for a period not exceeding twelve months will only be able to shorten his confinement on the island by extra work under the task system. On the completion of such extra work of the time computed to be equal to that of his sentence, he will receive for the remainder of the actual term of the sentence a ticket-of-leave.

7. In order to prevent the interruption which it has occasioned in the progress of the works, the prohibition to work under the task-work system shall no longer be imposed as a punishment under magisterial sentences for offences committed on the island; but, in lieu thereof, the Magistrates or Visiting Justice shall be empowered to add to the offenders' period of probation for a ticket-of-leave, according to the following scale :—

For a sentence of 28 days, an additional probation of 60 days.	
" 21 " " "	45 "
" 14 " " "	30 "
" 10 " " "	21 "
" 7 " " "	15 "
" 4 " " "	7 "

8. A sentence passed upon a prisoner by the Supreme Court or Court of Quarter Sessions whilst he holds a ticket-of-leave will be added to the unexpired portion of his original sentence, and the probation which he will be required to serve will be in proportion to the duration of these sentences combined.

9. The forfeiture of a ticket-of-leave for breach of regulations, without an additional sentence, will subject the holder to serve a probationary period, for the renewal of his ticket, of not less than six nor more than twelve months; such period to be fixed by the Classification Board at their next meeting after the prisoner's admission on the island.

10. Prisoners serving under sentences passed in the Mother Country will have the benefit of these rules, as far as they can be applied to their cases without interference with Imperial regulations.

11. The periods of probation to be served by Home prisoners shall be fixed by the Classification Board at their monthly meeting, in accordance with the recommendations of the Magistrates by whom they shall have been sentenced.

12. The police history of every Home prisoner, from the date of his arrival in the Colony, shall be forwarded with him to the island from the office of the Principal Superintendent of Convicts, and shall be placed on the records of the establishment as a guide to the Classification Board in fixing the prisoners' probation when not provided for by the regulations.

ON THE PUBLIC PRISONS IN SYDNEY AND CUMBERLAND.

B.

A NUMERICAL RETURN of Prisoners discharged under the Provisions of the Regulations prior to June, 1858, and who have been returned to this Establishment Re-convicted, or with Tickets-of-Leave cancelled, to serve their Sentences under the subsequent Regulations now in force.

G. K. Mann, Esq.
25 April, 1861.

Tickets-of-leave cancelled.....	24	Present strength of the prisoners on the Establishment	258
Fresh convictions	34		
	58*		258

* Being 22.5 per cent. of the present confines.

Cockatoo Island,
25 April, 1861.

GOTHER K. MANN.

C.

A RETURN of the Comparative Sentences passed upon Prisoners at Cockatoo Island by the Supreme Court, and Courts of Quarter Sessions, from the 1st of June, 1855, to the 31st of May, 1858.

	SUPREME COURT.														COURTS OF QUARTER SESSIONS.													
	YEARS OF SENTENCE.														YEARS OF SENTENCE.													
	1½	2	3	4	5	6	7	8	9	10	15	Total	1½	2	3	4	5	6	7	8	9	10	15	Total				
Murder and manslaughter			2		2					4	10	18																
Administering poison										1		1																
Rape			1							2	1	4																
Assault with intent to commit rape			1	3								4																
Indecent assault	1	3	7							1		12	2	2										4				
Attempt at unnatural crime	1			1								2																
Violent assault, &c.	1	3		9		2					1	16	1	1		1		1						4				
Burglary		1		5								6							1			2		3				
Assault and robbery	1			2	2	2	1			5		13			6		1		1					8				
Horse stealing, cattle stealing, &c.		1	7	4	23	14		1		2		52	1			26	1	9			2			39				
Stealing and larceny		1	26	8	15	1	2	1				54	2	9		10		4			2			27				
Mail robbery				1								1																
Embezzlement				1	2							3																
Fraud and false pretences			4						1			5			1									1				
Receiving stolen property	1	1		2								6																
Perjury				1								1																
Arson								2				2																
Forgery and uttering		1	13	3	8		2					27																
Court Martial				1		1				1		3																
	1	11	69	20	68	18	8	6	1	15	12	230	6	19	38	116					6			86				

Cockatoo Island,
25 April, 1861.

GOTHER K. MANN.

D.

A RETURN of the Comparative Sentences passed upon Prisoners at Cockatoo Island, by the Supreme Court and Courts of District and Quarter Sessions, from 1st of June, 1858, to the 24th April, 1861 :-

	SUPREME COURT.														COURTS OF DISTRICT AND QUARTER SESSIONS.													
	YEARS OF SENTENCE.														YEARS OF SENTENCE.													
	1	1½	2	3	4	5	6	7	8	9	10	15	Total	1	1½	2	3	4	5	6	7	8	9	10	15	Total		
Murder and manslaughter			1	1							2	3	7															
Assault with intent to commit a rape	1		3									4	1												1			
Indecent assault		1		1		1						3			1	2		1							4			
Attempt at unnatural crime			2									2	2												2			
Violent assault, &c.	1		4		1						1	7				3		2		2					7			
Bigamy			1	1								2																
Burglary			7	1		6		1	1		2	12			2	1		2		4		1			10			
Assault and robbery						1	2	4			1	8				1		5		5		3			14			
Horse stealing, cattle stealing, &c.				3	5	5	3					16				12		27		7	1		3		50			
Stealing and larceny			1	2	2	6						11				5	13	1	12		1				32			
Mail robbery								1				1																
Embezzlement				1	1							2				1	1								2			
Fraud and false pretences				4		2	1					7				3		4							7			
Receiving stolen property												1						1							1			
Perjury				1								1																
Arson				1		1						2								1					1			
Forgery and uttering		1	1	6	1	4	1					14				1	1	1		1					4			
Courts Martial					4						1	5																
	2	2	10	26	13	27	7	6	1		5	5	104	2	1	8	37	3	55		21	1		7	135			

Cockatoo Island,
25 April, 1861.

GOTHER K. MANN.

G. K. Mann,
Esq.
25 April, 1861.

E.

STATE OF Cockatoo Island, 25 April, 1861.

DETAIL.	Colonial.	Home.	TOTAL.	RELIGIOUS DENOMINATIONS.	
Under Sentence to the Roads	212	9	221	Protestants	133
Ditto Transportation ..	.....	.....	.....	Roman Catholics	111
Ditto to Irons	10	.....	10	Presbyterians	5
Ditto as Vagrants.....	.....	.....	.....	Jews	2
Ditto Tickets Cancelled	24	3	27	Pagans	7
Ditto Further Orders ..	.....	.....	.....
	246	12	258		258

NIGHT MUSTER, 24 APRIL,
1861.

DISTRIBUTION, 25 APRIL, 1861.

NIGHT MUSTER, 24 APRIL, 1861.		DISTRIBUTION, 25 APRIL, 1861.			
1 Ward	65	DRY DOCK.	Gateman 1, Messenger 1	2	146
2 "	66		Overseers	10	
3 "	16		Labourers	87	
4 "	41		Light hand-carts	6	
5 "	41	CONVICT ESTABLISHMENT.	Mechanics	41	
Hospital	12		Hospital 13, Attendants 3	16	
Cook-house	3		Cells	1	
Cells	10		Cooks 4, Wardsmen 10, Servants 18, Watermen, &c., 4	36	
Passage	4		Repairing Clothing, Shoes, &c.	6	
	258		Gardens	0	
			Sweeper and Shedmen	4	
			Washermen	5	
			Exempt by Surgeon	37	
			Signal Staff and Barbers	3	
		Constables	4		
			112		
	258		258		

There are also now in the Gaol 13 prisoners belonging to this establishment.

F.

A RETURN shewing the number of Prisoners on Cockatoo Island during the month of March, 1861, how they have been employed, the work they have done, the amount of gratuity earned, and the number of days obtained as credit.

	Penal Department— Effective.	In Hospital.	Exempt from Labour by Surgeon.	Under Punishment.	General Works.	Not on the Works from wet weather and other causes.	Total on the Island.
Gross Number during this Period.....	1,297	219	845	48	2,934	119	5,512
Daily Average " " "	59	9½	38½	2½	135½	5½	250½
Total Amount of Gratuity paid during this Period.....	£ 5 8 1	Nil	Nil	Nil	31 14 4½	Nil	
Daily Average to each Man	1d.	Nil	Nil	Nil	2½d.	Nil	

Number of Prisoners earning time by Task-work

Average time earned by each man during this Period..... 10½ days.

ON THE PUBLIC PRISONS IN SYDNEY AND CUMBERLAND.

191

VALUE OF THE PRISON LABOUR.

G. K. Mann,
Esq.

25 April, 1861.

<i>Blacksmiths' Work, &c.</i>		£	s.	d.	£	s.	d.	
Repairing and re-steeling	2395 Picks, @ 1d.	9	19	7				
"	" 924 Chisels, @ 1d.	3	17	0				
"	" 143 Jumpers, @ 3d.	1	15	9				
"	" 79 Wedges, @ 6d.	1	19	6				
Making	74 Screw Bolts, @ 6d.	1	17	0				
"	38 Nuts, @ 2d.	0	6	4				
"	151 Spike Nails, @ 1d.	0	12	7				
"	35 Drills and Turning Tools, @ 6d.	0	17	6				
"	23 Linchpins and Keys, @ 2d.	0	3	10				
"	4 Spanners and Tap Wrenches, @ 2s. 6d.	0	10	0				
"	12 Bars, Step Ladder, @ 6d.	0	6	0				
"	12 Washers, @ 1d.	0	1	0				
Repairing and re-steeling	3 Malls, @ 1s.	0	3	0				
"	Smiths' Tools	0	10	0				
Rivetting	Buoys, 2 men	13	4	0				
Heating	Rivets, 1 man	4	8	0				
Heating	Irons for fumigating, 1 man, ½ day	0	2	0				
					40	13	1	
<i>Carpenters' Work, &c.</i>		£	s.	d.	£	s.	d.	
Making	Gutter Bearers for New Workshop, 30 days, @ 6s.	9	0	0				
"	Patterns for Machinery, 9 days, @ 6s.	2	14	0				
"	Pump Wedges and Bout-hook Handles, 2½ days, @ 6s.	0	15	0				
"	Pick and Maul Handles, 240 @ 6d.	6	0	0				
"	Water-buckets, 2 @ 3s.	0	6	0				
Covering	Roof of Prison for fumigating, 33 men, @ 4s.	6	12	0				
Making	Covers for New Pumps	0	10	0				
"	Coal-box; repairing Bread-box, 5½ days, @ 5s.	1	7	6				
"	Straight Edges and Squares, 3 days, @ 4s.	0	12	0				
Staying	Pumps and fixing Girders, 11 days, @ 4s.	2	4	0				
Making	Frame for Cupola—New Workshop, 42½ days, @ 6s.	10	11	3				
"	new Ladder, 6 days, @ 5s.	1	10	0				
"	new Door for free Officers' Quarters.	1	5	0				
Repairing	Roof of Boiler-house and Coal-shed, 1 day, @ 5s.	0	5	0				
"	Wheelbarrows, Sentry-box, and Berths in Cells, 4 days, @ 5s.	1	0	0				
"	Forge Bellows, 7 days, @ 5s.	1	15	0				
					46	6	9	
Painters,	30½ days, @ 6s.	9	1	6				
					9	1	6	
Sawyers,	640 feet, @ 7s. 4½ 100	2	4	10				
					2	4	10	
Plastering,	60 yards, 3 coat, @ 7d.	1	15	0				
					1	15	0	
Quarrying,	693 cubic yards Rock and Earth removed 400 feet, @ 5s.	173	5	0				
Stone	sized up, 715 feet, @ 2½d.	7	9	0				
Ditto	cut, 1041 feet, @ 9d.	39	0	9				
Ditto	set, 7 perches, @ 6s.	2	2	0				
					221	16	9	
Engine	Fitters, 3 men, 22 days, @ 6s.	19	16	0				
"	Driver, 1 man, 22 days, @ 7s.	7	14	0				
Fireman,	1 man, 22 days, @ 5s.	5	10	0				
					33	0	0	
Docking	H.M.S. "Cordelia"	5	0	0				
					5	0	0	
Miscellaneous	Labour, 1344 men for 1 day=61½ for 22 days, @ 3s.	201	12	0				
					201	12	0	
<i>Penal Department.</i>		£	s.	d.	£	s.	d.	
Fifty-nine	men, for 22 days, @ 3s. each—(employed as wardsmen, cooks, water-carriers, washermen, barbers, &c., &c.)	210	14	0				
					561	9	11	
					210	14	0	
Gross Total earnings by 250 men, for 22 days					£	772	3	11
Average daily earning per man, including Invalids and all classes						0	2	9½
" " cost per man, with Military Guard						0	1	11
" " " " Police Guard						0	2	7

GOTHEK K. MANN,
Engineer-in-Chief.

SATURDAY,

SATURDAY, 27 APRIL, 1861.

Present:—

MR. LUCAS,	|	MR. PARKES,
MR. MATE,	|	MR. SUTHERLAND.

HENRY PARKES, ESQ., CHAIRMAN.

Penrith Gaol.
27 April, 1861.

[The Committee having met at the Railway Terminus, Sydney, proceeded *via* Parramatta to Penrith, where they visited the Court House and Gaol. The latter is a log building, faced with weather-boards, shingled, the ceiling being formed of logs, about forty-two feet long by eighteen wide, and divided into four compartments, which are entered from a passage about four feet and a half wide, lighted by an aperture over the gaol, protected by iron bars. At each end are apartments about eighteen feet by eleven and eleven feet high; running across these and let into the floor are iron bars, to each of which are attached three rings; one of these rooms is at present occupied as a store. The two central apartments are each about eight feet by ten, and eleven feet in height, and have also three iron bars sunk into the floor with two rings attached to each. In neither of the divisions is there any aperture for the admission of light and air.]

Mr. Henry Tubman examined:—

Mr. H.
Tubman.

5253. *By the Chairman*: You are in the police force? Yes.
5254. How long have you been in the force? Nearly twenty years.
5255. You at present hold the appointment of lock-up keeper? Of lock-up keeper and acting gaoler.
5256. How long have you held that office? Since last October twelve months. I was not appointed acting gaoler till the 1st of November, 1859.
5257. What class of prisoners is this building chiefly used for? All prisoners tried at the Courts at Bathurst on their way down to Darlinghurst Gaol, or Cockatoo Island, stop here one night and sometimes two, if the weather is not favourable for sending them on.
5258. Sometimes more, I suppose? They have not been detained more than two nights.
5259. What is the largest number you have received *in transitu*? Seventeen.
5260. Do you remember whether they were detained one or two nights? I can tell from the book. (*The witness referred to his book.*) Only one night.
5261. Do you recollect how they were confined during the night, whether in one room or two? There were ten detained in the large room, and the remainder in the two smaller ones.
5262. Were they at all refractory—had they to be chained? They are brought down on the chain, and the chain is left on one hand.
5263. Were they secured to these iron bars? That gang was not.
5264. Were they accommodated with blankets or any kind of bedding given to them? They had a couple of dozen blankets given to them.
5265. And they had to sleep in the best way they could, covered with these blankets? Yes.
5266. Had they any utensils during the night to make use of? Yes, tubs.
5267. Do you recollect whether the numbers that have been detained here, *en route* to Sydney, on other occasions, have been at all approaching that number? No, we have seldom had more than twelve.
5268. Have you ten or twelve often? No, not very often. The next gang was ten.
5269. What system do you adopt on receiving these men—how are they committed to your charge? On a warrant signed by the Sheriff that accompanies them, directed to all gaolers and lock-up keepers. As they come in here I search them, not taking them off the chain, and I then supply them with tea and anything they require in that way—never with any spirits, unless they are allowed by the doctor.
5270. How often do you receive prisoners *in transitu*? Very often; once every three months we receive a chain gang, but other prisoners *in transitu* from Bathurst, Mudgee, and other places almost every week. This day we had one from Bathurst and one from Mudgee, lunatics.
5271. Have you had many who appeared turbulent refractory characters? Not many.
5272. Do you chain them to these rings? Sometimes, when they are very bad characters.
5273. In cases where you have considered it necessary for their security? For their security only.
5274. How are they supplied with food when they are detained here? They are allowed a 2-lb. loaf of the best bread, and 1 lb. of the best beef.
5275. Do they generally arrive by the mail? No, they are marched down.
5276. Do they arrive here at all hours? They generally arrive here about two or three o'clock in the afternoon—they come on here from Eighteen-mile Hollow.
5277. They arrange their marches so as to be in in good time? Yes; it takes them seven or eight days to come from Bathurst, and they arrange their stages so as to stop at the various watch-houses on the road at night.
5278. I suppose prisoners are confined here who are sentenced by the Bench sitting here? Yes, for all sentences not exceeding a week; where a sentence exceeds a week, if for fourteen days, the prisoner is sent to Parramatta.
5279. All sentences under seven days, whether passed upon males or females, are carried out here? Yes.
5280. Where do you confine your female prisoners? If there are no male prisoners here we confine them here; if there are male prisoners we confine the females in a cell in the Court

Court House. There are three small cells at the end of the Court House where we sometimes Penrith Gaol. 27 April, 1861.
confine females; but if they are quiet and do not give any annoyance we put the males in the large cell and the women in a smaller one.

5281. Have you, during the time you have been acting gaoler at Penrith, had male and female prisoners in this building? I have.

Mr. H. Tubman.

5282. Often? I have, on several occasions.

5283. What means do you adopt on such occasions for securing the separation of the male from the female prisoners? We have no means of preventing their speaking to each other, but there can be no other intercourse.

5284. When there are any prisoners in the gaol is there any one in charge all night? Yes; there is a man on duty all night.

5285. Where does he discharge the duty? He remains in the yard between this and the Court House. (*Some twenty yards distant.*)

5286. There is an outside sentinel in fact? Yes.

5287. You have of course in your book entries shewing the number of sentences awarded by your local Bench? Yes.

5288. Will you furnish the Committee with a return shewing the number of prisoners sentenced by the local Bench since the 1st of January last, and the length of time for which they were confined? I will do so. (*Vide Appendix A.*)

5289. What means do you adopt of cleansing this place after a number of prisoners have been in it? It is mopped out.

5290. I suppose it is very filthy sometimes? No. If I have any here under sentence I sometimes make them clean it out.

5291. When do you expect the new gaol will be finished? The carpenter told me he was to have finished it on the 25th of this month, but I expect it will take him another month.

[The Committee entered the new gaol, which is a brick building consisting of two rooms, each about sixteen feet by twelve and ten feet six inches in height, and two cells, respectively ten feet by twelve and ten by thirteen, of the same height as the rooms. The cells form wings on each side of the house, and are entered by doors opening into the front room; abundant light and air are admitted by two ventilators about nine inches by two feet, protected by iron bars.]

5292. What is this central front room intended for? I have been told by the contractor that it is for the accommodation of the lock-up keeper; this room, and the one of the same size at the rear.

5293. The intended cells are on each side of this? Yes.

5294. Do you think this building, when it is completed, will serve the purposes of the wooden building we have been in? From my experience since I have been here, I think it would not.

5295. Do you think it a good arrangement for the lock-up keeper to live here with his family, having prisoners in the cells on each side of him? I do not think it by any means a good arrangement; it may be a very good arrangement as far as the security of the prisoners is concerned.

5296. Would you like to live here yourself? I should not like to bring my family with me.

5297. For what reason? There are a number of drunkards in this neighbourhood, and when they are brought in drunk they use the most filthy language I have ever heard since I have joined the police.

5298. Which would be heard by your wife and children if they were here? It might be heard on the other side of the road.

5299. You stated to me just now that you believe this building was erected here by mistake, and that it was intended for St. Mary's? Only from what I heard. I heard Mr. Robert Jamison say, it must have been a mistake to have put it here.

5300. You mean Mr. Jamison, the late Member of the Legislative Assembly? Yes.

5301. Is a watch-house badly wanted at St. Mary's? Yes.

5302. How many constables are stationed there? Two.

5303. How long have they been there? Only a couple of months; they were stationed there on account of the number of disorderly men at the railway, who caused a great deal of disturbance.

5304. If a constable apprehended a prisoner there at night time, what could he do with him? Bring him here.

5305. A distance of three miles? Four miles.

5306. He would have to bring a drunken, disorderly man a distance of four miles? In some cases now they are marched here, in others they are brought in on a cart.

5307. Do you consider that a watch-house is required at St. Mary's? I do.

5308. *By Mr. Lucas:* The only entry to these cells is through the living-room of the lock-up keeper? Yes.

5309. And when the cells are cleaned out all the filth from them must come through this room? Yes.

5310. And prisoners going from the cells to the yard in the rear must pass through the bedroom of the lock-up keeper? They must.

5311. There is no other way into the yard? No.

[Leaving the new gaol, the Committee crossed over to the Court House, and inspected the cells referred to by the witness. At the end of the Court House is a small door pierced with fourteen one-inch auger holes; this opens into a passage about three feet wide. On the left hand side are three cells, each about seven feet by four, lined with slabs, having no openings for the admission of light and air except

Penrith Gaol.
27 April, 1861.

Mr. H.
Tubman.

except ten one-inch auger holes, five respectively at the top and bottom of the door, and a small aperture in the ceiling. There was a most offensive, close, and musty smell in these cells, and when the doors were closed they were almost totally dark.]

5312. That is where you have confined females? Very seldom—only one or two during the last nineteen months.

5313. Are they locked up when they are not occupied? Not always.

5314. Is the outer door left open for the purposes of ventilation? I leave it open sometimes during the day, but I have now some gunpowder in one of the cells.

5315. How many confues have you had in the cells during the time you have been acting gaoler? I think I have had four altogether.

APPENDIX.

A.

RETURN shewing the number of Prisoners received at Penrith Lock-up, from 1st January to 30th April, 1861.

<i>In transitu.</i>	Taken into custody at Penrith.	Total.	Sentenced at Penrith.	Sentenced or committed to Parramatta.	Total.
21	68	92	15	9	24

Penrith, 3 May, 1861.

HENRY TUBMAN,
Acting Gaoler.

FRIDAY, 3 MAY, 1861.

Present:—

MR. MATE,	MR. WALSH,
MR. MORRIS,	MR. WILSON,
MR. SUTHERLAND,	MR. WINDEYER.

HENRY PARKES, ESQ., IN THE CHAIR.

John O'Neill Brennan, Esq., called in and examined:—

John O'Neill Brennan, Esq. 5316. *By the Chairman:* You held the office of Sheriff of the Colony for some years? Yes, and I consider that I am Sheriff now.

3 May, 1861. 5317. Something has taken place which, of course, the Committee do not wish to enter into, but there has been some action on the part of the Government with respect to your office? Yes.

5318. You still consider yourself Sheriff? I do.

5319. Are you still in the active discharge of the duties pertaining to that office? No, I am not.

5320. When did you cease to perform the active duties of the office? On the 15th February partially, and, absolutely, on the 16th or 17th of April.

5321. How long is it since your appointment to that office? I was appointed on the 2nd January, 1854.

5322. You have expressed a desire to be examined before this Committee? Yes; I expressed it to you.

5323. You were, I believe, previously summoned to give evidence, but in consequence of some objection raised by you, in which the Committee concurred, you were not then examined? Just so.

5324. It was part of your duty to inspect the prison at Darlinghurst during the time you were Sheriff? Yes; it was part of my duty.

5325. Did this inspection also extend to the prison at Parramatta, and to the establishment at Cockatoo Island? No; to Parramatta and the gaols generally, but not to Cockatoo Island.

5326. You considered it within your province to inspect the gaols throughout the Colony? Yes, as Sheriff, of course.

5327. Did you understand by the term "prisons," inferior establishments, such as the country lock-ups and places of that kind? No; these have been only lately established. I visited very few of them, and I exercised no control over them. The lock-ups were proclaimed gaols for a particular object, as I understood it, and that was to legalize the custody of prisoners awaiting trial at Quarter Sessions, otherwise the lock-up keeper would have no authority for their detention. I state that of course, knowing the object of Government, and in justice to the Government, because the idea of calling these lock-ups gaols is otherwise quite absurd.

5328. The Committee think it best that you make whatever statement you desire to make, without the usual interrogations by which these examinations are generally distinguished; and it appears to them, as well, that I should state to you, in general terms, the result of their inquiries on the spot, as to the state of the prisons at Darlinghurst and Parramatta, more especially of Darlinghurst. Of course I cannot go into details in any information I give to you. I only state the general results of our inquiry within the walls

of

of the prison. The Committee have visited Darlinghurst Gaol twice, and they have discovered, to their satisfaction as to the fact, that there has not existed any regulation compelling personal cleanliness among the prisoners for years past; they found some of the cells, especially in the female wing, very filthy with vermin; they also found that the bedding used by the prisoners was, in their judgment, very far from clean, according to the statements made by some of the prisoners, and corroborated by other statements; the blankets, in some instances, had not been washed for very long periods, more than twelve months; they also found that, in their judgment, there were not sufficient regulations in the conduct of the workshop to prevent the men from secreting tools to promote their own escape; there did not appear to be any means of search after the men left the workshops. The Committee were also surprised to find that there was no attempt at a school, or any means of instruction for the younger, or for any of the prisoners, and the general impression left upon our minds—I use the term “general impression” because, as you are aware, the Committee have not yet reported, and I believe I interpret the impression correctly—was, that there was a great want of vigilance in the general management of the prison, in the disposition of the wardens, in the regulations established for the good conduct of the prisoners, and for the purposes of their health and safe custody. I have given you this information out of what appeared to be fairness to you, so that you might be the better enabled to make any statement you chose to the Committee? With regard to regulations for personal cleanliness, there is no doubt no rule for compelling prisoners to wash themselves, or to keep themselves clean—no written rule; but it is the especial duty of the warden in charge of the particular wing to which the prisoner belongs, in the first place to see that the prisoners are not objectionable to each other for want of personal cleanliness; it is also the duty of the principal warden to see that the wardens in charge of the wing, or of the wings, do their duties in this respect; it is also the duty of the gaoler to see the prisoners once a day, and if he perceived any want of cleanliness on the part of any prisoner that rendered him objectionable to his fellow prisoners, it is his duty to remark it, and to see that it is remedied. Therefore, as in a regiment, the corporal, the sergeant, the subaltern, and the captain, have each their particular duties, so it is in the gaol, or ought to be. A person visiting, as I could only do, occasionally, seeing the prisoners at a distance—not examining their persons—could not ascertain whether they were personally clean or not, unless his attention was drawn to it; and I may here inform the Committee that my attention was never drawn to it but once, and that was by a Cockatoo Island prisoner. I remember now there were two. I think the name of one was Williams; he spoke to me about some men who were placed in his cell, whose persons were objectionable to him on account of want of cleanliness. They were short sentenced people. I ordered their removal from the cell, and directed them to be put in another cell by themselves. That is the only instance in which the matter was brought under my particular notice. Therefore, if such a thing has existed—and I presume it must have done from what the Committee say—all I can say is, that the warden in charge of the wing to which the prisoner belonged neglected his duty in the first instance; the principal warden, secondly; and the gaoler, thirdly. I as visitor once in ten days or so, as a general supervisor of the working of the establishment, could not be supposed to know all these things, unless my attention was drawn to it. With respect to the cells:—In the women’s cells I certainly knew there were bugs, and I saw them also in the men’s cells. The reason of their being in the state they were in when the Committee saw them was this:—Early in January, or at the latter end of December, 105 Cockatoo Island prisoners were sent to Darlinghurst Gaol for solitary confinement, and they were obliged to be placed in the wing next to the female wing. Their confinement entailed a great deal of extra duty upon the officers, and it was not safe or practicable to send—as I was informed when I spoke to the matron and gaoler about it—the men to whitewash the female wing, as the wardens could not be spared from their duties, to watch the prisoners while they were engaged in whitewashing the cells. That the cells were not in such a state some short time before, I am personally aware, because I saw them; but the Committee will bear in mind, that the influx of prisoners who cannot be clothed in the prison dress, who cannot be washed except by the positive directions of the medical officer, who have not even the power, if they were willing, to wash themselves, or even to comb their hair,—that such women coming in from the dens of Sydney almost daily,—must bring in vermin in immense quantities into the gaol; and therefore it is very difficult for prisoners of that class to be kept clean, or the prison in which they are confined. To the immense number of that class who go into the Sydney Gaol, I ascribe almost all the irregularities, and the deficiency in the general management and cleanliness. In 1856 there were of this class 2,571 males and 2,484 females, making a total of 5,055, sent for 24 or 48 hours, and 3 days; women most filthy in their persons, women that would not be washed, whom we dared not wash or put in the bath without the doctor’s orders, who, when they come into gaol, are barely able to walk into their cells from tremor, the effects of drink and dirt. These numbers include prisoners for solitary confinement and imprisonment without labour, and are all short sentenced prisoners generally speaking. In 1857 there were 1,998 males and 2,201 females, making a total of 4,199. In 1858 there were 2,275 males and 2,079 females, making a total of 4,354. So that this will, to a certain extent, excuse the officers for not keeping the women and their cells so clean as they ought to be. (*The witness handed in a return. Vide Appendix A.*) 5329. I may here state to you that the vermin more particularly alluded to is the common house-bug, which were noticed in some of the cells in nests consisting of hundreds, forming dark patches of an inch or two inches on the walls and ceilings, and in the hinges of the doors, and in all the cells they were noticed to be more or less numerous? With regard to the female wing it certainly did not come under my notice, because I had not visited that branch of the prison on account of the Cockatoo men. My attention was more particularly drawn

John O’Neill
Brenan, Esq.
3 May, 1861.

John O'Neill
Brenan, Esq.

3 May, 1861.

drawn at that time to the 105 men from Cockatoo Island, who were extremely troublesome, extremely noisy; their language was sometimes dreadful, and disgusting in the extreme, and it was with the greatest difficulty I could prevent their speaking to the women and gesticulating to them from the windows of their cells. The women had previously occupied the yard next to the wing occupied by these prisoners, and they were obliged to be removed and confined in the wing. That was the reason the cells were in that state when the Committee saw them. A short time before the Cockatoo Island prisoners came in I directed that a custom which had been previously adopted should be discontinued, that of driving nails into the walls, and making nail holes, as I considered that these holes formed receptacles for bugs and vermin. I directed that the nails should be taken out, that the holes should be stopped up with putty, and whitewashed over. I also directed the warder to get a particular kind of nail or hook made, to be driven into the wall for hanging the prisoners' clothes upon, and to have the holes well stopped up with putty, so that no crevices might be left to enable the bugs to squeeze themselves in. As to the hinges of the door, of course that was a thing I might not notice in a casual visit, but it is the duty of the warder who has charge of the wings, and who is bound to see that the cells are cleaned every day, to bring that under the notice of the matron.

5330. We noticed that? I am quite aware of that, and those who go specially to look into such matters may discover what others paying merely casual visits would not. It was, no doubt, the duty of the warder to report it.

5331. *By Mr. Morris:* Would you expect persons who had been extremely negligent to report their negligence to their superior officers? I had no reason to suppose they were extremely negligent. The particular duty of the warder is to see that these cells are kept clean; and, as I said before, I certainly did not visit the female wing for some fortnight or three weeks before that, and that accounts for my not seeing it in the state in which the Committee saw it. What drew my attention to them in the cells, both in the male and female wings, was the practice of killing the bugs on the wall with the fingers.

5332. *By the Chairman:* Perhaps it is as well to state here, that it has been given in evidence—though it is not before me to refer to—that the cells had not been cleaned for the previous six months at the shortest? That is whitewashed.

5333. Yes? I was not aware that it was so long as that; the regulation is, that they shall be whitewashed twice a year, and there is no necessity for doing so oftener if the cells are kept clean, still it is better to whitewash them every three months. In fact it is as well to do them often, but the gaol regulation is, that it shall be done at least once or twice a year. Now if the prisoner wardens were made to do their duty, and to keep the cells clean, it would not be necessary to whitewash them so often. With reference to the bedding not being clean, of course, the same remarks apply; but I am not aware, nor has it ever been reported to me, nor have I ever heard that the blankets were so very dirty as that, or so long unwashed. No doubt the prison was short of blankets, and my attention was drawn to it a short time ago when the Cockatoo Island prisoners were sent there, for one of the prisoners—and only one of them—spoke of his blankets being dirty. I examined his blankets, and they were no doubt dirty, and I directed that the prisoners should have other blankets; the reply was that they had no others.

5334. Some of the prisoners complained in very positive language of their bedding being lousy, but the Committee did not notice any filth of that kind? Such a state of things was never brought under my notice, for if it had been I should have directed the blankets to have been removed and scalded. I may mention that I had a fumigating room put up for the purpose of fumigating the clothes of the prisoners, and though I was constantly among the prisoners they never made a complaint of the kind except in one instance. Had they done so I should have given directions to have it remedied as far as the authorities could do so; certainly it was not brought under my notice by my subordinates, as such a state of things ought to have been. The gaoler should have told me of it, as it his particular duty, being resident in the establishment, to see to these things himself personally. He should see each cell at least once a day, or every second day; therefore, such a state of things could not have existed without his having neglected his duty, I must say, most grossly. When I visited the gaol I saw the blankets and bedding were folded up and piled upon the top of each other, and *I was not in the habit of taking them down and examining them*; and on the only occasion when I saw vermin I gave the orders I have just alluded to. With regard to the workshops and the searching of the men coming out of the workshops, it is the particular duty of the trade overseers to see the tools counted out to the prisoners and to see them recounted on their return, and particularly in the blacksmiths' shop. The overseer of that shop is supposed to be with the prisoners almost the whole day unless called away for some special purpose. It is also the duty of the principal turnkey to see that the officers do their duty in that respect when the prisoners are mustered, and to stand by as they pass into the wing. Before the trade overseers were appointed, which was in 1860, that duty was allotted to Mr. Harrison, the principal warder, and to the officers appointed to assist him; but since the appointment of the trade overseers, all the tools and all the materials are in their special charge, and they are accountable to the Colonial Architect for them. Since January, 1860, that branch has been entirely under the control of the Colonial Architect.

5335. *By Mr. Morris:* The workshops are not all under the same roof; for instance—the carpenters' shop is separate from the cabinetmakers, so that the overseer has to go from one part of the establishment to another to inspect the work going on, and during his absence men may secrete anything upon their persons, not the tools they work with, but tools they may

* NOTE (Correction by witness on revision):—I did not order them to be unfolded and examined, because I had no reason for doing so.

may make themselves or pieces of old iron, which it is impossible for the overseer to observe. Such things have been taken away, and for that reason search is necessary? To remedy that I proposed that the workshops now in progress should be all under one roof, and that proposal is now being carried out. I say it is impossible to carry out a proper system, and that is a branch of a system, unless the accommodation of a gaol is such as to enable the authorities to do so. While upon that branch of the subject, I may mention, that in 1854, shortly after I was made Sheriff, I represented to the Government the imperfect state of the gaols, and I may say, that I have endeavoured to push on the improvements at Darlinghurst as fast as I could, and urged the Government, on several occasions, to put sums of money upon the Estimates to enable me to get these improvements made which were absolutely necessary to enable the authorities to carry out a proper system, or to conduct the gaols properly. I have, over and over again, spoken to those in power upon the subject, and it is, perhaps, a disadvantage to me now; but the Committee will, perhaps, take my statement as as though it were a written one. I have, over and over again, visited every Minister that has come into power and specially drawn his attention to the state of the gaol, and to the impossibility of carrying out a proper system, and I have always been met by the Minister, "We will consider that subject presently; it is one of the subjects we will take up immediately, and go through with it." It is very difficult and sometimes very unpleasant for a Government officer, after such an intimation, to continue to write to a Minister, reminding him of these things. Such an officer would, perhaps, in the end, be his own friend, but certainly he will be a great pest to the Minister. In 1854 I wrote to the Government—

5336. There was no Responsible Minister in power then? I know that, but I mention it to shew that the subject then occupied my attention, and that I pointed out to the Government the imperative necessity of putting the gaol into a proper state, to enable a tolerably efficient system to be carried out. I would also refer to one document on the subject of the work done in gaols, and I may here say, that my object was not then to make money for the Government by the labour of prisoners; my chief desire was, to improve the gaol itself first, and then to let these men make money for the Government afterwards. In one of my letters, dated 13th October, 1856, addressed to the Colonial Secretary, I say, with reference to some comments that had been made by Mr. Forbes about the working of the men in gaol, "At the same time denying, *in toto*, that Mr. Forbes has introduced any new system of prison discipline into Parramatta Gaol; he has, no doubt, got employment for the prisoners from the people of that town; but I have yet to learn that a number of men cooped up in a small yard cutting stone, and fifty-four seated in the corridor of one of the wings of the gaol, cabbagetree hatmaking, and sleeping four or five in a cell at night, is a *new* and *improved* system of prison discipline, for, as I regard the subject, I apprehend that employment is but one of the very many important branches of the system, viz.:—classification, separate confinement during the hours of rest, education, religious and secular, most of which are defectively carried out in the gaols of the Colony, owing in a great measure to the establishments being wholly unfit for carrying out a proper system; therefore, I think it would have been much better had Mr. Forbes exerted the same energies to get the Government to obtain funds to enable them to carry out the improvements so much required in the establishment of which he is the Visiting Justice, and without which no proper system of prison discipline can be introduced, with good results, in that establishment."

John O'Neill
Brenan, Esq.

3 May, 1861.

(At the Chairman's request witness temporarily retired.)

Alexander Dawson, Esq., called in and examined:—

5337. *By the Chairman*: You are Colonial Architect? I am.

5338. Can you inform this Committee the number of prison buildings in the Colony, their extent, what state of repair they are in, and whether they are occupied or not? I understood from the note I received, that the Committee required the information only for the gaols in the County of Cumberland; but I will submit the additional information to the Committee.

5339. We do not want plans, but merely particulars as to the means of accommodation afforded by these buildings, and the other details I have mentioned? As far as Berrima, Bathurst, and Goulburn are concerned, I could simply say built of brick, consisting of so many cells. I will, however, submit to the Committee the additional particulars required.

5340. Perhaps you will supply the Committee with a return shewing the number of the principal gaols—I mean exclusive of common lock-ups—the areas they occupy, where you can, the number of cells, the accommodation they are capable of affording prisoners, what materials they are built of, the state of repair they are in, whether they are occupied or not at the present time for prison or other purposes; and, where you cannot give us these particulars, such particulars as you can give? I will do so. (*Vide Appendix A.*)

5341. Perhaps you had better send in two returns, one shewing the number of principal gaols, and the other shewing the number of lock-ups proclaimed as gaols? I am not aware what lock-ups are proclaimed gaols.

5342. Can you state to us whether the new lock-ups erected under the District Courts Act, for which there have been two grants voted by the Legislative Assembly of £25,000 each, are on the same plan as the lock-up at Penrith now in course of erection? Not at all, they are varied in plan; in some of the districts I have to convert existing buildings and add cells to them. There are a great many on the same plan.

5343. When you say a great many, how many do you mean? I should say half-a-dozen have been built; and there are some now being built.

5344.

A. Dawson,
Esq.

3 May, 1861.

- A. Dawson, Esq. 5344. How many are there in course of erection? I should say from twelve to fifteen.
5345. The lock-up now in course of erection at Penrith is a brick building consisting of a dwelling room for the lock-up keeper, with a cell on each side, the doors for entering the cell going out of the living-room, with a bedroom in the rear? In the rear of the lock-up keeper's living-room.
5346. You say you have built several on that plan—a dozen or more? Quite that number.
5347. *By Mr. Walsh*: The twelve lock-ups you have spoken of are principally for police purposes? Exclusively for transit purposes.
5348. The money voted for the extension of gaols to meet the requirements of the District Courts Act, has any part of it been devoted to building these lock-ups? No; the £25,000 has been confined to gaols and Court Houses only.
5349. The enlargement of existing lock-ups where District Courts have been proclaimed? Yes; and although not perhaps a competent authority in such matters, in all probability new lock-ups will have to be erected if the present ones are to be considered or converted into gaols.
5350. For instance, the lock-up at Yass has been enlarged? Yes, that is one; but it is proposed to build another watch-house there for night casualties.
5351. *By the Chairman*: Will you be good enough to state upon what plan the gaols are built under the District Courts Act? *There are three rooms in front; two for the use of the gaoler, and one for stolen property, and a series of cells to form a quadrangle in the rear.* The plans are designed to be capable of future extension.

(*II. Parkes, Esq., here left the Chair, and J. B. Wilson, Esq., was moved thereto pro. temp.*)

J. B. WILSON, ESQ., IN THE CHAIR.

5352. *By Mr. Mate*: Is the plan you have just described that upon which the gaol at Albury is erected? †No, this is a third-class gaol, such as is erected at Wollongong. † At Albury there is a first-class gaol of two stories.
5353. *By Mr. Morris*: What class gaol is the building at Penrith? ‡You may say it is a third-class gaol. ‡
5354. *By the Chairman*: Have you received any specific instructions from the Government as to the size of the cells? No, the Government have left that entirely to my discretion. I have erected a great number of gaols, I am sorry to say, and the capacity of the cells is chiefly guided by the climate in which they are built. There has been, of late, much consideration about the capacity of cells, and since the Crimean war the capacity of cells, especially for military prisoners, has been much increased. Of course it depends entirely upon climate and proper ventilation of the cell. Here and in Tasmania I have generally constructed cells containing 400§ cubic feet, and in military cells, upon recent instructions, the Imperial Government have allowed each man about 600|| cubic feet.
5355. I think the Government allows between eight and nine hundred feet? That is recently, and especially in hospitals it extends to 900 cubic feet.
5356. Is there any reason why we should restrict them to a few feet? No, except the expense. In England, where the climate is severe, it is necessary to keep away any excessive draught, and they warm the cells with heated air; but here they have sufficient ventilation and warmth without artificial heat.
5357. Perhaps you will be kind enough to inform us the size of the cells you are erecting in this Colony? They are generally about nine feet by six, and ten feet high. That is upwards of 600 cubic feet.
5358. *By Mr. Mate*: Will you describe the difference between the first, second, and third class lock-ups generally? ¶ I beg to state that I designed a series of Court Houses and gaols, which I estimated at £90,000. The Government, I believe, would not meet that expense, and these plans were all curtailed. It was thought by the Government of the day that £50,000 was sufficient, and this sum was again reduced to £25,000 by the succeeding Government. I consider the means now voted much too small to erect proper gaols throughout the Colony. I am not yet aware what the Government intend to do with the last vote of £25,000. I presume I will receive instructions so soon as the Appropriation Act is passed for these services. I have not as yet received any instructions.
5359. *By Mr. Sutherland*: Then the gaols are not carried out according to your plans? No, not upon the original designs I submitted to the Government, but upon plans subsequently prepared.

APPENDIX.

* NOTE (*The above omitted and following substituted on revision*):—There are three classes of gaols, which have been authorized by the Government, the designs of which may be seen by a reference to the plans.

† NOTE (*The above omitted on revision*).

‡ NOTE (*The above omitted and following substituted on revision*):—That building is a lock-up, not a gaol.

§ NOTE (*Corrected on revision*):—600.

|| NOTE (*Corrected on revision*):—800.

¶ NOTE (*By witness on revision*):—I presume you mean gaols, not "lock-ups"; they are shown by the plans submitted.

APPENDIX.

A.

A. Dawson,
Esq.

RETURN shewing the accommodation of the principal Gaols in the Colony of New South Wales.

3 May, 1861.

DARLINGHURST GAOL.

Occupied by prisoners. Built of cut stone, and cells laid with flagging. The buildings are all in a good state of repair, and consist of 4 cell ranges, 3 stories each, gaoler's quarters, debtors' prison, turnkey's quarters, hospital, bath-rooms, keeper's quarters at gate, and dead-house. This gaol is constructed to accommodate 432 prisoners, viz. :—

318 Male.
114 Female.

432

		ft.	in.	ft.	in.
Cells :— No. 1 range contains	24 cells ..	8	0	by	5 0
do.	24 do. ..	12	0	by	8 3
2 do.	42 do. ..	12	1	by	8 1
3 do.	36 do. ..	12	2	by	8 1
do.	6 do. ..	8	1	by	5 0
4 do.	78 do. ..	8	1	by	5 1
Gaoler's quarters :—consisting of 10 rooms, besides basement.					
Debtors' prison contains :—					
	6 cells ..	12	0	by	8 6
	1 store-room ..	12	0	by	8 6
	1 room ..	23	0	by	18 0
Turnkey's quarters contain :—	2 rooms ..	16	6	by	13 0 1 used as office.
	2 do. ..	16	6	by	15 6
Hospital contains :—	2 wards ..	25	3	by	22 3 Male.
	1 do. ..	25	3	by	22 3 Female.
	1 surgery ..	25	3	by	12 0
	1 nurse-room	13	3	by	9 0
3 Bath-rooms.					
Keeper's quarters at Gate contains	4 rooms	10	0	by	10 0
Dead-house, consisting of 1 room ..		14	6	by	12 6
Drying-room, do. do. ..		9	0	by	5 0
Old hospital, now used as a store, 3 floors ..		31	8	by	31 8 each.

PARRAMATTA GAOL.

Now occupied by prisoners. Built of stone, and in good repair; constructed to accommodate 156 male and 86 female prisoners, in 56 cells 12ft. 3in. by 8ft. 4in., three to each, and 74 cells 8ft. by 5ft., one to each.

The detached buildings and offices consist of—

Gaoler's quarters and office, 6 rooms in all.

		ft.	in.	ft.	in.
Male hospital, consisting of—	1 ward ..	31	3	by	11 3
	1 do. ..	15	11	by	11 3 and
Surgery		14	0	by	11 3
Female hospital, 2 wards		31	3	by	11 3 each.
Turnkey's quarters, consisting of 4 rooms		17	0	by	13 0 at Entrance Gate.

BERRIMA GAOL.

Now occupied by prisoners. Consisting of 3 cell ranges, 1 story high; the outer walls built of cut stone, and the internal walls, out-buildings, and boundary wall of brick. The buildings are all in tolerable repair.

The prison is adapted for 65 male prisoners, in—

		ft.	in.	ft.	in.
14 cells		8	0	by	4 0 for 1 prisoner, each.
6 do.		10	0	by	5 0 } for 3 prisoners, each.
20 do.		7	0	by	6 6 }

The out-buildings consist of—

Cook-house		20	0	by	15 0
Office		15	6	by	15 0
Turnkeys' rooms (2)		12	0	by	15 0
		15	0	by	15 0
		10	0	by	15 0

And 2 rooms in building at north-east angle, each 15 0 by 15 0 the present appropriation not known.

BATHURST GAOL.

Now occupied by prisoners. Built of brick, and in tolerable repair; consisting of 1 cell range, 3 stories high, and adapted for 104 male and 63 female prisoners.

		ft.	in.	ft.	in.
Ground floor	41 cells ..	8	0	by	5 0 1 prisoner to each.
Second do.	21 do. ..	11	6	by	8 0 3 do. do.
Third do.	21 do. ..	11	6	by	8 0 female prison, 3 to each.
Hospital	1 ward ..	15	0	by	12 0
	2 do. ..	11	0	by	8 0

GOULBURN GAOL.

Now occupied by prisoners. Built of brick, and in tolerable repair; consisting of 1 cell range, 3 stories high, and adapted for 104 male and 63 female prisoners.

		ft.	in.	ft.	in.
Ground floor	41 cells ..	8	0	by	5 0 { 1 prisoner to each; 3 of these used as stores.
Second do.	21 do. ..	11	6	by	8 0 { 3 prisoners to each; 1 of these used as turnkey's quarters, and 1 as store.
Third do.	21 do. ..	11	6	by	8 0 { Female prison, 3 to each cell; 1 cell used as female turnkey's quarters.
Hospital	1 ward ..	15	5	by	10 10
	2 do. ..	8	2	by	10 10
Gaoler's quarters and buildings, near Entrance.					
Guard-room		14	0	by	14 0
Office		14	0	by	13 0
Store		14	0	by	13 0

ALEXR. DAWSON,
Colonial Architect.

(The

(The Chairman having returned,—)

HENRY PARKES, ESQ., IN THE CHAIR.

John O'Neill Brennan, Esq., recalled and further examined:—

John O'Neill Brennan, Esq. (Witness resuming: Answer No. 5336?) I might refer to several letters addressed by me to the Government upon this subject, but I do not wish to detain the Committee. I would, however, beg to refer to one written on the 20th March, 1859, on account of some letters that appeared in the public press about the working of the gaols. I say:—"It is hardly necessary for me to remind the Colonial Secretary that I never said, or pretended, that there was what could be called prison discipline carried out in any of the gaols of the Colony, and, as I stated in former communications to the Secretary, that my only reason for opposing the employment of able-bodied prisoners at Darlinghurst for private individuals—to the obstruction of the building in course of erection, and so much required—was my desire to get the establishment built and remodelled as speedily as possible, to enable the authorities to carry out the proper system of prison discipline. As I am not desirous of wearying the Colonial Secretary by here entering into a comparison of the mode of working, or the amount of work performed by the prisoners in Darlinghurst and Parramatta Gaols respectively, and should not have troubled him thus much did I not feel bound to do so in justice to all parties, on account of the letter written and published in the *Herald*, by Mr. Forbes. I shall conclude by assuring the Colonial Secretary that I am quite alive to the defects, or rather want of prison discipline, in all the prisons, and that I should have long since written to him on the subject had I not been assured by him, personally, that as soon as the Session (which has been a very harassing one) was over, he would enter with me into the whole subject most fully and minutely, in order to ascertain the best and most expeditious mode of dealing with this very difficult and complicated question." Nothing, I need hardly say, has been done since then. Now, to shew that I have turned the labour to account; and I admit that * I may have lost sight of many* things which, if the gaol had been in a proper state, would have attracted my attention at once—my great anxiety was to have the gaol remodelled and improved. When I took charge of Darlinghurst Gaol there was the letter A wing built, called the committal wing, but in it are confined prisoners awaiting trial, prisoners on remand, and prisoners sentenced to imprisonment only; letter B wing, in which, though styled the hard labour wing, are confined both hard labour prisoners and confines. On reference to the return I have handed in, you will see that of confines under six months, in 1856, there were 517 males; in 1857, 740; and in 1858, 631. Six months, and under twelve—in 1856, 56; in 1857, 37; in 1858, 33. Twelve months, and under two years—in 1856, 30; in 1857, 15; in 1858, 7. Two years, and under three years—in 1856, 34; in 1857, 22; and in 1858, 9. Three years and upwards—in 1856, 9, of which there were several invalided Cockatoo men, 6 I think; in 1857, 6; and in 1858, 5. Now I refer to this at this moment, to shew the Committee the material with which I had to make these improvements. I had no prisoners there whose sentences were sufficiently long to enable me to make tradesmen of them. They were all rough hands, and short sentenced men, a class of men most difficult to manage, most difficult to supply with work on account of many of them being sailors or vagabonds about town; men sent in for drunkenness, dissipated characters. I suppose the majority of these prisoners were confined for a month, a fortnight, ten days, and so on. Then when I took charge, the third wing, E, was allotted to females of all descriptions, both hard labour, and those who were sent in for imprisonment only, or for solitary confinement. Now, seeing the state of the gaol when I took charge, my attention was most particularly drawn to the want of accommodation, the want of means of classification—there were only three yards for the male prisoners, and two yards for the females. The rest was an open stockade. There were only these three wings erected, the fourth or D wing had only the ground floor built, and it consisted of cells of the same size as those in the B wing—large cells. I had these divided into single cells, and the wing completed to contain 78 prisoners in separate cells. The bath-house was partly finished; I got that completed. The foundation of the debtors' prison was merely commenced —

5360. Was that ever used as a debtor's prison? Yes; there have been several debtors there.

5361. Is not that the place where Mr. Harrison lived? No; he had only the front portion of the building; the back is the debtor's prison. I also had the dead-house, fumigating house, and hospital built, which the Committee no doubt saw. I may have overlooked many little matters that would otherwise have attracted my attention; but as I said before, my great anxiety when I visited the gaol was to see that the men were at work at these buildings and improvements, which I pushed on as fast as possible. When I took charge I found that the men were in the habit of taking their meals, some sitting on the ground, and others under the hard labour shed, and as I wished to humanize them a little, I introduced tables for them. At the same time they had but a few dishes, and nothing but wooden or horn spoons supplied to them to eat their meals with; and I have often seen the men obliged to tear the meat with their fingers. I sent in a requisition for knives and forks, and it was sent back to the Auditor General with a minute from the Colonial Storekeeper, stating, that it was a most unusual application, that knives and forks were never allowed in gaols. From the Auditor General the letter was sent to the Colonial Secretary, who made a minute upon it, and the application was refused. I then wrote the following memorandum to the Colonial Secretary. (*The witness read the same. Vide Appendix B.*) The application was then granted, and that was the origin of the introduction

* NOTE (Correction by witness on revision):—I may have lost sight of things which, &c.

duction of knives and forks. Now my opinion has been most fully confirmed, as the men have ever since been most orderly at their meals. In one instance a fork was missed, and the warders, by my direction, told the men that if it was not forthcoming the knives and forks would be stopped for nine or ten days; that fork was returned the next day, shewing that the prisoners appreciated the indulgence and confidence placed in them. I merely instance this to shew my anxiety to improve the condition of the men, and also to shew the difficulty of getting these things granted by the Government. With regard to the trade overseers, I have not, unfortunately, with me here, the rules* I drew up for their guidance, as they have been mislaid at Darlinghurst, but I have requested that a copy of them may be sent from Parramatta, where they are pasted upon a board. When the trade overseers were appointed, they were selected by the Colonial Architect and appointed by me; and I may here mention to the Committee that I gave up six warders in order to get these four trade overseers, to press on the buildings and improvements of the establishment. These men were to be specially under the direction of the Colonial Architect. And while I am upon this subject I may state, that I have heard some very unhandsome and deliberate untruths have been told by some of the witnesses with respect to the discharge of these six men. I was accused, first, of discharging them on religious grounds. I will take that first, and in reply I assert that I did not know their religion.

John O'Neill
Brenan, Esq.
3 May, 1861.

5362. I may state that some evidence has been given before this Committee with respect to the discharge of the six warders in January, 1860, to whom you have referred; and according to that evidence, it would appear that the persons discharged were all of one religion; that the persons retained were of another; and no evidence has been given before us, that the discharge of those men was determined by any intelligible principle, as some of the men were discharged who were unquestionably men of good character—for they have the highest testimonials from the gaoler, Mr. Beverley, and they had been employed in the gaol a length of time—while persons, for no obvious reason, who had been only a short time, in comparison, were retained. Now, I have always understood it to be a principle universally acknowledged in the public service, that length of service should be considered in any capacity, unless there were some good reason countervailing that recommendation, and it does appear to be unquestionable that some of the men, who were discharged, had filled their situations for six or more years, while men were retained who had not been employed one-sixth of the time. I do not believe the Committee attach more weight to the circumstance stated by one of the witnesses, that the men who were retained were of one religion, and the men who were discharged of another, it probably was the result of accident; but, to say the least of it, it looks suspicious, and as it has been stated in evidence, I mention it to give you an opportunity of making what explanation you please? The principle I went upon was the one which has just been stated by you; and I may inform the Committee, in the first place, that I did not select the men who were to leave, but directed my gaoler to select them, and I particularly impressed upon him the necessity of discharging those who had been most recently appointed, unless he had some special reason for discharging those who were of longer standing.

5363. Did you give this instruction in writing? I am not sure whether I did or did not, but Mr. Beverley cannot deny it. I have not his note now, but I know he sent me the names of those he wished to be discharged. It having been stated that these men were all of one religion, and though, as the Chairman has said, that that might have been the result of accident, yet it may have struck the mind of the Committee, that I selected to retain all my own appointees, and that I discharged those appointed by my predecessors. Now, I was appointed Sheriff in 1854; and, from the list of the warders which I have before me, I find that every warder who was discharged was appointed during my time.

5364. Did you appoint a warder named Johnson who was discharged? Mr. Beverley appointed him.

5365. Was he appointed in your time? The date of his appointment was 1855. I have here a return, which I obtained from the gaol, shewing the names of the warders and the dates of their appointments, and I will take the names in the order in which they occur. The first is John Macdonald. That man was appointed in 1854; he was the oldest officer discharged; he was a man advanced in years, but a man of the highest character, and one whom I regretted to be obliged to discharge. He was recommended to me by Mr. Jeely, from whom he got the highest character; which character he sustained from the day he entered the gaol till the day he left it. Nothing pained me more than to be obliged to discharge that man, but it was solely on account of his advanced years. The next man is Thomas Johnson; the date of his appointment is May, 1855. Mr. Beverley selected that man to be discharged on account of being deaf; he was a very good man in other respects, a man of very upright and very good character.

5366. Johnson is not very deaf? Mr. Beverley represented to me that it was on account of his deafness, and I am aware that he is hard of hearing, as the term is.

5367. He is now office-keeper to Mr. Darvall; I always speak to him in the tone of voice I ordinarily use, and he has not any difficulty in hearing me? He was selected by Mr. Beverley on that ground; he was not selected by me. After he had selected these men I had a consultation with him, and that was the reason he assigned to me for wishing him to go. The next man on the list I find is Frederick Pegg; now that man was appointed by Mr. Beverley himself, and I must candidly admit to the Committee very much against my wish and desire. He applied to me for a situation at Darlinghurst, and I refused him. I was absent on circuit when a vacancy occurred, and Mr. Beverley gave it to Pegg. I asked Mr. Beverley when I returned why he had appointed that man, and he said he was such a very

* NOTE:—Subsequently furnished. *Vide Appendix C.*
157—2 D

John O'Neill
Brenan, Esq. very respectable and smart-looking man that he thought he would make a very good officer.
I told him that I did not approve of the appointment.

5368. Did you know anything of him? Yes, I heard he had been dismissed from the police force, and that was my reason for refusing him when he applied to me; but as he had got the situation I allowed him to remain.

5369. Do you know why Pegg was dismissed from the the police force? No. Captain M'Levie can tell you the particulars; he knows the man, and can give you his character. I know nothing more of him than that I heard he had been dismissed by the police.

5370. *By Mr. Morris:* Do you think that after having heard the man had been dismissed from the police, you did your duty in allowing the man to remain without making some inquiries? I knew it was nothing very serious, and that was the reason I did not inquire.

5371. *By the Chairman:* Are you quite sure he was dismissed? I think so. I heard so. However, that was my impression at the time, and that was my reason for refusing him—that Captain M'Levie would not give him a good character. His appointment was in 1855.

5372. *By Mr. Wilson:* What was the man's character as a warder in gaol? I heard nothing very much against him; he was a quarrelsome man, and an ill-tempered man.

5373. *By the Chairman:* Do you mean that he indulged in drink? No, I do not mean that he drank; I mean to say that he was ill-tempered and quarrelsome.

5374. A cross-grained man? Yes, and Mr. Beverley selected him to go on that account; he was continually in hot water with the other officers of the gaol. The next man, Henry Ellis, was appointed in 1856. He was discharged, but has been appointed since. Every one of those who were dismissed whom I considered well-conducted men, and fit for officers, as situations became vacant I offered them to them. I offered Johnson a situation at Yass, and he refused it; Henry Ellis accepted a situation at Wollongong—he is now warder there.

(The Chairman read from the evidence of Frederick Pegg to the witness.)

5375. With regard to Pegg, of whom you speak as a person who had been dismissed from the police force, and against whom you had a prejudice in consequence of this dismissal, it would appear from Pegg's own evidence that, so far from that being the case, for the greater part of his time he held the position of sergeant in the police, and left at his own request? All I can say to that is, that I was under the impression that he was dismissed, or if not dismissed that he had to resign, and that he was a person I would not select as an officer of the gaol. I had no personal prejudice against the man; I did not know him; and when Mr. Beverley appointed him I did not feel justified to rescind that appointment, and so I left him in the establishment. However, if there is any conflict between this man's testimony and mine, Captain M'Levie will be able to explain the matter. I am not sure whether Captain M'Levie told me he was dismissed, but he told me he was a most troublesome character.

5376. *By Mr. Windeyer:* When did he tell you that? Some time ago.

5377. Since Pegg has been dismissed? Yes.

5378. Then the only conversation you recollect with Captain M'Levie is the one you have had since Pegg was dismissed? That is the only conversation I have had. No; I had a conversation with Captain M'Levie before Pegg was dismissed, but it was not from Captain M'Levie I heard that he was dismissed, or had to leave the police. However, he was selected by Mr. Beverley, and not by me. With one exception none of the officers who were appointed by me were retained, a man of the name of Jeremiah O'Callaghan, now removed to Berrima. That is the only officer I told Mr. Beverley to retain, and my reason for that was, that he was the schoolmaster. At the same time I directed Mr. Beverley to offer the situation to any of the officers he was about to discharge who were capable of taking that office. He was the only officer who could teach the prisoners reading, writing, and arithmetic, and I had selected him at the time of his appointment on that account. I was not allowed by the Government a salary for a schoolmaster, but being anxious to introduce a school into the prison, I directed him to be made schoolmaster, and he was so from the day of his appointment until he left.

5379. Was it an adult school? Yes.

5380. Any prisoner who wished could learn? Yes. It was merely a class. I wanted to make a beginning.

5381. Did the prisoners shew any disposition to learn? Yes; particularly Germans and foreigners. There were some Germans in prison who got on very well. He also taught the females and young girls. I especially allude to him because he was appointed in 1857, and he happened to be a Roman Catholic. Pegg and some others spoke to me about it, and I said, "Very well, if you can take his situation he shall go; I cannot do fairer than that."

5382. *By the Chairman:* Before we leave the subject of the appointment of these turnkeys, it has been stated to the Committee that several of the turnkeys have been appointed directly from your own service, or from the service of your family? There is but one.

5383. Do you remember who was the turnkey on duty in the exercise yard when a number of prisoners, seventeen I think, escaped through the wall? That was after my suspension, and it was what I had prognosticated.

5384. Do you know a turnkey of the name of Callaghan? Yes.

5385. Was he ever in your service? No.

5386. Or in the service of your father? No.

5387. Was he appointed on your special recommendation? No.

5388. You know the man? Yes. He was appointed in 1851.

5389. It is not John Callaghan who was temporarily appointed to act as head turnkey that I mean, but another person of the same or similar name, but younger? I do not remember any man of that name being in my service.

5390. I suppose this turnkey to whom I allude, and who, it appeared to the Committee, was

was

was a very inefficient man, must have been appointed since you left, as you do not appear to know anything of him? Yes, unless you are mistaking the name.

5391. The person I allude to was on duty at the time these men escaped through the wall? A man with reddish whiskers and hair. I do not know his name. I know the man now from the fact of his being on guard when the prisoners escaped. He was a discharged soldier from the 12th regiment, and was highly recommended to me by the then Administrator of the Government, Colonel Kempt, and I directed his name to be put upon the book, and called the attention of the then Under Sheriff to him, and he was appointed by Mr. Uhr, the Acting Sheriff, on the dismissal of one of the officers after I was suspended.

John O'Neill
Brenan, Esq.
3 May, 1861.

5392. I understood you to say that only one person was ever appointed to the office of turnkey from your own service, or the service of your family? Yes, John Fallon. He is a stone-cutter by trade, and he was in the service of our family, or of my father, between five and six years. He is a very good tradesman, and a man of the strictest integrity. I should not have appointed that man but that he was a man of such good character and a tradesman, and I told the gaoler that he could be of great assistance in teaching the prisoners stone-cutting. He was our overseer for some time, and he is the only man I ever appointed who was in my father's service—he was not in my service, but in my father's. Trevor Turner was appointed in 1859; he afterwards got a situation at Yass. John Bowen was appointed in 1858; he got an appointment afterwards. So that the only juniors who were retained were Smith, Macleay, and O'Callaghan; all the others who were retained were the seniors of those who were discharged, with the exception of Ryan, who was kept because he was a master tailor, and he was the overseer of the tailors. That disposes of this matter.

5393. Is there anything else you would wish to say? With respect to the disposition of the warders, I presume you refer to the disposition of their duties. That was under the control of Mr. Beverley and the principal warder, and was a matter with which I rarely interfered.

5394. Mr. Harrison has given direct evidence before this Committee that his arrangement was interfered with by your instructions, and that if his arrangement had been carried out the turnkey Fallon would not have been on duty where he was on the night when David Clarke and another prisoner escaped. He has represented that they escaped principally from the inexperience and negligence of the persons in charge of the wing—firstly, as I understood, by allowing the bed-boards to be in the cell contrary to his wish; and secondly, by not being sufficiently vigilant in locking up the prisoners, by going round the corridors the wrong way, by which the doors shut out the apertures and enabled the prisoner concealed behind the door to run into the cell devoted to a second prisoner; whereas if they had gone round the corridor in the other direction they would have had the open door before them, and would have been enabled to see into the cells. He attributes that to the carelessness or inexperience of the turnkey, and says he never should have appointed this person to the task of locking up these desperate prisoners, and that his arrangements were interfered with by direct instructions from you, by which Fallon and another man were on duty that night? That is quite untrue. Mr. Harrison had the selection of the men himself. He appointed, or rather left in charge of that wing, the officer who had been originally in charge of it, his own father-in-law, M'Coy, an officer of thirteen years standing. He himself selected Fallon, not with my concurrence, but rather the reverse; but he stated, when he mentioned the matter to me, that as he was such an honest, decent man, he wished to have him to assist M'Coy, and so he selected him for that office. If my wish had been followed, or my opinion asked what officer would be most fitted for it, I certainly should have selected another officer, because I wished that particular officer, John Fallon, to be over the stone-cutters, being a stone-cutter himself.

5395. M'Coy is Harrison's father you say? Yes, and an old officer; and Fallon was appointed by Mr. Harrison to assist M'Coy. I had upon several occasions, upon going in, seen the stone-cutters dawdling over their work, and I had directed Mr. Harrison to bring them more particularly under the direction and notice of the warders, so that when the working overseer was absent on special duty they might see that they kept steadily at their work. That was the only change I made in the disposition of the warders. The night duty was changed no doubt, but it was after consultation with Mr. Beverley and Mr. Harrison. These are the rules drawn up for the guidance of the officers of the establishment (*producing a copy of Rules. Vide Appendix B to Mr. Harrison's further Evidence, at page 134*); and I wish to draw the particular attention of the Committee to No. 17, and a portion of the 13th rule, which I drew up personally. I added these words to the 13th rule—"and under no pretence to allow any turnkey to enter the gaol, upon duty, while under the influence of drink." I added that in consequence of some of the officers having come to the gaol under the influence of drink. The 17th rule is as follows:—"It is the especial duty of every turnkey to report any and every irregularity he may see or hear of on the part of any prisoner or turnkey; and should it be discovered by the principal gaoler that a turnkey has neglected his duty, in this particular, he will be instantly suspended, and reported to the Sheriff." Now the cause of the introduction of that rule by myself was this—I found that the officers were in the habit of taking notes of every little occurrence that took place in the gaol, and then, when they fell out with their brother officers, or the principal turnkey, or when the gaoler annoyed them in any way, they went to Members of this House and reported to them any irregularities that took place.

5396. What officer in particular adopted this practice? I think his name was Jones. It was to prevent officers noting down every little irregularity of his brother officers, without reporting them to the authorities, and storing them up to make use of after, perhaps, the expiration of years, that I made this rule.

5397. But you could hardly prevent a turnkey keeping a journal of all that took place? No, I would not object to that; my objection was to their noting down every little irregularity,

John O'Neill
Brenan, Esq.
3 May, 1861.

larity, and keeping these memoranda by them perhaps for years, without reporting them to me, or to the gaoler. If these things were reported to the gaoler, of course he would be responsible, and would be bound to report to me.

5398. I should gather, from your observations, that you consider the proper discipline of a gaol almost wholly dependent upon the existence of certain buildings? No, I do not say wholly.

5399. I say almost wholly? Yes, because discipline cannot be carried out.

5400. You say that, so far back as 1854, you represented the state of the gaol to the Government, and urged upon them the necessity of extending the buildings? Yes.

5401. And in several parts of your evidence you have read from letters addressed to the Colonial Secretary, in which you state that you cannot say there is anything like discipline in the gaol? Not what I consider discipline—no regular system—in fact, the system that has been carried out in all the gaols of this Colony has been merely to keep the prisoners safely, to keep them employed, and to keep them clean.

5402. They do not appear to have been kept clean? That appears to have been neglected, certainly, to a certain extent.

5403. You have in your evidence attached great importance to the existence of proper buildings? Yes.

5404. You consider that absolutely necessary to anything like a due discipline among prisoners—I should gather that from your evidence, and from the letters from which you have quoted? You cannot classify the prisoners—

5405. Then, again, you have represented that the workshops in Darlinghurst Gaol are under the Colonial Architect? Yes, they are.

5406. You made this representation in reply to some negligence pointed out by the Committee to you with regard to the tools? Yes.

5407. Could not discipline be carried out, however imperfect the buildings, so far as instruction went, and so far as the establishment of proper regulations went; for instance, could not the prisoners be mustered—let the buildings be what they might—periodically, every Saturday night or every Sunday morning, and be compelled to expose part of their persons, and, to shew that they were clean, to expose their arms, legs, and so on—could not that be done whether there were proper buildings or not? Of course.

5408. Could not the clothing be washed and kept clean—could not the walls and floors of the cells be kept clean, whether there were proper buildings or not? No doubt.

5409. These are matters not depending upon the completion of the prison buildings? No.

5410. Then again with regard to the workshops—though the labour of these prisoners is under the direction of the Colonial Architect, is it not the fact that the management and safe custody of them is just as much under you as that of any other prisoners? It is under the gaoler.

5411. I mean under the gaol authorities? Under the gaoler—by the gaol regulations he is responsible for them.

5412. What I mean is, whether the prisoners are appointed to work under the Colonial Architect or not—have not the gaol authorities control over them—are they not all in the same manner subject to prison discipline? Yes.

5413. So that they are just as amenable to any regulations that may exist for the proper conduct of the discipline of the gaol, as if their labour were not directed by the Colonial Architect? No; he has the charge of them during working hours, and I never interfere with the trade overseers; for instance, they can direct a prisoner to go to a particular part of the yard, to work in a particular manner, and at a particular time. The gaol authorities have directions not to interfere with a trade overseer, unless he gives such an order as to interfere with the safe custody of the prisoners. The safe custody and control of the prisoners is given into the hands of the trade overseers while they are working, and they are responsible for these men during working hours. The warders are put upon certain beats to see that no prisoner makes his escape or secretes any tools or materials, but the direction of these men is still in the hands of the overseer—he directs them, and, in fact, has the entire management of these men during working hours. They are handed over to the overseer in the morning, and are counted back in his presence by one of the warders.

5414. I do not clearly understand what you mean, when you say that the working overseer is responsible for the safe custody of the prisoner? Not for the safe custody.

5415. Those are the words you used, and, at the same time, you say there are warders appointed so as to see that none of them escape. Now the appointment of these warders would appear to confirm my idea that the prisoners, though working under the trade overseers, are still in the custody of the gaol authorities. That the trade overseer has the power of sending a prisoner to any part of the gaol I can readily understand, for unless he had, he could not direct his work; but I cannot understand how he can be charged with the safe custody. I apprehend that, if there were any attempt to escape, the prison authorities would soon interfere; that, in fact, the prisoners are just as much subject to the ordinary rules of the gaol, when they are working under the trade overseers, as they would be if they were kept doing nothing, though their labour is being directed by these overseers of the Colonial Architect's Department? "Safe custody" is, perhaps, too general a word to use. What I mean by the expression is, that these men are counted over to the overseers in the morning, and, if any of them absent themselves from work, or cannot be accounted for by the trade overseer, he should immediately report it to the warder nearest to him on duty. We have not sufficient warders for each shop, therefore, if a prisoner slips out of a workshop, unknown to the overseer, he is bound, the moment he discovers it, to give notice to the nearest warder. So far, the overseer is responsible for the safe custody of the prisoners, and only to that extent.

5416. What I wanted to arrive at was, whether it was not exclusively your duty as inspector of prisons, for only in that capacity I presume you visit them——? I visit them as Sheriff. John O'Neill
Brenan, Esq.

5417. Still you were practically inspector of prisons, you were not gaoler nor Visiting Magistrate? No. 3 May, 1861.

5418. Your duty must have been the general inspection of prisons? Yes.

5419. Was it not exclusively, or almost exclusively, your duty to see that these other people did their duty—the gaoler and warders—by the issue of instructions and the establishment of necessary regulations? No; I had no power to make regulations. Certain rules and regulations were made by the Government for the rule and guidance of the gaol, and these were printed.

5420. But your visits to the gaol were of no use except in so far as they had the effect of keeping the officers in charge to their duty, and enforcing their efficiency? Yes, whenever inefficiency was brought under my notice.

5421. This reminds me of the question put to you by Mr. Morris—do you think it likely that men who were negligent of their duty would bring that negligence under your notice? I could not presume that they were negligent from the gaoler downwards. How was I to discover that unless I discovered some gross irregularity when I went to the gaol.

5422. Is not that the difference between one man and another, that one man will discover what another will not—is it not that which distinguishes the qualities of men, that one will easily discover a thing which another will not discover in a lifetime? That may be.

5423. It must have been your particular duty to see that the Darlinghurst Gaol was properly managed, that the prisoners there were subject to the most just and salutary discipline with regard to due punishment, to due custody, and to the most beneficial and profitable employment? As far as I undertook it, but not as Sheriff.

5424. It must have been your duty to see that the gaol was well managed? Not as Sheriff.

5425. Will you state what you conceived your duty to be as Sheriff in relation to these gaols? The Sheriff's duties with regard to gaols are very limited, he is answerable only for the safe custody of prisoners.

5426. How can he insure their safe custody except by vigilant and cautious management; if he is answerable for their safe custody, does not that imply their proper custody; not safe custody by chaining them down to bolts, for instance, and delivering them up alive or dead; it means their proper custody, their being kept in a state fit for human beings? Of course.

5427. How is that to be done if the person responsible for the charge of prisoners does not see that the persons immediately in authority over them do not discharge their duties properly—is not that involved in safe custody if we understand safe to be proper custody? Then comes the question, what is proper custody?

5428. That is a large question, but I would ask is it proper custody to allow prisoners to remain unhealthily unclean—is it proper custody to keep them without clean blankets or bedding—is it proper custody to allow them to use tools of a formidable character, either for the purposes of personal violence or for the purpose of prison-breaking, without any examination from one night to another as to what becomes of those tools? With respect to that question, if you will allow me, the gaoler is responsible, under the gaol regulations, for the safe custody of prisoners; the Sheriff has only the general control over the prisoners, but the Visiting Magistrates have the more immediate control over the gaols. It is the duty of the Visiting Magistrate, no doubt, to see that the gaol regulations are carried out; that is especially provided for by the Act of Council—the Gaol Act.

5429. What I wanted to arrive at was, the extent to which you are to blame for not discovering a state of things such as you have described. Was it not your duty to examine the state of things actually existing, and to enforce proper discipline by your powers of instruction? As far as powers of instruction go, I conceive that I have given ample instructions to enable a proper system of discipline to be carried out, if these instructions had been obeyed. For instance, the bath-house was built purposely by me, to enable the prisoners to be regularly washed; but, no doubt, there were no regulations compelling any particular prisoner to wash himself often; but as I said before, it was the particular duty of the warden in charge of the wing to see that the prisoners kept themselves clean; and also, of course, it was the gaoler's duty, because he saw them every morning, or was supposed to see them every morning and several times during the day.

5430. *By Mr. Mate:* Is not he responsible to you? He is responsible to me for their safe custody; and he is generally responsible to me, no doubt.

5431. For the management of the gaol? No doubt.

5432. *By Mr. Sutherland:* Was it upon your recommendation that the bath-house was put up? No; when I took charge merely the shell of a building was erected, and it was under my supervision that the baths were constructed. The bath-house itself was partly erected when I took office.

5433. Did you ever give instructions to the gaoler to see that the prisoners made use of that bath? Yes, on several occasions I did.

5434. And you believe your instructions were carried out? Yes, I directed that every Saturday afternoon the prisoners should wash themselves, except those under the charge of the doctor. There was a time when the baths were out of order and Dr. West spoke to me about it; and I gave directions to the principal warden to see that they were put in repair immediately. It was done, and I presume that the prisoners, or the great body of them, washed themselves every Saturday. They were allowed half-a-day on Saturday to enable them to wash their clothes. They always knocked off work at a quarter to twelve on Saturdays to enable them to do this; and it was a rule, that every prisoner should be properly dressed and clean on Sundays, when he attended Divine service, and that rule the gaoler was bound to see enforced. I may be permitted to mention, that on
the

John O'Neill
Brenan, Esq.
3 May, 1861.

the 9th July, 1860, I wrote a letter to the Government, requesting they would allow me a certain sum of money to enable me to put the officers in an uniform, and the reply I received was, that that subject of the management of prisons, and of prison discipline generally, would come under the consideration of the Government almost immediately, and that, therefore, the matter should stand over. In sending the estimates for 1860 I put a sum of money for this purpose, but it was disallowed. With the permission of the Committee, as I do not desire longer to intrude upon their time, I will append to my evidence the particulars of my removal from office. (*Vide Appendix D.*)

5435. We have some evidence before us that the keys of the various wings in Darlinghurst Gaol were very loosely kept. Some witnesses state absolutely that they were simply hung up on a peg behind Mr. Harrison's door, and that frequently the turnkeys who unlocked the wings went, the door being open, and took them off the peg; that at one time, when prisoners were employed as servants to Mr. Beverley, they could have gone to Mr. Harrison's house, taken the keys off the peg, and unlocked the wings at night; but it is only right to say that other witnesses say that they always received the keys from Mr. Harrison himself, or from some one who lived with him—his father-in-law? M'Coy.

5436. Do you know anything about the manner in which these keys were kept? They are delivered over, after the wings are locked up, to the principal warder; he has the special charge of them.

5437. It appears that they were kept in a most loose manner? No doubt, if that were the case, it was not proper for Mr. Harrison to put the keys in that insecure place, but it does not follow that even the gaoler could know that, unless it were brought under his notice, because they were supposed to be locked up. It was never reported to me. I wish to hand in a letter, dated 9th March, 1859, containing some suggestions. (*The witness handed in the same. Vide Appendix E.*)

APPENDIX.

A.

NUMBER of Persons sentenced to Darlinghurst and Parramatta Gaols, respectively, during the years 1856, 1857, and 1858.

DARLINGHURST GAOL.

SENTENCED TO	1856.		1857.		1858.																																																								
	Male.	Fem.	Male.	Fem.	Male.	Fem.																																																							
Solitary Confinement	2,058	1,781	1,307	1,406	1,587	1,380																																																							
Imprisonment without labour	513	703	691	805	688	699																																																							
Hard labour, viz. :—	<table border="1"> <thead> <tr> <th rowspan="2"></th> <th colspan="2">1856.</th> <th colspan="2">1857.</th> <th colspan="2">1858.</th> </tr> <tr> <th>M.</th> <th>F.</th> <th>M.</th> <th>F.</th> <th>M.</th> <th>F.</th> </tr> </thead> <tbody> <tr> <td>Under 6 months*</td> <td>517</td> <td>171</td> <td>740</td> <td>110</td> <td>631</td> <td>97</td> </tr> <tr> <td>6 months and under 12</td> <td>56</td> <td>33</td> <td>37</td> <td>20</td> <td>33</td> <td>8</td> </tr> <tr> <td>12 months and under 2 years..</td> <td>30</td> <td>10</td> <td>15</td> <td>3</td> <td>7</td> <td>1</td> </tr> <tr> <td>2 years and under 3 years ..</td> <td>34</td> <td>..</td> <td>22</td> <td>2</td> <td>9</td> <td>2</td> </tr> <tr> <td>3 years and upwards</td> <td>9</td> <td>1</td> <td>6</td> <td>1</td> <td>5</td> <td>..</td> </tr> <tr> <td>TOTALS.....</td> <td>646</td> <td>215</td> <td>820</td> <td>136</td> <td>685</td> <td>108</td> </tr> </tbody> </table>							1856.		1857.		1858.		M.	F.	M.	F.	M.	F.	Under 6 months*	517	171	740	110	631	97	6 months and under 12	56	33	37	20	33	8	12 months and under 2 years..	30	10	15	3	7	1	2 years and under 3 years ..	34	..	22	2	9	2	3 years and upwards	9	1	6	1	5	..	TOTALS.....	646	215	820	136	685	108
	1856.		1857.		1858.																																																								
	M.	F.	M.	F.	M.	F.																																																							
Under 6 months*	517	171	740	110	631	97																																																							
6 months and under 12	56	33	37	20	33	8																																																							
12 months and under 2 years..	30	10	15	3	7	1																																																							
2 years and under 3 years ..	34	..	22	2	9	2																																																							
3 years and upwards	9	1	6	1	5	..																																																							
TOTALS.....	646	215	820	136	685	108																																																							
TOTALS.....	3,217	2,699	2,618	2,347	2,960	2,187																																																							

* The majority of these are seamen, under the Mercantile Marine Act, whose sentences never exceed twelve weeks; they seldom serve the whole of that period.

PARRAMATTA GAOL.

SENTENCED TO	1856.		1857.		1858.																																																								
	Male.	Fem.	Male.	Fem.	Male.	Fem.																																																							
Solitary Confinement	55	45	41	51	67	51																																																							
Imprisonment without labour	63	50	51	46	74	73																																																							
Hard labour, viz. :—	<table border="1"> <thead> <tr> <th rowspan="2"></th> <th colspan="2">1856.</th> <th colspan="2">1857.</th> <th colspan="2">1858.</th> </tr> <tr> <th>M.</th> <th>F.</th> <th>M.</th> <th>F.</th> <th>M.</th> <th>F.</th> </tr> </thead> <tbody> <tr> <td>Under 6 months</td> <td>49</td> <td>21</td> <td>40</td> <td>30</td> <td>62</td> <td>30</td> </tr> <tr> <td>6 months and under 12</td> <td>29</td> <td>15</td> <td>28</td> <td>14</td> <td>32</td> <td>13</td> </tr> <tr> <td>12 months and under 2 years..</td> <td>53</td> <td>16</td> <td>37</td> <td>17</td> <td>29</td> <td>8</td> </tr> <tr> <td>2 years and under 3 years ..</td> <td>35</td> <td>8</td> <td>19</td> <td>..</td> <td>24</td> <td>5</td> </tr> <tr> <td>3 years and upwards</td> <td>9</td> <td>..</td> <td>15</td> <td>1</td> <td>8</td> <td>1</td> </tr> <tr> <td>TOTALS.....</td> <td>175</td> <td>60</td> <td>139</td> <td>62</td> <td>155</td> <td>57</td> </tr> </tbody> </table>							1856.		1857.		1858.		M.	F.	M.	F.	M.	F.	Under 6 months	49	21	40	30	62	30	6 months and under 12	29	15	28	14	32	13	12 months and under 2 years..	53	16	37	17	29	8	2 years and under 3 years ..	35	8	19	..	24	5	3 years and upwards	9	..	15	1	8	1	TOTALS.....	175	60	139	62	155	57
	1856.		1857.		1858.																																																								
	M.	F.	M.	F.	M.	F.																																																							
Under 6 months	49	21	40	30	62	30																																																							
6 months and under 12	29	15	28	14	32	13																																																							
12 months and under 2 years..	53	16	37	17	29	8																																																							
2 years and under 3 years ..	35	8	19	..	24	5																																																							
3 years and upwards	9	..	15	1	8	1																																																							
TOTALS.....	175	60	139	62	155	57																																																							
TOTALS.....	293	155	231	159	296	181																																																							

J. H. BEVERLEY,
Principal Gaoler.

B.

B.

John O'Neill
Brenan, Esq.

MEMO.

I am aware that this application is a novel one. Heretofore prisoners in gaol have, here and elsewhere, in regard to the mode in serving them with their meals, been treated more like brutes than human beings. As I understand the subject, there are two objections which have always been made against such an allowance; first, the cost; secondly, the risk of placing dangerous weapons in the hands of prisoners. To this objection, which I regard the more important of the two, I answer thus:—Do we not daily and hourly place in the hands of prisoners far more dangerous weapons than the common dinner knife; viz., picks, axes, hammers, &c., whilst scattered in an open space, where, if they were so disposed, they could much more easily injure each other or the officers, than they could when locked up in a wing of the gaol whilst at dinner?

Until I took charge of the gaols, the prisoners never had a table to take their meals at. In Darlinghurst Gaol about 150 men sit down to dinner like soldiers, and are quite as orderly. In no instance that I have heard of has any disturbance arisen during dinner; and I take it, that if we wish to direct the mind and reform prisoners, we must first shew them that we regard them as human beings, and as such place some confidence in them. We do so when we want their labour, by trusting them with tools, some of which are most deadly weapons, but are startled at the danger when expense is to be incurred in ameliorating their condition.

I have heard them say, "We have to tear our meat like beasts."
The knives and forks might be chained to the table.

JOHN O'NEILL BRENAN.

Sheriff's Office, Sydney, 24 October, 1860.

3 May, 1861.

C.

RULES for the guidance of the Working Overseers nominated by the Colonial Architect to superintend the Government Work being carried on in H. M. Gaol, Parramatta.

1st. That in all matters appertaining to the discipline of the establishment each overseer must be subject to and carry out the rules of the gaol, in the same manner as the officers of the establishment, and he is so far to be regarded as an officer of the establishment.

2nd. That in all matters appertaining to the works over which the overseer may be placed, he is to take his instructions from the Colonial Architect, or from some person appointed by that officer for such purpose.

3rd. That all directions respecting the work are to be given by the overseer.

4th. That each overseer is to instruct the prisoners placed under him in the trade to which he belongs.

5th. That, whenever it may be necessary, from the want of prisoners understanding the trade to which the overseer may belong, such overseer is to work himself, taking care to select the most intelligent of the men under him to work with him, and thus prevent the work being retarded for the want of mechanical labour.

6th. That the overseer is to furnish weekly returns of all work performed, showing the number of prisoners under his control each day, the number of feet of stone cut by each man, the number of feet of stone set during the week.

7th. That the overseer is to receive the prisoners at bell-ring in the morning, and to count them.

8th. That the overseer is to remain at the work until bell-ring in the evening.

9th. That the overseer is to hold no conversation with the turnkeys during working hours, except such as may relate to the work.

D.

On Saturday, the 9th of February, I met Captain M'Lerie at Darlinghurst Gaol, to inquire into the escape of the prisoners Clarke and Cavanagh, when that gentleman produced to me a letter from the Colonial Secretary's Office directing him to inquire into the statements contained in Dr. West's report upon Polack's petition for a remission of sentence, in which Dr. West alleged, that although he had given a certificate stating Polack was fit to undergo hard labour, yet that he was not aware he had been put to it, or, indeed, that he had ever been clad in prison dress—and to report the result of his inquiry to the Government.

Of this I had no official intimation, nor had I been called upon for any report thereon.

Captain M'Lerie, instead of entering upon the inquiry for which we had met by previous appointment, at once commenced the investigation into Polack's case. The statements of Dr. West, and those called at his instance, as also Mr. Beverley, having been taken, I suggested that in fairness to Mr. Harrison, against whom the most serious charges were levelled, he ought to be afforded an opportunity of meeting them, and producing evidence to contradict the prisoner Banks, and such other of the witnesses as he could; but Captain M'Lerie refused, stating that his instructions were to inquire into the allegations contained in Dr. West's report, and not to inquire into the conduct of any of the officers of the gaol, and so closed the case.

On Monday he re-opened the inquiry at the instance of Mr. Beverley, to explain some of his former evidence, and upon again being asked, he refused to hear any evidence on part of Mr. Harrison, upon the same grounds as before.

However, as the case then stood, I deemed it my duty to suspend Mr. Harrison, and should have taken the same step with Mr. Beverley but for the large number of Cockatoo men in the gaol. At the same time I informed Mr. Harrison that he should have full opportunity afforded him to clear himself, and with this object, as well as of affording Mr. Beverley the same, I wrote the next morning to the Colonial Secretary the letter of the 12th February—annexed hereto.

On the following day, Wednesday, the 13th, I had occasion to call at the Secretary's Office, when I was shewn one of Mr. Cowper's minutes upon my letter of the previous day, expressing an opinion, as well as I can recollect, for I have not since seen it, that I should have suspended Mr. Beverley, as I could have easily have obtained a *locum tenens*; however, as this, as well as the other minutes, of which there were several, were to be communicated to me by letter immediately, I took no action on it.

I heard nothing more, nor received any communication until Friday afternoon, the 15th, when I got a note from Mr. Cowper, requesting me to call upon him, and upon my doing so he informed me that he wished to communicate to me personally what he had already written, which was, that he felt it his duty to suspend me as well as Mr. Beverley, stating at the same time that his principal reason for taking that course was for my not having suspended Mr. Beverley on seeing his minute, and upon my replying that I understood I was not to act until I got the official letter, he stated that no doubt he did intend I should have received it, but that in the hurry of business Mr. Elyard had forgotten it; however, since then he had received Captain M'Lerie's report, and after maturely considering that report, and my letter of the 12th, he came to the conclusion that it was his duty to take that step.

Feeling I had been very unjustly treated by Mr. Cowper, I wrote the letter of the 16th—annexed.

I heard nothing more of the matter until the 2nd March, when I received a letter dated the 1st, enclosing me a Minute of the Executive, dated the 18th ultimo, calling upon me to shew cause why I should not be removed from the public service by reason of the matters charged against me therein.

Up

John O'Neill
Brenan, Esq. Up to this period the Committee will see that there was no opportunity afforded me of testing the accuracy of the statements upon which Captain M'Levie based his report.

3 May, 1861. The minute of the 18th, after setting forth the charges *seriatim*, the substance of each of which is given below and answered, goes on to say—"These facts disclose a state of things which the Council cannot but regard as the result of incapacity or sheer neglect, and in either case equally discreditable to the Sheriff and principal gaoler.

"They are prepared to admit that in some of these matters both officers appear to have been betrayed and deceived by their subordinates, although, with ordinary vigilance, this could not long have escaped detection; but, in others (of which the confinement of Polack in a separate cell apart from the other hard labour prisoners is a flagrant instance), the positive instructions of the Colonial Secretary, supplemented by the Sheriff's own order, has been departed from, certainly with the knowledge and sanction of the principal gaoler, and, as far as the evidence goes, with that of the Sheriff." Now, the Committee will perceive, from the way in which this minute was drawn up, and my being debarred of the benefit of shewing upon an inquiry that such portion of the irregularities as might have existed were unknown to me, and that no vigilance on my part would have discovered them, I was compelled to take up the several charges and meet them by argument, and by analysing the evidence given by Dr. West and his witnesses, and so took up the charges *seriatim* and answered them. In fact, that my officers were denied that fair and impartial inquiry that every Government is bound to afford the humblest of its officers, and although there may have been gross negligence on their part, yet they were found guilty on one-sided evidence, and without a hearing; and I have been, I submit, most unjustly held responsible for their negligence or misconduct.

Although the fact of Polack's being allowed to pick the oakum in the wing or cell would not, in itself, be a breach of discipline unless done for some improper purpose, and particularly when done occasionally, as I was informed, because he complained of the effect of the summer sun on his head in the yard, yet I was not aware that he had been continuously worked so; and had I supposed for a moment that he had been put to work there from any wish to extend undue leniency towards him I should have put a stop to it.

Mr. Cowper refused to allow me to go before the Executive Council for examination upon all these points, so I was obliged to meet the case as well as I could in writing.

In support of my statement, I appended the evidence of Harrison, Rispen, Callaghan, and Lee, by declarations, copies of which are appended hereto, and the only link wanting was that of M'Koy's, which was sent to me too late, and not drawn up as a declaration—so it was not sent; but I add it as I got it, and let it be taken for what it may be worth. However, it must be borne in mind that the evidence of the prisoner Banks, which, in many respects, is uncorroborated, was a mere statement. I have been informed that my statement was not deemed satisfactory by the Ministers, as it was too much in vindication of my officers. All I can say, I did not mean it as such; but I was fully aware that if I had left a point unanswered that Mr. Cowper would have laid hold of it, and commented on my omission, and, perhaps, designate such as a most flagrant dereliction of duty. However, as I did not do this, I am told "that it is unnecessary to comment on my explanation in detail," and "that the Ministers did not pause to consider whether the state of facts (as they designate them) arose from incapacity or negligence."

I feel, from the unjust decision arrived at, that they could have neither paused nor considered, and that their comments would have been of little weight unless they refuted my arguments, and proved my statements to be incorrect, and so they deemed it more prudent to abstain from giving reasons.

STATEMENT OF THE SHERIFF'S CASE.

I HAVE the honor to request that my letters to the Honorable the Colonial Secretary of the 12th and 16th instant may be first read, the better to understand the following case. [See Appendix for letters.]

As to the escape of Clarke and Cavanagh, I can only say that Captain M'Levie has taken an entirely erroneous idea of what Mr. Beverley said. Mr. Beverley did not—nor could he, in truth—say that he repeatedly represented to me the insecurity of the gaol at night, in consequence of the withdrawal of the night watchman from the stockade, as it was after a consultation with himself and Mr. Harrison that we all agreed that that night turnkey could be dispensed with,—being one and all of opinion, that once the prisoners were locked up, it would be impossible for any one of them to get out; and, to use Mr. Beverley's own expression, "his mind was at ease after the prisoners were locked up." But he did complain of the reduction of the six warders for the four trade overseers, which reduced his staff for day duty. However, being well aware that if I proposed the trade overseers as an additional charge for the establishment, it would catch the eyes of the economical members, create opposition, and lessen the chance of getting them, and as the enlargement of the accommodation was my great object, I thought it wiser to make a virtue of a necessity, and give up six for four, which did not increase the cost of the establishment, and to trust to circumstances to enable me to get back such of the six as should afterwards be found indispensable.

1st Charge:—

"That Polack was confined in a separate cell, in a different wing of the gaol to the other hard labour prisoners."

In answer to this allegation I submit the following facts:—

Polack, on being removed from the debtors' prison, where he had been placed to act as wardman, was for three or four days confined in the committal wing, from thence removed to the old hard labour wing, and afterwards drafted, with other hard labour prisoners, to the NEW HARD LABOUR WING, where he remained until removed with others, by my orders, and for no other reason than to make room for the refractory Cockatoo prisoners. He was then confined for a few days in the committal wing, until room could be made in the old hard labour wing, which had been overcrowded by bringing back the prisoners from the new hard labour wing. He was then removed to the old hard labour wing, where he now is.

It is not, therefore, the case that Polack was confined in a separate cell, in a different wing of the gaol to the other hard labour prisoners, with the exception of the few days he had been confined in the committal wing, inasmuch as the new wing, as it is styled, was expressly built for hard labour prisoners, and has since its completion been occupied solely by that class. This wing is composed of single cells, and every prisoner confined therein had a separate cell. Mr. Harrison had my directions to thin the old hard labour wing, according as he got the cells in the new one fit for the reception of prisoners.

It is not the case that I ever specially visited Polack in his cell in that wing; but I did see him there on several occasions. On one of these I recollect he was walking on the upper landing, and, it being a little after three o'clock p.m., I asked Mr. Harrison (Mr. Beverley being present) why he was not picking his oakum. Mr. Harrison replied, he had done his task; whereupon I said it would be well to give him a little more to keep him employed during the working hours. The fact of Polack's being in that labour wing, and picking his oakum there, was no relaxation of prison discipline, nor a breach of any gaol rule or regulation, but, on the contrary, as I shall hereafter shew, it is regarded by the Gaol Act in the light of a punishment; and separate classification is positively directed by the first of the Gaol Rules in ALL cases where the buildings will admit of it. Moreover, his is only one of many instances of hard labour prisoners picking oakum in the wing, there being at present no less than twenty-six

twenty-six hard labour prisoners picking oakum in their cells and the wings; and this has been the case with respect to other prisoners both in Darlinghurst and Parramatta Gaols.

Now, in order to see if any ~~truce~~ relaxation of discipline has been made in favour of the prisoner Polack in respect of separate classification,—for that is essentially the charge,—it will be necessary to ascertain his rights as a hard labour prisoner, convicted of a misdemeanour, under the Gaol Regulations, and then see if he has been favoured in violation of them in regard to separate classification.

John O'Neill
Brenan, Esq.

3 May, 1861.

GENERAL RULES FOR GAOLS.

I. In all cases where the building will allow of separate classification, the prisoners are to be divided into three classes:—

1. Debtors and others confined for contempt on civil processes.
2. Prisoners committed on charges of felony, or misdemeanour, or for want of sureties, and prisoners convicted of misdemeanors.
3. Prisoners convicted of felony.

Now, under this rule, Polack, beyond all doubt, belongs to No. 2 class, and therefore was entitled to be placed in the committal wing, and associated with prisoners of No. 2. But it may be said that he is a hard labour prisoner. That does not alter his position or his rights, so long as the buildings will allow of separate classification. As the rule says, "In all cases," &c., the word convicted embraces the verdict and sentence; and, moreover, misdemeanors are punishable with or without hard labour. Was he so classed or associated? No! But when he was associated, it was with felons, &c.; therefore, instead of the rules of the gaol being relaxed in this respect in favour of Polack, it appears they have been carried out to his prejudice.

Now, the fact of Polack having been for a portion of his time confined in the new hard labour wing, does not show a violation of any rule or section of the Gaol Act. By the latter it is treated more in the light of a punishment than an indulgence.

4th Vic., No. 29, Sec. 10.—"And be it enacted, That in order to prevent the contamination arising from the association of prisoners, any prisoner may be, by order of the Sheriff or Visiting Justice, separately confined during the whole or any part of his or her imprisonment, and such separate imprisonment shall not be deemed solitary confinement within the meaning of any Act forbidding the continuance of solitary confinement for more than a limited time."

By this section such is regarded not as an indulgence, but rather as a punishment, as it provides that it shall not be deemed solitary confinement.

It may possibly be said that some would regard it as a favour. Even so, would not such a prisoner feel that by associating him with the lowest and worst class of prisoners that he was unjustly treated by unnecessarily and unduly increasing his punishment, and particularly so when done in violation of the Gaol Regulations? Therefore, in truth, there has been no relaxation in this regard towards the prisoner Polack.

2nd Charge:—

"That Polack had the use of two cells, in one of which he kept stores of tea, coffee, &c."

If such a state of things existed, unless reported to me by my officers, I could not by any inspection have detected it, inasmuch as all unoccupied cells are kept locked; and I must say I was astounded on hearing the statement of the prisoner Banks on this subject; but it must be borne in mind he is uncorroborated, and I am informed it is denied by all the officers, and Mr. Harrison states that Banks' statement is wholly untrue.

3rd Charge:—

"That Polack was allowed by the chief gaoler to wear an unbranded coat belonging to the gaol, but not of the description usually supplied to other prisoners, and did not even wear this except when visited by the Sheriff in his cell."

I never saw the coat alluded to on Polack after he left the debtors' prison, and such is borne out by the evidence. Mr. Beverley stated that it was with his knowledge Polack wore the coat in question early in the morning and late in the evening, because he complained of chronic lumbago, from which he has been suffering for many years, but that he never saw him out of prison dress during the day, viz., white duck jumper and grey trousers, which he also stated, did not appear to have been branded, nor did he consider it necessary that they should. It was in this dress I saw him, and I have been informed by five of the warders that he always wore it except in the morning and evening, when he wore the coat above alluded to, and which, as I am informed, was provided by the Government.

It will be seen by the dispenser's evidence that he does not consider a prisoner dressed as a prisoner unless dressed all in grey or white, and the clothes branded with the broad arrow and Darlinghurst Gaol, and Warder Burke takes the same view. Now, let the 18th Rule be read, and see what it says on this point:—

PRISONERS' CLOTHING.

18. No prisoner who has not been convicted of felony shall be liable to be clothed in a party-coloured dress; BUT IF IT BE DEEMED expedient to have a prison dress for prisoners not convicted of felony, THE SAME SHALL BE PLAIN.

There is no rule directing what description of dress is to be worn by prisoners not convicted of felony. THE FELONS' dress for summer wear is white duck jumper and trousers, branded with the broad arrow, and the name of the prison or establishment in which he may be confined on the front and back of each garment; and for winter, a grey suit—jacket, waistcoat, and trousers—branded in a similar way.

But it may be said that when a prisoner convicted of a misdemeanour is punished with hard labour, he should be dressed as a felon. That is not so. The rule not only implies, but says, in so many words, you shall not dress any prisoner who has not been convicted of felony in a felon's dress, thereby directing that there should be a marked distinction between the dress of those convicted of felony and those convicted of other offences, and such is but justice. As to the signal stated by Banks to have been given by Warder M'Kay, I can only say I do not believe it, and the statement of others confirms me in that belief.

4th Charge:—

"That on one occasion articles of ordinary clothing were introduced into the gaol for Polack's use, by the principal turnkey."

My answer to this is,—the principal gaoler communicated with me by memo., to know if Polack was to be sent to the Police-office under a writ of *habeas* in his prison dress, or to be allowed to put on his own clothes. To this I answered by indorsement, "Let the usual course be pursued." I subsequently heard that Mr. Beverley permitted him to wear his own clothes on this occasion, and, to enable him to do so, the clothes referred to by the warder and gatekeeper, Burke, were sent into the gaol for that purpose; and I am informed by Mr. Beverley, that they were only used on that occasion by the prisoner.

5th Charge:—

"That, with the knowledge of the principal gaoler, Polack was allowed to take exercise before the usual hour of opening the gaol and in the company of Turnkey M'Kay."

In answer to this I can only say, there was no permission given by me to exercise Polack in any exclusive way, so I could not be reasonably expected to know if such was the case, unless reported to me; and the hour it was alleged to have taken place is an additional reason for my not knowing it. However, I presume Mr. Beverley will be able to explain this.

John O'Neill
Brenau, Esq.
3 May, 1861.

6th Charge :—
“ That Polack was not searched on being removed into the gaol, in conformity with the 18th gaol rule ; or, if so, was allowed to retain in his possession money, watches, jewellery, and other articles of considerable value.”

These statements affect the principal turnkey, Mr. Harrison, and nothing stated therein was reported to me by that or any other officer, nor did it at any time come to my knowledge until I heard the statement of “ Banks,” when I instantly went to Polack’s cell, accompanied by the principal gaoler, and had a search made. No watches, jewellery, money, or valuables were found. I then interrogated Polack as to those things, and he denied ever having anything in his possession except a presentation watch, which he had for a short time, and returned it to his son. This was the first time I ever heard of this watch.

I think I have good reason to complain of Doctor West’s conduct in this matter ; for if he, being a high and responsible officer in the department of which I was the head, had reason to suspect the existence of the alleged relaxation in the gaol discipline towards Polack, it was his duty to give me some information of it,—more particularly when he must have seen by my minute on his certificate (see Appendix) that it was not my desire that any undue leniency should be extended to this prisoner. He must also have been aware, from conversations I have had with him, that, had he done so, it would have been well received by me, and that I was not so over-confident in my own management as not to take a suggestion, or even advice, when well meant.

Now, upon a review of the above facts, I would respectfully put it to the Executive Council whether the prisoner Polack has been more leniently dealt with, or the gaol regulations unduly relaxed in his favour, taking into consideration that he is a man now about *sixty-eight years of age, convicted of a misdemeanor, and whom Dr. West certified in October, 1854, to be then labouring under chronic lumbago, of a very gouty diathesis, and from his age and general debility, to be unfit to undergo a sentence of hard labour—and, in fine, that the infliction of such a punishment would in all probability endanger his life. This was not an ordinary or hasty certificate, but on oath, and after long and careful examination made for the purpose, and that, too, in the gentlemen’s official capacity, as appears by the following affidavit :—*

In the Supreme Court of New South Wales, }
Criminal Jurisdiction.

The Queen against Abraham Polack and William Henry Wells.

On this fifth day of October, in the year one thousand eight hundred and fifty-four, George West, of Sydney, in the Colony of New South Wales, Doctor of Medicine, being duly sworn, maketh oath and saith as follows :—I hold the situation of Surgeon to Her Majesty’s Gaol, at Darlinghurst, in the said City of Sydney. I have seen the above-named *Abraham Polack almost daily since he has been confined within the said gaol, under the conviction against him herein (convicted 9th August, 1854; sentenced the 6th October, 1854); and I have been on several occasions consulted by him, and find that he is afflicted with lumbago, which I am informed is of long standing, and also that he is of a very gouty diathesis; in consequence thereof, as well as from his age and general debility, I am of opinion that he is an unfit person to undergo a sentence of hard labour, without seriously injuring his health, and that the undergoing such a sentence would in all probability materially endanger his life.*

GEO. WEST.

Sworn by the deponent, on the day first above mentioned,
at Sydney aforesaid, before me,

AUGUSTUS CARTER,
A Commissioner for Affidavits.

Or whether his position has been better than, or equal to, that of any one of the following so-called billeted men, all of whom are his juniors by thirty years, and most of them felons ?

Prisoners employed otherwise than at Hard Labour in Darlinghurst Gaol, February, 1861.

No.	Name.	Offence.	Sentence.	Employment.
1	George Kemp . . .	Obtaining money on false pre- tences	2 years’ labour.	Clerk in office.
2	George G. Mayno .	Obtaining money on false pre- tences	2 years’ labour.	Clerk, overseer’s office.
3	William Holstein .	Larceny	2 years’ labour.	Letter writer.
4	John Mackie . . .	Horse stealing	2 years’ labour.	Hospital wardsmen and attendants.
5	Frederick Howard.	Forgery	3 years’ labour.	
6	John Pole	Robbery	3 years’ labour.	
7	Edward Cousins . .	Obtaining money on false pre- tences	2 years’ labour.	Wardsmen, commit- tal wing.
8	Edward Cheetham.	Stealing from a dwelling-house . .	2 years’ labour.	
9	Charles Turton . .	Cattle stealing	3 years’ labour.	Wardsmen, labour wing.
10	William Smith . . .	Vagrancy	12 months’ labour.	
11	Patrick Ryan . . .	Horse stealing	3 years’ labour.	Wardsmen, new wing.
12	George Davis . . .	Ditto	5 years’ labour.	
13	James Everett . . .	Stealing in a dwelling-house . . .	2 years’ labour.	Cooks.
14	John Campbell . .	Forgery	3 years’ labour.	
15	Thomas Smith . . .	Uttering a forgery	2 years’ labour.	Barbers, and with lunatics at night.
16	William Cenroy . .	Larceny	2 years’ labour.	
17	Stephen Allen . . .	Violent assault	3 years’ labour.	Yardsmen.
18	Robert Hilliard . .	Assault with intent	2 years’ labour.	
19	Thomas Brophy . .	Assault	3 months’ labour.	Lamplichter.
20	James Denny	Stealing	12 months’ labour.	
21	William Murphy . .	Ditto	2 years’ labour.	Cleans lodge
22	Thomas Burns . . .	Ditto	6 months’ impt.	
23	Thomas Cartwright	Manslaughter	2 years’ labour.	Bath-house.
24	Jenne Friend . . .	Stealing	18 months’ labour.	
25	Arthur Gore	Stealing from a dwelling-house . .	2 years’ labour.	Weighs oakum, &c.
26	Patrick Kellegher .	Manslaughter	3 years’ labour.	
27	Henry Smith	Stealing from the person	2 years’ labour.	Gardeners.
28	George Turner . . .	Escape from police	6 months’ labour.	
29	Hugh Glen	Manslaughter	8 years’ labour.	

Or has his position been better than, or equal to, that of the hundreds of hard labour prisoners who appear, by the following return, to have been employed cabbage-tree hat-making, and earning money and indulgencies of tea and sugar, and who have been, while so employed, always placed in the corridor of a wing ?

RETURN

RETURN of all money earned by Prisoners in H. M. Gaol at Parramatta during the years 1856-7, and part of 1858.

John O'Neill
Brenan, Esq.

EMPLOYMENT.	1856.		1857.		To 31st July, 1858.	
	Number employed.	Amount.	Number employed.	Amount.	Number employed.	Amount.
Hat-making	600	£ 1,047 1 10	592	755 15 3	312	374 8 7
Stone-cutting	519	680 3 11	412	614 11 3	206	206 17 3
All other work	125	226 19 1	151	279 6 3	66	66 2 8
Total	1,244	1,954 4 10	1,155	1,650 12 9	584	681 8 6
Monthly Average..	108	162 17 0	96	137 11 0	97	113 11 5

3 May, 1861.

In order to test the value of, and the reliance to be placed upon, the evidence and statements of Doctor West, it will be necessary to analyze both:—On the 5th of October, 1854, Doctor West, having almost daily seen the prisoner Polack from his conviction, viz., 9th August, up to that time, and having been several times consulted by him, pronounced upon oath that Polack was subject to *chronic lumbago*, to be of a *very gouty* diathesis, and, from his age and general debility, that he was not only unfit to undergo hard labour, but that the undergoing such a sentence would in all probability *materially endanger* his life. Now, let us see what Doctor West certified in February, 1860. He pronounces Polack fit for hard labour, notwithstanding what he swore upwards of five years previously, and knowing the very nature of the diseases he then swore Polack was labouring under to be *chronic*, adding, in the said affidavit, that at his age hard labour would “endanger his life.” This certificate so surprised the gaoler, knowing, as he did, from previous knowledge of the prisoner, that he was quite unfit for hard labour, that he sent it to me for my directions. I wrote the following minute on the certificate, viz.—“Unless Doctor West sees reason to alter his opinion, Polack must be put to hard labour.” Then Mr. Beverley wrote the memorandum in red ink, which drew from Doctor West the following amended certificate:—“I consider Polack to be in good health for a man of his age, and quite capable of picking oakum, scouring cells, or any other labour not requiring to lift heavy weights.” It will be seen that even under this amended certificate the gaoler might have put the prisoner to cut stone in the stockade; and, had he done so, looking at the affidavit of Doctor West, the result might have proved fatal to the prisoner; but the same humane motives that induced Mr. Beverley to press upon the attention of Doctor West the unfitness of the prisoner to be put to hard labour, prompted him to adopt the less objectionable portion of Doctor West's certificate, and the prisoner was consequently appointed a wardman in the committal wing, and there the duty of scouring cells devolved upon him. But this light labour was found too laborious for the prisoner, for the very causes assigned by Doctor West in his affidavit of 1854, viz., lumbago of many years standing; and it was reported to me by Mr. Beverley that he himself was obliged to assist a wardman to raise the prisoner Polack on his legs when he was endeavouring to perform the work of scouring cells; therefore, in carrying out this modified form of Doctor West's certificate, if persisted in, might have produced serious consequences, if not shortened the life of the prisoner—adopting Doctor West's view of his case in 1854. In consequence of this report, I appointed the prisoner to be one of the wardmen in the debtors' prison. When removed, in deference to the Colonial Secretary's decision, I ordered him to pick oakum, being the first description of labour mentioned in Doctor West's certificate. I use the words “in deference to the Colonial Secretary's decision,” because the prisoner Polack was appointed to that billet, which was always, and is now, filled by hard labour prisoners.

Now let us see how far Doctor West is correct in his statements. The first, though not of any great importance in itself, is one of the many instances in which Doctor West has made ill-considered and incorrect assertions. It is as follows:—“Polack was brought before me by order of the Judge, to know if he was fit for hard labour.” This is not the case; it was Mr. Beverley who called for the certificate. Doctor West states,—“I saw very little of Polack until he was removed from the debtors' prison back to the wing;” “on the 23rd of March Polack sent a message to me that he was very ill, and wanted me to see him in his cell,” &c.; and, after describing the difficulty he had in getting the prisoner to the hospital, he goes on to say, “He then had on black kerseymer trousers, black waistcoat, his own hat, and a jumper, with a muffler round his neck.” Doctor West then states,—“I don't think I saw Polack afterwards until his petition was referred to me in January, 1861.” The first portion of Doctor West's statement is as follows:—“I saw very little of Polack until he was removed from the debtors' prison back to the wing.” If this statement be true, Doctor West must have seen the prisoner Polack after the 28th of June, 1860, for that was the day he was removed from the debtors' prison. Now let us see what Dr. West further states. “On the 23rd of March, 1860, Polack sent a message to me to say he was very ill, and wanted me to see him in his cell,” &c. In alluding to this circumstance, Doctor West states he did not see the prisoner afterwards until he saw him in reference to his petition, in January, 1861. As to this latter statement, I am informed it is quite correct; indeed it must be so, as, doubtless, the Doctor referred to the hospital journal before making it. Now, with regard to the former portion of the foregoing statement, respecting the occurrence of the 23rd March, this must have been before, and not after (as he states), the removal of Polack from the debtors' prison, inasmuch as Polack was not sent to the debtors' prison for seven weeks after that date, viz., the 12th May, and not removed from there until the 25th June. So much for the correctness of this statement. I should not be disposed to take such notice of this statement, were it not manifest that, by the great particularity and circumstantial manner in which the Doctor related it, he wished to convey that, notwithstanding the decision of the Colonial Secretary, which caused Polack's removal from the debtors' prison, he was still permitted to wear his own clothes. Now, as to the clothes stated by Doctor West to have been worn by Polack when he saw him in reference to his petition in January, 1861, is it not likely the Doctor is as incorrect in this as he has shewn himself to be in his other statements, particularly when he speaks of the prisoner as being better dressed than he was, admitting at the same time that the prisoner had on a gaol jumper! Besides, he is contradicted on this point by two or three warders.

Doctor West goes on to say,—“I never gave any instructions that Polack was to be treated differently to the other prisoners sentenced to hard labour.” How does Doctor West reconcile this with the fact of his having given first a *general certificate*, consigning this prisoner to the *hardest labour*; then giving an amended one, allotting him light labour, viz., picking oakum, &c.? How well this accords with Doctor West's affidavit of October, 1854 and I would ask, was there ever such an order as the one he gave the gaol dispenser, viz., that he should never prescribe for the prisoner, even though he should be taken ill at night? I venture to assert there never was such an order given with respect to any other prisoner in Darlinghurst Gaol.

Now, with respect to Doctor West's pronouncing the prisoner a malingeringer, and consequently giving the dispenser the order just alluded to—this, indeed, appears very unaccountable, when we look at another portion of Doctor West's statement, wherein he states he had only seen the prisoner for a few times, which, by his own shewing, were during the first five weeks of his imprisonment, viz., from about 10th February to 23rd March, and admits not having seen him at all from the 23rd March, 1860, to January, 1861—a period of ten months.

It appears by the records of the Darlinghurst Gaol, that, in 1854, Doctor West ordered the prisoner Polack both wine and cigars, considering that a man of his years, habits, and constitution, required

Sentenced the
6th Feb., 1860.
Date of certificate,
15th Feb.,
1860.

John O'Neill required these extra and unusual allowances. Polack was thus treated from his conviction, viz., the 9th of August, 1854, to 8th October following, when he was transmitted to Parramatta Gaol.

8. May, 1861. Again I would ask, how can this be reconciled with his course of treatment and conduct towards this unfortunate prisoner in 1860? If Doctor West's entire statement be carefully considered, I confidently submit that it will be found to be replete with so many contradictions and inconsistencies that it cannot be considered as reliable evidence.

Mr. Walsh's statement is of little value, he having paid but slight attention to Polack, and as he considers a prisoner not dressed as a prisoner unless he be dressed all in white or grey, according to the season, and branded with the broad arrow and Darlinghurst Gaol.

Michael Burke takes the same view. They therefore did not consider Polack dressed as a prisoner, because he wore the grey trousers and white jumper, neither of which appears to have been branded.

The reason of Polack's not wearing an entire suit of white duck was that, being of such a very gouty habit, he could not bear the cold of them. And the same reason, in addition to his being subject to chronic lumbago, induced Mr. Beverley to sanction his wearing the coat before alluded to, not having, as he assures me, another in the gaol to suit, and which Doctor West seems now to make so much of, regardless of his having sworn that Polack had chronic lumbago, was of a very gouty diathesis, aged, and labouring under general debility.

Now, at the close of the inquiry, on Monday, the 11th instant, I considered it my duty, in consequence of the statements made during that inquiry, to suspend Mr. Harrison, but I abstained from taking a similar step with regard to Mr. Beverley for the reasons stated in my letter of the following day, the 12th instant, namely, "I have for the present abstained from suspending the principal gaoler, considering that it would be extremely inconvenient under the present circumstances of the prison, if not dangerous, to suspend both the principal officers of the establishment at the same moment."

On the next day, Wednesday, the 13th, I saw one of Mr. Cowper's minutes on my letter of the 12th instant, which, as well as I can recollect (having had but a cursory glance of it), expressed an opinion that I ought to have suspended Mr. Beverley as well as Mr. Harrison, and that I could easily have procured a *locum tenens*; and, before I had read any of the other minutes, Mr. Elyard said that he would send me the official letter after seeing Mr. Cowper; and I certainly understood that I was to wait until I received it, as it was to be sent to me immediately, and the more so as I understood the minute to express an opinion and not a direction. Thursday came, and no letter—Friday morning, and no letter; but in the afternoon I received a note from Mr. Cowper, requesting me to call upon him, when to my utter amazement he informed me that, having read and carefully considered the reports of the result of the investigations, and also my letter of the 12th instant, he could not arrive at any other conclusion than that it was his duty to suspend me as well as Mr. Beverley.

It appeared then (as I supposed) that the principal thing laid to my charge was want of decision and of determination, as was said, in not at once suspending Mr. Beverley as well as Mr. Harrison. Let us see how far that charge is well founded, or whether I did not take the more prudent course in writing the letter of the 12th, and waiting for instructions.

Here was an establishment with 105 of the most desperate Cockatoo convicts, in addition to its ordinary inmates, amounting to upwards of 300, the principal warden under suspension, four of its wardens very recently appointed, and I being in possession of information, through the principal gaoler, that 50 of the Cockatoo convicts, whose solitary confinement had expired, and who were necessarily at large during the day time in the gaol yard, were planning an escape over the wall behind the workshops.

* Now, with all these facts before me I am told I showed want of moral courage because I did not suspend the two principal officers of the establishment, and intrust it to the charge of a stranger.

Now let the converse be looked at. Suppose I had done so, and that a number of these desperadoes either escaped, or that in their attempt to escape some of the officers lost their lives, what, I would ask, would be said of my taking such a course and exposing the establishment to such consequences? Doubtless I would be told thus, and, I admit, rightly—"Mr. Beverley was not shewn either dishonest or unfit to be intrusted with the charge of the establishment for a few days longer, and from your want of discretion those serious consequences have resulted." Then, indeed, there would be good reason for suspending me.*

I am told that Mr. Cowper said he did not think I possessed sufficient judgment and discretion to manage such an establishment as Darlinghurst Gaol—at the same time speaking of me in the *very kindest terms*.

I do feel unwilling to trumpet my own praises, but the very serious character of the pending inquiry will plead my excuse. On a very recent disturbance in the above gaol, during the last Criminal Sittings, I was suddenly called upon by my officers to attend in the gaol, and deal with a large number of the Cockatoo Island prisoners who were then disturbing the whole establishment by howling at the top of their voices, and using very improper language, and exciting the other prisoners to such an extent that the business of the Court was likely to be very much interfered with. I went into the gaol, and desired my officers to call silence, and inform the prisoners I (the Sheriff) was about to explain to them their true position respecting the cause of the complaint, namely, the removal of the bed-boards from each cell. My officers, Callaghan and Wallace, assured me that they tried every way to appease them, but in vain. They were like madmen, threatening all sorts of things. Yet I proceeded to the wing, and called to the men to be silent. They instantly obeyed, and I then referred to their complaints as to the bed-boards being taken from them, and their being obliged to sleep on the flags. I told them they had to blame their fellow-prisoners, Clarke and Cavanaugh, for the removal of the bed-boards, as they used them to aid them in effecting their escape, and I told them they were removed by my order. I addressed those unfortunate and deluded men in my usual style on such occasions, remonstrating with them, and assuring them that such violence and disorder would only bring on themselves still greater suffering and privations, at the same time impressing on them the necessity of obedience to my orders, and that I should, although very reluctantly, enforce them, and then appealed to their common sense and self-interest. I have found from experience that admonitory appeals to such men before resorting to punishment rarely failed to produce at least obedience to my orders, and in this instance it had the desired effect. Silence and perfect order were restored, and my officers reported to me that those men from that day forth were most orderly and obedient up to the day of my suspension.

Mr. Isaacs, the barrister, and Mr. Williams, the Crown Solicitor, were within hearing, and both expressed their astonishment at the effect produced by my address to these men, and observed that my lecture had a talismanic effect on the men.

To refer to those unfortunate men would indeed be out of place, but I contend that their respect for an officer and great deference to his orders prove that they are satisfied at whatever he may be obliged to do in carrying out gaol discipline, and even punishments that may be inflicted when fairly investigated and proved to be deserved, and of this I have had various instances, and my subordinate officers can bear testimony to this.

Mr. Cowper is aware of the extensive improvements and additions I have made to the Darlinghurst Gaol, and that solely by prison labour; and that in the erection of the new single-celled labour wing, it is admitted that I have effected a saving to the Government of at least twenty thousand pounds (£20,000), and that in the short space of three years, exclusive of the debtors' prison and a spacious hospital; and I beg to remind Mr. Cowper of the many difficulties I had to contend with in procuring the materials to keep the men constantly at work. All these useful additions were not accomplished without the constant attention and exertions of myself and officers, as until the year 1860

there

* This was written before the escape of the seventeen Cockatoo prisoners from Darlinghurst Gaol.

there were no overseers of works, and this duty was performed by Mr. Harrison without additional pay, and the style and durability of the works speak for themselves. John O'Neill
Brenan, Esq.

I am seven years in charge of that establishment; there have been no serious irregularities or disturbances amongst the prisoners; indeed, on the contrary, good order and attention to the work was maintained throughout, notwithstanding the great influx and reflux of prisoners, and notwithstanding having the disadvantage of female confinees in the same establishment, which is not allowed in the large prisons in England. Are all these exertions and attentions of mine and my officers to be overlooked because it is now alleged that some comparatively slight gaol discipline has been relaxed in the case of this old and ailing man, Polack?

3 May, 1861.

Now, do my antecedents justify Mr. Cowper in the opinion that I do not possess sufficient moral courage and determination to grapple with the difficulties of managing an establishment like Darlinghurst Gaol?

It is always painful for a man of right feeling to enlogize his own capabilities, but in the present case it becomes necessary for me to prove that Mr. Cowper's estimate of my official abilities is not well founded, as I shall now proceed to shew that in the discharge of my public duties as Water Police Magistrate, so far back as ten years ago, I shewed myself to possess great moral courage and a determination to carry out the maritime laws, notwithstanding the powerful mercantile influence arrayed against me.

It may be within Mr. Cowper's recollection, as it is a matter of record, that several of my decisions as Water Police Magistrate were not only found fault with, but reprobated by a great portion of the merchants of the city, and that they employed the ablest legal assistance to control my decisions in my own Court, and that in several instances they appealed to the Supreme Court against them, but in every instance without success. Notwithstanding this justification of my conduct by the Supreme Court, the most wealthy and leading merchants in the city combined together, and many of them, then members of Council, determined to get rid of me by an indirect and, I should say, unconstitutional proceeding.

A resolution was moved and carried in the then Council, supported by those mercantile members and those whom they had enlisted in their cause, recommending the Government to remove me as Water Police Magistrate and to appoint me to some other situation, as Mr. Wentworth was pleased to say that there were many other situations which I was eminently fitted to fill. Mr. Donaldson, in his place in the House, said that I exercised my authority and discretion most unwisely and unfairly; and he then instanced the case of the ship "Ranger," at that time lying, as he said, rotting in the harbour, because I would not compel her crew to take her to sea upon a mere assumption on my part that she was not seaworthy, when in fact it was no assumption of mine, as she was reported to me unseaworthy, and a survey demanded by the men, which was refused by the ship's agent. What were the consequences?

The ship no doubt lay for several months in the harbour without a crew, when at length the ship's agent prevailed upon Captain Hunter and his crew to volunteer to take her to London, and I felt bound to permit them to do so, having first given them a full history of the case.

This ship, as I anticipated, never reached London; she foundered at sea, and all hands were lost but four seamen.

Notwithstanding the powerful interest brought to bear by the mercantile body in the Council, the then Governor, Sir Charles Augustus Fitz Roy, refused to act upon their recommendation, having first satisfied himself by his Law Officers that my decisions were legal, and that I shewed that I did possess moral courage to carry out the law in its integrity against the most powerful body in the community; and His Excellency observed that he would not remove me from the Water Police Bench until he had an opportunity of appointing me to something better, which led to my appointment as Sheriff.

Now, upon a review of the whole case, I respectfully but confidently submit that, regarding Doctor West's affidavit to be true, as we are bound to do, and his certificate of 1860 as untrue, it being in direct contradiction to his oath; and having regard to the true position of the prisoner Polack under the gaol regulations, and to his right to be treated like any other prisoner of his age, health, crime, and sentence, and not to be dealt with in furtherance of carrying out any undue severity, which would, in his case, have amounted to a positive cruelty and inhumanity on part of the gaoler; and, further, regarding the proper discretion to be used by the gaoler in carrying out the sentences of the law, that such shall not be made the instrument of torture by any one, who, having the power, may have the desire to use or cause it to be so used; and I do therefore most confidently but respectfully contend, that whatever slight deviation from the general practice there may have been made, and for which I can at all be accountable, in the case of Polack, it was on the side of, and induced by, humanity alone.

I am sure that the Honorable Colonial Secretary, on carefully looking at the facts of this case, will see how much he has been misled by Doctor West and the witnesses he produced in support of his statements; and I can well understand why the Honorable Colonial Secretary saw no reason to doubt the correctness of those statements, coming as they did from a gentleman holding so high and important an office in my department.

In conclusion, I have the honor to assure the Executive Council that I have every confidence in their giving a fair and impartial consideration to my case, and that they will agree with me that throughout the whole matter I have been blameless, and I trust that they will deal with this case on its own merits.

[Appendix to foregoing Statement.]

No. 61-29.

Sheriff's Office,
Sydney, 12 February, 1861.

Sir,

I have the honor to inform you that on Saturday last the Inspector General of Police produced to me your letter of the 8th instant, directing him to inquire into certain statements communicated, as I understand, by Doctor West, Visiting Surgeon of the Gaol, in reference to the treatment of and discipline enforced towards the prisoner Polack, and directing the Inspector General to inquire into, and to report upon, the allegations contained in the statement of Doctor West.

2. I beg respectfully to observe that I thought this direction to the Inspector General of Police was an unusual course, until I had been apprised of the nature of the statements made by Doctor West, and called upon to inquire into, and report upon, the discipline or want of discipline enforced by my subordinate officers in Darlinghurst Gaol with respect to this prisoner. However, I am willing to regard this proceeding as a mere oversight of the usual prior communication with the head of the department, it having probably arisen from the fact that Mr. M'Levie was appointed at that time, at my own suggestion, to assist me in an inquiry into the circumstances of the escape of the two prisoners named David Clarke and Michael Cavanagh. I, therefore, permitted Mr. M'Levie to proceed with the inquiry touching the allegations of Dr. West with reference to the prisoner Polack. I did so rather than allow it to appear that I would interfere in the slightest degree to shield my subordinates in any alleged neglect of duty on their parts.

3. I find, however, that the course which Mr. M'Levie felt himself compelled to take is such as I cannot consider quite fair towards my officers, inasmuch as he has refused to hear evidence in contradiction to the allegations of Doctor West and the witnesses examined at his instance; and notwithstanding this impression, as it appears to me, a *prima facie* case of neglect of duty and disregard of my positive orders has been shewn on the part of the principal warder, I have deemed it expedient to suspend that officer, with a distinct understanding that I would afford him every opportunity of relieving himself

John O'Neill himself from the consequences of a disregard of my orders and neglect of duty, which the evidence, so Brenan, Esq. far taken, tends to prove.

3 May, 1861. 4. Under these circumstances, I have the honor to request that the Inspector General of Police may be directed to assist me in entering into a full investigation of the treatment of Polack by my subordinate officers, with a view of affording them every opportunity of explaining and accounting for their neglect in carrying out my peremptory orders with reference to this prisoner.

5. I am particularly desirous that this course should be adopted, as it will be in your recollection that on a former occasion complaints were made with reference to a lax discipline in favour of this prisoner, when I gave a positive order that he should be removed from the duties of wardman in the debtors' prison to the hard labour yard, to be there dealt with as any other hard labour prisoners, and which order has not been by me relaxed in the slightest degree. [See Memorandum annexed hereto, No. 60-472.]

6. I have the honor farther to state—[“I have for the present abstained from suspending the principal gaoler, considering that it would be extremely inconvenient, under the present circumstances of the prison, if not dangerous, to suspend both the principal officers of the establishment at the same moment”]—although so far as the evidence has been taken in reference to Mr. Beverley personally, I will feel it my painful duty to suspend that officer, unless he can, upon the further inquiry, relieve himself of the apparent neglect of his own duties.

I have, &c.,

JOHN O'NEILL BRENNAN,
Sheriff.

To the Honorable
The Colonial Secretary.

MEMO. No. 60-472.

Let Polack be put to pick oakum in the hard labour yard.

Let Dr. Beamish be placed in the trial or confine wing, and have a cell to himself.

J. O'N. B., Sheriff.

2 July, 1860.
The Principal Gaoler, Darlinghurst.

Garryowen, 16 February, 1861.

Sir,

I have the honor to draw your attention to my letter, as Sheriff, of the 12th inst., No. 61-29, having reference to your letter of the 8th inst., directing the Inspector General of Police to inquire into certain statements communicated to you by Doctor West, the Visiting Surgeon of Darlinghurst Gaol, in reference to the treatment and discipline enforced towards a prisoner named “Polack,” now confined in that gaol, and directing him to report upon the allegations contained in Doctor West's statement made in reference to the treatment of that prisoner.

Not having received any official reply to this communication places me in a very embarrassing position, as I am really at this moment in ignorance of your opinion and decision on my appeal to you, contained in that letter, notwithstanding my having called at your office on other business, on Wednesday, the 13th inst., and Mr. Elyard having shewn me one of your minutes, being the last on my letter of the 12th, which, by the way, I found a difficulty in deciphering, and was assisted in so doing by Mr. Elyard, when he then said he would communicate your official answer to me as soon as he could speak to you on the subject. I understood him then to say (and am now under the same impression) that I was to hold my hand, and not act upon your minute, thus imperfectly understood by me, until he should see you on the subject, and then communicate officially to me your decision; and you will doubtless recollect that, on a subsequent interview with yourself, when you first intimated to me your intention of suspending me as Sheriff, for not having taken action on the minute referred to, I pledged my honour as a gentleman, in presence of Mr. Elyard, that I understood him to say that I was to wait until I received your official answer to my said letter, which was, in fact, the cause of my not having immediately carried into effect your opinion of what ought to have been done by me with reference to Mr. Beverley.

Prior to my having received your official announcement of my suspension as Sheriff, I made several inquiries with reference to the subject contained in my letter of the 12th instant, and I am led to the conclusion that, from the surrounding circumstances, it will be found on inquiry that a very different state of facts existed in reference to the treatment and discipline adopted towards the prisoner Polack than that reported by Doctor West.

Now, having reference to your letter of the 8th inst., addressed to the Inspector General of Police, and his construction of his duties under that letter, it is quite clear he did not consider himself justified in inquiring into the conduct of my subordinate officers,—as he himself said, and, in fact, as I believe, it was intended that I should co-operate with the Inspector General in that inquiry, as well as the inquiry into the circumstance and cause of the escape of Clarke and Cavanaugh. At the close of the inquiry touching the irregularities in the treatment of the prisoner Polack, which affected the conduct of my subordinate officers, I suggested to the Inspector General the necessity of affording my officers an opportunity of producing such evidence as they might see necessary in exculpation or explanation of their conduct, or, as I am informed, to prove a very different state of facts from that shewn by Doctor West and his witnesses; but I was immediately met by the Inspector General's decision that he was not inquiring into the misconduct of any of my officers, and he felt bound to strictly confine his inquiry as to the correctness of the representations made by Doctor West in his report; consequently, my officers have had no opportunity of proving those statements to be incorrect. I therefore respectfully submit that my officers have been dealt with without a hearing, and consequently that I have been visited with the consequences of their alleged misconduct, which may be yet proved to be without foundation in a great degree, and, as I am informed, can be so proved; and I, too, am visited with the severe treatment of a suspension upon an assumption that my officers have been guilty of some gross dereliction of their duty, which, in point of fact, even if true, has been already proved was wholly unknown to me.

In conclusion, I have the honor to submit that experience has shewn to me that the office and duties of Visiting Justice are incompatible with my office as Sheriff, and the distinction is pointedly drawn by the Gaol Act; they are, in fact, distinct offices; and even supposing my subordinate officers, as Sheriff, have been guilty of a breach of gaol discipline (and if known to me), I should be treated in this instance as Visiting Justice, and not in my capacity of Sheriff, as it is clear that the duties and liabilities are distinctly marked and provided for by law; and I therefore submit that the duties of Visiting Justice should not have been put upon me as Sheriff.

Under these circumstances, I very respectfully trust you will re-consider your suspension of me as Sheriff; and, in reference to my subordinate officers, I presume they will take such a course as will enable them to satisfy you that they are not guilty of any very grave dereliction of duty or departure from the gaol regulations; and I unhesitatingly assert I have not detected any of the irregularities complained of by Doctor West, and that there has been no want of vigilance on my part; and I may say, in truth, that I have felt the most anxious desire to establish the most perfect system of prison discipline at Darlinghurst Gaol that the building and accommodation enabled me to do.

I have, &c.,

JOHN O'NEILL BRENNAN,
Sheriff.

In

In the Supreme Court of New South Wales, }
Criminal Jurisdiction. }

John O'Neill
Brenan, Esq.

The Queen against Abraham Polack and William Henry Wells.

3 May, 1861.

On the fifth day of October, in the year one thousand eight hundred and fifty-four, George West, of Sydney, in the Colony of New South Wales, Doctor of Medicine, being duly sworn, maketh oath and saith as follows:—I hold the situation of Surgeon to Her Majesty's Gaol at Darlinghurst, in the said city of Sydney. I have seen the above-named Abraham Polack almost daily since he has been confined within the said gaol under the conviction against him herein, and I have been on several occasions consulted by him, and find that he is afflicted with lumbago, which I am informed is of long standing, and also that he is of a very gouty diathesis; in consequence thereof, as well as from his age and general debility, I am of opinion that he is an unfit person to undergo a sentence of hard labour without seriously injuring his health, and that the undergoing such a sentence would in all probability materially endanger his life.

Sworn by the deponent on the day first above mentioned, at Sydney aforesaid, before me,
AUGUSTUS CARTER, a Commissioner for Affidavits.

GEO. WEST.

H. M. Gaol, Darlinghurst,
16 February, 1860.

Sir,

I have this day carefully examined the prisoner Abraham Polack, and am of opinion his health is sufficiently good to perform hard labour.

I have, &c.,
GEO. WEST,
Visiting Surgeon.

To — Beverley, Esq.,
Governor of H. M. Gaol, Darlinghurst.

Unless Doctor West sees fit to alter his certificate, Polack must be put to hard labour.—J. O'N. B.

As this is a particular case, I request Doctor West will state what description of hard labour Polack is to be put to.—H. C. B.

I consider Polack in good health for a man of his age; he is quite capable of picking oakum, scouring the cells, or any other labour which does not require lifting heavy weights.

23 February, 1860.

GEO. WEST.

Darlinghurst Gaol, 19 January, 1861.

Sir,

I have the honor to report to you, for the information of His Excellency the Governor General, that the prisoner named in the margin [A. Polack] is not, nor has been at any time since his committal, in bad health, in fact he is stronger and looking better now than on his admission. Prisoner has frequently attempted to deceive me by feigning illness, and by other unjustifiable means to impose upon me; and although (when called on by the Judge after his committal) I gave a certificate stating that I considered him fit to undergo hard labour, I am not aware that up to the present moment he has been put to it, or indeed that he has ever been clad in the prison dress.

These facts distinctly contradict his assertion in the third paragraph of his petition, relative to the effect of hard labour on his health, and, if his statement was true, it would be a contradiction to his fourth paragraph, because prisoners undergoing hard labour have no right to be kept in close confinement.

I consider Polack a *determined malingerer*, and his case one that ought not to receive any mitigation of sentence on the plea of ill health.

I have, &c.,
GEO. WEST,
Visiting Surgeon.

The Honorable
The Colonial Secretary.

In the Colony of New South Wales, }
Sydney, to wit. }

I, John Callaghan, of Sydney, in the Colony of New South Wales, acting principal warden at Darlinghurst Gaol, do solemnly and sincerely declare that I have been a warden in this gaol nearly ten years; the prisoner Abraham Polack was in my charge for some short time while I was in charge of the committal wing; I was then relieved by Warden Rispen; he was in prison clothes while he was in my charge—that is, a white jumper and grey trousers, he picked his quantity of oakum while he was in my charge; from my own knowledge I am not aware of his receiving any luxuries; on my handing over charge of the wing to Rispen I read him the order from Mr. Beverley, that he was to pick oakum and wear prison clothes; while he was in my charge he was treated in a similar way to other prisoners, and received no indulgencies that I am aware of; and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act, &c.

Made before Andrew Lenchan, Esq., J.P.

JOHN CALLAGHAN.

In the Colony of New South Wales, }
Sydney, to wit. }

I, Thomas Lee, of Sydney, in the Colony of New South Wales, warden at Darlinghurst Gaol, do solemnly and sincerely declare that I shall have been a warden ten years on the 24th of May next; Abraham Polack was in my charge, as warden of the old hard labour wing, after he was removed from the debtors' prison, for some time during which period he picked oakum in the hard labour yard, and wore a jumper cut up the front, prisoners' grey trousers and shoes; I never knew, nor heard, of his getting any additional diet in the way of indulgencies, and afterwards, when he was in the new hard labour wing, I weighed out his quantity of oakum, sent it over to him, and got it back picked; I am not aware of any favouritism or unfair leniency towards this prisoner, beyond any other, whilst in my charge; I make this solemn declaration believing the same to be true, &c.

Made before Andrew Lenchan, Esq., J.P.

THOMAS LEE.

Donald

John O'Neill Breanan, Esq. }
 3 May, 1861. }
Donald McKoy, late warder in Darlinghurst Gaol, states:—I have been a warder in the gaol for 11 years; I had the prisoner Polack under my charge five months; he wore the same clothing as the hard labour prisoners wore; he always picked his oakum; I never saw anything in his cell more than was in any other prisoner's cell; I did not receive orders to treat him differently from other prisoners; when Polack was removed to the new wing, I was told he was to pick oakum there, and which he did as stated before.

DONALD M'KOY.

In the Colony of New South Wales, }
 Sydney, to wit. }

Thomas Harrison, of Paddington, in the City of Sydney, in the Colony of New South Wales, late principal turnkey of Darlinghurst Gaol, do solemnly and sincerely declare, that on or about the twenty-fourth day of March, one thousand eight hundred and sixty, Dr. George West, Visiting Surgeon to Darlinghurst Gaol aforesaid, requested me to bring Polack (who was then, and is still, undergoing a term of imprisonment for three years with hard labour in Darlinghurst Gaol aforesaid,) from his cell to the surgery; I went to Polack, who was ill in bed in his cell; I found him in a fearful state of perspiration; I then went to Dr. West and informed him of the state Polack was in, and asked him whether he thought it advisable to bring him down; Dr. West said—yes, I will have him down; I then went to Polack and told him that Dr. West declined to attend him in his cell, and that he must come down to the surgery; Polack said he could not go—that if he did it would be the death of him; I said you had better put a blanket round you, which he did, and went down with me to Dr. West, to the surgery, and he was then ordered to go into the hospital, and from thence he was discharged on the twenty-sixth day of the same month of March; at that time the said Abraham Polack had on a pair of black trousers of his own, but the rest of his clothes were prison clothes; at that time there were about thirty other prisoners wearing their own trousers and shoes in consequence of there being no prison trousers or shoes of any description at that time in the gaol store; a requisition had been sent in for slop clothing for the prisoners, but the said clothing did not arrive until the latter end of June, and after Polack left the debtors' prison I gave directions to have two pairs of prison trousers made into one for Polack, as there were none large enough for him; they were made and he wore them; I never saw him afterwards without them on, and I was in the habit of seeing him daily in taking my rounds through the different prisons and cells; I never knew Polack to have luxuries of any kind in his cell, as stated by the prisoner Banks in his examination before Captain M'Levie, at the gaol, on or about the ninth February, one thousand eight hundred and sixty-one; I am not aware of any signals being passed to Polack when the Sheriff arrived, nor am I aware of Polack's having any stores or luxuries in his own or any other cell; I recollected when Polack complained of lumbago I gave him the only coat that was in the stores, such as the prisoners once wore, and was furnished by Government; Polack was allowed to be exercised in the morning and evening in consequence of being principally worked in the wing; the same as all other exempt or partially exempt prisoners: the prisoner Polack frequently complained of being ill to me, but said he would rather die than call in Dr. West, in consequence of his treatment to him; I have myself repeatedly seen him unable to eat his dinner, and have occasionally ordered it to be reheated two or three times for him; in the month of January last I was present in Darlinghurst Gaol when Dr. West came to visit Polack; I had just completed my rounds and had seen Polack when Dr. West was coming up the staircase in the hard labour wing; Dr. West asked me where Polack was, and I pointed Polack out to him; at that time Polack was dressed in grey trousers, jumper, shoes, and hat, all prison clothes: And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the sixth year of the reign of His late Majesty, intituled, "*An Act to repeal an Act of the present Session of Parliament intituled 'An Act for the more effectual abolition of oaths and affirmations taken and made in various departments of the State and to substitute declarations in lieu thereof and for the more entire suppression of voluntary and extra judicial oaths and affidavits and to make other provisions for the abolition of unnecessary oaths,'*" and also by virtue of the provisions of an Act of the Governor and Legislative Council of New South Wales made and passed in the ninth year of the reign of Her present Majesty, intituled, "*An Act for the more effectual abolition of oaths and affirmations taken and made in various departments of the Government of New South Wales and to substitute declarations in lieu thereof and for the suppression of voluntary and extra judicial oaths and affidavits.*"

Declared, &c.

In the Colony of New South Wales, }
 Sydney, to wit. }

Christopher Rispen, of Denham-street, Surry Hills, in the City of Sydney, in the Colony of New South Wales, late warder at Darlinghurst Gaol, do solemnly and sincerely declare, that Abraham Polack, a prisoner now undergoing the punishment of three years hard labour in Darlinghurst Gaol, wore the prison clothing shortly after he left the debtors' prison, which was on the twenty-eighth June, one thousand eight hundred and sixty, and came under my charge in the trial wing of the gaol; up to that time he wore his own trousers—there being neither trousers or shoes in the gaol store at that time for the prisoners; when the prison clothing was supplied, there were no trousers large enough for Polack, and I was ordered by Mr. Harrison, the then principal turnkey, to have two pairs of trousers made into one for him; I gave orders accordingly, and Polack never wore any other but prison clothing from that time until I left the prison, to the best of my belief; I did see Polack occasionally with a long coat on, which I am informed was a prison coat; Polack was about a month under my charge, and then removed to the new hard labour wing of the prison under the charge of Mr. M'Coy, who was at that time a turnkey in the gaol; I never knew him to have luxuries of any description while in the gaol, nor did I ever convey any to him; when Polack came into the prison, I received him, I searched him, and took from him a penknife and a small sum of money—he had nothing else on him at that time; the money was as usual handed over to Mr. Harrison, the penknife was labelled and put by in the usual way; I never gave any authority to any person whatever to address letters to me or to my wife for Polack or any other prisoner; and I do not know anything about the contents of a letter which I am informed was intercepted by Burke, the gatekeeper at Darlinghurst Gaol, and said to be addressed to my wife; I never passed any signal to Mr. Polack, or to any other prisoner, upon the arrival of the Sheriff at the gaol, nor did I know of any one else doing so, and I do not believe such was done; while Polack was under my charge he frequently complained of being ill, but refused to consult Dr. West; Polack was employed picking oakum under my charge, on one occasion he appeared to be so ill, that although he begged me not to report it to Dr. West, I thought it my duty to inform Mr. Harrison, as I really thought he was going to die; he was then in a profuse perspiration, and shivering all over; I never saw a man in such a state of illness before, and as Dr. West did not visit him in his cell, he was removed by Mr. Harrison's order to the hospital, rolled up in a blanket; the prisoner said let me die here rather than be taken to Dr. West. And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the sixth year of the reign of his late Majesty, intituled, "*An Act to repeal an Act of the present Session of Parliament intituled 'An Act for the more effectual abolition of oaths and affirmations taken and made in various departments of the State and to substitute declarations in lieu thereof and for*" the

ON THE PUBLIC PRISONS IN SYDNEY AND CUMBERLAND.

"the more entire suppression of voluntary and extra judicial oaths and affidavits and to make other provisions for the abolition of unnecessary oaths," and also by virtue of the provisions of an Act of the Governor and Legislative Council of New South Wales, made and passed in the ninth year of the reign of Her present Majesty, intituled, "An Act for the more effectual abolition of oaths and affirmations taken and made in various departments of the Government of New South Wales and to substitute declarations in lieu thereof and for the suppression of voluntary and extra judicial oaths and affidavits." Declared, &c.

John O'Neill
Brenan, Esq.
3 May 1861

Sheriff's Office,
Sydney, 1 May, 1860.

Sir,

In acknowledging the receipt of your letter of the 25th ultimo, conveying to me the decision of the Executive Council upon the Report of the Board appointed to inquire into certain irregularities in the Parramatta Gaol, into the conduct of the gaoler, and other officers, and to report on the general discipline carried out in that establishment; also upon certain correspondence relative to the case of a female prisoner having been delivered of a child in the Sydney Gaol, she having been an inmate thereof for more than twelve months; and referring to the undue detention of William Wallis, a lunatic,—I have the honor to submit as follows:—

1. That the Executive Council have, unintentionally no doubt, done me a great injustice by importing into their decision on the Report of the Board specially appointed to investigate into irregularities in the Parramatta Gaol, two totally distinct matters, which, I respectfully submit, have been already dealt with by the Government of the day. (See Colonial Secretary's letters, dated 6th December, 1859, and 6th March, 1860.)

2. That the Executive Council have, unintentionally, done me an injustice by acting upon a Report before giving me an opportunity of seeing it and the evidence upon which it was based. I was the first witness examined, and was not afforded an opportunity of hearing the evidence of the several witnesses subsequently examined; and I was, consequently, deprived of the right, as it is called, of cross-examining those witnesses whose evidence tended to shew that it was the appointment of persons of indifferent character which was in a measure, if not altogether, the cause of the alleged irregularities; and I was thus deprived of the right of calling other witnesses to sustain my views upon the subject, should I have felt called upon to do so.

3. That the Executive Council allege that I have committed a grave mistake in advancing damaging imputations against a subordinate, which I did not sustain by clear and indisputable proof. In answer to this portion of the censure of the Executive, I beg to observe, that I made no imputation against Mr. Allen. The imputations, or charges, made against that officer, were made by third parties, wholly without my knowledge until they reached me officially; and that I only founded my opinion, and came to conclusions from the evidence taken upon the inquiry I held into the cause of the alleged irregularities; and I was influenced in arriving at the conclusions I did from the evidence taken upon that inquiry, strengthened by the failures of Mr. Allen in supporting counter-charges against other subordinates, and his manifest zeal and exertion in supporting those counter-charges which obviously tended to exonerate himself. I allude to John Bowen's case, and the attempt to shew that Mr. Dudgeon was an accessory, if not a principal, in the larceny of the cabbage-tree hats. I may here observe, that evidence taken before the Boards of Inquiry into Mary Murphy's and John Bowen's cases was of such a character as to elicit from the Colonial Secretary the expressions in the annexed letter.

4. In reference to the observation that a great portion, if not all the irregularities were attributable to the appointment of persons of indifferent character to the subordinate offices. I beg to state that, since the dismissal of Mr. Moxham, who was principal turnkey when I became Sheriff, and who, in 1857, brought charges of immorality against Mr. Allen—it appearing on that inquiry that the subordinates were divided into two parties—I felt called upon to appoint strangers to all parties who were represented to be of good character. Mr. Moxham's successor was Mr. Phegan, who had strong recommendations from Major Twist, R.F., Captain M'Kay, 15th Regt., and Captain Kelso, Inspector of Penal Establishments. Mr. Phegan had been an overseer over prisoners in Hobart Town. Mr. Phegan's successor was Mr. Magney, who had high testimonials from several gentlemen in Melbourne; he was unknown to myself, and only a short time in the Colony. Mr. Magney's successor, Mr. Dudgeon, was selected for the office by Captain M'Levie, at my particular desire. Mr. Dudgeon's successor, Mr. M'Connack, the present principal turnkey, was also appointed upon the recommendation of Captain M'Levie.

In conclusion, I beg the Colonial Secretary will be pleased to lay this communication before the Executive, with the view alone of shewing that the conclusions arrived at by the Board were not confined to the evidence on which I formed my former opinion of the conduct of Mr. Allen; and I beg to assure the Government that, had I been present at the inquiry before them it would have afforded me sincere pleasure to hear any evidence that would justify me in changing my opinion of the conduct of that officer, and I am now glad that he has succeeded in placing before the Board such evidence as induced them to come to so favourable a conclusion as to the conduct of Mr. Allen; nor do I now desire to disturb that conclusion, yet I most solemnly assure the Government I was solely actuated in the view I had taken of the evidence before me, and the course taken by me thereon, by a sense of duty, and to secure the efficient discharge of the public service in the establishment under Mr. Allen's charge; and I was fully aware that Mr. Allen was surrounded by highly respectable and influential relations and friends, and that the recommendation I then felt bound to make would naturally bring upon me their displeasure, and perhaps their censure; even so I could not be turned aside from what I considered an imperative duty.

Under all the circumstances herein referred to, I do feel the view taken by the Executive of my conduct in reference to Mr. Allen was not in accordance with the dictates my own conscience justified; and the censure of the Executive, and what I am to expect at their hands in future, leaves on my mind a very painful impression.

I have, &c.,
JOHN O'NEILL BRENNAN,
Sheriff.

To the Principal Under Secretary,
&c., &c.

Darlinghurst,
26 February, 1860.

~~The Colonial Secretary~~
1861.

My dear Sir,

I have the pleasure to acknowledge the receipt of your letter dated the 25th instant, and also copies of your letters to the Honorable the Colonial Secretary of the dates 12th, 16th, and 19th February, 1861. I also acknowledge the receipt of a document headed—"Statement of the Sheriff's case."

I have attentively considered these several papers, and proceed, according to your request, to make such observations as occur to my mind on the perusal of them.

Though I ever carefully abstain from intruding my opinions on the notice of Her Majesty's Ministers, I will, nevertheless, deviate on this occasion from my practice:—1st. Because I have the same confidence, as you express at the end of your statement, that Her Majesty's Executive Council will give a fair and impartial consideration to your case. 2nd. Because I have always considered, during the seven years you have been Sheriff, that you have performed the duties of that arduous office in a highly satisfactory manner. In volunteering this testimonial, you will be kind enough to understand that I refer to that portion.

John O'Neill
Brenan, Esq. portion only of your duties which have devolved on you as an officer of the Supreme Court, and not in respect of those discharged by you as a functionary of the Executive Government.

3 May, 1861. With respect to the indulgence exhibited towards Polack, I do not perceive that you have been blamable in that matter. As far as I can collect, you neglected no visitation that you ought to have made. On your visitations you appear to have been deceived by gaol officers. The indulgence imparted to Polack was not communicated to you; you could not be omnipresent, and, therefore, could not be aware how Polack was generally treated unless you were told of it, which it appears you were not. I therefore venture to hope that, on consideration of this matter of Polack, the Honorable the Executive Council will hold you entirely blameless.

With respect to your not suspending Mr. Beverley, the question involves very delicate consideration, and it is a matter upon which the Honorable the Colonial Secretary is far more likely to form a correct judgment than I can pretend to offer. Assuming that you were wrong in not suspending Mr. Beverley, I am strongly inclined to think that if I had been in your place I should, under the circumstances, have done as you did. I think you took a correct course, and that if you did not do so you only committed a mistake in judgment on a point of no ordinary difficulty. If a gentleman should make a mistake upon such a point, and be deprived of his office for it, I am afraid that very few eligible persons would be desirous to enter into the public service. However this may be, as I am sure your conduct will receive the just and even lenient consideration of Her Majesty's Ministers, I conclude this letter by expressing my earnest hope that you will long continue to be employed in Her Majesty's service.

Believe me, &c.,

J. N. DICKINSON.

*This should be
1861.

John O'Neill Brenan, Esq. P. S.—I have this day perused my letter to the Sheriff dated February 26th, 1860*; I have also read the printed "Statement of the Sheriff's case." Having read the printed statement, I see no reason to recede from what I said in the letter referred to. I entertain still the same hope which I expressed at the conclusion of my letter to the Sheriff.

J. N. DICKINSON.

15 March, 1861.

Supreme Court,
21 March, 1861.

My Dear Brenan,

I have read the correspondence and statement shewn me by you, touching your suspension, together with Sir John Dickinson's letter; and I cordially agree with the opinion which he expresses respecting your services as Sheriff, in all things which have come under our judicial observation during your long tenure of office.

Until the duties of the Bench increased so overwhelmingly, I used periodically to visit and inspect the gaols; but, for some years past, I have been unable to continue that practice. I cannot form any opinion, therefore, from personal knowledge, as to your merits in that department. I can say, however, from frequent conversations with you on the subject of prison discipline, and similar matters, that I have always believed you to be very zealous, as well as minutely observant, in that portion of your many duties; certainly not in any degree lax, or disposed to undue leniency.

On the particular questions now before the Executive, my position makes it desirable for me to express no opinion to you. I must content myself by recording here my sincere and earnest hope that you may speedily be restored to office.

I am, &c.,

ALFRED STEPHEN.

E.

Sheriff's Office,
Sydney, 9 March, 1859.

Sir,

As it appears to me that no definite decision and recommendations are likely to emanate from the Select Committee upon secondary punishments, at least for some very considerable time, I have the honor to submit the following suggestions for the consideration of the Honorable the Colonial Secretary.

1. That the Act 11 Victoria, No. 34, be repealed and re-enacted, substituting the words "penal servitude" for hard labour on the roads or public works.

2. That the female prisoners be removed from Parramatta and Darlinghurst Gaol, and that they, excepting the old irreclaimable reprobates, be sent to the buildings in Parramatta known as the Military Barracks, as already suggested by me, and that this establishment be styled "The Female and Juvenile Female Penitentiary," and be placed under the management of two or three ladies belonging to some religious order.

3. That a common gaol and House of Detention should be established in or near Sydney, where all short-sentenced male prisoners (viz., under one year) and the old female reprobates from the police offices, &c., should be sent, and thus relieve the Parramatta and Sydney gaols of such inmates. At this place the prisoners might be employed breaking stones for the city. A hulk might also be fitted up, and prisoners whose sentences exceeded six months and under two years be employed on Garden Island, or elsewhere in the harbour, forming earth embankments in front of some of the proposed batteries.

4. That no more prisoners be sent to Cockatoo Island, and as soon as those there or a large majority of them have served their sentences, that the remainder be sent to some prison in the country districts, and free labour be substituted.

5. That immediate steps be taken to enlarge and remodel Parramatta Gaol so as to make it capable of accommodating say two hundred prisoners in solitary confinement under the system of primary prisons of the "Irish convict prisons." This might be done by the erection of two wings on the space of ground on the Parramatta side of the Parramatta Gaol Establishment, and which it is proposed to enclose by a wall of equal height with the present wall. That these wings should contain one hundred cells each at least eight feet by nine and ten feet high, with four patent water-closets on each landing.

6. That Darlinghurst Gaol should be enlarged as a reformatory establishment, similar to those in Dublin.

7. That all the prisons be under the management of a Board of three paid Directors, and that the Irish Act be adopted. This need not be done until the gaols at Darlinghurst and Parramatta are fit for the reception of prisoners under the new system, which they ought to be I think in two or three years, according to the number of prisoners employed upon the works. Parramatta ought to be the first, as there would not be any of the prisoners then confined under the Irish system eligible for removal to the reformatory establishment at Darlinghurst until they had undergone nine months solitary confinement, so that the improvements, &c., in Parramatta Gaol ought to be pushed on as much as possible, and, if necessary, free labour should be employed to erect the wall for enclosing the additional ground proposed, and while the wall is being erected the Colonial Architect and myself can plan the new wings proposed for that gaol.

8. To carry out these improvements with vigor and effect the Government ought to ask for, and the House to place at its disposal, a sum not less than ten thousand pounds.

I have, &c.,

Principal Under Secretary,
&c., &c., &c.

JOHN O'NEILL BREMAN,
Sheriff.

TUESDAY,

TUESDAY, 7 MAY, 1861.

Present:—

MR. HART,	|	MR. SUTHERLAND,
MR. MATE,	|	MR. WILSON,
MR. MORRIS,	|	MR. WINDEYER.

HENRY PARKES, ESQ., IN THE CHAIR.

Mr. William Augustine Cahill again called in and further examined:—

5438. *By Mr. Sutherland:* Are you clerk of works, or foreman of works, on Cockatoo Island? Principal foreman of works. Mr. W. A. Cahill.
5439. Is there a clerk of works on the island? There is a man under that designation there.
5440. Do you know by what means Johnson and Ferris escaped from the island? There were some men employed at night in the engine-house, for the purpose, I think, of pumping out the dock, and these were two of the men who were employed. There was a boat moored at the wharf, and which, it appears, they had cognizance of, and they slipped away from the engine-house to the wharf, and got away by this boat. The boat belonged to the present clerk of the works; he was then foreman of engineers. 7 May, 1861.
5441. Was it left in such a manner that the prisoners could have access to it at any time? It appears so; on that occasion it was, for it was moored close to the landing wharf.
5442. How many boats were there belonging to the island at that time, or was every one allowed to keep a boat? No other person than Mr. Broderick was allowed to keep a boat.
5443. Then, if I have been informed that it was the practice to allow any or all of the officers to keep as many boats as they liked, and as long as they liked, is that right? No officer of the island was allowed to have a boat except Mr. Broderick. He had permission from the Government to have a boat for his use.
5444. Had he more boats than one? Yes, two; one for his son's, and one for his own use.
5445. Were these boats allowed to pass backwards and forwards, to and from the island at any hour of the day or night? I believe they did come at late hours as well as at early.
5446. Do you remember the prisoners Landells and Hughes escaping from the island? I recollect an attempt being made by them to escape from the island.
5447. Where were they concealed at the time they made that attempt? In the store where the Government supplies are kept, ironmongery, ropes, paint, canvas, and other things of that sort.
5448. Who has charge of that store? Mr. Duff, I think; he is the Government storekeeper there.
5449. Is Mr. Duff a prisoner or a free officer? A free officer.
5450. Could they be concealed there without his knowledge? Yes; I suppose they were—that is where they were found when they were detected.
5451. Where was the boat made by some of the prisoners? It was made in a loft over the carpenters' shop.
5452. Who made that boat? A man of the name of Landells, I think, made it; he was working in the carpenters' shop. He was employed there in making patterns for Mr. Broderick's purposes, for the fitting or engineers' shop, and he therefore was not removed when the other men were taken away to fix the roof of the new building—continuation of workshops. Although he was working in the carpenters' shop, he never received any directions from me, but always from Mr. Broderick, and as he was not working under my instructions, I had not removed him to put the new roof up. During this time he contrived to make this boat, and he had every facility, as he had the shop to himself, unless when a free man went in or out, and there was scarcely half-an-hour in a day that some one was not in the shop.
5453. Was he under your charge at that time? Yes, he was under my charge, but I could not be accountable for him at that time, not being in the shop, unless occasionally when I went in and out, but at these times I always found him at his work—that is, the work he should have been at.
5454. What has become of the vessel used for the diving-bell and the punt belonging to her? The vessel is lying a wreck opposite the prison, at the present time; the punt that belonged to her has been taken to pieces, because she was useless.
5455. How was that vessel wrecked, can you tell? I have some recollection of the manner in which she was lost, at least of the manner in which the punt was lost. I think it is now about two years, if not better, since she was lost. One day the sea was very rough, and the punt, being lashed to her by a rope which was not sufficient to keep, she broke away and drifted over to the opposite shore, to the west side of Balmain. The police made an attempt to come up with her before she went on the other side, but were not in time enough, for she thumped on a rock and went down. Then an attempt was made to raise her by this vessel, with which the diving-bell was usually worked, and after some time the punt was raised and taken towards the prison to beach the punt; they did so, but after beaching the punt, I believe they did not moor the vessel sufficiently far from the land, and she consequently drifted in on the land, her sternpost got on a ledge of rock, where she remained till the tide went down. There was a great quantity of loose ballast in the vessel, which ran forward as she sank, and this plunged her immediately into deep water, where she lay.
5456. Was the vessel in good working order at the time? She had been in good working order up to that time. I think Mr. Broderick and Mr. Kelleher were the persons principally in charge of that diving-bell, and they could give the Committee better information respecting its loss than I could.

MINUTES OF EVIDENCE TAKEN BEFORE THE SELECT COMMITTEE

- ~~Mr. W. A. Cahill~~ 5457. Is it the fact that the prisoners have been allowed to issue the Government stores without a free man being present? Not lately.
- ~~27 May, 1861.~~ 5458. What I refer particularly to is the issue of the stores belonging to the Engineer's Department—had the prisoners access to the stores where files, powder, and such things are kept without having a free overseer with them? They have had, on some occasions, but not recently. I do not think that has been the case within this year.
5459. Then that system is discontinued on the island? Yes.
5460. Do the carpenters who are in your department work by piece-work the same as the masons? They seldom work by piece-work; it is difficult to get them on piece-work, there is such a variety of work that they are seldom kept any length of time on the same job. They are mostly paid according to their industry; where we can get anything done by piece-work we do.
5461. Then if a man is industrious he gets so many marks for time and money? Very few men receive any benefit by time—they get money. None of those men who have been sentenced since June, 1859, get any benefit by time.
5462. Is it principally those men you have in your department? The greater number of them are what are called long sentenced men—men who do not receive the indulgence of a ticket-of-leave.
5463. Can you give the Committee the work done in the new buildings on the island—that is, the number of perches of stonework, and the number of squares of roofing, joisting, &c.? I will furnish it to the Committee. (*Vide Appendix A.*)
5464. Do you make the plans and specifications? No, unless for the direction of the men who work under me. I make the plans for my own use—for all that I superintend—my own working plans.

APPENDIX.

A.

QUANTITY of Work performed in New Building.

Continuation of Workshops.

Excavations for foundations	9,740	cubic feet.
Foundations, rough hammered	305	perches.
Cut work over surface	1,025	perches.
Mould cornice	1,036	superficial feet.
Framed truss roofing	80½	squares.
Gutter boarding and bearers	432	superficial square feet.
Flooring joist	15	squares 12 feet.
Ceiling joist	15	squares 12 feet.
Circular head frames and sashes (9)	10	feet × 4 feet.
Boxed frames and sashes (3)	6	feet 8 inches × 3 feet 6 inches.
Solid frames and sashes on pivots (6)	4	feet × 3 feet 6 inches.

The greater portion of foundations were set under water, as the tides would permit.

WILLIAM A. CAHILL,
Principal Foreman of Works.

Mr. Henry Fitzgerald called in and examined:—

- ~~Mr. Henry Fitzgerald~~ 5465. *By the Chairman:* What are you on the island? Foreman of works.
- ~~May, 1861.~~ 5466. What is your particular duty? I am generally occupied in measuring stone, and sizing stone to be cut.
5467. What is the difference between your situation and the situation of Mr. Cahill, the witness who has just left? He is a carpenter; he is a tradesman.
5468. What is the difference between the situation held by you and that held by him? He has blacksmiths and carpenters under his control.
5469. He is a foreman of works, and you are a foreman of works? Yes.
5470. Is this the difference: that you have charge of the stone-cutting gangs, and that he has charge of the men working at other businesses? He has; but previously I had a gang under me engaged in building.
5471. I should understand that you have charge of the cutting of the stone, until it is taken away to be used in building; and that Mr. Cahill has charge of the men working in the blacksmiths' and carpenters' shops; and also, of the men engaged in the erection of any building? Yes, at present he has.
5472. You have charge, exclusively, of the men engaged in the cutting of the stone? Yes.
5473. *By Mr. Sutherland:* Mr. Cahill gives you the dimensions of the stones he requires, and you see that your men cut the stone according to those dimensions? Yes.
5474. You have charge of the gang—that is, of the whole of the stone-cutters? Yes. (*Vide Appendix A 1.*)
5475. Are you a stonemason by trade? No; I am not a tradesman.
5476. How long have you had charge of the masons? I have been on the island since the year 1851, and I have been in the employment I am now engaged at since February, 1854.
5477. You have had charge of the stonemasons since 1854? Yes; I have.
5478. Can you direct the stonemasons, not being a tradesman? Yes, as well as any man, I think.
5479. If the Committee have been informed that through your wrong directions a quantity of stone has been destroyed on the island, is that correct? It is incorrect; there may have been one or two instances, where a stone has been broken; such a thing may accidentally happen, but such cases have been very trifling.

5480. Do you give the lines to the men, or do they take their own lines from your direction? They take my lines. I have a sub-overseer under me, and he gives them their lines; when moulding stones are required, they are cut to a certain length.
5481. You have a working overseer under you? He does not work more than to apply the square to the stones, and I generally do so myself.
5482. Is he a free man? No; he does not work, but sees that the work is carried out as you direct him; he assists me in carrying out the work.
5483. Is he a tradesman? No; he has learned the trade of stone-cutting while a prisoner.
5484. He has learned the trade from you on the island? Under my superintendence; among fifty or sixty others, I should say.
5485. A quantity of stones are lying on the wharf which have been condemned as not fit for the purposes for which they were cut? Are they moulding stones?
5486. Cornices? I am aware of that. If you will look over these papers it will explain more than I can. (*The witness handed some papers to Mr. Sutherland.*)
5487. I want to know whose fault it was that those stones were destroyed?* I generally at the end of each month sent in a return to the Engineer's Office of the lineal, superficial, and cubic measurement of the work done during the month, and those papers will explain this matter.
5488. The men are paid then by the quantity of stone you return fortnightly? Yes; the quantity of work performed during that number of days. The work is divided by the number of days the men are employed in cutting it, and the task-work clerk makes up the account for them.
5489. It has been given in evidence before this Committee, that a large quantity of stone, not once or twice but very often, has been wasted through wrong lines having been given to the men? Such is not the case. (*Vide Appendix A 2.*)
5490. And that these stones are broken up and cast into the sea? Such is not the case—only one stone was brought under my notice, it was only an insignificant matter, it measured two feet five and a half, it was for the arch of the tank. There was no chiselling whatever upon it.
5491. What reason do you give for the quantity of cornices and other stones lying on the wharf without being used? They were cut in the square by my men, and I was told there was a sufficient compliment of them cut.
5492. *By Mr. Morris*: Why are these now wasted? They are not required at present; if a similar building were put up they would be used.
5493. Do the men themselves, notwithstanding the lines you give, spoil much stone? They do not; if they did they would be at the loss of them, and they take good care of that. I have known stones to be broken up, that were not fit for another useful purpose, and to be sold as ballast, years ago, but that has not been done lately.
5494. *By Mr. Sutherland*: Sold as ballast? Yes, stone not adapted for any purpose on the island.
5495. How was it sold? At so much per ton, 2s. 6d. per ton.
5496. What quantity was sold at that time? I did not keep any account, it was an officer of the Penal Department generally attended the boat. I have seen from the papers that the prisoners wished to injure me and my character, but if you read the paragraph here (*handing a document to Mr. Sutherland*) you will see the grounds upon which they wish to do so. I have been very badly treated.
5497. *By Mr. Hart*: By whom have you been badly treated? I could not bring it home to my employers, but I have a shilling a day under men I think inferior to me in ability. I have to attend to the unloading of the boats, and have a great responsibility.
5498. Do you make proper entries in a book of the amount of work done under your direction? I enter entirely the complement of the workmen.
5499. Do you make the entry in any books kept for the purpose, or merely on scraps of paper? There was a time when I put down the unloading of boats on scraps of paper, but afterwards an order was made that it should be entered in the day book.
5500. I wish to know if you enter the work in a book kept for that purpose? I enter in my day book every occurrence that is worth notice. I tally the number of loads in a memorandum book, and then enter them in the register.
5501. *By Mr. Sutherland*: Then there is a register of the work done? Yes. In fact, myself and the other foreman have nothing else to do than to keep an accurate return of the work performed by the labourers under our charge.
5502. *By the Chairman*: Are you in any way brought in contact with the prisoners except while they are in the gangs? No, I have nothing to do with the internal management of the prisoners whatever, more than that I go with them to Divine service.
5503. Have you heard of any immoral conduct in the sleeping places? I have heard the men cursing, and have threatened to take them to the office if they did not discontinue it.

Mr. Henry
Fitzgerald.
7 May, 1861.

ADDENDUM.

I beg leave to state that I do not line out every stone that is cut; there are gauges as to width for that purpose, and I see they are cut exactly to the required sizes. But in cases where stones of difficult workmanship are required, such as circle or angular, I always line them and mark them out to the given scale, to which I see them properly prepared.

I also give directions to those learning to cut.

H. FITZGERALD.

APPENDIX.

* NOTE (*By witness on revision*):—No stones have been destroyed. (*Vide Appendix A 1.*)

Mr. Henry
Fitzgerald.

APPENDIX.

A.

7 May, 1861.

1. *Answers No. 5474 and 5487*:—I should have added—excepting mouldings and cornices, &c. Every single stone of these were prepared by Taylor, Barry, and Norris, who belonged to Mr. Cahill, and done under *his own superintendence*. These stones are *not* "destroyed," but will answer in a similar building intended to be erected contiguous to the one recently put up. They are perfectly sound, free from injury, and are left in a safe condition when cut.

2. *Answer No. 5469*:—This question, I think, has reference to some parapet stone which I had prepared according to a "templet" with which I was furnished—12' by 12'—but was afterwards given to understand there was an error in its dimensions—that it *should have been* 15' by 12'. This I was accordingly supplied with, and to which I had the proper stones prepared.

Many of these, although not answering the purpose for which they were at first intended, have been used in the present building; others lie upon the wharf, and will be found to answer other purposes.

HENRY FITZGERALD,
Foreman of Works.

Inspector John Francis Lane called in and examined:—

Inspector
J. F. Lane.
7 May, 1861.

5504. *By the Chairman*: You are an Inspector of the Metropolitan Police? I am.

5505. You have charge of the detachment of police stationed at Cockatoo Island? Yes.

5506. How long have you held that charge? Since the 8th April, 1860.

5507. What number of police have you on the island? Forty-one, including myself.

5508. What are your particular duties in charge of the penal establishment—I mean not your own personal duties, but what is the routine of the police force? To do sentry duty, to guard the prisoners, and to take charge of them during the night.

5509. Can you explain the duties for twenty-four hours? At six o'clock in the morning the sentries are posted round the island upon the main guard.

5510. At points in sight of each other? Yes, each sentry can see two other men from his own post. They are so situated that they can observe anything transpiring between them. The men of the landing guard take the boat at six o'clock in the morning, and lay out at the buoy till they are relieved. That is continued until six o'clock in the evening, and the prisoners are then counted into the wards by the chief warder. The police are kept round the water's edge until the men are in the gaol, and they are then withdrawn. Previous to that the night duty men take charge of the prison—there are five night duty men stationed at the sentry-boxes round the prison.

5511. After the prisoners are locked up for the night, are there any sentinels on the beach? No, they are withdrawn at six o'clock.

5512. What guard is there round the prisoner's barracks during the night? There are ten men for night duty, five for each relief.

5513. How are these five men stationed? One at the back of the prison, one on each side, one at the front of the prison, and one in the yard, who is locked in. The duty of the last named constable is occasionally to visit the dormitories.

5514. That is to say, to go to the gate? To open the door—there are check doors, or iron gates, on each side, and it is his duty to look through the inner door to see that the wardsmen are up and doing their duty—that is, the prisoner wardsmen; the free officers have nothing to do with the prisoners during the night.

5515. How are the police armed? With a rifle. The sentry who is inside I have armed with a revolver, as I found it was very inconvenient for him to carry a rifle, because he had to put it out of his hand whenever he had to unlock the door; for instance, if the doctor or dispenser were called to see any prisoner, the revolver would be more convenient if he had to come to close quarters with the prisoners.

5516. *By Mr. Sutherland*: Will you inform the Committee the number of escapes, or attempted escapes, from the island, that have been made since you have been in charge? I think about ten attempts have been made since I have been on the island.

5517. State to the Committee the nature of those attempts, and make any observations you may see fit on any of them? I may state that there have been about ten attempts to escape since I have been there, but no prisoners have effectually carried out their design. A few weeks previously to my arrival on the island two prisoners escaped from the island; but I know nothing of the circumstances but what I have heard.

5518. We want to know the cases that have occurred since you have had charge? The first case that occurred was that of Robert Landells and John Hughes; they were missed from the muster at one o'clock midday on the 11th April, and were found concealed in a store-room at four o'clock p.m., on the 13th of April. Information was given by a prisoner that they were secreted in a store-room near the engine-house; and it appears that at no time during the search was this store-room thoroughly examined, as the storekeeper made it a practice to carry the key of the room about in his pocket. I, with a number of the police, was searching about for the prisoners, but the door of the store-room being locked, it was not thought they were secreted there.

5519. *By Mr. Morris*: They were not able to get out of this store, being locked in? Yes, they could have got out.

5520. *By Mr. Windeyer*: Upon what did they live during the time? Biscuits are sometimes supplied to the prisoners when the supply of soft bread is short, and these men when they try to escape save their biscuits and get a bottle of water to take with them.

5521. *By Mr. Sutherland*: State how they were found in the store-room? On the morning of the 13th April I received information that it was likely the prisoners would turn up in the

- the course of the day. I made inquiries, but I could find out no parties who could give me any particulars. I was not informed by the superintendent as to how these prisoners were to turn up, or where they were to be found; but about dinner time one of my sergeants came to me and said one of the men had informed the superintendent that about four o'clock they would be found, and at that time they were found, and we took them away.
5522. *By Mr. Windeyer*: How do you suppose they got into this store if it was kept locked? It was about one o'clock, at dinner time, that the men were mustered in the yards, but were previously missed from their gangs, and by some neglect were allowed to get into the store-room. At one o'clock the storekeeper may have turned the lock of the door and taken away the key.
5523. Were they ironed? I think not.
5524. *By Mr. Sutherland*: You have stated that the superintendent had information from a prisoner some time in the day that they would turn up at four o'clock? Yes.
5525. Did the superintendent give you any information upon this matter? No; I received no information from the superintendent.
5526. Did you get any assistance in any of these cases from the superintendent or officers upon the island in finding these prisoners? No, I think not.
5527. *By Mr. Windeyer*: Did you see the superintendent when you got that information? I never saw him in the course of the day.
5528. Did you go and speak to him with reference to this matter? No, I did not. When a prisoner is missed, the other prisoners are kept locked up, because some of them may know the secret place where he is hidden, and convey provisions to him, and the only way to secure him is to starve him out. They do that by keeping the prisoners locked in.
5529. If you heard that the superintendent had got information, why did you not ask him? I do not consider that it is my place to go to the superintendent. I have in some important cases gone to give him information, and he has not received it.
5530. On this occasion do you know whether he had received information? I am not aware.
5531. Did he give you any reasons for declining to give you the information? I did not ask him. I received the information from the sergeant. When I first went to the island there was some misunderstanding about landing, and Mr. Mann contended that I had nothing to do with the landing guard. He had a sergeant there whom he termed his own sergeant, and any duty he wanted to have performed, instead of directing the orders to me, he gave to the sergeant.
5532. *By Mr. Wilson*: If any instructions were given by the superintendent, did you consider yourself bound to attend to them? Any instruction in writing.
5533. As to the disposal of your men? In some measure; but perhaps I might not have sufficient men to carry out his orders.
5534. If you do not act up to his wishes, do you consider that you are bound to give a satisfactory reason for not doing so? Yes, most decidedly.
5535. Suppose his instructions, and those of Captain M'Lerie, should clash with regard to prison discipline, whose instructions should you consider yourself bound to obey? The orders of the Inspector General of Police; but, in fact, Captain M'Lerie has nothing to do with the prison discipline on Cockatoo Island.
5536. You consider the Inspector General of Police your commanding officer, and would obey his instructions in preference to those of the superintendent of the island? I should, certainly.
5537. Have you received written instructions from the Inspector General as to the conduct of your duty on the island? I have received some instructions.
5538. In those instructions, has he stated that it is necessary for you to act up to any request or instructions from Captain Mann? The Inspector General has always wished me to carry out the instructions of the superintendent as far as possible, consistently with the number of men at my disposal; at all times he has been most particular in making that remark.
5539. Was there not some request made by Captain Mann, as to a sentry being placed at the gate of the yard, which you either did not or could not accede to? There was one there some time.
5540. And you took that sentry away? I did.
5541. Contrary to his express wish? Yes.
5542. What was your reason for doing so? Perhaps I may begin with the statement, that when I went there I found no military sentry provided for the post in question. He requested that I would place a sentry at this gate, and I told him I could not do so unless I made an application to the Inspector General of Police; he said, he did not want a sentry there with arms, but merely as a civilian, to see that no more prisoners left the yard than were allowed by the free overseer.
5543. Do you think it would have been unsafe for a constable to have been stationed there without arms? I did not consider it necessary for a sentry to be there.
5544. Then you were acting upon your own judgment, and not upon the instructions of Captain Mann? I may state, that I allowed this sentry to remain for some considerable time, when he could be spared.
5545. *By Mr. Windeyer*: What was your real reason for not placing a man there—was it because you objected to his being there without arms? I had not sufficient men on the island at the time, and I did not consider this man was required at the gate, as there was a sentry already posted within a few yards of this place. I allowed a man to be there at first to oblige Captain Mann; he said he wanted a man to be there as a check on the prisoners leaving the yard, and I said, a sentry would be useless without arms. At first, there was a sub-overseer

Inspector
J. F. Lanc.
7 May, 1861.

Inspector
J. F. Lane.
7 May, 1861.

sub-overseer, named Garbutt, stationed at the gate, to open and shut it for the prisoners, and then I allowed a sentry to be there occasionally; but when Garbutt left, the men complained that they were subject to the taunts and insults of the prisoners, and that they were performing the duty of gatekeeper rather than that of police. Captain Mann took no notice of the matter, and I then made a written request to him to place some party there to open and shut the gate, as I could not allow the sentry to be there as a porter, and that, unless he did so, I should withdraw the constable.

5546. *By Mr. Wilson*: Did you report the matter to the Inspector General before you withdrew the man? I am not positive about that.

5547. *By Mr. Sutherland*: Did you report the matter at all to him? I think so.

5548. *By Mr. Morris*: Did you receive the approval of the Inspector General as to the course you pursued in the withdrawal of the man? I made a written report of the circumstance, informing him that I had no men there for the purpose. It was only on Saturday afternoons and Sundays that the men were required, and sometimes I would allow them to be there for two or three hours, but I had no men for the duty, and I did it more out of respect to Captain Mann than from any other reason.

5549. *By Mr. Sutherland*: Do you consider that there is strict discipline carried out in the penal department of the island? No, I do not.

5550. Can you state in what way it is not? In many ways; for instance, I have reported a number of warders, that is, prisoner overseers, for neglect of duty, who have not been brought before the Visiting Magistrate.

5551. Neglect of duty on the part of the warders? Yes; such as being asleep instead of up on their posts, and allowing lights in the wards after eight o'clock at night, contrary to the regulations. A number of cases have been reported that have not been brought before the Visiting Magistrate. In one case I reported a warder, and he got seven days in the cell; and I reported another warder for a similar offence, two different times, yet he was not brought up before the Visiting Magistrate.

5552. To whom did you make the report? To Captain Mann. I will mention the cases I have reported, if necessary. (*The witness referred to a memorandum and read as follows* :—

“Sergeant Lawlor reported the warder for having a light, contrary to the regulations, burning in No. 5 ward, at 9 o'clock, p.m., on Sunday, 7th July, 1860. This case was not brought before the Visiting Magistrate. Sergeant Lawlor reported the warder for allowing two lights in No. 1 ward, at 9 o'clock, p.m., on Sunday, 7th July, 1860. This case was not brought before the Visiting Magistrate. Constable Cochran reported the warders of Nos. 4 and 5 wards for being asleep during their watch, Wednesday, 25th July, 1860. This case was brought before the Visiting Magistrate, admonished, and discharged. Constable Cochran reported that a prisoner made use of the most obscene language towards him when he was calling the warder who was asleep while on duty on the night of the 25th July. The warder told the superintendent that prisoner's name was Booth, who made use of the obscene language, but he never was brought before the Visiting Magistrate to answer the charge; and on the 28th of the same month he attempted to escape by taking up some large flags from the floor of the dormitory.” I suppose the warder was asleep at the time, but that is only my supposition. He made a very large excavation, and had taken up a quantity of heavy stones to get to the mouth of the drain.

5553. How was that found out? It was found out in the morning—one of the prisoners gave information when they were going out at six o'clock in the morning—“Inspector Lane reported card-playing in No. 2 ward, at 7 o'clock p.m., on Saturday, 8th September, 1860.” This was witnessed by a sergeant and myself; a number of prisoners were sitting round a stool, in the centre of the dormitory, playing at cards. It was reported by me, but was not brought before the Visiting Magistrate. “Constable Lynch reported the warder of No. 4 ward, Daly, for being asleep while on duty, at 3.45 a.m., on the 25th September, 1860. This case was not brought before the Visiting Magistrate, as I heard that the warder was working at Mr. Taylor's garden the day previous.” Mr. Taylor is Clerk of Petty Sessions, and Daly is now gardener to Captain Mann.

5554. *By Mr. Morris*: Have you any reason to believe that the complaints you made to Captain Mann never reached him? I could hardly think that my reports do not reach him, as I send them direct, by one of the police, to his office. Of course if the clerk liked to put them away he might do so.

5555. *By Mr. Windeyer*: Have you any reason to believe that the clerk would do so—have you observed anything in his conduct that would lead you to suppose so? I have made some requisitions and reports to Captain Mann, which he has said he has never received; and unless they were put aside by the clerk, I do not know how he could have failed to receive them. “Sergeant Sweeny reported the warder of No. 2 ward, for allowing a light at 9 o'clock p.m., on the 13th December, 1860. This case was not brought before the Visiting Magistrate.” The cases I now mention I have not the least doubt were all placed before the superintendent; in some instances the sergeant, the constable, or myself, have been sent for, and the superintendent has heard the complaint. “Inspector Lane reported the prisoners singing in No. 2 ward, the whole night, on the 1st January, 1861.” This is the time when they first determined to fall out on the following morning from their work. I explained this matter, and stated that I did not believe it was the warder's fault, as I had heard him during the night call upon the prisoners to give over singing. The warder was brought up before the Visiting Magistrate, and I stated, on oath, that I did not believe it was his fault, as he had done all he could to advise them to be quiet; he was discharged. “Sergeant Sweeny reported sub-overseer Hyland for standing on a ladder and tampering with prisoners confined in the cells, on the 11th January, 1861.” This

was

was at the time the prisoners refused to work, and this man was put over those who were confined in the cells to prevent their receiving tobacco or any thing of that kind. "Sergeant Sweeney also reported the sub-overseer Hyland for asking one of the prisoners in the cells to sing him a song, on the 16th January, 1861." This case was not brought before the Visiting Magistrate on Court day, but I requested that it might be put before him. The superintendent said that he had inquired into it and that there was no case. The Magistrate said he thought there was a case, and recommended Hyland's removal. The sergeant said that he heard Hyland ask a prisoner in the cells, this day, to sing him a blackguard song, not a sentimental one. This sub-overseer by the Visiting Magistrate's direction was removed from the cell and is now on the works as a sub-overseer. He lost his appointment for a few days, or a week; for some very short time.

Inspector
J. F. Lane.
7 May, 1861.

5556. *By the Chairman*: Have you ever heard of unnatural crimes being committed in the sleeping apartments of Cockatoo Island? No more than that I have heard the prisoners talking the matter over at night. I have sometimes spent hours in listening to them.

5557. What is the impression you have arrived at from that? I think some of them are guilty of committing almost any crime you can think of; but there are some very respectable men among them.

5558. What I desire to ascertain from you is, whether the conversation that takes place is of such a character as to imply the commission of these acts? The conversation that I have generally heard has been remarks passed to one and another. I do not think any men, let them be ever so depraved, would stand up and tell others any transactions of the kind in which they had been engaged. What I heard was one calling another "a bloody whore," and such things as that—"an Irish whore," mentioning the prisoner's name.

5559. Have you ever heard prisoners address others or seen them treat others as men treat women? No, I have not.

5560. I mean by using terms of endearment, calling them female names? That I believe was behind their backs. I believe that was only slang they used.

5561. You say that you have listened for hours to the conversation of the prisoners—was their language often obscene? It is very bad at times.

5562. The Committee would gather from the evidence they have received on the subject, and from the examination of the sleeping apartments, that the atmosphere must be in a very impure state at night in those places? Yes; sometimes when I visit the dormitories in a summer's evening at 8, 9, 10, or 12 o'clock, the smell is intolerable.

5563. Intolerable to you at the outside? Yes; I do not know what it must be in the inside. The sentries complain very much of having to go to the wards, and they only go to the hall. There are tubs placed down the wards, and the prisoners all make use of these tubs, and in the hot weather, when these have to remain in the dormitories ten or twelve hours, the smell must be dreadful. I wonder how the men live there. I have seen dozens of them running about naked, at all hours of the night. They are supposed to be in bed at eight o'clock, but on these very hot nights I never attempt to force them in, for I hardly think I should be justified in doing so, and when I have gone round at ten or twelve o'clock I have seen twenty men breathing, as it were, out of the bars of the prison.

5564. *By Mr. Morris*: Trying to get a little fresh air? Yes.

5565. *By the Chairman*: You mean that they come to the grating to try to get fresh air? Yes. I have sometimes spoken to them, and said, "How is it you men are not in bed?" and they have said, "It is impossible, sir, to sleep here." Sometimes, when it is wet, you see the men running about to find a dry place, and the rain coming down upon them through the roof. I have a servant attached to my place, and one morning he came with his clothes nearly wet through.

5566. *By Mr. Hart*: With respect to the crimes imputed to the prisoners at Cockatoo Island, do you think you would have been likely to have detected them in the act, if the crime had been actually committed? I have no means of detecting it.

5567. You say you have spent many hours in listening to their conversation? Yes; but of course I was out of sight of the prisoners—I was underneath the walls.

5568. Do you think the kind of conversation in which they indulge is more from a morbid desire on their part to use filthy language than as referring to the commission of these acts by them? I think the conversation arises from a kind of bravado on their part, from what they term "flashness," as the man who is the greatest blackguard is the man they look up to—he is the man to lead them anywhere.

5569. Is it desirable to employ prisoners as warders—would it not be an improvement to employ free men in the wards? You could never do that—it would be impossible; the man who would go in there would be in danger of his life. Under existing circumstances, as the dormitories are placed now, I do not believe one free man would dare go in there to do the duty.

5570. You think with respect to the prison warders they connive at what is said or done? No doubt.

5571. Do you think these wards are fit for human beings to live in? Cockatoo is not what I expected to find it.

5572. *By Mr. Morris*: Is it much worse? Yes; as soon as I went over and saw it I compared it to some very large workhouse, and not to a prison. (*Vide Appendix A.*) I do not think it would be possible to get free men to act as warders, to be locked up with these prisoners, as they might unawares kill a man instantly, and they do now sometimes attack these warders if they speak. I think if the prisoner warders were paid, or had some inducement held out to them they would do the duty better. At present, all the men get a penny a day, and some of them get—four or five—quarter a day on the works, while the warders receive only a penny a day the same as all the rest. The prisoners now say they can buy

Inspector
J. F. Lane.

7 May, 1861.

the warders over to anything; and as these men are generally great gamblers, they are always gambling, and the warders connive at it.

5573. *By Mr. Hart*: Are they allowed to have money in their possession? Yes, I remember a circumstance where a prisoner had two halves of £5 notes, on the island; it is a frequent occurrence for them to have money.

5574. *By Mr. Sutherland*: Sent to the island? Yes.

5575. *By Mr. Windeyer*: Do they gamble for money? Yes; with cards, at tossing, and all kinds of gambling. It is only occasionally those who are outside can see them.

5576. *By Mr. Sutherland*: Do you remember the case of a prisoner named Williams who was brought up for stating that a son of Mr. Broderick supplied him with spirits on the island? Yes.

5577. State what you know of that case to the Committee? I do not think I could supply you with the date now; but there was a prisoner of the name of Williams, or Lenthall, living with an overseer of the name of Jones. This prisoner one day complained that Mr. Broderick's son had supplied him with grog, he went up to the office taking some grog in a bottle with him. Shortly afterwards, while I was at the landing guard visiting the men, Mr. Broderick's son came to the sergeant and had some conversation with him. I asked the sergeant what it was about, and he told me that Harry Broderick had been to him and informed him that he had got into a mess for giving a prisoner some grog, and that he had asked him, "Do you remember my getting two bottles of grog for Jones?" He said, "Yes, some two or three months ago." He said, "Well, I want you to go up and say, it was brandy or rum, or one of them." The sergeant said, "No, I will do nothing of the kind; it was Old Tom you brought, for I took it out of the basket to look at it." I may state here that any person on the island requiring to get grog has to obtain an order from the Superintendent or Visiting Magistrate, and that anything brought on shore is examined by the officer at the landing. The next Court day this case was brought before the Visiting Magistrate, when, instead of the boy being brought before him, the prisoner was placed in the dock for making the charge. Mr. Broderick gave his evidence, and in that evidence he admitted that, from statements made to him by his son, he knew his son had given the prisoner some grog. The magistrate then denounced the proceedings, ordered the prisoner out of the dock, and directed that young Broderick should be brought before him on the next Court day.

5578. *By the Chairman*: Who was the magistrate? Captain Scott.

5579. What was the result? I never heard anything more of it from that day to this.

5580. Was he ever brought up? No.

5581. The matter was shelved? Yes.

5582. *By Mr. Sutherland*: Will you state to us how the island boat was managed at the time you took charge—and if there have been any alterations made, what are those alterations? I found, upon taking charge of the landing guard, that the guard-boat was employed more for the special purposes of parties resident on the island than for the actual service of the prisoners. I made a communication to that effect to the superintendent, who said he was going to place some documents before the Colonial Secretary, and he would have it altered. I waited month after month, and finding these frequent attempts at escape being made and nothing done, I pressed the superintendent to make some alteration, but he never gave me any satisfaction. I then applied to the Inspector General, and he wished me to put on paper what I suggested. I did so, and he recommended that I should lay it before the Visiting Magistrate. I beg to hand in a copy of this communication. (*The witness handed in the same. Vide Appendix B.*) I should state that the alteration was made, and, according to this regulation, the guard-boat is not allowed to leave the buoy till the prisoners are off the works. A week or a few days after this alteration was made, a boat was found, 14 feet long by 3 feet 6 wide, in the carpenters' workshop, quite convenient to where this boat is supposed to remain, and had the guard-boat plied at the usual hours, from twelve to half-past one, as it would have then been full of women and children, the prisoners might then have launched this boat, and got off to the other side. I may state, as regards the attempts at escapes, and the assistance I got from the superintendent, one case in particular, that of David Clarke, a most notorious character, with sentence for life. He secreted himself on the island at 12 o'clock noon, on the 28th June, and was discovered at 6 o'clock, a.m., on the 2nd July, by a sentry.

5583. *By the Chairman*: Is that man on the island now? No; he is at Darlington. I was at the Inspector General's Office on that day, and on my return to the island the superintendent informed me that Clarke was gone. I asked him how it was possible he could get away. He said he had left his clothes at the hole where he had been sawing timber, and that he believed he had swam from the island. I went to the spot where he had left his clothes, and came to the conclusion that it was a ruse upon the man's part to throw the police off the scent, and told the superintendent I did not believe the man was off the island. The following day the superintendent sent for me, and said that as Clarke was a man of great tact, he believed he had watched the tide, and had got a piece of timber to drift to the opposite shore; that he had then taken the opportunity, when the guard-boat was being relieved, to swim across. On Sunday night, when visiting the sentries, I saw a free officer named Balls, who informed me that when he accompanied Mr. Agnew to the prison in the morning, he received information from a prisoner that Clarke was secreted in the big wall, which information he immediately gave the superintendent, at same time giving the name of the prisoner who gave the information. The following morning Clarke was discovered getting into the water by one of the sentries as he relieved guard at six o'clock. I may state that the superintendent in this case never informed me that the man was supposed to be in this wall.

5584. What do you call the big wall? The wall facing the landing wharf.
 5585. The wall built up where Captain Mann's garden is—you say he was in the wall—are there any crevices in it in which a man could conceal himself? There was a patch of garden for the children of Mr. Ormsby, who was formerly there, and the wall ran in a triangular shape. Since Captain Mann has been there, rubbish has been thrown here, and the place is overgrown with weeds.
 5586. It appears very surprising to me that no one should have looked in this place? When I went round to visit the sentries a few hours after Clarke was found, to my surprise I saw this wall being taken down by an overseer and a gang of men.
 5587. *By Mr. Sutherland:* The prisoners have complained to the Committee that they have been treated with partiality, that some have been punished for slight offences, while others have committed more serious offences without any notice being taken of them? I have mentioned several cases illustrative of that where some wardsmen have been punished for breaches of the regulations while others have escaped. I may also mention that some of the prisoners complain that they cannot obtain paper for the purpose of writing. A servant I have applied for paper to write, and was sent only half a sheet; he said he wanted to write to London to his friends, and that it was not sufficient; they refused to give him any more, although, he states, that a prisoner called the Marquis of Townsend was allowed to write his life in the office, and to use a hundred sheets of foolscap. I hardly thought it was possible; but, upon asking some of the free overseers, I was told it was the fact.

Inspector
 J. F. Lane.
 7 May, 1861.

APPENDIX.

A.

Answer No. 5572:—My reason for comparing the prison to a workhouse is the great liberty enjoyed by the prisoners, they being allowed to say and do, in many instances, just as they like, there being no place on the island sufficiently large or separate for the confinement of prisoners committing themselves, as the late outbreak has shewn; they are also allowed to purchase tea, sugar, coffee, tobacco, candles, &c.; they make use of very improper language in the presence of the chief warden, who takes no notice of them. On the 1st January a number of prisoners refused to be searched before being put into the cells, stating to the chief warden that no bloody man should search them; they were put in accordingly, the guard not being called to enforce compliance. I have also seen the chief warden order prisoners from the camp to the exempt bank, which order they refused to comply with, and no further notice taken of them. On one morning the prisoners were called off the works, it having commenced to rain, but the rain ceased before they arrived at the camp; they were ordered back by the chief warden, which they refused to comply with, and rushed into the camp, and allowed to remain until after breakfast.

B.

*Main Guard, Cockatoo Island,
 2 November, 1860.*

Sir,

I have the honor to state that I have the sanction of the Inspector General of Police to submit for your approval a proposed alteration to further the efficiency of the police guard-boat.

The daily routine of this boat is as follows:—Leaving the landing wharf at from 8 until 9½; from 12 until 1½; from 4 until 6—for the purpose of conveying to and from the off shore the residents on the island, their friends, and visitors.

I beg to bring under your notice that, under this system, the guard-boat is employed on the above duty three-quarters of an hour in the morning, one hour at noon, and one hour in the afternoon, during the time the prisoners are actually employed at labour on the works.

I beg leave to point out that I consider this system to be bad, as, in the event of an attempt to escape being made from off the works while the guard-boat is at the opposite shore, perhaps with several children in it, very serious consequences are likely some day to arise.

To remedy this, I beg leave to propose that the police guard-boat should only leave its station as follows:—From 8 to 9, morning; from 1 to 2, midday; from 5 to 6, afternoon—during these hours the prisoners are not on the works.

Under this arrangement the guard-boat will be ready at all times, while the prisoners are on the works, at a moment's notice, in the event of a prisoner taking the water, or using other means to effect his escape.

I also beg to suggest, that under no ordinary circumstances should the guard-boat be permitted to leave its station while the prisoners are on the works, unless to convey an officer of the establishment to the opposite shore on some special public duty, or to look after the safe mooring and custody of all boats arriving and departing from the island.

Captain D. C. F. Scott, P.M.,
 Visiting Magistrate,
 Cockatoo Island.

I have, &c.,
 JOHN F. LANE,
 Inspector in charge.

Edward Bell, Esq., M.I.C.E., called in and examined:—

5588. *By the Chairman:* You are the City Engineer under the Municipal Council of Sydney? Yes.
 5589. You attend here, I believe, in compliance with a summons, to give evidence with regard to the expediency of the employment of prisoners in stone quarries? Yes.
 5590. *By Mr. Sutherland:* Have you made any estimate of the cost of working these stone quarries? Yes.
 5591. *By the Chairman:* To what stone quarry does the estimate refer? Any quarry.
 5592. Have you reference to any one in particular? The data are taken chiefly from the Pennant Hills quarry.
 5593. *By Mr. Sutherland:* Will you hand in the statement to the Committee? Yes. This is a report I wrote at the time to the City Council; it originated in a minute sent down by late Governor General. (*The witness handed in the same. Vide Appendix A.*)

Edward Bell,
 Esq., M.I.C.E.
 7 May, 1861.

- Edward Bell, Esq., M.I.C.E.
 7 May, 1861.
5594. *By the Chairman:* This shews, I presume, what would be the advantage, in an economical point of view, of working the stone quarry by prison labour? Yes.
5595. The stone being excavated and broken for the purpose of metalling the streets of Sydney? Yes; it shews the cost to us per ton of the metal from Pennant Hills quarry, and then it goes on to shew what would be the cost if prisoners worked in that quarry, and the metal were brought down by railway.
5596. Have you anything to say as to the propriety of so employing prisoners, independently of the economical results; have you considered the subject as to whether it would be safe for the interests of society that prisoners should be employed on such works? I think if they were employed at some distance from the city, to work a quarry, it would be no nuisance to the public, and might be very profitable to the city, to the Government, and to the railway also.
5597. *By Mr. Sutherland:* Do you not think it would be better for the prisoners themselves? I think so, if they were allowed something for breaking the stone, which might be given them at the termination of their sentence.
5598. *By the Chairman:* Do you not think the guard necessary to prevent their escaping would be very costly? I think it would be, but I think the remuneration derived from the metal would more than cover it.
5599. Does it occur to you that the prisoners would escape, in spite of any guard, however vigilant? No; I think that might be prevented.
5600. *By Mr. Sutherland:* That would depend upon the class of prisoners sent to the quarry? Yes; it was never contemplated to send the worst kind of prisoners to these works.
5601. The principal part of the metal now used by the Corporation is broken by old men—men not fit for other work? Yes, that is within the city. The stonebreakers at Pennant Hills are strong active men, boys, and some women.
5602. *By the Chairman:* Could the stone be quarried in blocks, brought down to Sydney, and broken in the gaol? Yes, but that would increase the cost by 2s. a ton. It would cost 2s. a ton to take it to the gaol and to bring it away.
5603. That would be the difference in the cost? Yes, we reckon every time we move it it costs 1s. a ton.
5604. *By Mr. Windeyer:* Is there any place besides Pennant Hills where such a quarry could be opened, and the work carried on by prison labour? I think so; at Concord, about two miles and a half off the line of railway.
5605. *By Mr. Wilson:* What kind of stone is it? Bluestone—basaltic rock.

APPENDIX.

A.

*City Engineer's Office,
 28 March, 1859.*

Sir,

In compliance with your instructions,—First, to report to you upon the present cost of procuring blue metal from the Pennant Hills quarry, delivering it upon the wharf, and carting and spreading it upon the streets of Sydney; Secondly, to report whether any other means can be adopted by which a sufficient quantity of blue metal may be supplied to the city at a cheaper rate than the present,—

I have now the honor to state, that the quantity of blue metal quarried at Pennant Hills, between the 10th November, 1858, and the 4th January, 1859, was—

	Tons.
Unbroken metal.....	1,480
Partly broken do.	2,168
Total	3,648

Pence per Ton.

The cost of quarrying the above quantity, inclusive of overseer's wages, was £281 Os. 7½d., or nearly 18½d. per ton, say	18 48
Carting rubbish from the quarry during the same time was £43 12s., or 2¾d.	2 86
Repairing and sharpening tools, powder, fuze, do. do., £15, or 1d.	0 99
Superintendent's wages, and expenses at wharf, Pennant Hills, £38 13s., or 2½d.	2 54
Breaking 1,480 tons, @ 4s. } = £487 19s. 2d.	32 1
Do. 2,168 " @ 1s. 9½d. }	
Making together 56 97 pence per ton, or 4s. 9d. nearly.	

Per Ton.

	s.	d.
Cost of metal	4	9
Cartage from quarry to the wharf	4	0
Boating, inclusive of loading and discharging	3	0
Total cost on the wharf, Sydney	11	9

Per Ton.

	s.	d.
The average cost of cartage to the streets which are now metallled is	1	9
Spreading	0	3
Wharfinger, weighing, and expenses at wharf, Sydney	0	3
.....	2	3

Together with

Total cost when laid upon streets

14 0

The contemplated construction of the railway from Pennant Hills to the river, at an outlay of £6,000, would reduce the cost of transport 2s. per ton. Edward Bell,
Esq., M.I.C.E.

Hence the total cost upon the wharf might be reduced to 9s. 9d. per ton.

Since I commenced the preliminaries for preparing this report, I had the honour to submit the foregoing data to the highest authority in the Government of this country, and to receive in return the following memorandum relative to the procuring of blue metal from "Prospect," and delivering it by the railway in Sydney. 7 May, 1861.

This communication is so interesting to the Corporation and inhabitants of Sydney, and to the country generally, that I feel honoured in being in a position to submit it to the consideration of your Worship and the Municipal Council before the contemplated outlay for a railway from Pennant Hills is incurred.

"From the foregoing data it may be seen that a man may quarry 2½ tons of metal daily, and "would break about 1½ ton of all sorts, large and small. If, then, the Government were to establish a "prison at "Prospect," upon a good quarry of metal, where the short sentence men might be employed "in breaking stone, any quantity of good metal might be delivered at the railway station at less than "half the price for which it is now delivered at the wharf, and the calculation is as follows:—

"400 prisoners, @ £23 each, per annum, or say £30 each..... £12,000

"Of these, 16 per cent. might be sick or unable to work, or otherwise employed, leaving 340 available "for breaking or quarrying stones. Of this number 115 would be employed in quarrying stone, 18 in "clearing away rubbish, 200 in breaking stone, and the remainder in keeping tools, &c., in repair. 115 "men would quarry 326 tons daily, and 200 men would break rather more than that quantity daily, "which would give 96,000 tons yearly, which, at a cost of £12,000 annually, as before mentioned, would "be 2s. 6d. per ton. If a railway from the prison were connected with the Western Railway, the stone "would have to be brought about 20 miles, and this, at a charge of 2d. per ton per mile, would give for "carriage 3s. 4d. per ton, making the cost of the metal, delivered at the station, 5s. 10d. per ton, instead "of 11s. 9d. There would also be the advantage that the stone would be delivered at the high level "instead of the low one, and that if the station were moved to Hyde Park, or the railway continued "down Pitt-street, the stone might be delivered at various parts of the city, with very little cost for "cartage. The saving to the city would be 50 per cent. upon the cost of the stone; the saving to the "Government, or the community generally, would be that of the maintenance of 400 prisoners, or about "£10,000 or £12,000 per annum, in addition to the profit arising from the conveyance of about 100,000 "tons for 20 miles per railway, which, if taken only at 25 per cent. of the cost of conveyance, would "amount to £4,000 per annum."

With reference to these remarks, I conceive it to be the interest of the Government to, and it would, doubtless, make the connecting link of railway between the quarry and Western Railway, as the city will not, for several years to come, require so large a quantity as 100,000 tons of blue metal, but Sydney will require ere long 50,000 tons annually, whilst the remainder will be readily taken by the suburban Municipalities and Hamlets, Liverpool, Parramatta, and other towns and villages along the line of railway.

I have no hesitation in stating, that if metal can be brought into this city at the rate of 6s. per ton, it will be more economical to form the whole of the streets of the city with that material than with any other, and hence the annual consumption would be increased from 24,000 tons to 50,000 tons.

And taking the supply at the present standard of 24,000 tons annually, the saving to the city, which would accrue for that quantity, would not be less than £7,000 per annum, and should the demand and consumption reach 50,000 tons, the saving to the city will be about £10,000, whilst the cost of the 50,000 tons will be barely more than you are now paying for 24,000 tons.

I would venture to submit to your Worship and the Municipal Council that this work would be fraught with so much benefit, not only to the city, but to the community at large, that I conceive the Government could not treat a suggestion for such an arrangement unfavourably.

I have, &c.,

EDWARD BELL,
City Engineer.

The Right Worshipful the Mayor.

The Rev. Philip Peters Agnew called in and examined:—

5606. *By the Chairman:* You have been Chaplain of the Church of England at Darlinghurst and Cockatoo Island for some time? Yes, of both. The Rev.
P. P. Agnew.

5607. For how long? At the gaol about five years, and at Cockatoo Island something over four. I was attached to Darlinghurst many years before. 7 May, 1861.

5608. With regard to Cockatoo Island, how often do you visit the penal establishment there? Generally twice, sometimes three times. I always consider myself bound to attend if required.

5609. Every Sabbath I suppose? Yes.

5610. Is there Divine service there every Sunday? Every Sunday.

5611. In the forenoon or afternoon? In the forenoon at present.

5612. Performed in the same manner as in an ordinary church—are the services as full in all particulars? Not in all particulars; I read the Litany on one Sunday* and the Communion on the next. The service is similar to that generally performed by the military.

5613. It is concluded, I suppose, by a sermon? Yes.

5614. Are the prisoners compelled to attend? Yes; I think it is necessary for them to attend.

5615. They are required to attend? They appear to attend very willingly.

5616. Are they attentive? Yes; I always consider it one of the most attentive congregations in Sydney. For Cockatoo Island I prepare something as I would for an intelligent congregation.

5617. Is the behaviour of the prisoners decorous in all particulars? Yes; they take their regular part in the service standing up, and sitting down, and responding.

5618. That is not very common in the Church of England? No; it was not very common when I first attended, till it was remarked, and they were requested to pay more attention.

5619. Do you, on Sundays or week days when you visit the island, have frequent conversations with prisoners as to their prospects in life? Invariably when I visit.

5620. Are you of opinion that the discipline to which they are subject on the island at present has a salutary effect? No, I think the contrary.

5621. What, from your experience of the management of prisons, do you think should be the

The Rev. P. P. Agnew. the chief features in prison discipline? I think two principal things ought to be attended to—first the reformation of the prisoners, and then profitable labour for the Government—both might be effected.

7 May, 1861.

5622. I presume you include the safe custody and proper punishment of them also? Certainly.
5623. Combined with those objects, you think the management should be directed to the reformation of the prisoners, and also, to the employment of their labour so as to contribute as much as possible towards their maintenance? Yes; I think all expenses might be covered by their labour.

5624. You are aware that at present the prisoners at Cockatoo Island are under two sets of regulations, by one of which they are subject to a kind of task-work by means of which they can shorten the terms of their sentences? Yes.

5625. Do you think that right? No; I think it very wrong to mix the classes together, and it has led to a great deal of discontent, and many manifestations of insubordination.

5626. You have, I believe, some written statements in your possession, addressed to you by prisoners, making serious complaints against the authorities? Yes.

5627. Are you willing to hand them in to the Committee, for the purposes of this inquiry? Yes, I will do so; but I wish the names of the prisoners to be suppressed, as they were handed to me in partial confidence.*

5628. There has been some evidence given before this Committee which, I believe, in the judgment of every member—two or three members being professional men, and therefore, accustomed to examine evidence very closely—is of a very serious character, having the features of consistency, which are generally taken as the ingredients of truth in evidence, to the effect that unnatural crime is committed on Cockatoo Island frequently—have you, in the course of your ministrations, had occasion to inquire into this painful subject? Yes; I have made very strict inquiry on that subject particularly, and I feel convinced that it has not taken place really; and that there is only one attempt of the kind that can be remembered. There are many prisoners on Cockatoo Island who, I think, would tell me the truth, and I have asked them personally and particularly.

5629. Do you know a boy on the island named Smith, a servant to Mr. Balls? Yes.

5630. What is his character generally? I really cannot say.

5631. Have you any reason to suspect he would invent a story of this kind? I could not pick him out, certainly.

5632. *By Mr. Hart:* The instance you refer to relates to him, does it not? Yes; I was in the Court when the matter was brought before the magistrate, and I do not believe there was the slightest foundation for the statement.

5633. Do you know a man named Frederick M'Gregor? I can only recollect one man of that name, a man who has been brought back recently on account of the loss of his ticket-of-leave. I know him particularly.

5634. Have you observed anything in his conduct that would lead you to suspect him of fabricating a story of this kind? No.

5635. Have you any reason to doubt his being as well conducted as the prisoners generally? I think I should generally trust that man.

5636. Do you know a man who acted as one of the warders—a young man? I thought favourably of that person.

5637. His conduct appeared to this Committee to be that of respectability, if we may apply that term to a person in his condition. These two persons have stated, in the most consistent and positive manner, having been cautioned beforehand, as to the serious nature of the statement, that they have been eyewitnesses to offences of that kind? It is unaccountable to me. It would render them very unpopular if the prisoners knew such statements had been made.

5638. Do you know a man named Power? Only by name.

5639. *By Mr. Hart:* With respect to the letters referred to in your evidence, do you think there is any foundation for the complaints made by the prisoners who have written them? The letters are generally merely written for my information. I ask them to tell me how they spend the night when they are locked up, and also as to how they spend the various hours of the day.

5640. I understood, from the questions put to you by the Chairman, that they had reference to complaints against the authorities? Yes.

5641. Is there any foundation for those complaints, so far as your knowledge extends? I think what the prisoners have stated in those letters was the truth; the facts were before their eyes at the time.

5642. What facilities have you for giving instruction to the prisoners, both at Darlinghurst Gaol and at Cockatoo Island—is there a separate chapel? There is almost everything that is desirable at Darlinghurst, but the accommodation is very limited at Cockatoo. In fact, we have service in the dining hall, and it serves both for the Roman Catholics and for ourselves. I can scarcely see any of the men in private, and there is no encouragement for the men to attend to their religious duties.

5643. Immediately you have celebrated service in the place, is it opened for the Catholic clergyman? Yes, if I happen to be first, but he generally conducts the service before me.

5644. And the prisoners have their meals in the same place, both before and immediately after? Yes.

5645. Do you think the effect of that is to demoralize the prisoners, with respect to religious instruction—do you think the instruction under such circumstances can have any beneficial effect? We must remember that it is not a religious community at all on Cockatoo Island.

5646.

* NOTE—Statements referred to mislaid by the Chairman.

5646. I understood you to say that the prisoners were very intelligent, and respectful, and paid attention to the formalities prescribed by the rubric? Yes; I should have no objection to hold Divine service where the prisoners take their food. I have held service in the open air in the bush, in rooms of inns, in Courts of Justice, and in other places; but what I complain of is, the absence of any means of speaking to the prisoners in private; they can scarcely speak to you alone; they are generally in the hearing of others.
5647. What do you think of allowing the prisoners one week in each year, during which time they should be exempted from work, and be attended by a clergyman, who should instruct them in the principles of their religion? I think if a couple of hours in a month were devoted to hearing a kind of scientific, interesting, and instructive lecture, it would be very beneficial, and would be appreciated by the men.
5648. *By the Chairman*: With regard to your last reply—do you think it would be right to afford such prisoners as desire it the means of instruction while they are confined during their imprisonment? Of course, I think so.
5649. I put my question in this form because I, for one, conceive that though society have the right to deprive persons who offend against the law, of their liberty; they have not the right to deprive them of all their prerogatives as human beings; they have not the right to deprive them of the means of health, or of moral and spiritual improvement? Or to morally debase them as the present system surely does.
5650. What I want to elicit is, whether it ought to form part of prison discipline to afford the means of instruction for such prisoners as desire it? Yes.
5651. Suppose the men worked an hour a day less to afford them a fair opportunity of receiving this instruction—do you think that would be so appreciated by them as to induce them to do a larger amount of work in the shorter time? I think you could scarcely trust so much to their honour. The time could not be properly occupied without a resident schoolmaster.
5652. How then would you impart instruction to them? I would begin gradually. I have now some books, a small library, which they appear to appreciate and enjoy, and I believe that has prevented them from running into many evils. I think if a lecture could be established, to be delivered once a month in the presence of the chaplain, it would make an opening for the general improvement of the men.
5653. *By Mr. Wilson*: Do you not think a resident schoolmaster an absolute necessity in such an establishment? No doubt.
5654. *By Mr. Windeyer*: Do the men ever ask to see you alone? Yes, I never visit them without having these requests; very often they are connected with secular matters, to request me to open up communications with their friends, or with thousands of little things they want.
5655. Then it is not generally from any earnest desire to receive advice or assistance? In many cases it is; there are many hopeful characters, and I verily believe many innocent men there.
5656. Did I understand you to say that you approve or disapprove of remitting punishment in any way by a system of task-work, or would you have the sentences rigidly carried out? I think it is desirable to return to the old system; I saw its operation formerly. The men worked willingly, and did not require half the superintendence—not half the people pretended to be sick—and they were in better order in many respects than they are at present.
5657. *By the Chairman*: Do the remarks you have made with reference to Cockatoo Island apply to Darlinghurst, as to the decorum of the prisoners in attending Divine service? Yes.
5658. And also with reference to the system of discipline? It is essentially different.
5659. Is there any special recommendation you would desire to make? I beg to hand in a copy of a letter addressed by me to the late Governor General, containing my ideas on the subject; I never received any answer to that communication. (*The witness handed in the same. Vide Appendix A.*)
5660. Does the statement you have handed in relate to Darlinghurst Gaol as well as to Cockatoo Island? No.
5661. Are there any observations you desire to make specially with reference to Darlinghurst? —

The Rev.
P. P. Agnew.
7 May, 1861.

APPENDIX.

A.

Fort-street, 14 August, 1860.

To His Excellency Sir William Denison,—

I beg, most respectfully, to call your Excellency's attention to the present state and condition of the Penal Establishment at Cockatoo Island.

I had the honor, some time since, of stating personally my opinion in reference to the impracticability of the new penal regulation, and the doubtful operations which would evidently result in its entire enforcement.

My doubts have been painfully realized, and I consider it my duty to request that your Excellency may at once take the matter into consideration, or, at least, allow the prisoners a hearing on the matter of such vital importance. You may think the subject worthy of attention, when I say, that the prisoners, who, under the old regulation, were so peaceable and so easily and profitably governed, are at present in a most unsatisfactory and dangerous state, being, almost to a man, openly or sullenly disordered; that within the last few months there have been not less than eleven attempts at escape, and two or three open combinations to resist authority; and that from what I know of the minds of several of the prisoners, it is my opinion, that the manner of working the existing regulation must lead to most unhappy and disastrous consequences.

I would call your attention to two or three things connected with this establishment, which will shew, that whilst similar institutions in England have received the deepest attention from the highest Ministers in the State, and most salutary reforms have been wrought out, yet here we have gone steadily

The Rev. P. P. Agnew. steadily backwards until our most important penal establishment is at least sixty years behind the age and the requirements of the people.

7 May, 1861. 1. Although the Island of Cockatoo has every natural advantage and desirable requisite for a penal establishment for the reception and profitable working of all the prisoners in the Colony, whose sentence may exceed one year—having sites for accommodation and material for building; being situated near the capital, and having demand for labour and a market for produce; being broadly surrounded by water, and easily guarded, it might be rendered a most suitable depot for prison labour generally, and at half the amount which is now sought to put the prisons of the interior in proper condition—yet this establishment remains in a most primitive and inefficient condition, affording neither security for the prisoner nor satisfaction to the Government.

2. No classification whatever exists at Cockatoo Island. The whole of the prisoners are together, from the first to the last day of their sentence. The youth for his first offence, and the hardened veteran in crime are inseparably connected at once. Year after year they work at the same cart, sleep side by side, walk in the same yard, and eat out of the same tin dish. No prisoner is allowed to be alone one hour during his whole imprisonment, and the difficulties and discouragements by which he is legally surrounded renders it utterly impossible for him to attend to his necessary religious duties, or that others can assist him in working out any hopeful reformation.

3. The sleeping accommodation is both indecent and brutalizing. The men are herded together in fifties and sixties, not having private space to undress. They sleep in open racks, one above another, separated merely by rude and open woodwork. The heat, in summer, is described as intolerable. All the offices of nature are attended to openly in the place where they sleep. The rustic fittings give safe refuge to vermin of most offensive kind, which at intervals are fumigated and swept away in incredible quantities.

4. No prisoner placed in the cells is allowed to attend Divine service on the Sunday. This reasonable and necessary indulgence has been objected to, both by the authorities on the island, and by the late Government. There is not a prison in England where religious instruction and consolation is denied to a prisoner under any circumstances. I see no reason for objecting to this privilege, as the men from the cells could be brought to Divine service without taking up the time of the officers, or communicating with other prisoners, by having the first seat in the chapel appropriated to their use, and by coming in last, and being conducted away first.

5. The last thing to which I would call your attention is, the recent abolition of the ticket-of-leave, which compels the prisoner to work out his full and entire sentence irrespective of all good and meritorious conduct. This has at once put the good and the bad on the same footing. Bad conduct makes a man's case no worse, good conduct, no better. A sentence of seven, ten, or fifteen years, is, in many cases, equal to life; and as men under the old and new system are still working together, it has occasioned very much dissatisfaction, and connected with many other objectionable features in the present system, which marks no distinction of character, and cuts off all hope, and has resulted in the present disturbed and unsafe state of things at Cockatoo Island.

I am afraid, that if an impartial and enlightened inquiry was made into the present working of the system, it would be found as ill adapted to the general good as anything of the kind in Her Majesty's dominions.

P. P. AGNEW,
Chaplain, Cockatoo Island.

The Rev. Samuel Sheehy, O.S.B., called in and examined:—

The Rev. S. Sheehy, O.S.B. 5662. *By the Chairman:* You are Chaplain of the Roman Catholic Church at Cockatoo Island, I believe? Yes.*

5663. Do you attend any other penal establishment besides Cockatoo Island? I do not attend the island now. It is some time since I attended Darlinghurst Gaol.

7 May, 1861. 5664. You do not attend any prison at the present time? No.

5665. How long were you attending Cockatoo Island, or Darlinghurst Gaol? I cannot say how long I attended the island, but I attended the gaol over a period of eight years; sometimes both places.

5666. Was it near the same period you attended the island? No, I suppose not more than two years of that time.

5667. How often did you visit the island? I attended once on Sundays, and some time in the course of the week—when I say I attended, I mean that I either went myself, or had a substitute.

5668. What was the course of service—the same as in the ordinary chapels? Yes; instruction and mass, the same as in church.

5669. The service of mass was the same as in the churches? Yes.

5670. How often did you preach to the prisoners? Public instruction was given every Sunday.

5671. What was the conduct of such prisoners as attended upon you when you were performing Divine service? I have not seen anything bad in their conduct. In my experience of Cockatoo Island, I have seen as well behaved men as in any church.

5672. Was the assembly generally as orderly as other congregations? I would not expect the same from them as from other congregations.

5673. As a matter of fact was it? I have nothing to complain of in my experience of prisoners in that matter.

5674. Did you ever have occasion to examine the system of discipline prevailing at Cockatoo Island or Darlinghurst Gaol at the time you acted as chaplain—that is to consider it? Yes, I frequently considered it, and made representations to the authorities—not with regard to Cockatoo Island. I may have spoken with regard to Cockatoo to the Sheriff.

5675. Did you feel satisfied with the discipline? No; if by discipline you mean the opportunity of attending religious instruction, I was not satisfied.

5676. I mean more than that, I mean the whole treatment to which the prisoners during the time they were working out their sentences were subject in its moral effects upon them, and also in its relation to cleanliness, general health, and so on? There was much to complain of in that matter. With regard to the place in which the prisoners sleep, on the island,

* NOTE (Corrected by witness on revision):—Not at present.

island, I do not think there is sufficient supervision exercised. The dormitory is, I believe, left without any one to watch over the prisoners except one of themselves.

5677. Were complaints ever made to you of the accommodation—by the prisoners themselves? They complained of it to me as one of the difficulties in the way of a man doing any good on the island—general treatment was complained of.

5678. You refer to the difficulty of attending to their religious duties? The annoyances those who were inclined to do good were exposed to from their companions.

5679. Did similar complaints reach you at Darlinghurst? Yes, but not to the same extent.

5680. The sleeping apartments are very different there? Yes.

5681. The cells are large and roomy there? Yes.

5682. Have you ever been able to trace the subsequent career of any of the prisoners whom you have attended during their imprisonment? Yes. I know several who came under my notice in Darlinghurst who have done very well. I cannot say I know any who have been at Cockatoo.

5683. You know several who were in Darlinghurst Gaol who have behaved themselves well since they have left? Yes, and who have got on very well.

5684. Have you any statement you wish to make to the Committee? My difficulty with regard to Cockatoo Island, and I have found the same complaint made by those who went before me and by my successors, is, the want of a suitable place in which the prisoners could meet, and where instruction could be imparted. I think the building in which they now meet, and where they have been accustomed to meet, is not at all an appropriate one; and assembling in such a place tends to destroy any sense of religion the men might have. It is used as a place of recreation and as a refectory, and when men meet together in a place for Divine service immediately after having used it for such purposes, the circumstance is calculated to produce a want of respect. It is difficult to produce the same feeling of religion in the minds of these men in such a place, as might be called into existence if there were a building set apart for the purpose. I have spoken to the authorities of the island on the subject.

5685. You think there should be a chapel? Yes. I would of course suggest that there should be one for Protestants and one for Catholics, or that at least there should be one building set apart for Divine worship.

5686. You think that in a large prison establishment there should at least be a Protestant and Catholic Chapel? I think it would be better, for we know that prejudices are strong among such men as we meet there.

5687. Do you think from your acquaintance with the character of the prisoners at Darlinghurst and Cockatoo that many of them would avail themselves of the means of instruction if there were educational classes established? I do not know with regard to Cockatoo Island; I know that at Darlinghurst Gaol it was tried, and very little good was done. I think with the younger prisoners it might be done; but when all were allowed to go to the classes very little good was done. I believe that in the gaol advantage was taken of it, as it gave the prisoners the means of communicating with one another.

5688. *By Mr. Hart:* Do you think it would be desirable to have a school both at Cockatoo Island and Darlinghurst, where the children, both lads and girls, could be taught? I do think it desirable.

5689. Do you think it absolutely necessary at Cockatoo Island, where there are a good many people whose parents are free connected with the establishment? I do not think a school would do which should be established both for the prisoners and the children of the free overseers.

5690. I do not mean that, but that there should be a school established for the purpose of giving instruction to the children of the free officers on the island? A school would be requisite for them, but I imagine if such a school were established the prisoners would not attend it, as there would be an objection on the part of the free population. I know that at present there is an objection to attend at the services that take place, and that only those who are required attend.

5691. You complain of want of accommodation for celebrating the services of the Roman Catholic Church? Yes.

5692. Do you consider that those services are of so sacred a character that where they are performed nothing else should take place if possible? Yes.

5693. Is there any place for the clergyman to robe and unrobe, to hear confessions, and to give instruction privately to the prisoners? Not that I am aware of; when I did give instructions privately, or hear confessions, it was in this dormitory—a very unbecoming place.

5694. Are you aware whether these places have been visited by His Grace the Archbishop? I cannot say for certain. I think they have.

5695. Do you know whether he has expressed great dissatisfaction with the system pursued at both places, and that he considers it would seem to give the weight of his authority to the present system were he to visit them? I am aware those are his sentiments with regard to Cockatoo. I know he has visited Darlinghurst Gaol during my chaplaincy, but I am not aware whether he has visited the island.

5696. Do you think it desirable that a certain portion of time, say three days or a week, once or twice in a year, should be set apart exclusively for religious instruction? Very desirable, I think.

5697. In which the prisoners should be wholly exempted from work, and be attended by their clergymen? I do not know that it would be necessary to give them the whole day. I think they might have an hour in the morning and evening in order that they might have some consecutive instruction. Many require instruction in the rudiments of religion, and we have no opportunity of giving it.

The Rev.
S. Sheehy,
O.S.B.

7 May, 1861.

5698. Have you applied for permission to give instruction to the prisoners occasionally? I have not made that application, but I believe it has been done, and it has been refused at Cockatoo. In Darlinghurst I have always had the opportunity of seeing the men whenever I wished to see them individually.

5699. Do you think the system I have alluded to would be attended with great moral benefit to the prisoners? I think great good would result from it. It was the system pursued here formerly with regard to prisoners coming from Home. A week was given at the commencement of the year in which instruction was given every day, and I believe great benefit resulted from that.

5700. What do you think of lectures being given to the prisoners—of allowing any one who had the ability to do so, to give information upon different subjects to be approved of by the chaplain? The lecture to be by a prisoner?

5701. Either by the clergyman, or by a prisoner, with his permission? I have never thought of that, but I do not think any good would result from one prisoner lecturing the others. I think the prejudices of the prisoners would prevent their listening to one of their own class.

5702. Suppose the lectures were given by the clergyman, or by some other person connected with the establishment, upon moral subjects and other matters, would it not relieve the minds of the prisoners from their constant daily task, and elevate them? No doubt good would result from it. I know many who would be benefited by it, as there are many well disposed persons in both places.

5703. Have they a library on Cockatoo Island? I am not aware—I believe they have in both places, but the library is confined to works of a religious character, and I do not think that is sufficient.

5704. It is not so at Darlinghurst? I think the books provided for the library were of a religious character.

5705. Do you not think it desirable that they should have books upon general subjects? I think so.

5706. How is the money expended that is voted by Parliament for books for the gaols? In buying Prayer Books, Bibles, and books of that sort—religious books.

5707. Had you any difficulty to get that money after it was voted by Parliament? I think there was some delay.

5708. Do you consider that it is injurious to the welfare and future prospects of the prisoners to allow them to mix together as they do, indiscriminately, at Darlinghurst? I think that is a great obstacle to their reformation, and I have always strongly urged upon the authorities that it should be done; but I believe one cause of its not having been done was the state of the building. I have some examples now in my mind, of young people who have been ruined by having been sent among prisoners who have been a long time under sentence.

5709. Does that apply to male or female prisoners? The examples I refer to are males— young boys—but I think in both cases there is the same result.

5710. Are there any instructions in the catechism given in the gaol at this time? I think so. It is usual to give a discourse on some moral subject in the morning, and in the evening catechetical instruction. That is the custom in our church, and I believe that is the custom there.

5711. *By Mr. Windeyer*: Could the men who came under your notice read and write? I know many did read and write—they applied to me for books, which I lent them.

5712. You have said that some of them required instruction in the first elements of religious teaching? Yes; some of the prisoners in the gaol. I had generally one to attend me, who took charge of the vestments belonging to me; if he could read and write, he generally instructed the children or others—this was before the appointment of a schoolmaster. I found some of the people benefited by it, and learned to read.

5713. *By the Chairman*: At the time you were attending Cockatoo Island, did you ever hear of the perpetration of unnatural crimes upon the island? The prisoners have complained of such; it was to that I alluded as having been said to have taken place in the sleeping places.

5714. The prisoners have complained to you, as a clergyman? Not under secrecy of course; they have said it was impossible to do good on account of their associates.

5715. Have any of these complained of the actual commission of the crime? Not as being the subjects of it.

5716. They believed that it took place? I cannot say for certain. I know the complaint has been made to me.

5717. *By Mr. Morris*: The complaint was made to you that these crimes had been committed? Yes.

5718. *By the Chairman*: I should understand that frequent complaints were made to you? Men have told me such was the case. In such a case of course I would not enter into any particulars, for I concluded from the class of men there, and the state of the place in which they slept, the thing was quite possible, and even probable.

SEPARATE APPENDIX.

PART I.

SEPARATE STATEMENTS RECEIVED FROM PRISONERS.

NOTE:—Examinations obtained by certain prisoners, presenting only *personal* statements, are included.

(On first Visit to Cockatoo Island Prison, 1 February, 1861.)

1. JOHN PAGE.
Complained that when he went to the island, he had a good suit of clothes, which had been stolen from the store.

2 (*written*). JOHN WATSON.
Handed in a statement, as follows:—
I arrived in Sydney, 26th January, 1859, from Goulburn; on the evening following, was taken in charge by Detective Adderly and another, after picking a lady's pocket of £15 in notes, and £24 in cheques. I was committed to the Quarter Sessions, and tried by Mr. Cheeke on the 20th of the following month, February, and sentenced to twelve months in Sydney Gaol. After my release from gaol, a man named Henry Foy, came up to meet me at the gaol gate, and took me to his home, telling me that I could stop there until I could better my condition. On the same day I had occasion to go to the South Head Road with a message for a man who was in the gaol; but, unfortunately, I went into a public-house, and getting drunk, got confined in the watch-house, opposite the gaol, for the first time in my life, never having been drinking to excess before, and for which I got twenty-four hours. In consequence of this friend of mine not knowing it, I had to serve it, not having wherewith to pay the fine of 10s. I was thus discharged from gaol on the 22nd February, and being totally destitute, I was much depressed in health and spirits; and not liking to trouble my friend, I wandered about the town all day until midnight, when, going down Market-street, fearing every minute I should be arrested for being out so late at night, I came to a house, at the door of which I found a woman preparing to go to the Market with coffee; I asked her to let me stop there till morning; her son being at the time in the house she objected, but said she would allow me to stop at her stall, in York-street, till morning. I availed myself of her offer, and laid on a box which she had there till daylight, when I thanked her, and went about my business. I walked about all the forenoon in search of employment, but found none. During the day, I was stopped in George-street, in company with another man; the prosecutor pointed to me saying, I looked like one of the three men who choked and robbed him on Wednesday night. I have not any recollection of what he said to the other man, being too much engrossed about myself being accused of a thing of which I was entirely innocent. The policeman, who was with him, asked him four or five times if he would give us in charge, but he appeared very doubtful; upon which, the policeman was inclined to let us go about our business, but a sergeant coming up, insisted on the case being taken to the watch-house; when, on being examined, I did not like to tell the police I had just come out of the gaol, thinking it would tend to injure me, but said I had just come down the country, or words to that effect. We were then confined in separate cells, and the following morning, the other man was examined privately, and was able to give a satisfactory account of himself; after which, I was subjected to the same process, when I told them as I told them before. After which, we were both tried before the Bench (having been charged on suspicion the night before), and remanded. On the deposition of the policeman, I was charged with robbing the man, and the other on suspicion for being in my company; this was Friday. We were remanded till the Tuesday following, on which day the prosecutor swore to me, but the other man was acquitted. I was committed to the Quarter Sessions in March, and upon that evidence was found guilty, and sentenced to ten years to Cockatoo Island. I have protested my entire innocence ever since, and have written two statements, in which I have set forth the whole of the above facts, but have been unable to obtain any redress; and not having been allowed to see the magistrate since, I consider myself seriously aggrieved. I declare that I had neither hand, act, or part, in the robbery, neither did I know such had been committed.

JOHN WATSON.

[In reply to a question from Mr. Cowper, he stated that he was tried by Mr. Holroyd.]

3. JOSEPH O'HALLORAN.
Complained that he had been detained on the island six months beyond his term.

4. HUGH MONTGOMERY BLAND.
Made a similar statement.

5.

5. MICHAEL CANTWELL.
Tried by Court Martial three years since—Complained that he had forwarded a petition to Captain Lovell, who had acted as Judge Advocate, and by whom hope of a remission of sentence had been held out seven months since, and that he had received no reply to his petition.
6. WILLIAM JOHNSON.
Complained of over sentence.
7. MICHAEL FRAYNE.
Stated that he came to this Colony a prisoner in 1837. In 1855, he obtained a ticket-of-leave for Moreton Bay, having, as he believed, according to the English regulations, but six months to serve before he would be entitled to his emancipation. After his departure, his mother petitioned the Government, and obtained an answer that he was to obtain his emancipation at the end of six months. Being anxious to see his mother, who was very aged, he, after residing two years and a half at Moreton Bay, returned to Sydney, where he married, and entered into business as a licensed coach-proprietor. In this capacity was under the notice of the police, having four coaches, a license for each of which was taken out in his own name. Having acquired other property, to the value of £500 or £600, was apprehended as an Imperial prisoner illegally at large.
8. WILLIAM WASHINGTON.
Complained of over sentence.
9. CHARLES NIXON.
Made a similar complaint.
10. JOHN HAWKINS.
Under seven years sentence, ten months of which were served—Desired to petition for mitigation of sentence, in consequence of having had his leg broken while on the works.
- 11 (*written*). ALEXANDER DOUGLASS.
Had written a statement of his case, which he desired to lay before the Committee, viz. :—

The Statement of Alexander Douglass, at present a prisoner on Cockatoo Island,—
Respectfully sheweth :—

That your Memorialist is now undergoing a period of three years on the public works, on a charge of uttering, and in extenuation begs respectfully to submit the following statement for your consideration :—

James Cameron stated to the Sergeant :—

I sold my horse and saddle to a man named T. A. Rouse, on the Bathurst Road, in coming from Dubbo, for the cheques in question.

On oath he stated :—

I met Douglass on the Monday morning; he took me to a house where he gave me those cheques, and told me whatever money was over I was to return to him; he did not know my real name, nor had he ever seen me previously; the name on those cheques is my proper name; my reason for passing as Frederick Hellier is to prevent my parents ascertaining that I had emigrated; Douglass did not write those cheques, nor was he out of my sight to write those cheques; I had nothing left out of those cheques; I never had any dealings with Douglass previously.

On the following morning Cameron stated to the magistrates :—

I will confess the truth; I received those cheques from a constable in the town of Bathurst; I mentioned his name yesterday to Captain Battye.

Mrs. Doyle stated on oath :—

Douglass told me that he saw Cameron sell his horse and saddle for those cheques.

On the trial James Cameron stated :—

I know nothing of Douglass, nor had I ever any dealings with him; I did not receive those cheques from him; I came by those cheques in a dishonest manner; I stole them from a person, from a pocket-book containing two more notes and some silver; this person was coming from the village of Peel to Bathurst; my reason for stating that Douglass gave me those cheques was, that Captain Battye told me if I would swear so he would let me go free, and get me a situation in the police—that is, if I would swear to having obtained those cheques from Douglass, and that Douglass got them from Sampson; I never saw Douglass before the 4th May, 1859, it was in a booth on the racecourse at King's Plains, where he was engaged to play music, and I declare that Douglass is innocent of the charge.

N.B. This man (James Cameron) was let at large for a few minutes, but subsequently brought back, placed on his oath, when he swears the very words required of him by Captain Battye, and he was then committed along with me.

Alexander Douglass states :—

I never to my knowledge saw Cameron previous to being apprehended on my road home from King's Plains; I was remanded from the 8th May until the following December, whereas, had the law deemed me guilty, they would have tried and sentenced me before, for I subpoenaed seven respectable witnesses who could have proved my innocence; but my subpoenas were never served, and consequently I received the sentence of three years to hard labour on the public works, which I am at present undergoing. I beg to state that Sampson was an inmate of the gaol from the 23rd March up to the time of my trial in December,
when

when he received a sentence of four years to Cockatoo; but after four months servitude he went to his liberty, his case having been tried in Banco.

Trusting that your Honorable Board will take the above facts into consideration, as well as my having previously resided in Bathurst, where I was well known as a man obtaining an honest living, both as a bricklayer and plasterer, or a painter, and being well known to the authorities as an honest tradesman about the town—and so far enter into the merits of my case as will result in my obtaining my liberation.

ALEXANDER DOUGLASS.

Alexander Douglass, per "Abdallah," was received here on the 7th January, 1860, under a sentence of three years hard labour on the roads, passed upon him at the Quarter Sessions at Bathurst, on the 8th December, 1859, for uttering a forgery, since which period his conduct has been good.

Nothing recorded.

Cockatoo Island,
6 February, 1861.

GOTHER K. MANN.

12 (*written*).

CHARLES WAGNER.

Had also written a statement, which he had forwarded to the office, viz. :—

The Statement of Charles Wagner, a prisoner on Cockatoo Island, undergoing the sentence of five years for stealing, in a dwelling, the sum of one hundred sovereigns :—

I was tried on the 25th day of April, 1860, before His Worship the Chairman of Quarter Sessions, at Sydney, and received the above sentence.

I am not guilty of the above crime, inasmuch as I had but recently arrived from Melbourne, with the view of investing my small capital in trade in New South Wales, and had taken lodgings in a respectable house in Gloucester-street, where I had occupied the same room for five weeks; three weeks I was the sole occupant of the room, but the last two weeks was conjointly with a sea-faring man, who subsequently became my prosecutor.

I being a foreigner, and speaking very bad English, was totally ignorant of all law matters, and unprepared at the time of my trial to prove satisfactorily my innocence, having been committed on the 19th and tried on the 25th of the same month, and was most inefficiently defended by Mr. Moffat, he only arriving in the Court at the close of the evidence for the prosecution, when he only asked a few questions of trivial import, although I had fecd him to be further defended by a barrister-at-law.

I was convicted simply on my prosecutor swearing to one sovereign, of a whitish cast, out of £176 10s., taken from me when arrested.

The arresting constable took my money while in the lodging-house, and spread it on the table in the presence of the prosecutor, thereby giving him an opportunity of seeing the whitish sovereign, which is not uncommon amongst gold specie, for he had no other mark whereby he could swear to any of the money.

I would now beg to submit points which were not brought forward by my counsel at the time of trial.

The landlady of the boarding-house had three daughters, the eldest being twenty-two years of age, to whom I was under engagement of marriage, and was not aware at the time that the prosecutor, who occupied the same bed-room, was my rival, as, on the preceding evening to my arrest, he asked me my intentions respecting marriage to the daughter, and how much money I had (stating that he made these inquiries at the request of the young lady and her mother). I at once told him £200, in gold, at the same time opening my box, and shewing it to him. The following evening, on my return home from a walk, about 8 o'clock, the prosecutor stated he had lost one hundred sovereigns, which he said he had drawn from the bank in the morning, and placed in his chest, leaving the lid open. He at once gave me in charge, when I told the apprehending constable that it was easy for prosecutor to lay such a charge against me, his having seen my money the previous evening, at the same time telling him the exact amount of money in my chest, and giving him a memorandum-book from my pocket, containing a confirmatory account. The prosecutor admitted that his box, and the door of the bed-room, was always, day and night, unlocked and open, and that the master, mistress, the three daughters, and male boarders, had equal means of access; yet he singled me out, and gave me at once in charge.

I had left Melbourne but the month previous, having in gold £209 and 5s. when leaving, £100 of which I received from Mrs. O'Brien, green-grocer, Flinder's-lane West, part of money lent on mortgage, and £100 from Mr. Rolls, the coach proprietor, of that city, for a Hansom safety cab, which I sold him. I have written to the aforesaid parties, and also to Messrs. Muttelbury and Costar, solicitors, who negotiated the mortgage for me, for the receipts of the above money, and also for certificates of an unimpeachable character since my sojourn in the Colony.

I am now labouring under a disease of the heart, brought on by premature depression, in consequence of my incarceration; I therefore beg that your Committee will be pleased graciously to cause such investigation and inquiries as shall seem fit and necessary.

CHARLES WAGNER.

The petitioner, Charles Wagner, per "Juanita," was received here on the 28th April, 1860, under a sentence of five years to the roads, passed upon him at the Quarter Sessions at Sydney, for stealing money; since which period his conduct has been good.

Nothing recorded.

Cockatoo Island,
8 February, 1861.

GOTHER K. MANN.

13. DAVID JOBSON.

Stated that he had petitioned, but received no answer.

14. MICHAEL DORAN.

Stated—I came to the island on the 28th May, 1858. I had at that time clothes to the value of £9 14s. 6d. with me, for which I have the tailor's bill. I had also a pair of boots, not included in the bill, which cost me £1 5s. I had also two rings in my pocket, to the value of £3 7s., and £9 in money stitched in the breast of my waistcoat. I never mentioned this to any man until I had been eight months here, when I told Mr. Brown, in the presence of five men, to take the two rings out of my pocket, and so much money. In the month of July, 1859, four men were going away from the island to their tickets-of-leave, and one of them named Edwards, who had been a constable here, took away my clothes. I received information of this from Thomas Lenehan.

15. ROBERT BANKS.

Complained that he had been sent to the island, and to work in the quarry, because, having a ticket-of-leave for Bathurst, he had been found in Yass.

16. FREDERICK SOMERVILLE.

Stated that in November, 1849, he had received a sentence for four years, and in 1850, a sentence for seven years. That he had received a ticket-of-leave for the Yass district. That he was, for two years, in business at Adelong, where he was well known, as an auctioneer, by the name of Frank Templeton; and that he was seized at Kiandra as an absentee from his district. The warrant under which he was apprehended, stated that he would be free on the 3rd November, 1860, and he was now informed that under the present regulations he would have to serve two years longer. He was under the impression that when his seven years sentence had expired he was free to leave the district, as he believed that that sentence had been concurrent with his former one. During the two years he had been off the island he believed his conduct had been satisfactory, and while at the diggings he believed that no one there had been more anxious to suppress crime. A petition had been forwarded to the Governor General by the residents at Kiandra on behalf of the prisoner, and he begged to refer to Charles Cowper, jurr., Esq., M.P., Mr. Shadforth, and other gentlemen in the Tumut district as to his general character.

17. FREDERICK WM. SCRIMES.

Begged to bring his case under the notice of the Committee. In 1848 he separated from his wife, by mutual consent, being then in England. In 1851 he came to this Colony, and remitted money to his wife, the receipt of which was not acknowledged by her, and he concluded that she was dead. Married a second time. Some two years after his second marriage his first wife came out to the Colony, and having discovered her husband, demanded a maintenance from him. He then furnished a cottage for her at Pymont, and allowed her £2 a week. After a time she increased her demand, and as he could not comply with her exorbitant requirement, she brought the charge of bigamy against him, upon which he was sentenced to three years imprisonment upon the island. His wife had been in the Colony four years before she brought the charge. He had been in the service of Messrs. Wilkinson, Brothers three years and a half. Could refer to Mr. Williams, of that firm, as to his general character, and believed, if the Superintendent of the island were called upon, that gentleman would bear testimony to his good conduct. Had never before been charged with any offence.

18. DANIEL SULLIVAN.

Complained that, being legally free, he had been apprehended for being out of his district. Had a ticket for Moreton Bay, and was apprehended in Sydney.

19. MICHAEL CROFTON.

Had lost his ticket while at Ipswich; had served his time within seven months, and had been well conducted while on the island.

20. JOHN M'SPADDEN.

Charged with murder, and sentenced to fifteen years imprisonment—Complained that he was detained over his sentence, which had expired eighteen months ago.

21. FRANCIS MORAN.

Complained that his ticket-of-leave had been cancelled for drunkenness.

22. WILLIAM THOMPSON.

Sentenced to ten years imprisonment, the first twelve months in irons—Complained that he had to serve twelve months longer than a man who had received the same term of sentence, but without irons.

23. JOHN HASSETT.

Complained that he had been detained on the island over his proper time. Was sentenced to fifteen years—the first three in irons. Had been six years and six months on the island, and served the first three in irons. Had petitioned, but received no answer.

24. JOHN SMITH.
Complained of cancellation of ticket-of-leave, which he had received for Moreton Bay; but coming to Sydney to see his wife and family, was apprehended as a prisoner illegally at large.
25. LOUIS BRETON.
Complained of having been sent to the island for losing his ticket-of-leave.
26. WILLIAM HEAD.
Complained of having been detained on the island seven months beyond the expiration of his sentence.
27. JAMES EDWARD CARNEGIE.
Stated—I came out to this Colony in the "Hashemy," in April, 1849, under a sentence of exile for seven years; I did not land in Sydney, but was sent to Moreton Bay. There I remained some time, and met a number of my Scotch friends; I then came to Sydney, remained about six weeks at the Royal Hotel, and then proceeded to California. In the beginning of 1857 I came to Melbourne, and was employed on the press; I wrote a number of scientific articles in the *Argus*. I was also the proprietor of two papers—*The Evening Mail* and *The Evening Bulletin*—both of these failed. *The Green Room* was my entire property, and I was the only editor. I arrived in Sydney in March, 1859, and acted as agent for the Nelson Family, whom I was the means of introducing to the Colony. I was also agent for Signor Bianchi, from whom, as well as from Mons. Coulon, I have testimonials. During my residence in Sydney I was constantly in places of public resort, and my employment was of a public nature. I believed that I had fulfilled the terms of my sentence. I was under the impression that the conditions of my exile was, that I was not to return to the United Kingdom during seven years, and this condition I had fulfilled. As to my conduct and character, while I was in Sydney, I confidently refer to Sir Daniel Cooper, Mr. John Fairfax, Mr. O'Connell, brother of Captain O'Connell, the Honorable Mr. Merewether, Mr. Dunsmore, and Major Chauvel; and I believe the Superintendent of the island would speak favourably of my conduct since I have been here.
28. RICHARD HART.
Complained that he was kept on the island for having lost his ticket-of-leave.
29. JAMES M'LAREN.
Stated that he had lost a finger.
30. THOMAS FITZGERALD.
Complained that he had been sentenced for five years for passing a coloured half-penny, which was a minor offence of the lowest order.
31. RICHARD HANSON.
Eighteen years of age—Complained that he had been sentenced to five years imprisonment, of which he had served eleven months, for breaking into the market; was tried by Judge Holroyd; other cases of a similar kind had been sentenced to a month or two months imprisonment; had been twice before in gaol for stealing clothes—the last time about six or seven months before.
32. WILLIAM CRAIG.
Sentenced for five years, of which he had served two years and four months, for obtaining goods under false pretences—Stated that he had never been tried before; had sent in a petition to which he had received no answer.
33. MICHAEL CANTWELL.
Stated that he had been on the island three years; when he arrived received two blankets which had never been changed or washed from that time to the present.
- (On first Visit to Darlinghurst Gaol, 8 February, 1861.)
34. ROBERT ALEXANDER.
Stated that he was tried at Braidwood on the 27th December last, and sentenced to two years on a charge of robbery; that at the time he was apprehended he was gazetted as a runaway from Tarban Creek. He asserted his innocence, and stated that he was illegally imprisoned, having been sentenced by the Braidwood Bench and not by a Judge.
35. GEORGE TAYLOR.
Stated—I was convicted at Rockhampton for uttering forged notes, and sentenced for five years by Judge Milford; two years of which have expired. On the 10th of January last I refused to work. The ground of my refusing to work was in consequence of being working with other parties who were reaping a great benefit, whereas we were reaping no benefit whatever, and were compelled to perform the same work. I would be most willing to return to work to-morrow—indeed I am doing so now—if I could shorten my time. I have a wife and family,

family, and would be prepared to work eighteen hours a day at anything if I could shorten my time.

By Mr. Windeyer: Are you prepared to return to work if your period of labour is not shortened? I know it is folly to refuse to work against Government.

36.

JOHN O'BRIEN.

A contractor under the Corporation of Sydney—Complained that for disobeying an order to pay wages he was confined in this wing, directly opposite the cell of a murderer (Swan). In the cell with O'Brien was—

37.

HUGH CRADDOCK.

Stated that he was confined for disobeying an order to support his children.

38.

CHARLES OXBURGH.

A runaway from H.M.S. "Iris"—Complained that he had been apprehended on the 1st of August last, and was detained in prison until the return of his vessel to the port.

39.

JAMES BINNEY.

Made a similar complaint: he stated that he was apprehended on the 4th last November; had been remanded from fortnight to fortnight, as there was no one to bail him out; and that such as he were thought no more of than the basest murderers or felons in the prisons. During the time he and his companion in the cell, Oxburgh, were obliged to mix, in the committed yard, with men charged with all sorts of offences.

40.

GEORGE DAVIS.

Sentenced at Tamworth on the 18th June last, for horse stealing, to five years imprisonment in Darlinghurst—Complained that his sentence was illegal, inasmuch as the Judge had no power to sentence him for a longer period than three years.

By the Chairman: Have you made any application to the Government on the subject? I spoke to Mr. Harrison.

What did you hear from Mr. Harrison was the result of your application? He said he had not heard anything of it.

When was that application sent? About six months ago.

41.

PATRICK MURRAY.

A patient in the hospital—Stated, I came over on the chain with the last of the prisoners from Cockatoo. When I came in here, and the gates were closed on us, Mr. Singleton came up and shook me by the arm, while Mr. Harrison, the deputy governor of the gaol, was counting us. I told Mr. Singleton he had nothing to do with me, as I was under the gaol authorities. He said, "I will let you know I have something to do with you," and he drew his sword and cut me here (*pointing to a scar over the right eye*), and I was put in the cell that night.

By Mr. Hart: Did you not strike him first? No, I was in handcuffs.

Did you not hustle him? No, I could not.

Your wound does not appear to be very serious? If his sword had not caught against a tree he would have cleaved me down.

42.

ANN M'INTYRE.

Stated that she lives at Richmond, and was taken up on a charge of being drunk in Sydney streets, and was sentenced to three months imprisonment; was married to John Fletcher two years ago, and her house and family were going to destruction.

43 (*written*).

BARNETT LEVI.

The following statement handed in, viz. :—

The humble Statement of Barnett Levi, tried at the Sydney Quarter Sessions in May, 1853, for petty larceny (picking pockets), and sentenced to ten years on Cockatoo Island,—

Sheweth :—

That prisoner completed a sentence of five years and ten months on Cockatoo Island, and emerged with a ticket-of-leave to Ipswich, Moreton Bay district, in a suit of Government branded slops, without a shilling, when he was ordered by the Police authorities to leave the town and proceed to the country, notwithstanding he had a friend in Ipswich, who offered to place a sum of money at his disposal to enable him to enter into business, which was explained to Colonel Gray, Police Magistrate, but without effect. Unaccustomed to the bush, or agricultural employment, and without any definite knowledge of the boundaries of the district, he proceeded to Tenterfield diggings where he opened a store, and for four months was obtaining a honest livelihood, which Commissioner Masterton can vouch for. Through the agency of one of the police, prisoner received information of a warrant being issued against him for being illegally at large, and he, afraid of returning to Cockatoo, sold off and immediately set out for Melbourne, paid his passage in the "Great Britain" with the view of returning to his friends, and was unfortunately apprehended and forwarded to Melbourne Gaol, where he remained for six months, and was returned to Cockatoo to complete the unexpired portion of his original sentence and two years additional from other sources. Now, prisoner feeling there is something so unjust in detaining him in custody for a number of years without trial by Judge or Magistrate, humbly entreats your Excellency

to

to investigate and take the subject into consideration, for as all sentences of solitary confinement, &c., are extension, a man who is disliked may be kept many years in chains and bondage.

P.S. Some six months since the Visiting Magistrate permitted me to petition. I did so, but it was returned from the Chief Inspector's Office.

(*On Visit to Parramatta Gaol, 15 February, 1861.*)

44.

MARTIN KENNY.

Sentenced to three years imprisonment for gold robbery at the diggings—tried at Bathurst in 1859,—Stated that he had been advised by the Judge who tried him (Mr. Dowling) to send in a petition to the Government, but had been prevented doing so by the rules of the prison.

(*On second Visit to Darlinghurst Gaol, 1 March, 1861.*)

45.

GEORGE SINGLETON.

Made the following statement:—I was sent here by the Sydney Magistrates for refusing to obey an order of the Court to pay ten shillings a week for the support of my wife and four infant children. I have a freehold in Petersham, upon which my wife is living, and for a portion of which she is receiving rent. My eldest daughter is sixteen years of age, and has been living in service at Balmain for more than twelve months. I was at work at Mr. Holt's three weeks before I came here, at 25s. a week. One week I worked three days, one four, and another six days.

By Mr. Lucas: Had you nothing besides the twenty-five shillings a week? No.

What are you? A carpenter.

What induced you to take such wages? It was my last resource.

How much did you receive during the time you were at Mr. Holt's? 53s. 7½d.

Where were you boarding and lodging during this time? She had taken everything out of the house, even the bedding, and would not allow me to stay there, so I took lodgings close to Mr. Holt's.

The Committee inspected the stockade, exercise ground, and wall in rear of the hospital, whence the seventeen prisoners recently escaped. They then returned to the gaoler's house, on their way tasting the bread which had just been brought in by the contractor.

(*At Sitting, 8 March, 1861.*)

46 (*written*).

RICHARD AINSWORTH.

The Honorable the Chairman and other Honorable Gentlemen of the Select Committee on Prison Management, &c., &c., &c.

Gentlemen,

I have to express my gratitude in allowing me to lay before you a statement of the circumstances under which I am placed, and at the same time humbly to solicit you will not be deterred in your perusal, from the painful recital which must appear at the commencement.

I have been tried on three charges in the Colony:—

- 1st. At the Criminal Court, Bathurst, in September, 1848, for uttering a forgery, and sentenced to seven years on the roads.
- 2nd. At the Criminal Court, Bathurst, in February, 1852, for receiving and detaining a letter, containing a money draft, and sentenced five years to the roads.
- 3rd. At the Court of Quarter Sessions, Maitland, in January, 1854, charged with stealing a horse, and sentenced five years to the roads.

On the last occasion I stated to the Court that the sentence passed upon me was, under the circumstances, a most severe one, when the Chairman was pleased to remark, "Though five years is the period, it is not so in effect, since you well know, by good conduct, you will receive a ticket-of-leave in half the time by the regulations of the task-work system." Was immediately removed to Cockatoo Island, where I remained ten weeks, then returned to Darlinghurst, forwarded from thence to Parramatta Gaol, and in that establishment completed the last mentioned five years. It will be seen the two first sentences lapsed while serving the latter, and that this was the opinion of the authorities at Parramatta, for on the 2nd January, 1859, I was discharged free. I at once returned to Sydney, and within forty-eight hours afterwards suffered a severe attack of dysentery, which continued near four weeks. This affliction completely exhausted my finances, and on becoming convalescent, considered the most prudent step for me to take was to use my endeavours to proceed into the interior. To this end I attended the office of the Honorable the Colonial Secretary with a letter, addressed to that gentleman, praying him to grant me a free passage to Moreton Bay, where I had friends, or to some other settled district. Mr. Elyard handed in my note, and in a few moments afterwards I was informed by the messenger that Mr. Cowper was writing a reply, which I should receive immediately. It turned out that this messenger, at that very period, had received orders to call in Constable Singleton. That officer appeared with him, and informed me he was desired to take me to the Convict Office to know if I was free. I at once accompanied him, and was there told I had been illegally discharged from Parramatta Gaol. That evening I was lodged in Darlinghurst, at the end

of four days forwarded to Cockatoo Island, and after twelve days more returned to Darlinghurst Gaol, where I have been confined for the past two years and upwards.

I would here remark that, on three occasions, I have been advised my detention here is illegal, that there was no provision in the Road Act to make these sentences cumulative, since they had not been so ordered, and consequently forwarded two statements to the Honorable the Attorney General, for the time being, but received no reply. I then, at the request of the Sheriff, wrote a third, which was intended to be laid before his Honor the Chief Justice, but nothing more was heard of it. In March last, assuming my imprisonment legal, was eligible for a ticket-of-leave in accordance with the Classification Regulations, and although that system ceased to exist in June, 1858, there was an order of His Excellency the Governor General posted in this and all other prisons, to the following effect, viz.,—

“ 2. Those regulations will, however, be acted upon in the cases of all prisoners now undergoing sentences passed while they were in force.

“ CHARLES COWPER.”

I therefore brought this matter also before the Sheriff, who desired me to write a statement shewing the prescribed period of probation and when it expired. This document was forwarded to the Chairman of the Board of Classification, and some time after a letter was received by the Sheriff, from the Colonial Secretary, inquiring why my name had been submitted to the Board. I believe that gentleman replied, it had been forwarded the same as in all cases of a similar nature, when a further letter was received purporting I was not to receive a ticket-of-leave at all, but must serve the whole of the sentence in gaol, which is said not to expire till September, 1865. I am well assured if Mr. Cheeke had known, when passing the sentence of five years upon me at Maitland, that I should have been differently affected to other prisoners he would never have ordered me to Cockatoo Island, but consigned me to confinement in gaol, and that by law could not have exceeded three years for one offence, in confirmation of which I beg to refer you to the second case in the annexed list; therefore what the law could not do other authority did, and I have consequently served since that period near two years more than a prisoner on the island would have endured from the same time with a sentence of fifteen years.

In January last I again appealed to the Sheriff, and requested his permission to petition His Honor Sir J. N. Dickinson, in the hope of receiving a favourable recommendation prior to the departure of His Excellency the Governor General, and I cited a case which occurred last April, when a man made a similar request to petition the Judge who tried him. This man had been convicted of two charges of highway robbery in June, 1850, and sentenced to fifteen years roads and ten years roads; he was permitted to forward his petition, His Honor took a merciful view of the case from the man's advanced age, &c., and he was discharged free on the 24th May. The Sheriff replied to my request as follows:— He could not allow me to petition, there was so strong a prejudice against me that it would be useless, for he had been brought to account for even forwarding my statement to the Classification Board last year.

Further,—If it be urged I have committed some offence which ought to shut me out from the privilege granted to other prisoners, surely my punishment has been already severe, for had I been allowed the benefit of credit for labour I should have possessed a ticket-of-leave three years ago; but I emphatically declare I have done nothing to place me in so fearful a position, and although three charges specified at the head of this paper blacken my history, there is no man breathing who has ever been injured by me to the loss of one shilling. I am compelled to add, my punishment is greater than that of the murderer, the highwayman, or others who have committed serious outrage upon society, all of whom to this very hour are receiving the benefit of the order previously referred to, and amongst this number there are several who have committed repeated offences since my incarceration, and after all are again at large. I herewith annex the history of three of this character, each of whom have been discharged at no very distant period.

I am aware I am considered guilty of causing the discharge of a prisoner from Cockatoo Island in 1851, by means of false certificates or something of the kind, which was intimated to me by the Visiting Magistrate, but I had no opportunity afforded me of shewing the contrary. Had this privilege been granted, I could have proved that the man so discharged was subsequently apprehended through my information, and it is not likely I should have assisted in tracing his whereabouts had I been a principal or actor in that improper movement. The honorable gentleman now at the head of the Government was the Chairman of a Select Committee in 1852, to inquire into the discipline and management of Cockatoo Island. On that occasion this charge against me became public; to it, and the improper replies to questions put by the Committee to Mr. Ormsby during his examination, I attach the prejudice which exists against me; from that time it commenced, and continues to the present as powerful and keen at the end of nine years as though the act was that of yesterday. I verily believe that Mr. Ormsby, on that occasion, made statements unconscious of what he said, for I observed all he had been asked relative to the duties of the office and keeping of the books, his replies were fearfully incorrect, and this I pointed out to him, but he had gone too far to recede. Whatever, therefore, may be urged against me, there is this evident fact—I have now been in gaol seven years and upwards, and I would beg to add, whatever the past, I trust I am a changed man, and only anxious for an opportunity of proving the sincerity of my regret. I have been for some time past acting here in the capacity of wardman, and also attending upon the Rev. P. P. Agnew. Under this gentleman's observation for more than two years, I have no hesitation in affirming he would speak favourably of me, and I believe I may also include the whole of the authorities; but as my case at present stands, all appears hopeless, and nothing remains but the fearful looking for of a further unjust and, I believe, illegal imprisonment, until my powers become prostrated;

prostrated; and, should it please the Almighty to spare me, I must, under these circumstances, be sent adrift in the world, bereft of the ability to provide for the future. But as Heaven takes out of account repented crime, so earth should, and thus lead to the renewal of a right spirit within us. In perfect confidence, therefore, I leave the whole in the hands of your Honorable Committee, beseeching your merciful interposition, and praying at the same time you may be guided by Him before whom all hearts are open, and from whom no secrets are hid.

RICHARD AINSWORTH.

Darlinghurst Gaol,
3 p.m., 5 March, 1861.

1st. Henry Burns was tried for robbery in 1849; sentenced three years to the roads; forwarded to Newcastle Breakwater; absconded; apprehended in Sydney attempting pocket-picking, identified as a runaway, and sentenced a further twelve months. August, 1852, received a ticket-of-leave; in November following absconded from his district; again appeared in Sydney, stole from a little girl in Pitt-street a £20 note, who had been sent by her father for change; apprehended and sentenced four years to the roads. This man, in February, 1853, had entered into a scheme with a fellow prisoner to escape from the island; a sort of boat or raft was put together for the purpose, and just as the arrangements were completed he betrayed his companion, who was already on the water, and immediately captured; for this service he considered himself entitled to his freedom; Captain M'Lerie thought otherwise, and had him removed to Darlinghurst Gaol. On jumping ashore at the wharf he attempted to escape from the constable, who fired after him and shot him near the shoulder. Some time after his arrival at Darlinghurst he was accused of an unnatural offence, and removed to Parramatta; he was then allowed the benefit of probation, which expired in September, 1855, when he was again allowed a ticket-of-leave for Goulburn; committed a number of offences there, and reached Port Phillip; there he was identified as a runaway, and sentenced to six months in irons; again ordered to Parramatta Gaol, during which the authorities in the Convict Department sought to compel him to serve the full period of the various sentences passed, but it was found illegal (a case similar to my own), and he was discharged. In less than three weeks afterwards he committed another robbery, and sentenced three years to the roads; and since my confinement here he has been again discharged to a ticket-of-leave.

2nd. Frederick Barlow, in 1848, received a sentence of eighteen months in irons, for a robbery in Parramatta. This man committed two offences on the island, and did not receive a ticket till June, 1850; six months afterwards he was tried in Sydney for robbing his master, and sentenced four years roads; in 1853 he received a ticket-of-leave for Singleton, was there committed for trial for robbing one of his master's lodgers, but was acquitted, and the Chairman ordered him to be escorted to his district. The night of his release he lodged in a public-house in Maitland, and got in the room where two gentlemen were sleeping, whom he robbed of £30; was again committed for trial, and as the Chairman was about to pass a sentence of seven years, after his trial and conviction, he craved the consideration of the Court, and prayed not to be sent to Cockatoo Island, as he had been previously mixed up in some charges against the authorities there; he was therefore ordered to three years hard labour in Parramatta Gaol; this he served during my stay, and was discharged in August, 1857. In January, 1858, was ordered one month to Parramatta Gaol, from Windsor, as a vagrant; in March following convicted of another robbery in Sydney, and sentenced to seven years roads; and in January last was again discharged to a ticket-of-leave.

3rd. Richard Hart sentenced, in 1848, to three years roads for robbery, remitted in 1850; in the same year received two years as a vagrant; at the expiration of this committed another offence, again allowed a ticket; and in 1856 received a sentence of seven years on some other charge; and in July last again released with the usual indulgence. A few weeks past this man was ordered here for one month, for attempting to pick the pocket of a female in the theatre; he had absconded from his district, and was not four hours in Sydney when he committed this offence. He arrived here in an assumed name, and it was clear to me he had not been recognized. I, therefore, take the credit of saving the citizens of Sydney from further depredation by him for some time, as I acquainted the authorities of his being a notorious pickpocket, gave his history, which was immediately inquired into, and he was returned to the island.

(At Sitting, 19 March, 1861.)

47 (written).

CHARLES ROGERS.

Darlinghurst Gaol,
13 March, 1861.

— Lucas, Esq., M.L.A.
Sir,

Agreeable with permission received from you, I sent a petition praying for a remission of my sentence, which was four years to the roads, which was passed on me at the Quarter Sessions held at Sydney, on the 23rd of February, 1860, by Mr. Justice Holroyd. I now take the liberty of addressing you, sincerely trusting you will cause it to be brought before the Executive Council, and use your interest in my behalf to obtain for me a remission which I have so long prayed for. Sir, you will remember that I was a house painter at Camperdown, and completed many contracts of house painting for you and many other Members of Council for the last ten years; and in this case I was completing a contract of work for the prosecutor, and at the finishing of the work he wanted me to do more than I had

had agreed to do, and we had some words about it, and he afterwards gave me in charge in his own house for obtaining money under false pretences—the amount of the money, five shillings. When in gaol, waiting for trial, I subpoenaed two witnesses, which would have established my innocence, but the subpoena was not served on the time of trial. On those grounds, I asked Mr. Justice Holroyd to postpone my trial; he refused to do so, and I was tried and sentenced without witnesses or counsel. I trust I may be fortunate enough to obtain a favourable reply.

Sir,

I am, &c.,
CH. ROGERS.

48 (*written*).

HENRY CARROLL.

Darlinghurst Gaol,
22 February, 1861.

To the Chairman of the Select Committee now sitting on Prison Discipline.

Sir,

In the years 1859 and 60, a quantity of planks were sent on to the island for the express use of the Dry Dock for coping for the blocks. There were about one hundred of them from about 18' to 22' long, 14" deep, and 4' thick. Likewise about a dozen large logs from about 50 to 75 feet long, and about two feet square. The whole of the above timber, instead of being applied to the use for which it was sent, was all cut up and used in the building of Captain Mann's house. In addition to the above timber, there were likewise 27 other shares removed from the dock for the same purpose, as well as several other planks. I cut the whole of the timber myself by the order of Captain Mann. When there were 100 feet used for the dock, I was ordered to book 300; the same way with the wedges. There is another complaint I have to make. This is one which so many of my fellow prisoners also feel aggrieved at; and that is the conduct of Mr. Taylor, Clerk of Petty Sessions, who takes upon himself more than the Superintendent, in fact he is the actual Superintendent, as he leads Captain Mann—for whatever he says, it is sure to be carried out. It is he that puts all the men into the different billets, such as wardsmen, cooks, servants, &c., and they are nearly the worst characters, such as those that have twice or thrice been convicted, who are always coming back to the island; in fact, unless he is a scoundrel of the deepest dye, he has no chance of getting on on the island, for a quiet man is nowhere. If he is an informer or such like, he is looked up as a good man, and the first opportunity he is put into a situation where there is no work, and eventually Mr. Taylor will get him his liberty, as he has done several. I can name several cases should you require it. I have been a prisoner on the island seven years. I never held a billet, yet I can defy any one to say that I have ever misconducted myself; and what I have stated in this letter I can prove.

I remain, &c.,

HENRY CARROLL.

49 (*written*).

JOHN HOLLAND AND HENRY CARROLL.

To the Honorable Gentlemen now sitting on the Board of Inquiry.

Sirs,

We take the liberty of laying before you a statement of our grievances, hoping, from your sense of justice, a kind consideration of them. Sirs, we, the prisoners John Holland and Henry Carroll, received each the sentence of fifteen years; the first three years of that sentence to be worked in chains on the roads or public works of the Colony. When we had completed the three years in chains, the authorities on the island then told us that we should then have to commence the probation for fifteen years; that the time that we wore our chains lay dead. Gentlemen, if there is an Act that we should do a sentence equal to twenty-one years we are satisfied; but never hearing of such an Act, and doubting the validity of a letter produced by the Clerk of Petty Sessions of Cockatoo Island, and signed by some person unknown, which he asserts that he received from the Colonial Secretary's Office, now, gentlemen, we wish you to see that letter, and see on whose authority a prisoner is detained three years after he is eligible for a ticket-of-leave. Gentlemen, a prisoner by the name of Clarke represented his case to the Colonial Secretary, on Cockatoo Island, and Mr. Cowper said he did not understand the regulation that compelled a prisoner to do an additional probation for a ticket-of-leave on account of the iron time he received; which makes us believe this regulation arose on the island. Gentlemen, we wish to shew you distinction made between the rich man and the poor man. When we committed our crimes we were but boys; our respective ages being, Holland 15½, and Carroll 17 years of age; besides our utter ignorance of the laws of our country. Gentlemen, had we known the danger of the crime that we committed we would not have committed it. Now, gentlemen, I will shew you difference. We were both sentenced to suffer the extreme penalty of the law, which sentence was commuted to fifteen years, with the first three years in chains. Shortly after the prisoner Holland was tried, a man by the name of Lakeman was tried and found guilty of the same crime, and the sentence of death passed upon him. His sentence, in the first instance, was commuted to ten years, without chains; and on his arrival on the island he received the best situation on it, and before he had completed his second year he obtained his free pardon. Now, gentlemen, a man arrived at the age of understanding, and knows that he breaks the laws of his country in committing a crime in defiance of the laws; he received a remission of his sentence, and two boys committing a crime of the same nature in their ignorance of the laws, must pass the best of their days in a prison. Gentlemen, we have

have heard great boasting of English justice ; but we wish to know if it was just to allow Lakeman at large ; if so, it must be unjust to keep us in prison for a number of years.

We remain, &c.,

JOHN HOLLAND and
HENRY CARROLL.

50 (*written*).

GEORGE WALTER ROWE.

Darlinghurst Gaol,
21 February, 1861.

To the Chairman of the Select Committee now sitting on Prison Discipline.

The Petition of George Walter Rowe,—

A prisoner who was sentenced in the year 1847, in England, to a sentence of ten years, and, in consequence of getting into trouble in this Colony, I am still considered as an Imperial prisoner. I received a sentence in this Colony, in 1857, of ten years; the probation for that is six years and eight months, whereas a Colonial prisoner's probation for the same sentence would be five and a half years. In the year 1851 the Government formed a just regulation by which a prisoner might shorten his probation by extra labour, which enabled a Colonial prisoner sentenced for ten years to obtain a ticket-of-leave in four years, and even in three years and eight months; whereas an Imperial prisoner has to do the same amount of labour to obtain the marks which are placed on the board, but he derives no benefit from them. On the 16th of last May I was sentenced by the Visiting Magistrate to work twelve months in irons, the probation for which is eight months, at the end of which time I applied to the Superintendent to have my irons removed, but he could not tell me whether I was due or not; the Superintendent then made inquiry of Mr. Taylor, the Clerk, but he either could or would not tell. Captain Mann then asked me if I ever knew any similar case; I mentioned one in which an Imperial prisoner had his irons removed. Upon examining the books he found my statement correct. I was then referred to the Visiting Magistrate, and ultimately learned that Captain Mann had written to the Superintendent of Convicts, from whom he received a reply that my irons should be struck. After waiting a fortnight without them being struck I refused work. I was taken before the Visiting Magistrate, who did ask my reason for refusing work, which I stated—to which Mr. Mann replied that my irons would have been struck before had I not refused to work. After then completing a sentence of fourteen days solitary I was directed by Captain M'Levie to write to him, giving a full statement of my case, which, if he found correct, he would cause my irons to be struck. I saw him the week following, when he told me that Captain Mann had received orders to have my irons removed two days previous to *that* on which I refused work.

Now, gentlemen, I beg leave to state, in conclusion, that if Captain Mann's orders had been promptly executed I would not have refused work, and thereby saved myself and the authorities a deal of trouble. Hoping you will institute an inquiry into my case,—

I remain, &c.,

GEORGE WALTER ROWE.

51 (*written*.)

LAURENCE POWELL.

Darlinghurst Gaol,
21 February, 1861.

To the Chairman of the Committee now sitting on Prison Discipline.

Sir,

I hope I shall not be too bold in asking you to spend a small portion of your valuable time in hearing the grievances of 16 or 17 self-taught stone-cutters. Sir, we believe that the Government expects the free officer in charge, Mr. Fitzgerald, to be able to direct and instruct those men. I can assure you, sir, he can do neither, for he has never served one hour to the trade; he does not know whether a stone is cut right or wrong, unless he is told by one of the prisoners in the gang; in fact, he does not know a square from a straight-edge. When there is an order given for certain stones to be cut for a building, each prisoner generally spoils one or two before they complete one fit to be used. The free officer then gives an order to have them broken up and thrown into the river, before any other free officer sees them. Now, sir, there is the loss of time in the quarrying those stones, the loss of time in dragging them from the quarry to the stone-cutters, and then the cutting of those stones; and all this loss of time and destruction of material is from the want of some free man conversant with the trade to direct and instruct us. Now, sir, the Government has been pleased to appoint a certain task for each man under the old system to perform, and by doing that task it leaves them entitled to half-a-day's credit and three-pence gratuity; consequently they get the benefit of that indulgence called "task-work credit" up to the present day. Now, sir, we, the prisoners addressing you, are labouring under the new system, and are compelled to work side by side with those under the old system, and cut foot for foot and stone for stone with them, and we get no half-day credit, nor three-pence gratuity, only what the free overseer thinks proper to give us; some days he gives us three half-pence, and some days a penny; and when we ask him the reason he is dealing so unjustly with us, he will give us no satisfaction. When we appeal to the Superintendent for justice, he will tell us to go back to our gangs, as he cannot be losing his time in listening to our complaints. We next see the Visiting Magistrate on the matter: he will tell us he has nothing to do with the Engineering Department. And this is the way our grievances are redressed. Every hand is raised in vengeance against us. No hope! no hope!

Only

Only work out a miserable existence, and a long sentence, under the iron hand of tyranny; and these are the causes of so many dangerous and perilous attempts being made to escape from the island. Sir, if any of the prisoners on the island told you that they were justly dealt by, let me describe the class of prisoners they are—men, probably, that have never seen the public works, such as cooks, butlers, servants, and messengers; wardsmen, shedmen, policemen, moneyed men, and informers. Now, sir, should you take our miserable condition into consideration, and better our position, it is to be hoped you will take the power out of such free overseers hands, who take a pleasure in depriving us of our small amount of pay, when we merit it by completing the task that leaves us entitled to such indulgence. There is one class more that I wish to bring under your immediate notice—what we prisoners call “Cockatoo Island convict gentlemen”—they are men whose skins are not bronzed with the exposure to the sun’s broiling effects, nor are they ever exposed to a wet jacket, a blistered hand, or a hungry belly. These are men who are in positions which allow them plenty of time to premeditate plans of the most skilful nature, at the same time with the most unprincipled, and unmanly, and foul intentions. Now, sir, like the skilful architect, they form their plans, point out their retreat, and shew joyously the hopes of success; then the hopeless prisoners, sir, jump at the moment, seize the opportunity, and commence operations, with the assistance of those unprincipled scoundrels, that get this up for the express purpose of getting their liberty at the expense of their fellow-prisoners; when, within a few hours of its completion, these men give the names of the different men, and they are called out one by one, and chained and sentenced, and solitary is the order of the day. Now, sir, it is for you to judge how those unfortunate men will be dealt with for the remaining portion of their sentence; while they are in the cells the witty concoctors of those plans lay their claims on the Government, pointing out the danger they stand in by their not having been in cells where their fellow-sufferers suppose them to be. Now, sir, the Superintendent sends a special letter to the Classification Board, strongly recommending these informers for their liberty, at the same time pointing out the danger they will incur by remaining on the island. The fact is, sir, they obtain their liberty, or a ticket-of-leave, or some easy position on the island, through their *very meritorious* conduct; and when they obtain that indulgence they smile at the Superintendent’s simplicity, and laugh at the Classification Board, and dance with their friends that night, boasting how they have outwitted the Government. Now, sir, this is as near their character as our abilities will allow us to express. Now, sir, if there were any hopes held out to us prisoners we should not be so apt to be led away by those prisoners, superior in cunning, and who take advantage of our ignorance. We submissively await your impartial decision.

LAURENCE POWELL.

(At Sitting, 12 April, 1861.)

52 (written).

JAMES ARNOTT AND GEORGE THURSTON.

To J. Lucas, Esq., M.L.A.

Sir,

We enclose, herewith, a copy of our grievances for your perusal, hoping that you will lay them before the House of Assembly at the earliest opportunity. We are aware that we have not taken the proper steps, but, at the same time, beg you to consider that we have waited in patient expectation for the last fifteen months, for the fulfilment of certain hopes which, it appears, have been doomed to disappointment; and that hope deferred has made the heart sick, the last spark has become entirely extinguished. We have become as men having no hope, in fine, we have become desperate.

The records which survive of the treatment experienced by the prisoners subjected to the tyranny of those unfeeling monsters at Melbourne are replete with lamentations; and it is to be hoped, that when they can be prevented, they will not be allowed to be enacted here, for the threshold of danger being once entered, terror ceases to exercise its grim sway. In bringing the various subjects of complaint under your notice, we will endeavour to be as brief as possible, as it would exhaust your patience to dwell at considerable length on every separate subject.

The causes of the late disturbance, the many attempts to escape, as well as the outbreak of October, 1859, are these briefly, as follow:—

First.—Two codes of regulations are in operation, by which one class of men receive certain privileges and advantages, which the remainder are denied. The first of these is the mark or credit system, for extra work, by which all prisoners, tried prior to the 1st June, 1858, are afforded an opportunity of recovering their liberty after having served a little more than one-third of their sentences; while all men tried since that period are called upon, not only to do the same amount of labour, but to serve the full period of their sentences, without any prospect of any mitigation whatever, no matter how exemplary a man’s conduct may be. Now this in itself would not be so bad, if the Judges, having been apprised of the ticket-of-leave regulations being abrogated, had passed sentences in proportion; but the very reverse has been the case, as we shall presently shew, sentences generally being not only as severe, but even more so than they were under the former regulations. This remark applies particularly to the sentences at the various Courts of Quarter Sessions, which, on an average, are one-fourth heavier than those passed by the Higher Courts; for instance, cases of uttering forged cheques are rarely punished by a heavier sentence than three years, where in many instances a former conviction is proved, whereas, James Baker, who was convicted for the first time of this or any other offence, and who received a good character at the time of trial, was sentenced to seven years at the Sydney Quarter Sessions.

Two

Two notorious wholesale horse stealers (William and John Mackay), brothers, tried at the Maitland Circuit, March, 1859, only received two years imprisonment in a gaol. Whereas, other men, tried for a similar offence, about the same time, in other parts of the Colony, receive sentences ranging from five to ten years. A party of four men, tried at the Yass Quarter Sessions, October, 1859, for cattle killing, are disposed of as follows:—One gets two years, one gets five years, and the other two get seven years each; the names of these men are Leadbetter, James, M'Kenzie, and Fuller. As the many instances we could mention similar cases of gross disparity, which would fill about a ream of paper, we shall content ourselves by referring to only one more, which is the case of James Wade, convicted a few months since of picking a woman's pocket in the street; this man was sentenced to seven years hard labour, though it is an offence invariably disposed of summarily at the Police Office, by three or six months imprisonment, and in this instance, the Bench offered to dispose of the case summarily, thereby acknowledging that they considered their powers amply sufficient to pass as severe a sentence as the offence merited (which, at the very outside, could not have exceeded two years); but, unfortunately, the prisoner had employed an attorney, who doubtless consulted his own interests in getting the case sent to the Sessions. How can we respect the laws of our country when they are administered thus.

Secondly.—We complain of the illegality of detaining prisoners after the expiration of their sentence, in consequence of having incurred the punishment of a few days in the cells for some trivial breach of the regulations; but, as this is a subject that will sooner or later have to be decided by the Judges of the Supreme Court, it is not necessary to do more than just refer to it here as one of our grievances.

Thirdly.—There is a system of coercion by convict overseers, the evils of which must be apparent to the most superficial observer, one of the most disgusting features of which is allowing a man named Berriman to carry a bludgeon all day amongst the men, as if he were in search of some stray ox. What effect is this likely to have on the feelings of the men, inclined to be peaceable and orderly if they are only encouraged.

Fourthly.—We complain that the present money gratuity is partially and unfairly distributed, some men being allowed to earn as much as sixpence per day, while others can only get a penny; now any impartial person will be inclined to admit, that as long as a man conducts himself with the strictest propriety, and does as much work as his bodily strength will admit of, he is entitled to the maximum amount granted; but this being a subject of (to us) such vital importance, we shall leave its further discussion to persons more competent to deal impartially with the subject.

Fifthly.—By a course of general injudicious management our health is impaired, the medical returns shewing that there are always on an average about one-sixth of the whole convict population of the island incapacitated from labour by suffering from some malady or other; this is to be attributed, more especially, to the inferiority and insufficiency of the Government ration, the state of the dormitories, not proper appliances for cleanliness of body, and to being invariably kept out in rainy weather until we are wet through. Thus, we are first made ill by bad management, and then driven to the hospital for a cure; and it speaks volumes for the skill, attention, and humanity of the doctor and his assistant, that considering the immense proportion of sick to the healthy (a proportion unequal in any place of the kind under British rule), that the rate of mortality should be as low as it is. It should here be remarked, that, by a money gratuity issue which is allowed to be spent for extra rations, the Government thereby acknowledge that the scale of provisions issued is too low; how then must those be off who get a penny a day or less.

Sixthly.—We are studiously kept in ignorance of all Acts of Council specially referring to penal discipline, and we often think ourselves illegally dealt with, when probably we are not; now, as every person ought to be allowed an opportunity of making himself acquainted with the laws of the country by which he is governed, in order that he may not transgress through ignorance, we request that copies of all Acts of Council, or extracts therefrom relating to the prison population, may be published from time to time, and suspended in some conspicuous part of the convict barracks.

Seventhly.—We are not allowed an opportunity of making the slightest provision for ourselves by the time our sentences expire; thus the majority of the men are discharged totally destitute, without as much as will sometimes supply them one meal, and what is the consequence the records of the Court too truly tell.

Eighthly.—We find our complaints never receive that attention we think they merit. The Superintendent and Visiting Justice are difficult of access, the men in a body never being inspected by either of those officers; letters, for which postage is charged, never reach their destination, or is the postage refunded. There are no means of educational improvement; no classification of prisoners; and lastly, we are compelled to work on Saturday till two p.m. without our dinner, which is a thing unknown in any other similar establishment in the Colony, all labour for the week ending at twelve o'clock on that day in every other prison; and it should be here explained that this alteration was made at Cockatoo Island for the purpose of enabling the men working under the mark system to obtain the full amount of credit allowed to be earned daily, a thing we derive no benefit from.

In conclusion, we humbly beg that, should a Board of Inquiry be appointed, we may be afforded an opportunity of being examined and substantiating these our complaints, and that should you consider the foregoing statement worthy of your consideration you will take such steps as to you may seem advisable.

We remain, &c.,
(on behalf of ourselves and fellow sufferers)

JAS. ARNOTT.
GEORGE THURSTON.

Darlinghurst, 19 January, 1861.

53 (*written*).

PATRICK BYRNE.

To the Chairman and Gentlemen of the Committee inquiring into Prison and Penal Discipline.

Gentlemen,

I, the undersigned, was tried and convicted at the Assize held in Roscommon, on the 7th July, 1838, and sentenced to fifteen years transportation, which sentence expired in July, 1853. While serving the above sentence, I received solitary sentences, and sentences to the treadmill, and eight months to a chain gang. I was tried on the 11th September, 1854, before His Honor Mr. Justice Dickinson, and received eight years. When I received that sentence, some few months addition to my Imperial sentence remaining unfinished, I was compelled to do two-thirds of the Colonial sentence, without marks, and then go free; that sentence expired on the 11th January, 1860. Mr. Taylor, C.P.S., told me, that by order of the Classification Board my Colonial sentence would expire on the 11th January, 1860, and that I should receive a ticket-of-leave for the five months addition, received while serving my Imperial sentence; but I did not receive the ticket, according to the order he said he received from the Board, although my character was in gaol irreproachable, but I was delayed till the 24th April. In July, 1861, I forfeited my indulgence by leaving my district, which I did on the grounds of being a free man. I was apprehended on the 29th December, for being out of my district, being hard at work at the time in my own place, honesty and industry being my motto, and a good prospect before me; but, alas! I was dragged from my home to Sydney. On my arrival in Sydney, I was brought before Mr. Horsey; he told me I had two months twenty-four days to do. I objected to it, claiming as a matter of right the month I was on escort, which would cause me to go free on the 24th March. He (Mr. Horsey) told me he would not allow me the month, and would not bring me before a Magistrate. Since I have been here I have seen the Visiting Magistrate; he requested Mr. Taylor, C.P.S., to lay my case before the Board. I have applied since at the office of the Superintendent, and I am told there is no answer from the Board yet. Mr. Taylor has told me that I would be allowed the month I was on escort; if so, I am at the present moment a free man. Gentlemen, having some important evidence to give before the Committee, I hope you will give me the opportunity of doing so, by sending for me.

Cockatoo Island, 24 March, 1861.

I have, &c.,
PATRICK BYRNE.

PART II.

A.

To J. C. Read, Esq.,
Governor of Darlinghurst Gaol.

1 March, 1861.

Sir,

With regard to the statement made this morning to the Committee by the four Cockatoo Island prisoners in hospital, I beg most respectfully to inform you, that it has been since intimated to me by one of the before-mentioned prisoners, named George Jones, that should the Committee require further corroboration they are referred to other two prisoners among the Cockatoo men, named Henry Whittaker and James Burns. I have every reason to believe that these two last-mentioned prisoners could not have had any prior communication with those in hospital; also, being a wardsman in the establishment, no such proceeding could have taken place without my knowledge.

I have thought it advisable to make the foregoing remarks in order to convince you of the genuineness of the information.

J. H. MACKIE.

I have the honor to transmit this document for the perusal of the Select Committee of Prison Management.

JNO. C. READ,
Acting Principal Gaoler,
Darlinghurst.

4 March, 1861.

B.

RICHARD AINSWORTH, per "Isabella," to Van Dieman's Land, 1833; was tried at London, July, 1832; sentence, 7 years, for felony.

Was again tried at the Supreme Court, at Hobart Town, on the 5th December, 1839, sentence, life, for forgery; arrived in New South Wales, per "Layten," 1840, from Van Diemen's Land; and was forwarded to Norfolk Island, per "Governor Phillip," on the 14th July, 1840; was returned to Sydney on the 27th March, 1844, his sentence having been commuted to 14 years from the date of conviction—he having to serve a commuted sentence under the Act 2 Victoria, No. 1.

Was again tried at the Supreme Court, at Bathurst, on the 20th September, 1848, and was sentenced 7 years roads, for uttering a forgery under the assumed name of James Jabez

Jabez Albiston; received at Cockatoo Island on the 23rd of October, 1848; discharged to a ticket-of-leave for Bathurst on the 22nd August, 1851.

Was again tried at the Circuit Court, at Bathurst, on the 25th February, 1852, for feloniously obtaining a money letter, and sentenced 5 years to the roads; received on Cockatoo Island on the 6th March, 1852; discharged to the Breakwater Stockade, at Newcastle, on the 3rd February, 1853; discharged free on the 20th November, 1853.*

Was again tried at the Quarter Sessions, at Maitland, on the 3rd January, 1854; sentenced 5 years roads, for horse stealing; received on Cockatoo Island on the 16th January, 1854; discharged to Darlinghurst Goal on the 20th March, 1854†; again received on Cockatoo Island on the 3rd February, 1859, to complete his sentences; discharged to Darlinghurst Gaol on the 15th February, 1859. Ainsworth will not be free until the 20th of September, 1865.

Ainsworth was also charged with forging a petition and the signatures of several magistrates and gentlemen, either at Port Macquarie or the M'Leay River, on which a man named John Wilkinson or Tulinbar P. Mellish was discharged from Cockatoo Island on the 19th June, 1851, under the authority of a letter from the Honorable the Colonial Secretary, No. 51-113, dated 16th June, 1851; Wilkinson was apprehended, and returned to Cockatoo on the 14th February, 1852.

G. K. M.

8 March, 1861.

C.

[REPLY.]

Hyde Park,
Wednesday Evening, 10 April.

Sir,

The Court will sit *daily* from 10 till 4 or $\frac{1}{2}$ p. 4 until the 4th May:—except that, on Saturdays, we meet for consultations only. And as, during the period thus indicated, *two* Courts frequently sit, I do not see how I could possibly attend without breaking up the Court altogether.

On the 6th May, Jury Causes commence:—and although *two* Courts will then sit for three weeks daily, yet one Judge can occasionally be spared. And I shall feel it to be a duty, to attend the Committee, whenever it may best suit their convenience to receive me.

I could, of course, attend on *any* day after $\frac{1}{2}$ p. 4. But the House sits at that time. In like manner, I could attend on any Saturday; by arranging to give up an evening or two in Chambers instead. But your Committees, I know, do not usually meet on Saturdays.

I am, &c.,

ALFRED STEPHEN.

Chas. Tompson, Esq.

D.

THE TURNKEYS OF DARLINGHURST GAOL.

To the Honorable the Select Committee of the Legislative Assembly on Prison Discipline, &c., &c., &c.

Gentlemen,

We feel assured, whilst your endeavours are exerted to place the treatment of prisoners on a proper and substantial basis, you will alike regard the interests of those who are placed in responsible situations over them.

Annexed hereto is a recital of the duties we have to perform in the capacity of turnkeys, on perusal thereof it will be found no opportunity is afforded us for social intercourse or improvement, but each succeeding day, a repetition of that harrowing spectacle the consequence of misery and crime. Honorable gentlemen need scarcely be informed how powerfully this must operate upon mind as well as body, and so render our positions little superior to those by whom we are surrounded. That solemn day of rest from toil, the Sabbath, brings to us no soothing influences, since we are shut out from its enjoyments; and if at its close, we enter the hallowed precincts of a place of worship, the fatigue of the body overpowers inclination and shrouds it in unconquerable drowsiness.

We beg, respectfully, further to submit that the salary for this labour is 6s. 9d. per diem, and if, after a lapse of years, any of our number should become incapacitated, there is no prospect of future benefit, however faithful the service. There are other departments in which provision is made for the future, and where such is the case it must ever act as a stimulus to increased utility and diligence, and we would beg to observe the amount of pay at present allowed enables us to make no provision beyond the time being; families must be supported,

* This discharge from Newcastle was obtained by forging a letter, purporting to come from the Colonial Secretary's Office, and to be signed by Mr. E. D. Thomson.

† Ainsworth was discharged in error from Parramatta Gaol at this time, on the expiration of the sentence of five years; he afterwards was at large for a few days, and went to the office of the Honorable the Colonial Secretary, where he was apprehended by the police as illegally at large, and returned to Government to serve the residue of his cumulative sentences.

supported, and the consequent expenditure leaves little remaining as a preparation against debility or infirmity. We, therefore, solicit your favourable consideration of the circumstances by which we are affected, and at the same time humbly pray you will make such recommendation for our benefit as in your judgment may seem meet.

We are, &c.,

JOHN CALLAGHAN,	ANTHONY KEOGH,
CHRIS. ARMSTRONG,	JOHN FALLEN,
THOMAS LEE,	MICHAEL BURKE,
CHRISTOPHER CARTHY,	JOSEPH GATES,
MICHAEL WALLACE,	JAMES BEACOM,
ALEXANDER ELLIOTT,	WILLIAM GRAHAM,
PHILIP MULLIGAN,	JOHN GREGORY,
CHARLES PUGH,	MICHAEL RYAN.
JAMES CALLAGHAN,	

ROUTINE of duty performed by the Turnkeys in the establishment of H. M. Gaol, Darlinghurst.

THE number employed are seventeen, and appropriated as follows:—

- 4 permanently stationed at the three wings.
- 2 at front gate, one permanent, the other changed daily.
- 1 in hard labour yard.
- 1 overseer of tailors.
- 6 at various stations of the wall, inside the yard—east, west, north, and south.
- 3 performing night duty for one week—their attendance being required from 5 p.m. to 6 a.m.—after which they are relieved by three of the number periodically changed. This arrangement places each so employed one week out of three as attendants for the night, and all others are on the spot each succeeding day from 6 a.m. to 6 p.m., Sundays not excepted.

E.

POLICE history of Robert Banks, per ship "Anglia" to Tasmania, in the year 1843.

WAS convicted at the Supreme Court, Sydney, on the 9th December, 1857, of burglary, and sentenced to five years on the roads.

Obtained a ticket-of-leave, dated 31st January, 1860, for Bathurst; was reported absent therefrom in the May following, but for his assistance at the time in the capture of a horse stealer, he was not deprived of his indulgence.

Absconded from Bathurst in June, 1860, being at the time under a charge of stealing wearing apparel, but no conviction has followed. Was apprehended in Victoria last December, returned to Sydney, and his ticket-of-leave cancelled.

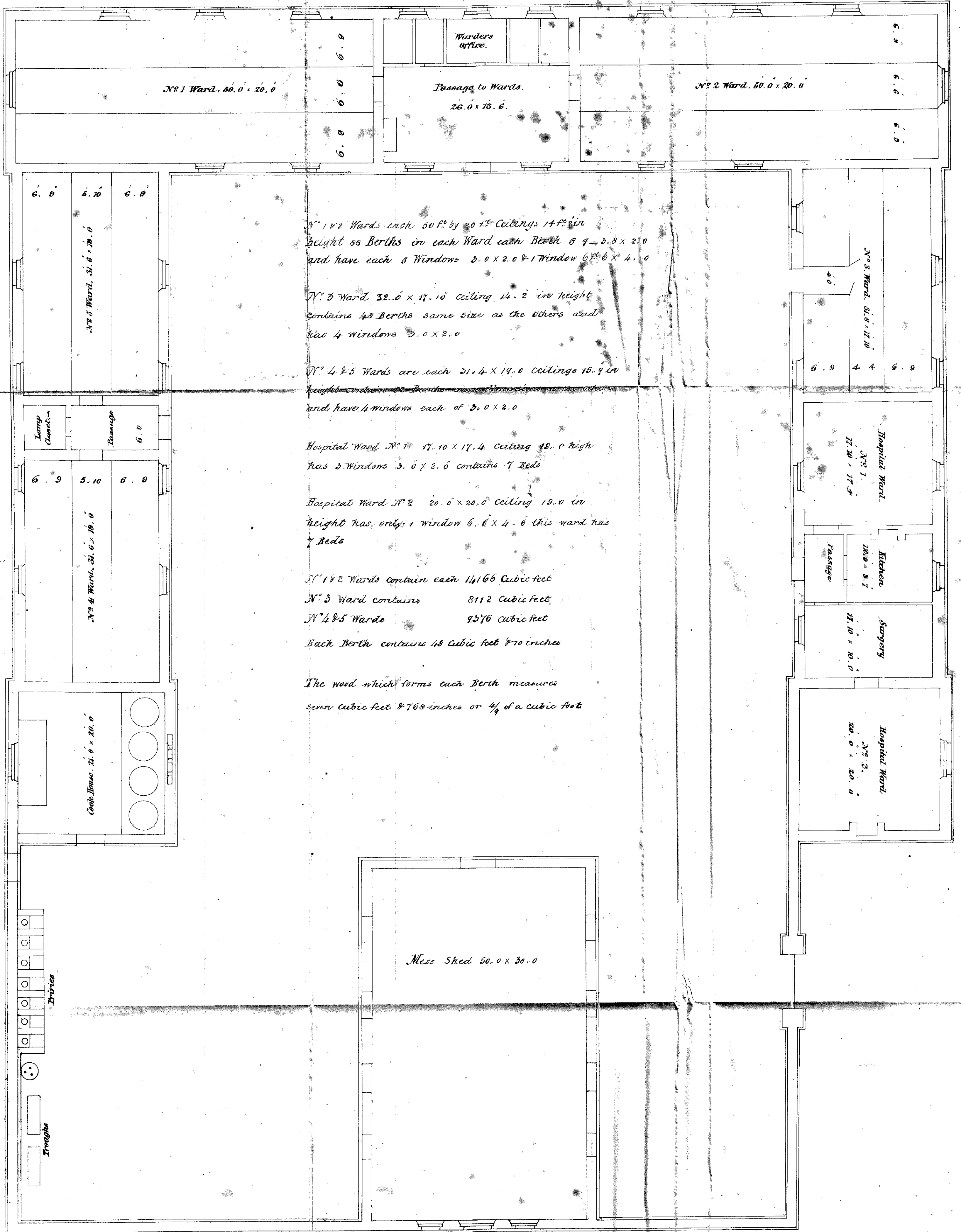
Banks stated when mustered, that he was transported from India to Tasmania for ten years in 1843—that he is a printer by trade, and that he was formerly a soldier in the Hon. E. I. Company's Horse Artillery.

*Police Department, Sydney,
Convict Branch, 7 May, 1861.*

JNO. M'LERIE,
Inspector General of Police.

GROUND PLAN OF PRISON COCKATOO ISLAND

(Sig. ^d William Cahill



N° 1 & 2 Wards each 50 ft by 20 ft Ceilings 14 ft in height 88 Berths in each Ward each Berth 6 ft 9 in x 2 ft 0 in and have each 5 Windows 3 ft 0 in x 2 ft 0 in & 1 Window 6 ft 6 in x 4 ft 0 in

N° 3 Ward 32 ft 0 in x 17 ft 10 in Ceiling 14 ft 2 in in height contains 48 Berths same size as the others and has 4 Windows 3 ft 0 in x 2 ft 0 in

N° 4 & 5 Wards are each 31 ft 4 in x 19 ft 0 in Ceilings 15 ft 9 in in height contain 80 Berths same dimensions as the others and have 4 Windows each of 3 ft 0 in x 2 ft 0 in

Hospital Ward N° 1 17 ft 10 in x 17 ft 4 in Ceiling 13 ft 0 in high has 3 Windows 3 ft 0 in x 2 ft 0 in contains 7 Beds

Hospital Ward N° 2 20 ft 0 in x 20 ft 0 in Ceiling 19 ft 0 in in height has only 1 window 6 ft 6 in x 4 ft 0 in this ward has 7 Beds

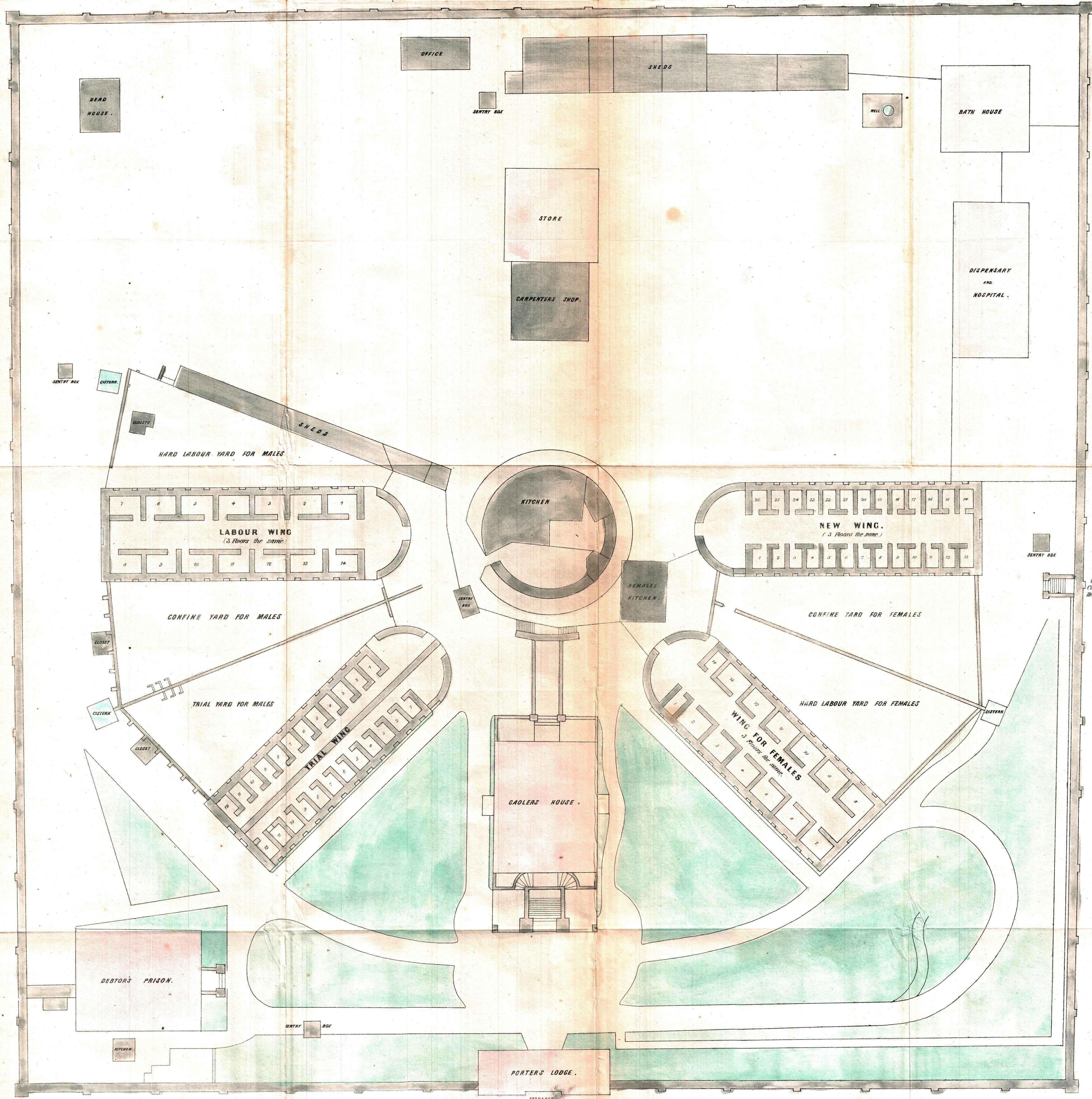
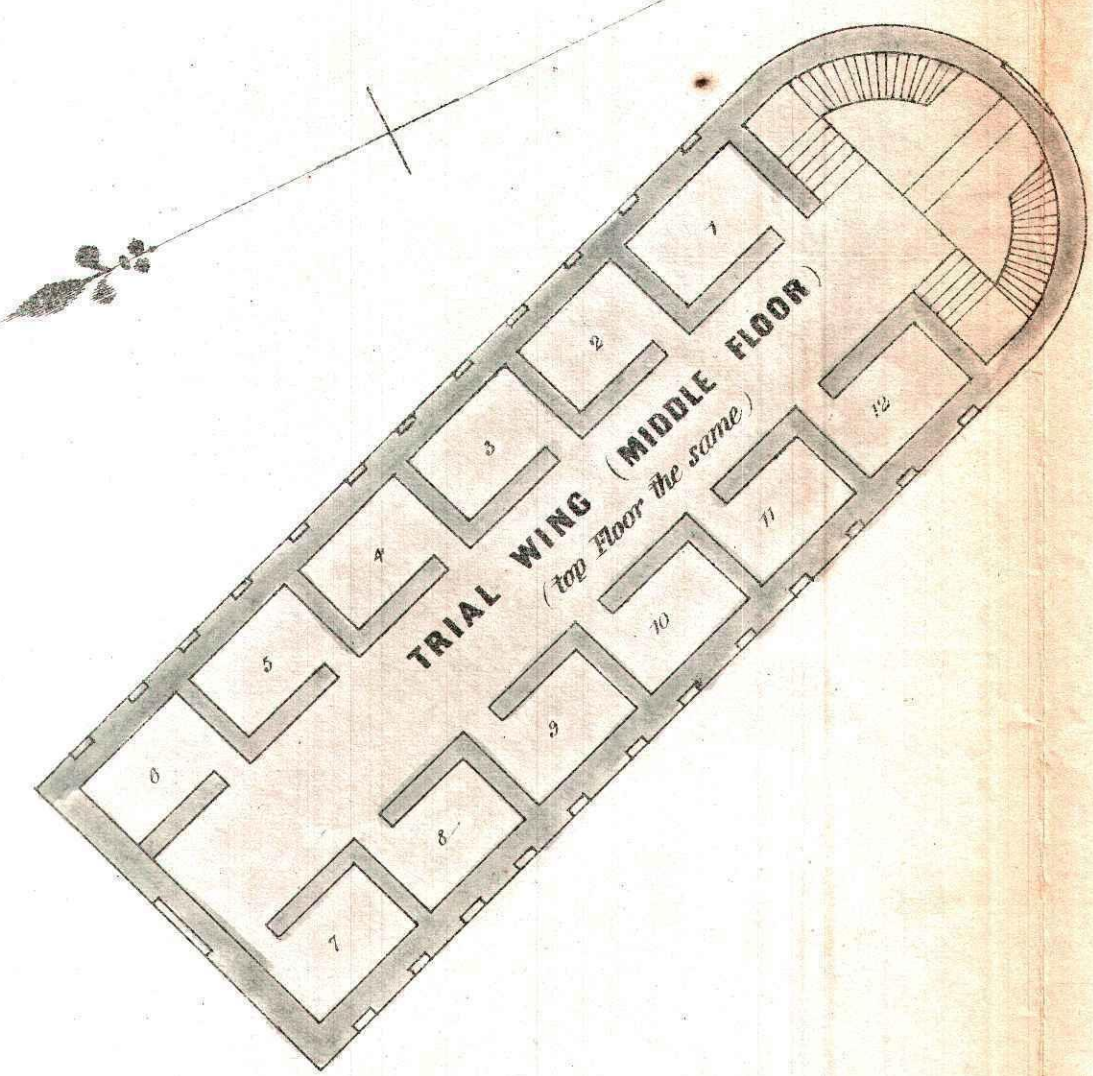
N° 1 & 2 Wards contain each 14166 Cubic feet
 N° 3 Ward contains 8112 Cubic feet
 N° 4 & 5 Wards 9376 Cubic feet
 Each Berth contains 48 Cubic feet & 10 inches

The wood which forms each Berth measures seven Cubic feet & 768 inches or $\frac{4}{9}$ of a cubic foot

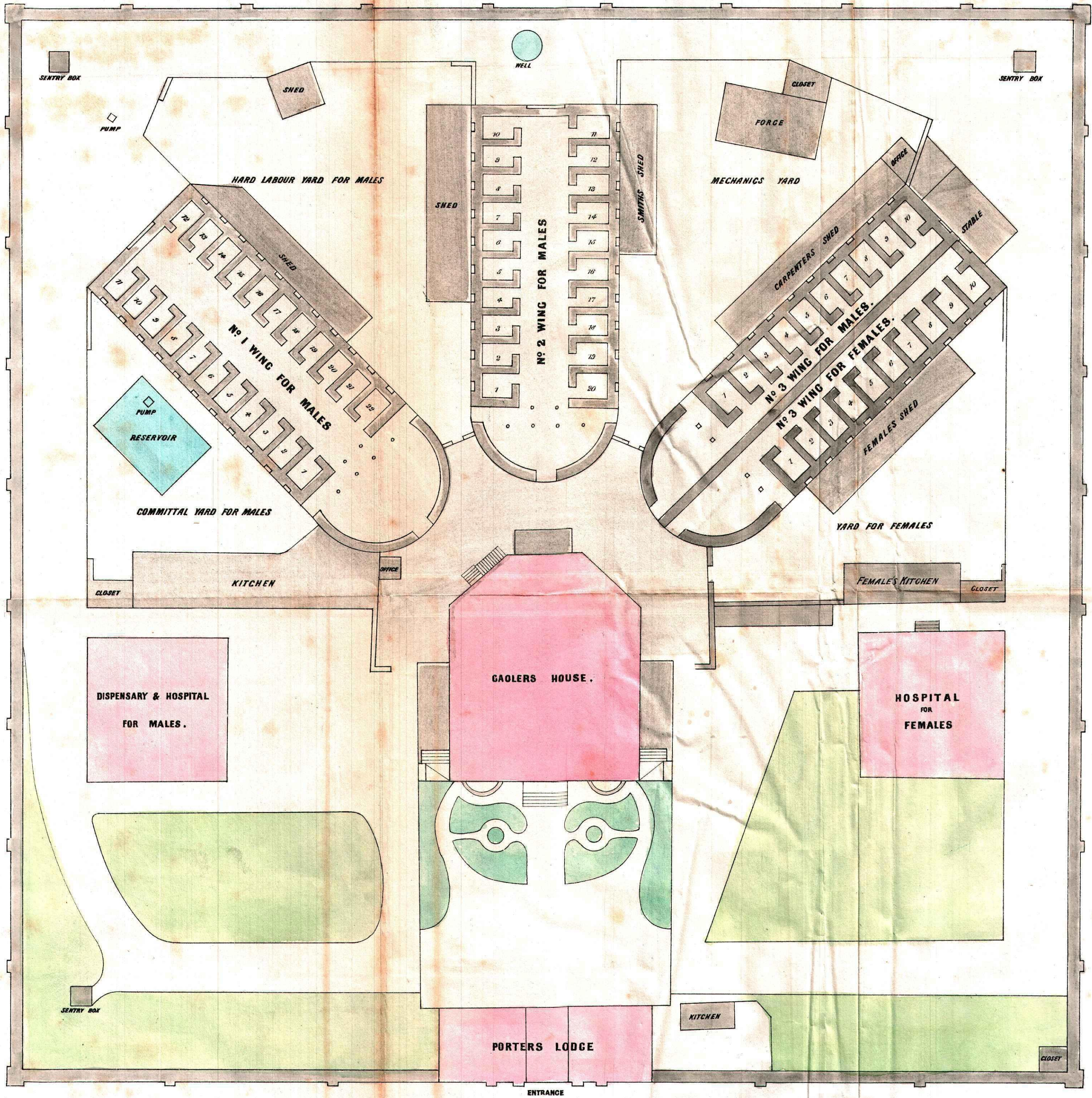
PLAN OF
Darlington Gaol
 1861.

Scale of Feet

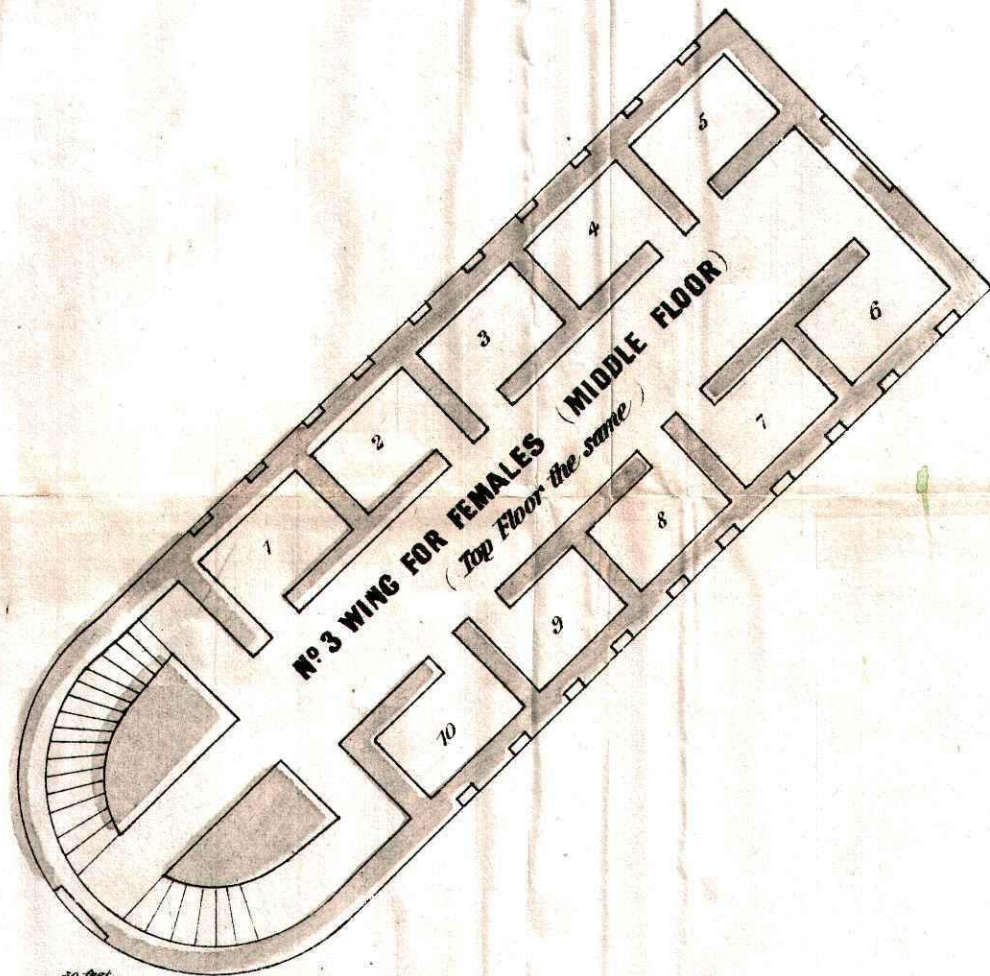
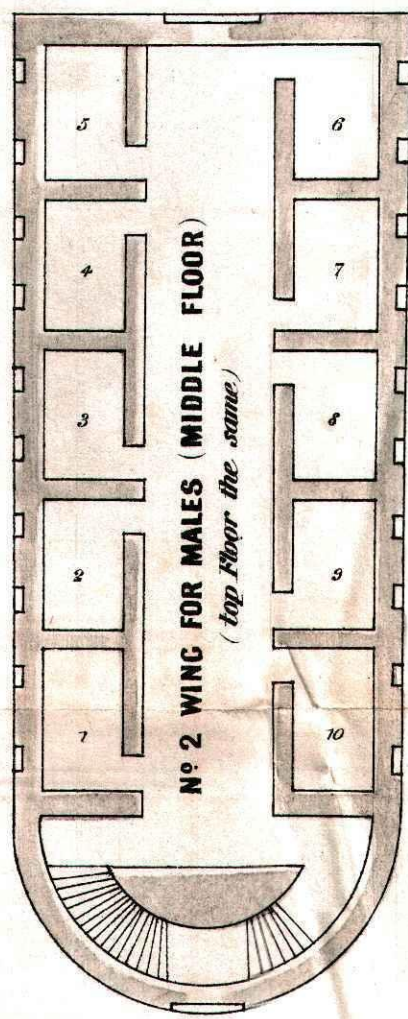
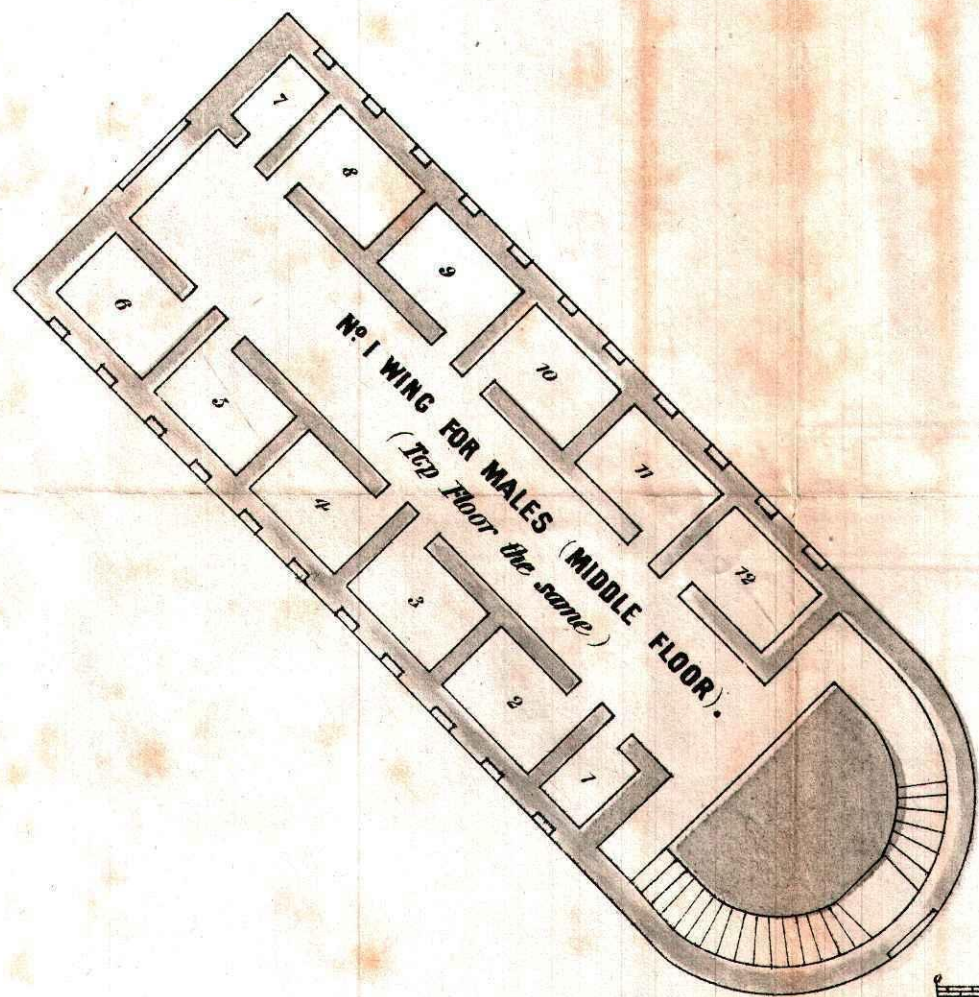
Quantity 3. 3. 26



PLAN OF Sarramatta Gaol 1861



Quantity 1. 2. 3



Scale of Feet.



1861.

Legislative Assembly.

NEW SOUTH WALES.

PUBLIC PRISONS IN SYDNEY AND CUMBERLAND.

(PETITION OF THOMAS HARRISON.)

Ordered by the Legislative Assembly to be Printed, 20 February, 1861.

To the Honorable the Legislative Assembly of New South Wales, in Parliament assembled.

The humble Petition of Thomas Harrison, late Principal Turnkey at H. M. Gaol at Darlinghurst,—

RESPECTFULLY SHEWETH:—

That your Petitioner has been for twenty-three years in the service of the Government of this Colony, nearly twelve years of which period he held the office from which he has been now summarily dismissed.

That your Petitioner has not been made fully aware of all the charges brought against him, and is at present actually ignorant of the precise charge upon which he has been dismissed from H. Majesty's Service.

That with regard to the treatment of the Prisoner "Polack," your Petitioner is prepared to prove, on the evidence of eight or nine different witnesses, that the said Prisoner has not been indulged in any way contrary to the discipline of the Prison, and that he has not been treated in a manner different from other Prisoners.

That the escape of two Prisoners from the Gaol was effected without the knowledge of your Petitioner, and your Petitioner most solemnly and conscientiously declares, that neither by connivance or neglect on his part was that escape effected.

That a fair opportunity has not been allowed, during the late investigation, for your Petitioner to contradict statements made against him, and on some of which he has never been examined at all.

That the principal witness against your Petitioner ("Robert Banks") is a notoriously bad character, utterly unworthy of belief; and that, prior to his leaving the Gaol for Cockatoo Island, he had threatened, in the hearing of divers persons, that he would, "right or wrong," crush your Petitioner, and that by "fair or foul means he would get Mr. Harrison broke," as the accompanying warrants will shew.

Your Petitioner, therefore, prays that your Honorable House will be pleased to take his case into your favorable consideration, and allow him such relief in the premises as to your Honorable House may seem fit.

And your Petitioner, as in duty bound, will ever pray.

T. HARRISON.

1861.

NEW SOUTH WALES.

MILITARY ASSISTANCE TO NEW ZEALAND.
(DESPATCH)

Presented to both Houses of Parliament, by Command.

SECRETARY OF STATE FOR THE COLONIES to GOVERNOR GENERAL.

(No. 82.)

Downing-street,
13 October, 1860.

Sir,

I have to acknowledge the receipt of your Despatch, No. 77, of the 14th July last, reporting the steps you had taken for complying with the Governor of New Zealand's request for re-enforcements to assist in putting down the Native outbreak in that Colony.

In reply, I have to express to you the thanks of Her Majesty's Government for the readiness with which all disposable troops have been spared from New South Wales, for service in New Zealand.

I have, &c.,

C. FORTESCUE.

(In the absence of the Secretary of State.)

1861.

NEW SOUTH WALES.

RESPECTING ARTILLERY FORCE SERVING
IN THE COLONY.

(DESPATCHES.)

Presented to both Houses of Parliament, by Command.

SCHEDULE.

NO.	PAGE.
1. The Governor General to the Secretary of State for the Colonies, 16 April, 1860 (No. 48), respecting Artillery Force serving in New South Wales, and the re-payment to the Colony of the cost of the passage thereof from England	3
2. Ditto to Ditto, 22 June, 1860 (No. 69), on the same subject	3
3. The Secretary of State to the Governor General, 13 October, 1860 (No. 89), in reply ..	4

RESPECTING ARTILLERY FORCE SERVING IN THE COLONY.

No. 1.

GOVERNOR GENERAL to SECRETARY OF STATE FOR THE COLONIES.

(No. 48.)

*Government House,
Sydney, 16 April, 1860.*

MY LORD DUKE,

In my Despatch, No. 42, dated 12th instant, relative to the despatch of Troops to New Zealand, I noticed generally the steps taken by me to forward as large a force as possible. I wish now to bring under your Grace's notice some of the circumstances connected with the position of a portion, at all events, of the Military force, namely, the Artillery, which are likely to be productive of serious embarrassment.

The Battery of Artillery was applied for by the Colonial Government, for the express purpose of aiding in the defence of the harbor and city of Sydney. The cost of the passage of the men and officers was defrayed by the Colonial Government, and the pay and allowances of the Battery are charged altogether upon the Colonial Revenue; the consequence is that this portion of the Military force is considered by the Legislature to be in a different position to that of the Regiment of the Line stationed here, and to be, to a certain extent, under the orders of the local Government.

On a previous occasion, when my Ministers and myself were anxious to forward reinforcements to India, the Legislative Assembly not only refused to vote the money required to place the Artillery in a state to take the field, but also protested against the removal of the Battery from the Colony. On that occasion, as the Artillery would have been useless without horses, and as the Legislature refused (as was quite within its competence to do) to vote the money required to enable them to remove, I did not press the question of the right of the General in Command to direct their removal.

On the present occasion, however, as the necessity was urgent, I did not hesitate to suggest to the General to act at once; and, while I communicated to the Executive Council the steps which it would be necessary to take, and also to the Legislature, I did so in terms which I took care should not raise the question of the right or power of the General commanding to dispose of the Military force in the Colonies according to the best of his judgment, and when any case of urgency might arise.

In the Legislative Assembly, however, the ground which I anticipated was taken up, and objections were made to the movement of the Artillery as a corps belonging especially to New South Wales; and I am by no means certain that further steps may not be taken to vindicate the so-called right of the Colonial Government to the entire control of this portion of Her Majesty's forces. The ground upon which this claim is made, is the payment by the Colony of the cost of the transport of these men from England; and I beg to submit that it would be far better that this sum should be repaid to the Colony than that an opening should be afforded to the Legislature or the Government to claim a right of controlling the movements of the Troops. I am justified in making this request by the statement in Sir E. Bulwer Lytton's Despatch, No. 39, dated 5th May, 1859, that the charge for the conveyance of Troops from England to the Colonies, and of their removal from one Colony to another, should be defrayed by the Imperial Government.

With

RESPECTING ARTILLERY FORCE SERVING IN THE COLONY. 3

With reference to the general question of the defence of the Colonies, which is to a certain extent mixed up with this of the disposal of the Troops, I beg leave to refer your Grace to my Despatch, No. 127, dated 14th August, 1856, and to press upon Her Majesty's Government the advisability of adopting the general principle therein laid down, that the cost of maintaining such a Military force as may be required for the defence of a Colony should be shared equally between the Mother Country and the Colony.

Under the circumstances in which the Government of New South Wales has been placed, I have not been able to obtain any definite expression of opinion, either on the part of my Advisers or of the Legislature, upon the general question of the defence of the Colony. I therefore take this opportunity of pressing my own views, as detailed in the Despatch above alluded to, and in a later one, No. 156, dated 26th October, 1858; as also in sundry Minutes, addressed to the Executive Council, copies of which I forward herewith; and of suggesting that Her Majesty's Government should, if disposed to adopt the general principle, direct that the subject should be brought before the local Legislatures, with a view to obtaining an expression of their opinions thereupon.

I have, &c.,
W. DENISON.

No. 2.

GOVERNOR GENERAL to SECRETARY OF STATE FOR THE COLONIES.

(No. 69.)

Government House,
Sydney, 22 June, 1860.

MY LORD DUKE,

In my Despatch, No. 48, dated 16th April last, I brought under your Grace's consideration the anomalous position in which the Battery of Artillery, serving in this Colony, is placed, owing to the circumstance that the cost of its passage to this Colony, as well as the pay and allowances of officers and men since its arrival, have been defrayed by the Colony.

This question has been again pressed upon my notice, under the following circumstances: The Officer commanding the Royal Artillery having received instructions from the Horse Guards to send two non-commissioned officers to England, applied to the Officer in command of the Troops to give the necessary instructions to provide a passage for them. Reference was then made to me from the Brigade Office, and my sanction was requested for the removal of these men; this was brought before me by the Colonial Secretary, with a Minute to the effect that the request required some consideration; and it is evident that if the Colony is to pay for the passage of Troops from England, which troops are liable to be recalled, either altogether or in small detachments, at the will of the Military authorities in England, just grounds of complaint will be given to the Colony.

I have not of course attempted to withhold my assent to the removal of these men, but I have caused to be noted a claim that the vacancies thus created should be filled up, and the passages of the men sent out defrayed by the Military authorities; and I think it advisable to bring again under your Grace's consideration, the desirability of the establishment of some definite principle, which, while it would leave the Troops in the Colonies completely under the control of the Military authorities, would at the same time define the relations between the Mother Country and the Colonies, with reference to the defence of the latter, in such a manner as to leave them no just cause of complaint, either on the ground that sufficient attention is not paid to their defence, or that they are called upon to defray more than a just proportion of the expense of the Military force required for such a purpose.

I have, &c.,
W. DENISON.

No. 3.

4 RESPECTING ARTILLERY FORCE SERVING IN THE COLONY.

No. 3.

SECRETARY OF STATE to GOVERNOR GENERAL.

(No. 89.)

Downing-street,

13 October, 1860.

Sir,

With reference to your Despatches, No. 48, of the 16th April, and No. 69, of the 2nd June, relative to the removal to New Zealand of the Battery of Artillery, which had been brought to New South Wales at the expense of the Colony, I have the honor to inform you that the Secretary of State for War has agreed with me that it will be proper to repay to the Colony the expense of the transport of this force to New South Wales. I have caused an inquiry to be addressed to the Emigration Commissioners, in order to learn whether the expense can be accurately ascertained here, in which case instructions will be given without delay for paying the amount to the credit of the Colony.

I have, &c.,

G. C. LEWIS.

1861.

Legislative Assembly.

NEW SOUTH WALES.

VOLUNTEERS.

(ESTIMATED DISTRIBUTION OF VOTE FOR.)

Ordered by the Legislative Assembly to be Printed, 28 March, 1861.

ESTIMATED DISTRIBUTION OF VOLUNTEER VOTE.

	£	s.	d.
1 Inspecting Field Officer, at 20s. per diem	365	0	0
1 Adjutant, 10s. per diem, with 2s. 6d. per diem for forage ...	228	2	6
2 Clerks, 1 at 4s. 6d.; 1 at 3s. 6d. per diem	146	0	0
1 Musketry Instructor (12th Regiment), at 10s. per diem...	182	10	0
1 Sergeant Instructor (12th Regiment), at 5s. per diem ...	91	5	0
ARTILLERY.			
1 Commandant, at 15s. per diem	273	15	0
1 Adjutant, at 10s. per diem, with 2s. 6d. per diem for forage ...	228	2	6
7 Drill Instructors, at 3s. 6d.	447	2	6
1 Clerk, at 2s. 6d.	45	12	6
RIFLES.			
1 Sergeant Major, at 10s. per diem	182	10	0
12 Drill Instructors, 6 at 3s. 6d., and 6 at 7s. each per diem ...	1,149	15	0
1 Bugler, at 7s. per diem	127	15	0
MOUNTED RIFLES.			
1 Commandant, forage, at 2s. 6d. per diem	45	12	6
1 Adjutant, at 5s. per diem... ..	91	5	0
TOTAL, PAY	£	3,604	7 6
CONTINGENCIES.			
Contribution to support of Band	300	0	0
Clothing, 1,500 men, at £3 10s. each	5,250	0	0
Travelling Expenses of Inspecting Field Officer, Adjutant and Musketry Instructors, Targets, Medals, Stationery, Postage, Rent of Armouries, &c.	600	0	0
Incidental and Unforeseen Expenses	245	12	0
TOTAL, CONTINGENCIES	£	6,395	10 0
GROSS TOTAL	£	10,000	0 0

1861.

NEW SOUTH WALES.

ANNUAL ORDNANCE RETURNS.

Presented to both Houses of Parliament, by Command.

No. 1.

*Military Store Office,
Sydney, 8 January, 1861.*

A RETURN of all Moneys which have been received, or are now payable to Her Majesty's War Department, in respect of lands, tenements, and buildings, vested in the principal Officers of Her Majesty's Ordnance in New South Wales, under the provisions of the Act of Council, 4 Victoria, No. 2.

NIL.

THE HONORABLE
THE PRINCIPAL SECRETARY.

PERCIVAL WILKINSON,
Aast. Mil. Storekeeper.

No. 2.

*Military Store Office,
Sydney, 8 January, 1861.*
A RETURN of all Lands, Messuages, Tenements, and Buildings, vested in the principal Officers of Her Majesty's Ordnance in the Colony of New South Wales, pursuant to the provisions of the Act of Council, 4 Victoria, No. 2.

DESCRIPTION OF PROPERTY.	CONTENTS OF LAND.	WHERE SITUATED.			DATE OF DEEDS OF GRANT.	PURPOSES FOR WHICH AUTHORIZED.
		Parish.	Town.	County.		
Part of Goat Island	a. f. p.	Petersham	Cumberland.....	30 January, 1844	Magazines and Stores.
Lands	1 2 34	Brisbane	Stanley	Stanley	21 July, 1843	} Sites for Military Barracks.
	0 1 9	St. Luke	Liverpool	Cumberland.....	4 August, 1843	
	0 0 13	St John	Farramatta	do.	do.	
	0 1 31½	do.	do.	do.	do.	
	0 8 39	St. Matthew	Windsor	do.	do.	
Pinchgut Island.....	0 0 16	St. Phillip	Sydney	do.	30 January, 1844	} For the Harbor Defences.
Land on which Dawes' Battery is erected.....	7 2 11	Alexandria .....	.....	do.	do.
Lands	14 3 24	St. Phillip.....	Sydney	do.	31 July, 1844	} For Military purposes.
	7 1 16	Bathurst.....	Dathurst.....	Bathurst	18 December, 1844....	
	16 1 25	St. John.....	Farramatta	Cumberland.....	30 January, 1846	
Lands	29 2 17	Newcastle	Newcastle	Northumberland	5 January, 1847	} Sites for Military Barracks.
	.....	Alexandria .....	.....	Cumberland.....	31 July, 1850

PERCIVAL WILKINSON,
Asst. Mil. Storekeeper.

The whole of the above Lands are now in the possession of the Colonial Government.

THE HONORABLE
THE PRINCIPAL SECRETARY.