



*Dr. J. G. Yates, Esq. M. D.*  
*Kingston*

# REPORTS

OF THE

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*Library*

## COMMISSIONERS

APPOINTED TO INQUIRE INTO THE

### CONDUCT, DISCIPLINE, & MANAGEMENT

OF THE

## PROVINCIAL PENITENTIARY,

*With the Documents transmitted by the Commissioners.*

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PRINTED BY ORDER OF THE LEGISLATIVE ASSEMBLY.

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*Montreal:*

PRINTED BY ROLLO CAMPBELL.

1840.



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# PROVINCIAL PENITENTIARY.

## RETURN

TO AN ADDRESS FROM THE LEGISLATIVE ASSEMBLY TO HIS EXCELLENCY THE GOVERNOR GENERAL, dated the 30th instant, praying that His Excellency would be pleased to cause to be laid before them, "a Copy of the Reports made by the Commissioners appointed to investigate into the Conduct, Discipline, and Management of the Provincial Penitentiary, with the Documents transmitted by the Commissioners."

By Command,

J. LESLIE,  
Secretary.

PROVINCIAL SECRETARY'S OFFICE,  
Montreal, 30th May, 1849.

PROVINCIAL PENITENTIARY COMMISSION ROOM,  
Montreal, 20th March, 1849.

SIR,

I have the honour to transmit herewith the First Report of the Penitentiary Commission.

The Second and Final Report of the Commission will be submitted to His Excellency with the least possible delay.

I have the honour to be,

Sir,

Your most obedient Servant,

GEO. BROWN,  
Secretary.

Honourable JAMES LESLIE,  
Provincial Secretary.

SECRETARY'S OFFICE,  
22nd March, 1849.

SIR,

I have had the honour to receive and lay before His Excellency the Governor General, the First Report of the Penitentiary Commission, which was transmitted with your letter of the 20th instant.

I have, &c.,

JAS. LESLIE.

GEO. BROWN, Esquire,  
Secretary,  
Penitentiary Commission.

**FIRST REPORT OF THE COMMISSIONERS  
APPOINTED TO INQUIRE INTO AND REPORT UPON THE CONDUCT,  
ECONOMY, DISCIPLINE AND MANAGEMENT, OF  
THE PROVINCIAL PENITENTIARY.**

To His Excellency JAMES, Earl of ELGIN and KINCARDINE, Knight of the Most Ancient and Most Noble Order of the Thistle, Governor General of British North America, and Captain General and Governor in Chief in and over the Provinces of Canada, Nova Scotia, New Brunswick, and the Island of Prince Edward, and Vice-Admiral of the same, &c. &c. &c.

MAY IT PLEASE YOUR EXCELLENCY,

The undersigned were appointed Commissioners by Your Excellency, to inquire into and report upon the conduct, economy, discipline and management, of the Provincial Penitentiary. The appointment was by Letters Patent under the Great Seal of the Province, of which the following is a copy :—

ELGIN AND KINCARDINE.

Province of } VICTORIA, by the Grace of God,  
Canada. } of the United Kingdom of Great  
Britain and Ireland, Queen, Defender of the Faith,  
&c. &c. &c.

To Our trusty and well beloved Councillor the Honourable Adam Fergusson, of Woodhill, in the County of Halton, in the Province of Canada, Esquire, one of the Members of the Legislative Council of Our said Province; Narcisse Amiot, of the City of Montreal, in Our said Province, Esquire, Barrister-at-Law, and one of Our Justices assigned to keep Our Peace in and for the District of Montreal, in Our said Province; Edward Cartwright Thomas, of the City of Hamilton, in Our said Province, Esquire, Our Sheriff of Our District of Gore, in Our said Province; William Bristow, of Our City of Montreal, in Our said Province, Esquire; and George Brown, of Our City of Toronto, in Our said Province, Esquire;—

GREETING :

WHEREAS, divers Charges and Complaints have been made to Our Governor General of Our said Province, respecting the conduct, economy, system of discipline and management, of Our Provincial Penitentiary, situate in the Township of Kingston, in the County of Frontenac, in Our said Province: And whereas it has been thereupon thought expedient by Our Governor General, acting by and with the advice of Our Executive Council in and for Our said Province, that an inquiry should be forthwith made into, of, and concerning the same; and into, of, and concerning all other charges and complaints which, during the continuance of the powers hereby committed unto you, shall or may be referred to you by Our Governor General of Our said Province, acting as aforesaid, or which during the time aforesaid shall or may, by any person or persons whomsoever, be preferred before you, or any three or more

of you, or which during the time aforesaid you, or any three or more of you, in the course of the inquiry with which you are hereby charged, shall or may see fit to direct to be preferred or investigated, or which during the time aforesaid shall or may in any other manner whatsoever be lawfully brought before you, or any three or more of you; and also into, of, and concerning the whole conduct, economy, system of discipline and management, pursued in or with respect to Our said Penitentiary: And whereas, in and by a certain Act of the Parliament of Our said Province, passed in the ninth year of Our Reign, chaptered thirty-eight, and entitled, "An Act to empower Commissioners for inquiring into matters connected with the public business to take evidence on oath," it is among other things enacted, That whenever the Governor, Lieutenant Governor, or person administering the Government of Our said Province, acting by and with the advice of the Executive Council thereof, shall cause inquiry to be made into and concerning any matter connected with the good government of Our said Province, or the conduct of any part of the public business thereof, or the administration of Justice therein, and such inquiry shall not be regulated by any special Act, it shall be lawful for the Governor, Lieutenant Governor, or person administering the Government as aforesaid, by the Commission, to confer upon the Commissioners, or persons by whom such inquiry is to be conducted, the power of summoning before them any party or witnesses, and of requiring them to give evidence on oath, orally or in writing (or on solemn affirmation, if they be parties entitled to affirm in civil matters), and to produce such documents and things, as such Commissioners shall deem requisite to the full investigation of the matters into which they are appointed to examine, and the Commissioners shall then have the same power to enforce the attendance of such witnesses, and to compel them to give evidence, as is vested in any Court of Law in civil cases: And whereas it hath been further thought expedient by our said Governor General, acting as aforesaid, that for the better, more perfect, and more satisfactory conduct of the said inquiry, all and singular the powers and authority in and by the said Act of Parliament in such case provided, should be conferred upon you, and upon any three or more of you, acting in the execution of this Our Commission, as fully and effectually as for the purposes aforesaid the same can or may be lawfully conferred as aforesaid: And whereas, for these and divers other good causes and considerations Us thereunto specially moving, We have thought fit that such inquiry should be forthwith made as aforesaid. Now therefore know ye, that We, having and reposing great trust and confidence in your fidelity, discretion and integrity, have, by and with the advice of Our Executive Council of Our said Province, authorised and appointed, and by and with such advice, do, by these Presents, au-

thorise and appoint you the said Adam Fergusson, Narcisse Amiot, Edward Cartwright Thomas, William Bristow, and George Brown, or any three or more of you, to make diligent inquiry and investigation into the premises: And for the better discovery of the truth in the premises, We do, by these Presents, give and grant to you, or any three or more of you, acting as aforesaid, full power and authority to call before you, or any three or more of you, as well the Warden and Physician of the said Penitentiary, as such and so many of the Commissioners, Officers, Clerks, Guards, and other ministers engaged in or in anywise employed about Our said Penitentiary, or in or about the management of the same, as also all such other persons as you, or any three or more of you, acting as aforesaid, shall judge necessary, by whom you may be the better informed of the truth in the premises; and to inquire of the premises, and every part thereof, by all other lawful ways, methods, and means whatsoever: And we do hereby give and grant unto you, and to any three or more of you, acting as aforesaid, full power and authority, when the same shall appear to be requisite, to administer an oath or oaths, affirmation or affirmations, as the case may require, to any person or persons whomsoever, to be examined before you, or any three or more of you, touching and concerning the premises: And We do also give and grant to you, and to any three or more of you, acting as aforesaid, full power and authority to cause as well the said Warden and Physician of Our said Penitentiary, as all and singular the Commissioners, Officers, Clerks, Guards, and other ministers of Our said Penitentiary, as well as all and singular the Officers, Clerks, and ministers of Our several Courts of Criminal Jurisdiction within Our said Province, or any part thereof, to bring and produce upon oath before you, or any three or more of you, all and singular rolls, records, orders, books, documents, accounts, papers, or other writings, of what nature or kind soever, belonging to the said Penitentiary, or to the said Warden or Physician, Commissioners, Officers, Clerks, Guards, or other ministers thereof, in such their official capacity; or to the said Courts or any of them, or to any of the said Officers of such Courts, as such Officers respectively. And Our further will and pleasure is, that you, or any three or more of you, upon due examination of the premises do, within one year from the date of this Our Commission, or sooner if the same can reasonably be, certify to Our Governor, Lieutenant Governor, or the person administering the Government of Our said Province of Canada for the time being, at Montreal, under your hands and seals, respecting all and every of your several proceedings by force of these Presents, together with what you shall find touching or concerning the premises upon such inquiry as aforesaid, and what regulations respecting such matters as aforesaid you shall think fit to recommend to be established: And We further will and command, and by these Presents ordain, that this Our Commission shall continue in full force and virtue, and that you Our said Commissioners, or any three or more of you, shall and may, from time to time, proceed in the execution thereof, and of every matter and thing therein contained, although the same be not continued, from time to time, by adjournment: And We do hereby direct and appoint that you, or any three or more of you, may have liberty to certify your several proceedings, from time to time, to Our said Governor, Lieutenant Governor, or the person administering the Government of Our said Province for the time being, at Montreal aforesaid, as the same shall be respectively completed and perfected: And we hereby command, as well the said Warden and Physician, Commissioners,

Officers, Clerks, Guards, and other ministers of Our said Penitentiary, as all and singular our Justices of the Peace, Sheriffs, Mayors, Bailiffs, Constables, Officers, Ministers, and all other Our loving subjects whatsoever, that they be assistant to you, and each of you, in the execution of these Presents; giving, and by these Presents granting to you, and to any three or more of you acting as aforesaid, and that in the fullest and most ample manner all such authorities, rights, and powers in the premises, as by or under the authority of the said Act of Parliament, or by virtue of Our Prerogative, Royal or otherwise howsoever, we can or may or could or might in any wise lawfully confer upon you by virtue of these Presents or otherwise howsoever: And know ye further, that for the more regular and orderly conduct of your proceedings under the powers hereby conferred upon you, and the better execution of this Our Commission, We have made choice of you the said Adam Fergusson, to preside as President or Chairman at all meetings of Our said Commissioners, for the execution hereof at which you shall be personally present, whose services as such We require you Our said Commissioners, from time to time, to use as occasion shall require: And know ye also, that for the more regular recording of all such proceedings, We have made choice of you the said George Brown, to be Secretary to this Our Commission, whose services and assistance as such We also require you Our said Commissioners, from time to time, to use as occasion shall require.

In testimony whereof, We have caused these Our Letters to be made Patent, and the Great Seal of Our said Province to be hereunto affixed: Witness, Our right trusty and right well beloved Cousin, JAMES EARL OF ELGIN and KINCARDINE, Knight of the Most Ancient and Most Noble Order of the Thistle, Governor General of British North America, and Captain General and Governor in Chief in and over Our Provinces of Canada, Nova Scotia, New Brunswick, and the Island of Prince Edward, and Vice-Admiral of the same, &c. &c. &c. At Montreal, this Twenty-sixth day of May, in the year of Our Lord One thousand eight hundred and forty-eight, and in the Eleventh year of Our Reign.

(Signed,) ROBT. BALDWIN,  
Attorney General.

By Command,

(Signed, R. B. SULLIVAN,  
Secretary.

A Copy of the following Letter of Instructions was received by each of the Commissioners:—

“ SECRETARY'S OFFICE,

“ Montreal, 1st June, 1848.

“ SIR,

“ With reference to our recent communications upon the subject of the Provincial Penitentiary, I have the honour, by command of the Governor General, to inform you, that His Excellency has been pleased to appoint you, together with  
“ and  
“ Esquires, as Commissioners to enquire into, and report upon the affairs of that Institution.

“ The Commission and Documents connected therewith have been transmitted to the Honourable A. Fergusson, (named in the Commission to act as President or Chairman at all meetings of the Commissioners,) for the use of the Commissioners in general.

“ The first subject for the consideration of the Commissioners will probably be the various charges and complaints preferred against certain of the Officers, and others connected with the Institution, contained in the Documents which accompany the Commission.

“ His Excellency feels that it is almost superfluous to remind the Commissioners how necessary it is that they should, in the discharge of this delicate and difficult branch of their inquiry, exercise the most rigorous impartiality, and not allow themselves to be influenced by any other feeling than the desire of doing entire justice to all the parties concerned.

“ There is, however, another and, as regards the public, a much more important branch of the present inquiry, viz. :—The general system of Discipline and Management of the Penitentiary.

“ His Excellency trusts that the Commissioners will give this portion of inquiry, their most serious attention, with a view to their suggesting, for His Excellency's consideration, any modification in either the system of discipline or the mode of managing the affairs of the Penitentiary, which, in the opinion of the Commissioners, might conduce to secure for the Institution the confidence of the public, and to increase its efficiency and utility.

“ I am to add, that His Excellency desires that the Commissioners should lose no time in commencing the proposed investigation.

“ I have the honor to be,

“ Sir,

“ Your most obedient Servant,

(Signed,) “ R. B. SULLIVAN,  
“ Secretary.”

We assembled at Kingston on the 23d June, 1848, and entered on the duties Your Excellency was pleased to commit to us, with a deep sense of the importance of the trust, and a sincere desire to execute it faithfully and efficiently. We have been engaged in the inquiry ever since, and though the time occupied has exceeded our first anticipations, we are satisfied that the work could not have been properly accomplished by a more speedy process; and should our labours tend in any degree to shed light on the important question of Prison Discipline, to excite in the public mind of Canada a warmer interest in the subject, or to place the Penal Establishments of our country on a footing more worthy of its rising greatness, we feel that the time and labour we have devoted to the inquiry will have been well spent.

Before entering on the matters to which our attention has been more immediately directed, we conceive it may be beneficial to give a short sketch of the history of the Provincial Penitentiary from its first commencement up to a period shortly previous to the issuing of Our Commission, when dissatisfaction with the management of the Institution began to be openly expressed. We then propose to

state the proceedings of the authorities of the Penitentiary consequent on this feeling towards the management, the effect of such proceedings, and the condition of the Institution when we entered on our duties.

Following up this order, we propose to lay next before Your Excellency the result of our inquiries into the conduct of the Officers, and the past administration of the affairs of the Institution, and to close Our Report with suggestions for the future.

The first notice in the public Records of the Kingston Penitentiary, appears in the Journals of the Upper Canada House of Assembly, on the 14th January, 1832. On that day the Committee of the whole House reported a resolution in favour of granting One hundred pounds for the purpose of procuring Plans and Estimates of a Penitentiary to be erected in the Province of Upper Canada, and to enable Commissioners to collect information respecting the management of such Institutions,—which was carried,—Yeas, 23; Nays, 18. In pursuance of this vote, Mr. Jarvis, from a Select Committee, reported a Bill, on 16th January, which was then read a first time, and having subsequently passed through the usual ordeal, the Bill received the Royal Assent on 28th January, 1832.

The Honorable John Macauley and Hugh C. Thomson, Esquire, (now deceased,) were appointed Commissioners, under the Act, and they appear to have executed the task committed to them with energy and ability. In the month of June following their appointment, the Commissioners visited the Penitentiaries at Auburn, Sing-Sing, and Blackwell's Island, in the State of New York, and Wethersfield, in the State of Connecticut, all which prisons are conducted on the Auburn, or congregated system. While at Auburn they met Mr. William Powers, then Deputy Keeper of that Institution, and received much valuable information from him; and a correspondence was then opened up, which finally resulted in the removal of that gentleman to Kingston as the Superintendent of the Prison Works. The Commissioners, on 12th November, 1832, reported to the Head of the Government as the result of their inquiries, that “ the Auburn system is that which it is safer to act on in this Province,” and they recommended its adoption by the Legislature. Accompanying their Report were Plans of the proposed Penitentiary, and a letter explaining the system of discipline and government recommended to be adopted, with calculations in detail of the probable expense of building and maintenance, and the returns from Convict labour, all very ably executed, and from the pen of Mr. Powers.

On 19th December, 1832, the Report of the Commissioners was referred to a Select Committee, with power to report by Bill or otherwise. On 4th February, 1833, a Bill for the erection of a Provincial Penitentiary was reported, and having subsequently passed through the different stages, it received the Royal Assent on 13th February. Under this Act, John Macauley, Hugh C. Thomson, and Henry Smith, Esquires, were appointed Commissioners for building the Penitentiary, and £12,500 was appropriated to carry on the works. On 25th November, 1833, these gentlemen made their first report, from which we make the following extracts :—

“ That, in pursuance of the Act, their first object was to select a good site for the Prison. After

“ examining with great care, all the grounds in and near the Town of Kingston, it was found that no situation, combining the advantages of perfect salubrity, ready access to the water, and abundant quarries of fine limestone, could be obtained nearer the Town than Lot Number Twenty, in the First Concession of the Township of Kingston, which is about a mile west of the Town. The west half of this Lot, belonging to the heirs of the late Phillip Pember, which contains one hundred acres of land, reaching from Hatter’s Bay, on Lake Ontario, to the rear of the First Concession, was accordingly purchased for the sum of One thousand pounds. The space between the Lake and the highway is about fifteen acres in extent, of which nine or ten acres will be inclosed by the walls of the Penitentiary, and on the west side is a fine harbour, where vessels may approach within a few feet of the shore. Nothing indeed can surpass the convenience and beauty of this site, on which is found a quarry of the best limestone, amply sufficient for the construction of the buildings and walls of the proposed establishment; twenty or twenty-five acres on the front of this Lot would, perhaps, furnish all the room that is required for the buildings connected with the Penitentiary, and the Legislature might therefore (if they should see fit) direct the residue to be sold. The Commissioners are, however, of opinion that the land is worth the purchase money, and should be retained for public uses, especially as it appears to abound with quarries of the finest limestone, which it will, doubtless, be found profitable to open when Convicts are sentenced to hard labour at the Penitentiary. Probably it may become advisable to let a part of the Lot on the rear, as soon as a system of Prison discipline has been organized for the Establishment, but certainly it would not be desirable that any portion of it should be sold before the nature and value of the quarries have been fully and closely inquired into and understood.

“ The deed of conveyance for this land from the heirs of Mr. Pember to the Government, is submitted with this Report. It has been drawn up by a professional gentleman of this place, and is supposed by the Commissioners to be sufficient to secure the investment of the title to it, according to the terms of the Act, in His Majesty, his Heirs, and Successors. After having determined on the site of the intended structure, the next step on the part of the Commissioners was to select suitable assistants for building it; and with this view, two of their number proceeded in the month of June to Auburn, in the State of New York, where, after some enquiry and negotiation, they engaged Mr. William Powers, the deputy keeper of the State Prison at that place, to superintend the building of the Penitentiary at Kingston, and agreed to allow him three hundred and fifty pounds per annum, for the space of two years.

“ When it is recollected that this gentleman was the individual who furnished the plan which was submitted to the Legislature during its last Session, and which then received its approbation, the value of his services in the construction of a prison in conformity to that plan will be readily perceived. The Commissioners also engaged Mr. John Mills, of the same place, at the rate of two hundred and fifty pounds per annum, to act as master builder and general foreman of the works. They considered his assistance very important on account of his experience in this particular branch of architecture, and they are satisfied that as his general

“ knowledge of every department of mechanical labour that is carried on at the Penitentiary will enable him to act as foreman in each of those departments, a considerable saving of expense will arise from employing him in his present capacity.”

“ In commencing the building, it was a matter of great and serious deliberation with the Board, whether they should proceed to do the whole by contract, or by the employment of day labourers. They at length resolved that they ought not to build the Prison by contract, and for these reasons :

“ 1st. The plan of the building was entirely novel, and no person in this country could safely be allowed to undertake it.

“ 2dly. It was very probable that alterations and improvements might suggest themselves to the mind of the Superintendent while the building was in progress, in making which, the existence of a contract might be found embarrassing.

“ 3dly. It was most important that the whole of the work should be done in the most substantial and faithful manner.

“ 4thly. It was considered that the expense of superintendence by experienced persons was unavoidable, and that when incurred, the profit that would be reaped by contractors might well be saved, for the vigilance and skill of the Master Builder, combined with the management and experience of the Superintendent, ought to realize to the public all the benefits usually obtained by means of contracts.

“ With such views, the Commissioners, in all practicable cases, have had the mechanical work performed on the spot by the day; and in order to explain in what respect savings are in this manner effected, of sums of money that would otherwise have been paid as profit to contractors, it may be stated that by the erection of a lime-kiln near the quarry, the article of lime is now provided at nearly half the cost at which it was formerly obtained by contract.”

Accompanying the Report of the Commissioners was the following Estimate of the total cost of the proposed buildings :—

“ ESTIMATE of the probable cost of erecting the Penitentiary near the Town of Kingston, made by William Powers, Superintendent, and John Mills, Master Builder :

No. 1.—Cost of South Wing.....	£10000	0	0
2.—This Wing cannot be finished without building the Rotunda, in which there will be 120 cells which will form a part of the east and west Wings, the cost of which was	7250	0	0
3.—North Wing, to contain Offices, Keeper’s Hall, Dining Hall, Chapel, Hospital, Kitchen, &c.....	6250	0	0
4.—To finish the East Wing..	5750	0	0
5.—To finish the West Wing..	5750	0	0
6.—Warden’s and Deputy’s Houses.....	2625	0	0
Carried over.....	£37625	0	0



It was not until the winter of 1836-7, that any Chaplain was appointed; but the Rev. W. M. Herchmer, a clergyman of the Church of England, was then installed, with a salary of £150.

On the 21st January, 1837, James Nickalls, Esq., took his seat as a Member of the Board of Inspectors, in the room of the Hon. John Macaulay.

On the 6th July, 1839, Mr. Fraser took his seat as a Member of the Board of Inspectors, in the room of Mr. Gray.

Very shortly after the opening of the Prison, an unfortunate misunderstanding seems to have arisen between Mr. Warden Smith and his Deputy, Mr. Powers; and for at least four years before Mr. Powers left the Institution, (1840,) quarrels seem to have constantly existed between them. These differences were frequently before the Inspectors, in the shape of charges preferred by one officer against the other; and the Warden seems to have been invariably supported in such references by Mr. Grant, while Mr. Powers was as invariably sustained by all the other Inspectors, four in number. As a specimen of these disputes, we make the following extracts from the Minutes of the Board:—

21st February, 1837.—Present: Messrs. Pringle, Gray, and Nickalls. “A letter was laid before the Board by the Warden, containing a series of complaints against the Deputy Warden. The Inspectors direct, that in justice to the Deputy, he be furnished with a copy of said letter; and, that on his reply, the matter will be taken into consideration, and the parties heard at a future meeting.”

15th March, 1837.—Present: Messrs. Cartwright, (President,) Pringle, Gray, and Nickalls. “The Board having read the defence submitted by Mr. Powers, in answer to the charges preferred against him, are of opinion, that it is satisfactory. The Board, in thus acquitting the Deputy Warden, are of opinion, that the safety and discipline of the Prison can only be enforced by a mutual good understanding between the Warden and the Deputy, and constant anxiety on their parts to maintain proper vigilance on the part of the subordinate officers of the Institution. And they are of opinion, that the authority of the Deputy should be properly and strictly maintained, as the Police of the Establishment is greatly entrusted to him, conformably to an order of the 5th December last.”

31st March, 1837.—Present: Messrs. Cartwright, Pringle, Gray, and Nickalls. “The Warden, wishing an investigation of the charges made by him against the Deputy Warden, and that the evidence should be heard under oath, the Board have appointed Tuesday next, the 4th April, at 11, A.M. In the meantime, the Inspectors direct that the Deputy Warden be notified, and that if he require any witnesses, they may be summoned also.”

4th April, 1837.—Present: Messrs. Cartwright, Pringle, Gray, and Nickalls. The Warden states the following charges against the Deputy, 9 in number. 1st. Speaking disrespectfully of Warden. 2d. Concealing depredations of one Pope. 3d. Giving newspapers to Convicts. 4th. Holding religious disputes with M'Carthy. 5th. Reading newspapers and writing in Hospital. 6th. Taking his dog to be fed in the Penitentiary. 7th. Calling the Lieutenant Governor a tyrant. 8th. Giving leave of absence to

Girard Revel. 9th. Speaking within hearing of convicts on political subjects.

The Inspectors having heard the evidence against the Deputy Warden, decided, in effect, as follows: That as to the 1st and 2d charges, they are not proved; on the 3d. Having a religious paper read with consent of the Warden, he (Powers) is acquitted; 4th. Not proved, except that a conversation did occur, from which the Deputy properly desisted; 5th. Acquitted; 6th. Dismissed; 7th. No satisfactory evidence; 8th. No evidence; 9th. The same.

“The Board cannot dispose of this unpleasant matter without remarking on the feelings of the majority of the witnesses against the Deputy, most of them being persons who have been dismissed for offences which were detected by his vigilance, and the Board feel themselves reluctantly compelled to place little reliance on such testimony.”

“The Board would further remark, that the Deputy seems on all occasions anxious to maintain the discipline of the Prison, and that whatever mistakes he may have committed, have arisen more from an error of judgment than from any wish to neglect or prevent the orders of the Board, or the directions of the Warden: but they trust and believe, that he will for the future, avoid any religious or political discussions with any subordinate officer.”

The disputes between the Warden and Mr. Powers were not ended with this decision; and on the 14th February, 1839, Mr. Smith preferred a second series of charges against his Deputy, on which explanations and rejoinders were received by the Board from the parties.

In June, 1839, Mr. Pringle brought under the notice of his brother Inspectors a charge against the Warden of making profit to himself by the hire of a man named Brown, with a horse and team, for the use of the Penitentiary. The Warden thereupon appealed to Government; and his letter of complaint, with accompanying documents, was transmitted to the Inspectors for their observations. The following letter from the President of the Board, in reply to the Provincial Secretary, shows the state of discord in which the Institution was at this moment:—

“Kingston, July 10th, 1839.

“Sir,

“I have the honour to return herewith the application of Henry Smith, Esquire, the Warden of the Provincial Penitentiary, with the copy of the Affidavit of John Brown referred to in the said application, and, in reply, I beg to state for His Excellency's information, that the said documents were handed to Mr. Pringle for his remarks, and at the late meeting of the Board the matter was brought up, when that gentleman gave in the communication sent herewith, and on his retiring from the Board the same was read; whereupon the Board

“Resolved, That they deem it to be completely satisfactory; and that Mr. Pringle, as an Inspector, had a perfect right, and it was his duty, to make every inquiry that he might think necessary as affecting the character and conduct of any subordinate officer of the Institution, for the discipline and management of which the Inspectors are no doubt responsible.”

“ And it was further Resolved, ‘ That, inasmuch  
 “ as the Warden appears by the Memorial to His  
 “ Excellency to be apprehensive that justice will  
 “ not be done him by the Inspectors in the inves-  
 “ tigation of the charges which have been preferred  
 “ against him, the Inspectors would suggest the  
 “ propriety of His Excellency the Lieutenant Go-  
 “ vernor’s appointing a Commission to investigate  
 “ and report upon the nature and extent of the dif-  
 “ ferences which have unhappily arisen between  
 “ the Warden and the Deputy Warden.’

“ And with respect to so much of the Warden’s  
 “ Memorial as implicates myself, I would beg to re-  
 “ mark, that the Warden has enlarged the terms of  
 “ my alleged denunciation of dismissal of himself and  
 “ the Deputy Warden. The fact is, that at a late  
 “ meeting of the Board, Mr. Grant proposed to dis-  
 “ pense with the services of the Deputy Warden  
 “ altogether, when after some discussion the mem-  
 “ bers (Mr. Grant dissenting) came to the conclu-  
 “ sion that if the one was to be discharged, they  
 “ would recommend the discharge of the other also.  
 “ In this opinion I most fully concurred, and I am  
 “ very certain that I have never expressed an opi-  
 “ nion that both of these officers ought to be dis-  
 “ missed; and for this good and substantial reason,  
 “ that though I have great doubts as to the efficiency  
 “ of the Auburn system of discipline in effecting a  
 “ moral reformation in the Convict, and deterring  
 “ from future crime, I am convinced that should the  
 “ Institution unfortunately lose the services of the  
 “ Deputy Warden before the system is more ma-  
 “ tured and established on a firmer basis, the experi-  
 “ ment of the Penitentiary, as a means of punish-  
 “ ment in Upper Canada, will prove a failure. The  
 “ difficulties between the Warden and Deputy  
 “ Warden are of that character, as to peril the best  
 “ interests of the system; and as the Warden has  
 “ raised an issue between himself and four of the  
 “ Inspectors, it would seem to be somewhat indec-  
 “ orous at least that they should act as judges in  
 “ their own cause, and I can with great confidence  
 “ state that the majority of the Board would be most  
 “ happy should His Excellency the Lieutenant Go-  
 “ vernor be pleased so far to grant the request of  
 “ the Warden, as to appoint the Committee he asks  
 “ for.

“ I have the honour to be,

“ Sir,

“ Your obedient servant,

“ (Signed,) JAMES NICKALLS,  
 “ Prest. Board of Inspectors, P. P.”

On the 10th September, 1839, the Board had the  
 differences between Messrs. Smith and Powers again  
 under consideration, and resolved that they would  
 on the 1st October “ proceed to inquire into and in-  
 “ vestigate the nature of the misunderstanding ex-  
 “ isting between the Warden and Deputy Warden.”

On the 25th September the Warden’s list of  
 charges against his Deputy was read, and witnesses  
 ordered to be summoned for the 16th October, when  
 the inquiry would be entered on.

Negotiations seem to have commenced about this  
 time for the amicable removal of Mr. Powers through  
 a pecuniary compensation to be paid him from the  
 public chest; and on the approach of the day of trial  
 of the differences between the Warden and his De-  
 puty, a report got about that Mr. Powers had been  
 removed from his situation, which was calculated to  
 be injurious to him, as well in making his own de-

fence as in proving his case against the Warden.  
 The Inspectors inquired into the matter, and the  
 following memorandum, placed in their hands by Mr.  
 Bickerton, the Clerk, throws light on the subject:—

“ Memo. Last night the Honourable C. W.  
 “ Grant sent for the subscriber, and asked him if  
 “ Mr. Powers had communicated the circumstance  
 “ of Sir G. Arthur having discharged the Deputy  
 “ Warden from his situation at the Penitentiary.  
 “ I replied, he had not, and I asked him if that was  
 “ the fact. He answered, it was. He then said, if  
 “ Mr. Powers applied for any papers or documents  
 “ belonging to the office relative to the late difference  
 “ between him and the Warden, you are to withhold  
 “ them, as he is now no longer an officer of this Es-  
 “ tablishment; and you may inform Mr. Powers,  
 “ that if he persevere in agitating these matters,  
 “ the advance salary of £150, promised to him by  
 “ the Governor, I will take care it is withdrawn.

“ (Signed,) F. BICKERTON.

“ 8th October, 1839.”

The Board met on 11th October, and took the  
 matter into consideration, and the President was re-  
 quested to give written instructions on the subject  
 to the Clerk, which he did, as follows:—

“ Sir,

“ A report having by some extraordinary means,  
 “ got into circulation, that the Deputy Warden had  
 “ been suspended from his duty, a report alike in-  
 “ jurious to the individual and to the character of  
 “ the Institution; and that unauthorized orders had  
 “ been given that that gentleman should not have  
 “ access to the books and papers thereof; I have to  
 “ desire that you will communicate to Mr. Powers,  
 “ that so far from his being suspended from his  
 “ functions, no steps have as yet been taken by the  
 “ Board in that matter, and that he do continue in  
 “ the performance of his duty as Deputy Warden  
 “ as heretofore, and that you will give him every fa-  
 “ cility of access to the books and papers of the  
 “ Prison that he may desire, until you are directed  
 “ by the orders of the Board to the contrary.

“ I remain, Sir, &c.

(Signed,) “ J. NICKALLS,  
 “ President.

“ Mr. F. BICKERTON,  
 “ Clerk.”

The charges preferred against the Warden by Mr.  
 Powers were 30 in number, embracing Peculation,  
 neglect of duty, mismanagement, and many other  
 most serious accusations. Previous to the day when  
 these charges were to be examined into, however,  
 the arrangement already alluded to seems to have  
 been effected with the Government; and we find the  
 following minute on the subject:—

16th October, 1839.—Present: Messrs. Nickalls,  
 Grant, Cartwright, Pringle and Fraser. “ A letter  
 “ from the Warden withdrawing the charges against  
 “ the Deputy Warden having been read, it was re-  
 “ solved; that, inasmuch as under the peculiar cir-  
 “ cumstances of this period, His Excellency the  
 “ Lieutenant Governor has conceived it advisable,  
 “ and has recommended, that the Deputy Warden  
 “ should be relieved from his duties in the Provin-  
 “ cial Penitentiary; it is Resolved, ‘ That the Board,

“ according with the views and suggestions of His Excellency, during whose pleasure these appointments are held; are of opinion, that the continuance of Mr. Powers as Deputy Warden of this Institution would not be attended with the benefits which might be expected from his knowledge and experience in Prison buildings and discipline, and therefore recommend that he receive such gratuity, on ceasing to hold the office of Deputy Warden, as His Excellency may be pleased to direct.”

Resolved, “ That this Board have received at various times from Mr. Powers, the Deputy Warden, very useful and important suggestions relative to the application of Convict labour, and alterations in the buildings of the Institution, and are satisfied with his anxiety and competency to carry on the discipline of the Institution at all times; but the very peculiar circumstances of the country render it necessary that the Institution should be deprived of his services, and that his releasement from his present situation does not arise from any matter or thing affecting his character as an individual, or an officer of the Institution.”

The matter remained in suspense, however, for several months, but, on the 1st June, 1840, Mr. Powers finally left the Penitentiary, having received a gratuity of £300 as compensation for the loss of his situation.

On the 12th September following, the services of the majority of the Board of Inspectors were also dispensed with by letter from the Provincial Secretary, of which the following is a copy:—

“ GOVERNMENT HOUSE,

“ Toronto, 12th September, 1840.

“ SIR,

“ I have the honour to acquaint you, that the subject of the Provincial Penitentiary has lately engaged the Governor General's attention, and that after the fullest consideration of the whole matter, His Excellency has, however, reluctantly been induced to conclude that the interests of the Institution will be best promoted by the organization of a new Board of Inspectors.

“ Instructions will therefore be issued without delay for the preparation of the necessary Commission for that purpose, and with a view to relieve you from your present duties as an Inspector.

“ I have the honor to be,

“ Sir,

Your most obedient humble Servant,

“ S. B. HARRISON,

“ Secretary.

“ JAMES NICKALLS, Esquire,

“ Kingston.”

A new Commission was immediately issued, and on the 7th October, 1840, Thomas Kirkpatrick, C. W. Grant, A. M'Donell, A. Manahan, and Henry Sadlier, Esquires, held their first meeting as a Board of Inspectors; the gentleman first named being elected President.

From the removal of Mr. Powers in June 1840, to September 1841, there was no Deputy Warden,

but at the latter date Mr. Edward Utting was appointed, under the title of Assistant Warden, with £150 per annum.

On the 25th February, 1842, George Desbarats, Esquire, took his seat as an Inspector, and on 3rd April, 1843, E. Parent, Esquire, did so also, in room of Messrs. Grant and M'Donell.

On the 10th December, 1844, J. B. Marks, and R. S. Atcheson, Esquires, were appointed Inspectors, in room of Messrs. Desbarats and Parent, resigned.

Mr. Utting seems to have been scarcely installed, when disputes broke out afresh between the Warden and his Deputy; and they were kept up with but brief cessation for 5 years. Complaints preferred by the Warden against Mr. Utting were frequently before the Board, but he failed, in the opinion of the Inspectors, to establish any serious charge against him.

In June 1843, the Reverend W. M. Herchmer resigned the Chaplaincy of the Penitentiary, and the Reverend R. V. Rogers, who had acted for sometime in the absence of Mr. Herchmer, was appointed his successor.

In the annual Report of 1843, the Chaplain urged the importance of establishing a daily School in the Penitentiary, and also that some place in the Prison should be set aside as a Chapel.

In the same Report the Inspectors brought under the notice of the Government, the necessity which had arisen from the Union of the Provinces for the appointment of a Roman Catholic Chaplain.

In the annual Report for 1844, the following passages occur in the Chaplain's letter to the Board of Inspectors:—

“ The Chaplain considers that his Report should bring into view whatever he may consider detrimental to the moral design of the Penitentiary, and therefore, although the execution of discipline is not within his province, yet the manner of that execution, materially affecting his department, forces itself on his attention. It must be self-evident, that either of the two extremes in the internal government most materially interferes with the effect of religious instruction on the mind of the governed. More than one illustration of this has offered itself during the past year, proving the vast importance of the character of all the Officers of the Institution. They should be temperate men, men of unceasing vigilance, of pure and chaste conversation, possessing great benevolence, men who fear God. Less than this they ought not to be, who are to enforce by their example those lessons in morals and religion which it is the Chaplain's office to give. Less than this, and the Penitentiary will continue to be a prison it is true, but not a School of Reform.

“ In connexion with this foregoing observation, the Chaplain desires to record his conviction of the injuries to the moral senses of the Convicts, arising from the prevailing practice of the admission of visitors,—especially to those of the females. The language of another does not fall short in its description of what has taken place among us:—“ The throng of visitors is incessant, and becomes to the prisoners a perpetual exhibition to gaze at,

“ to draw them from their labour, and to relieve  
“ the tediousness of confinement.”

“ One of two consequences must follow—to render  
“ the mind callous, or unnecessarily to wound it.  
“ The effect on the females is beyond measure in-  
“ jurious. Visits of every kind should be few as  
“ possible, chiefly official; but if they cannot be al-  
“ together prevented, yet allowed at such times  
“ only, when the Convicts may be seen, but not see,  
“ at breakfast or dinner.

“ The admission of boys into our Penitentiary, to  
“ be subject to the same discipline as adults, is, the  
“ Chaplain fears, not calculated to reform, but to  
“ injure. Should not some respect be paid to the  
“ peculiarities of youth, even in a place of confine-  
“ ment? Would not the desired end be more  
“ effectually secured by a judicious admixture of  
“ school, labour, and recreation?”

A Roman Catholic Clergyman having taken under  
his charge the adherents of that church in the prison,  
application was made to Government, early in 1845,  
to know how his services were to be remunerated.  
A sum of £200 was devoted to the payment of  
religious instruction, and the Inspectors left to divide  
it as they saw proper. The Board finally appor-  
tioned £125 to the Protestant Chaplain, and £75  
to the Roman Catholic Priest.

In the Annual Report for 1845, the Chaplain  
makes the following observations:—

“ In the latter Report (1844) the hope was ex-  
“ pressed, that the Protestant Convicts would be  
“ no longer debarred the privilege of a suitable  
“ Place of Worship, as the Dining Hall offers no  
“ accommodation for the administration of the Sa-  
“ craments, and but very imperfect even for the  
“ celebration of Public Worship. The Chaplain  
“ cannot but express his deep regret, that although  
“ much labour and expense have been incurred for  
“ other objects, this, which yields to none in im-  
“ portance, remains unprovided for. He dare not  
“ withhold the expression of his fear, that attention  
“ to the coercive character of the Penitentiary has  
“ been at the expense of its being considered a  
“ School of Reform.

“ I would respectfully ask, is it this prevailing  
“ feeling on the part of the Governors of the Insti-  
“ tution, which has led to the reduction of the  
“ Chaplain’s Salary, at a time when the demand for  
“ his services had so greatly increased; and when,  
“ in consequence of much additional labour both of  
“ mind and body, every other Officer had received  
“ increased remuneration? The request for more  
“ time for the Convict School, and increased ac-  
“ commodation for teaching, as well as the appoint-  
“ ment of a Master, has not been thought deserving  
“ attention.

“ The boys and youths of a tender age are still  
“ subject to the same discipline as the more mature  
“ Convict; and the Chaplain would here observe  
“ on the extraordinary fact of a Convict having been  
“ lately introduced into the Penitentiary only eight  
“ years of age; and further, that, at the present  
“ moment, three Convicts are under twelve and  
“ twelve under sixteen years old.”

“ Our Library remains dependent on private be-  
“ nevolence only for its existence; though if greatly  
“ increased, it might be rendered a very useful  
“ assistant in the moral education of the prisoner.”

“ My sincere thanks to the Board are here ten-  
“ dered, for having acceded to the Chaplain’s wish  
“ for excluding visitors from the Female Depart-  
“ ment.

“ Whilst giving to the present officials all that is  
“ their due, except I were to record my conviction  
“ that the class of mind needed for superintendence  
“ should be of a higher grade, I should be unworthy  
“ of the confidence reposed in me. My full im-  
“ pression is, that the Female Superintendent should  
“ bear a relative position to the Warden himself,  
“ since much must necessarily depend on her in  
“ which even that superior officer cannot with pro-  
“ priety be consulted. The Female Superinten-  
“ dent, according to my opinion, should, both in  
“ moral and social deportment, and in religious and  
“ secular education, be raised to such an eminence,  
“ as that the unhappy Convict may look up to her  
“ as an example, and command obedience by moral  
“ influence rather than physical force.

“ In addition to what has been done for the  
“ females, if a similar exclusion from the male Con-  
“ victs ‘of idle visitors, and visitors merely from  
“ ‘curiosity,’ could be effected, I am persuaded the  
“ best consequences would follow to the discipline  
“ and moral well-being of the Convict.”

The merely historical portion of our narrative  
closes in 1846, as the dismissal of Mr. Utting, the  
passage of the amended Penitentiary Act, framed  
under the advice of the Warden, the reduction of  
the salaries of certain officers under that Act, and  
the consequent resignation of the entire Board of  
Inspectors, bring before us events which demanded  
and received from us strict investigation.

In the Session of 1846 a new Penitentiary Act  
was introduced and carried through Parliament.  
By its provisions the powers of the Warden were  
greatly increased; the salaries of the Chaplain, As-  
sistant Warden, Clerk and Architect, were reduced;  
while the salary of the Warden was increased from  
£300 to £500.

The Inspectors were not consulted in any way as  
to the provisions of this Act, and did not see a copy  
of it until it became law. The Bill was brought  
into the House of Assembly by Mr. Draper; but it  
having become known that Mr. Warden Smith and  
his son, Mr. Henry Smith, M.P.P., were the framers  
of it, much feeling arose in consequence.

An attempt was made by the Inspectors to get  
the Architect’s salary restored by an Order of the  
Governor in Council, but without success, and Mr.  
Coverdale resigned his situation. The Members of  
the Board of Inspectors took umbrage at the dis-  
courtesy which they conceived was shown them in  
the whole proceedings as to the new Act, and ten-  
dered their resignations to His Excellency.

The following is their letter of resignation:—

Copy.—Letter from the Inspectors Provincial Peni-  
tentiary to the Provincial Secretary.

“ KINGSTON, 4th August, 1846.

“ SIR,

“ The undersigned members of the Board of In-  
“ spectors of the Provincial Penitentiary have the

“ honour to acknowledge the receipt of Mr. Assistant Secretary Hopkirk's letter of the 28th ultimo, addressed to the President of the Board, by which they are informed that His Excellency the Governor General was advised to decline acceding to their recommendation that the Architect of the Institution should continue to receive the salary heretofore paid him, the amount allotted to that officer by the late Act being quite inadequate to recompense his services; and assigns as a reason, that His Excellency was further advised that the advanced state of the Building is likely to render unnecessary so much time and attention on the part of the Architect as has heretofore been required.

“ The undersigned beg you will inform His Excellency in Council, that the works now in progress, and the other works essential to the Establishment not yet commenced, are as follows:—

“ The completion of the outer Wall, and the fourth angular Tower.

“ The erection of permanent fire-proof Workshops for the different trades pursued in the Institution, in which the following number of Convicts are at present employed, viz.:—88 masons, 71 stone-cutters, 19 carpenters, 24 blacksmiths, with whom 113 labourers are engaged, making a total of 315, besides those employed in the wheelrights', coopers', tailors', and shoemakers' shops; and when it is taken into consideration that the Convicts are not skilful artizans, and that the utmost attention is required on the part of the keepers to keep them at work and instruct, it will not be deemed surprising that the constant surveillance of the Architect is necessary to ensure the faithful and correct performance of the several parts of the buildings, in addition to his ordinary duties of furnishing plans and specifications.

“ The works still to be performed within the precincts of the Prison are,—

- “ The erection of an Hospital.
- “     of a Female Prison.
- “     of the Rope Walk.
- “     of a Dining Hall.
- “     of a Prison Kitchen.
- “     of a Protestant Place of Worship.
- “     of a Catholic Chapel.
- “     of a School House.

“ Uniting the four Wings of the Building by a Rotunda and a Dome in the centre; constructing 270 Cells in the West Wing and 50 Cells in the South Wing; levelling the Yard, and forming drains throughout the Yards; levelling the Road in front of the Prison to the area of the outer Wall; constructing a Wharf of 800 feet in length; add to which, the necessity of erecting Cottages on the Penitentiary ground as residences for the several Keepers and Guards, thereby securing their presence at all times of emergency out of working hours.

“ The erection and completion of the Rotunda and Dome is the most difficult and important work, and will require the utmost skill and attention on the part of the Architect; and the Board of Inspectors are of opinion, that the several works enumerated cannot be completed within a less period than four years—during which time the services of an experienced Architect will be constantly required. The undersigned communicate these facts in justification of their late recommendation,

“ and to assure His Excellency that his Advisers have not drawn their information from correct sources.

“ They take this opportunity to remark, that the recent Act of the Legislature consolidating and amending the laws relating to the Provincial Penitentiary, has made very important changes in the working of the interior economy of the Institution, which, from the long experience some of the undersigned have had, they fear will be productive of great confusion, and subversive of the system of controul hitherto kept by the Board of Inspectors.

“ The undersigned cannot be dissuaded from the opinion, that the Act operates unjustly and injuriously in reducing the salaries of the Chaplain, the Clerk, and the Assistant Warden, or Head Keeper: on the latter Officer devolves the most onerous duties of any employed in the Institution. On his appointment, the number of Convicts in the Penitentiary did not exceed 168, and his salary was £150 per annum; at present there are nearly 500 Convicts under his care and keeping, and his salary is reduced to £125; and the undersigned cannot forbear remarking upon the impolicy of lessening the influence of that Officer in the Establishment by reducing him in grade and title from Assistant Warden to the position of Keeper, while in any event of sickness or absence of the Warden, the Act charges him with the controul of the Institution: and in connection with this subject, the undersigned would further state, that the Board of Inspectors had uniformly fixed the rates of salaries and wages under its controul at the lowest possible sums.

“ The unremitting attention which the Board has always paid to the affairs of the Institution, without any remuneration whatever, and often to the detriment of their private affairs, and the knowledge which they may reasonably be supposed to have obtained of the defect of the existing law, and the requirements of the new law, induced them to suppose their suggestions would have been of some service to the framers of the new law, and the undersigned were not a little surprised when they found that the Act was framed, introduced into the Legislature, and had passed both Houses, without the slightest reference to them.

“ From this circumstance, and the fact that the authority of the Board of Inspectors is superseded and rendered a complete nullity by the new law, the undersigned feeling that the public will look to them for the faithful performance of the above works, which they are satisfied the partial attention of an Architect will not ensure, are induced to believe that His Excellency has no confidence in them as members of the present Board: they therefore beg you will place this communication before the Governor General, with their respectful request, that His Excellency will be pleased to relieve them from their trust.

“ The undersigned have the honour,  
“ &c. &c. &c.,

“ (Signed,) THOS. KIRKPATRICK,  
“ President.

“ ANTHONY MANAHAN.  
“ HENRY SADLER.  
“ JOHN B. MARKS.

“ A true copy from the Inspectors' Minute Book.  
“ (Signed,) F. BICKERTON,  
“ Clerk.”

The history of the Penitentiary Act, referred to, is given in the evidence of Henry Smith, Esquire, M.P.P., son of the Warden, as follows:—

By the Warden:—

“ Witness suggested to the Warden his (witness’s) intention of bringing in a new Penitentiary Act; did so in 1846, and long previously; “ asked the Warden’s opinion in drawing up the “ Bill on several points witness was not familiar “ with; did not introduce the Bill himself; having “ conversed with the Warden, witness thought it “ better that the Government should introduce it, “ and previous to the meeting of Parliament in 1846, “ witness wrote to the Attorney General Draper, “ and gave him a synopsis of the Bill, and thinks “ also a copy of the Bill. At the meeting of Par- “ liament Mr. Draper returned the draft of the Bill “ with a good many alterations; witness approved of “ them, and the Bill was then introduced by Mr. “ Draper. No opposition was shown to the Bill by “ either side of the House. The Bill was introduced “ in blank, as regards the Salaries of the Officers; “ gave Mr. Draper a list of the Salaries, which he “ lost, and applied to witness for another; witness “ went to the Journals of the House of a previous “ Session, and filled up the blanks in a copy of the “ Bill, with the sums then paid to each of the Offi- “ cers, with the exception of the Warden, and Chap- “ lain, and Priest; Mr. Draper moved all the Sala- “ ries in Committee; Mr. Draper moved £500 as “ the Salary of the Warden, which was passed; “ witness then observed, that changes had been made “ in several of the Salaries, and went to Mr. Draper “ and reasoned with him on the subject; Mr. Draper “ insisted on the reductions he had made, and they “ were all carried; witness never heard of any reduc- “ tion being intended until the Bill was in Committee. “ In the time of Lord Sydenham, the Inspectors in “ their annual Report to Government recommended “ that the Warden’s Salary should be increased; “ thinks there was twice a recommendation to that “ effect. The Warden wrote to witness, remonstrat- “ ing against the reduction of Salaries, especially “ about the Architect’s, the Clerk’s and the Assis- “ tant Warden’s Salaries; but the Bill was then “ through Committee and could not be altered. “ Witness learned afterwards from Mr. Draper that “ the reason why Mr. Coverdale’s Salary was re- “ duced, was because it had reached Mr. Draper, “ that the Architect was not entirely dependent on “ his Salary from the Penitentiary, but did work “ outside for various parties.

“ Sent the Warden a copy of the Act after its “ first reading; it was sent for his own private use.”

By Commissioners:—

Q. What alterations did Mr. Draper make on the Draft of the Penitentiary Act, which you handed to him?

A. He struck out a clause that witness had inserted, giving a seat and vote to the Warden at all meetings of the Board of Inspectors. Witness, at the Warden’s suggestion, had put in a clause reduc- ing the length of imprisonment of Convicts, accord- ing to a certain scale, on the report of the Warden as to their good behaviour, which was also struck out. Witness had also inserted a clause lengthening the imprisonment of Convicts, according to their bad behaviour, as reported by the Warden. Other alter- ations, but not very material, were also made, but witness has forgotten their import; there was one alteration as to the Architect being an Officer of the Penitentiary.

Q. Did the Bill pass as introduced by Mr. Draper, or were there any amendments made on it by the House?

A. Thinks there were only one or two trifling amendments; and all the blanks were filled up as Mr. Draper moved them.

Q. Did you oppose the reductions proposed by Mr. Draper on the salaries of the Clerk, Chaplain, Architect, and Assistant Warden, from your seat in the House?

A. No.

Q. When you were so much opposed to these re- ductions, and were probably the only Member of the House who understood the real position of these officers, why was it that you did not explain your views to the House?

A. Objects to answer that question; does not conceive he is here to give an account of his public conduct to the Commissioners.

Q. Was it understood that the copy of the Bill you sent the Warden was to be concealed from the Inspectors?

A. No; quite understood it was to be as open as any other Bill.

Q. Did any of the Inspectors apply to you for a copy of the Bill?

A. No.

By Mr. Smith:—

“ There was a clause in the amended Act, giving “ power to the Warden to increase the sentence of “ a prisoner who had been previously in the Peni- “ tentiary unknown to the Court sentencing him; “ Mr. Draper struck this out.”

“ None of the Inspectors expressed any dissatis- “ faction to witness with the new Penitentiary Act, “ except Major Sadlier, who was not satisfied with “ the reduction on Mr. Coverdale’s salary.

“ Had a conversation with Mr. Coverdale about “ the reduction of his salary, after returning from “ Montreal; went to see Mr. Coverdale, as he had “ heard Mr. C. was about to resign; pressed him “ not to do so, and witness said he would endeavour “ to have his salary restored; does not recollect “ of applying afterwards to the Administration to “ increase Mr. Coverdale’s salary; he resigned im- “ mediately afterwards.”

By Commissioners:—

“ Is not aware that the Kirkpatrick Board of In- “ spectors resigned in consequence of the passing of “ the Act so often referred to; understood from “ Major Sadlier that if Mr. Coverdale’s Salary had “ been restored the Inspectors would not have “ resigned.”

Constant misunderstandings continued to exist between the Warden and Mr. Utting, the Assistant Warden; but notwithstanding the reduction of his salary, and the importance of the office he held, by the new Act, the latter did not resign his situation; and while the resignation of the Inspectors was still before Government, the Warden removed him from his situation and preferred formal charges against him before the Inspectors. These charges were investi- gated by the Inspectors on 12th October, 1846, and

a decision pronounced on them. Only three Inspectors were present, two of whom did not feel at liberty to dissent from the step the Warden had taken in the removal of Mr. Utting, while the third disapproved of his removal. The Board, however, entertained a doubt as to whether a majority of a meeting attended only by three Inspectors could legally act, and they instructed the Warden to state the whole case to the Governor General. Mr. Smith thereupon addressed the following letter to His Excellency:—

“ PROVINCIAL PENITENTIARY,  
“ 17th October, 1846.

“ Sir,

“ I have the honor to forward for the consideration of the Governor General, in pursuance to the Statute 9th Victoria, chap. 4, sec. 6, a copy of the proceedings had by the Board of Inspectors, of this Institution, in the case of Mr. Edward Utting, the Head Keeper of the Penitentiary, against whom it became my duty on the 25th ultimo to prefer certain charges for misconduct, and who was consequently suspended by me until the same should be inquired into, and a final decision made respecting the same.

“ The charges preferred by me against Mr. Utting were as follows:—

“ 1st. Pulling down a quantity of the plank fence at the north-west corner of the wall, and carrying it away without the knowledge or consent of the Warden, being contrary to the 13th section of the General Rules and Regulations of the Penitentiary, and afterwards refusing to replace it when ordered so to do.

“ 2d. Sending out Convicts to his private dwelling and to his lot in Union Street, for the purpose of carting cordwood and lumber, without the knowledge or permission of the Warden; being contrary to their sentence as well as to the discipline of the Institution.

“ 3d. For giving to some person, unconnected with the Penitentiary, a statement of the punishment inflicted upon the Convicts in the month of August last, with a view, and which has led to, the publication of false and scandalous accounts in certain Newspapers published in different parts of the Province, and bringing the Institution into disrespect.

“ 4th. Employing Convicts to work for his private advantage, without the permission or knowledge of the Warden, and placing them in such a position that they might have effected their escape.

“ For the consideration of these charges, the Board assembled at the Penitentiary on the 12th instant, and continued their sitting, by adjournment, to the 13th and 14th instant, on which day they came to the following decision:—

“ Having heard the evidence adduced by the Warden in support of the charges, as well as that offered by Mr. Utting in his defence, the Board are of opinion on the several charges, as follows:

“ On the first charge, they are of opinion, that Mr. Utting caused some of the fence on the west side of the Prison to be taken down without the knowledge of the Warden. They consider, however, in doing so, Mr. Utting may have supposed

“ that he had authority, from the fact that he had permission of the Warden to purchase some other old lumber which had formed part of the fence on the east side. With respect to his refusal to replace it, they consider that he virtually complied with the order, by proceeding to make good the fence in another place with other materials, the old stuff having been sawn into studs.

“ On the second charge, the Board are of opinion, that the Convicts were very improperly taken off the ground of the Institution, and thereby unnecessarily exposed to escape; they do not, however, impute any mercenary motive to Mr. Utting in doing so.

“ The third charge, the Board conceive, is not supported by any evidence which it would be safe to rely on.

“ With regard to the fourth charge, the Board are of opinion that there is no evidence to satisfy them that any work was done for Mr. Utting by Convicts, for which he has not been charged; and with regard to the latter part of the charge, they consider that the Convicts were not more exposed to an escape in collecting the pickets for Mr. Utting, than they were in pulling down the rest of the fence.

“ Having thus expressed their opinion on the several charges, two Members of the Board consider that the facts of the case would warrant them in dissenting from the removal of Mr. Utting by the Warden; the other Member present is of opinion, that the punishment of dismissal is too severe for the offence.”

“ In the examination of these charges there were three Inspectors present, but as the Board are not satisfied how far they are competent with that number to act in the affairs of the Penitentiary, according to the terms of the Statute before mentioned, and although a majority of those present concur with the Warden in the necessity of Mr. Utting's removal from his situation, they prefer that the matter should be first submitted to the decision of His Excellency. They have to state that the cause of a full meeting of the Inspectors not having taken place in this case was occasioned by the absence of Mr. Atchison, who has never appeared at the Board since his appointment, and the cessation of Mr. Manahan to take any share in their proceedings for some time past. Hitherto, however, the Board when composed of three Members, being a majority of the whole, have felt no hesitation in acting when called together, at their regular bi-monthly meetings.

“ I cannot omit to state, for His Excellency's consideration, the absconding of one of the Guards of this Establishment, (Robert Thompson); this man superintended nearly all the work done within the last month for Mr. Utting, and would therefore have been a material witness in substantiating the 1st and 4th charges.

“ It appears that Thompson, in company with another Guard, went on the 27th ultimo, two days after the charges were preferred, to Mr. Utting's house, where they drank some spirituous liquors, and that one of them returned in a state of intoxication.

“ In order to account for the absence of Thompson, I have made every enquiry, and I learn from his wife, that he said, immediately previous to his

“ going away, that he knew a great deal about Mr. Utting, and therefore did not like to appear as a witness against him. I beg to observe that I do not state this as evidence, although it might have been made so, had not I felt a repugnance to produce Mrs. Thompson to testify against her husband. From this, I trust it will not be deemed too great an assumption, to suppose that Thompson has been purposely kept out of the way.

“ Among the Convicts sent by Mr. Utting, as stated in the second charge, were two soldiers who had been tried for desertion, and sentenced to two years imprisonment; the term of one of whose confinement does not expire until the 2d of September 1847. The sentences of some of the other Convicts so taken out, do not expire until the months of March and October 1848, so that the length of their imprisonment was a strong temptation to effect their escape. The distance from the Penitentiary to Mr. Utting's house, as well as to his Lot, is each about half a mile.

“ I beg leave further to state, for His Excellency's information, that in the month of March 1845, the conduct of Mr. Utting, who then held the rank of Assistant Warden, was so improper, that I felt it my duty to prefer the following charges against him:—

“ ‘1st. Using insulting language to the Warden, when told he was absent without leave.

“ ‘2nd. Holding improper intercourse with the Convicts.

“ ‘3rd. Pampering with witnesses prior to their coming before the Board of Inspectors.

“ ‘4th. Endeavouring to subvert the authority of the Warden, and lower him in the opinion of the Convicts.

“ ‘5th. Unnecessarily dispiriting the Convicts, by using harsh and improper language to them.

“ ‘6th. Informing a Convict of the proceedings of the Board of Inspectors.

“ ‘7th. Using profane, violent, and unbecoming language, before the Keepers and Guards.

“ ‘8th. Insubordination when receiving an order from the Warden, and making an improper reply thereto.

“ ‘9th. Endangering the safety of the Institution, by informing a Convict there was a disunion among the Keepers and Guards.’

“ Of the 1st, 2nd, 4th, and 7th charges, he was declared by the Board to be guilty; and, as the evidence given on the other charges was principally that of Convicts, the Board did not consider them to be proved. On that account he was ordered to be admonished, and in doing so, the President of the Board informed Mr. Utting, that it was only in consideration of his family that he was not dismissed from his situation, and a minute to that effect was made.

“ After the repeated complaints it has been my unpleasant duty to make against Mr. Utting, at the several times he has been reprimanded by the Board, it is hardly necessary to say, that I have ceased to have any confidence in him, and, although his duty is clearly defined in the 22nd Clause of the

“ before mentioned Statute, as well as in the Rules of the Institution, it has too frequently occurred that he has acted without any directions given by me, or contrary to those issued.

“ I have, therefore, most respectfully to submit, for His Excellency's consideration, the necessity of removing Mr. Utting from his situation in the Penitentiary, as conducive to the proper management of the Institution.

“ I have the honour to be,  
 &c. &c. &c.,

“ (Signed,) H. SMITH,  
 “ Warden.

“ Honourable D. DALY,  
 “ &c. &c. &c.”

The statements made in this letter will come up hereafter, under the head of false representations.

The reply of the Government was in the following terms:—

“ SECRETARY'S OFFICE,  
 “ Montreal 21st October, 1846.

“ Sir,

“ I have the honour, by command of the Governor General, to acknowledge the receipt of your letter of the 17th instant, forwarding a statement of the proceedings had by the Board of Inspectors of the Penitentiary in the case of Edward Utting, the Head Keeper.

“ In reply, I am to acquaint you, that His Excellency having given the whole subject of the charges brought against Mr. Utting, with the opinion of the Board thereon, his most careful and attentive consideration, sees no reason to doubt that it is necessary for the preservation of due discipline in the Penitentiary, and for the public interest, that Mr. Utting be permanently removed from his late office. He therefore concurs in opinion with yourself and the majority of the Inspectors present at the investigation, as to the propriety of his immediate dismissal.

“ I am to add, that the subject of the present state of the Board of Inspectors, in consequence of the resignation of some of the members, will not fail to receive His Excellency's early consideration.

“ I have the honour to be,  
 “ Sir,  
 “ Your most obedient Servant,

(Signed,) JAMES HOPKIRK,  
 Assistant Secretary.

“ H. SMITH, Esquire,  
 “ Warden of the  
 “ Provl. Penitentiary,  
 “ Kingston.”

A good deal of evidence was received on the subject of Mr. Utting's dismissal, some of which throws light on the affair:—

By Commissioners:—

Thomas Kirkpatrick, Esquire, states: “ In instructing the Warden to refer to the Government the case of Mr. Utting, the Inspectors did not intend that he should make any state-

"ment to the Government beyond the simple proceedings of the Board on the charges then before them; does not think the Warden ought to have introduced into his letter other charges prejudicial to Mr. Utting."

Henry Sadlier, Esquire, by Mr. Smith:—

"The majority of the Inspectors present concurred with the Warden in his removal of Mr. Utting; two of them out of three, were of opinion that the facts of the case would not warrant their dissenting from the dismissal of Mr. Utting by the Warden. The Warden was directed to make a representation on the subject to the Government. The Warden was instructed to make a fair and just representation of the facts elicited at the trial to the Government; cannot tell what representation the Warden made, as witness ceased to be an Inspector immediately after."

By Commissioners:—

Q. Was the evidence you have given to-day as to Mr. Utting's trial, founded on an inspection of the Minutes of the Board of 16th October, 1846?

A. Yes.

Q. Is that Minute signed by the Inspectors who were present?

A. No; it was the last meeting of the Board; this Minute was drawn out by Mr. Kirkpatrick on a sheet of paper, and the Warden was not present at the meeting in question, except as prosecutor against Utting; the sheet was left to be copied into the Minute Book, and has not been since signed.

Q. (Witness is shown an original draft of a Minute handed to the Commission, by the Clerk, from the records of the Institution.) Is that the sheet you refer to as having been drawn up by Mr. Kirkpatrick?

A. Thinks not; thinks this was an attempt by Mr. Kirkpatrick to reconcile the different views of the Members of the Board; believes that Mr. Kirkpatrick drew up several drafts, but that the one finally adopted was in ink, and believes that in sum and substance it was the same as the copy now in the Minute Book.

Q. Had the Warden any instructions to draw up a Minute for the Board of the proceedings of 16th October, 1846?

A. The Warden had instructions to have the document Mr. Kirkpatrick drew up copied into the Minute Book, and ready for the signature of the Inspectors.

Q. Was there any necessity for the Warden drawing up a fresh copy of the Minute, for the Clerk to copy from into the book?

A. Would conceive not; according to ordinary usage, the Minute was left ready to be copied into the book.

Q. Is the rough draft of Minute of 16th October, 1846, in the handwriting of Mr. Kirkpatrick?

A. Cannot say.

Q. Does this rough draft contain the following passage:—"Having thus expressed their opinion on the several charges, the Board consider that the

"facts of the case would not warrant them in dissenting from the removal of Mr. Utting by the Warden, though they would have considered temporary suspension as sufficient punishment for the offence, if the law had left it in the discretion of the Inspectors."

A. Yes.

By Mr. Smith:—

"Would have signed the Minute of 16th October, 1846, as it now stands in the book without any hesitation."

On 31st October, 1846, the Inspectors were relieved of their duties, and a new Board appointed in their room, consisting of Thomas A. Corbett, Esq., President; James A. M'Farlane, Esq.; George W. Yarker, Esq.; George Baker, Esq. And shortly after his removal to Kingston, James Hopkirk, Esq., was added to the number.

Some time after, two vacancies in the Board occurred, by the deaths of Mr. M'Farlane and Mr. Yarker; one of them was filled by the appointment of Henry Gildersleeve, Esq., but the other was never filled up.

All these circumstances contributed to create discord in the Penitentiary. Parties as well inside as outside the Prison, seem to have sympathized with one side or the other, and the impression that the new Board was very favourable to what has been commonly designated "the Smith influence," did not tend to harmonize matters.

One of the first steps of the new Board was to elevate Thomas Costen, a person who came to the Prison as a Watchman, and afterwards became Quarry-keeper, and finally Kitchen-keeper, to the responsible office of Head-keeper, or Deputy Warden. To the vacancy thus created in the kitchen, the Warden appointed his son, Mr. Francis William Smith, which appointment was afterwards sanctioned by the Inspectors. It has been alleged that this situation was only regarded as a stepping-stone for Mr. Smith, junior; and the Report of the Inspectors to the Governor General only a few weeks after his appointment, is referred to in proof of this. On the 12th December, 1846, the Inspectors thus addressed His Excellency:—

"The Board beg to suggest to Your Excellency, as an improvement in the management of the Penitentiary, the appointment of a Steward, an officer usually employed in receiving and dispensing the provisions furnished for the support of the Convicts, as well as in taking charge of the clothing and bedding of the Prisoners, with rank and salary commensurate with the importance and responsible character of the duties of his office."

It is certain that the duties here spoken of are precisely those of the Kitchen-keeper.

From individual complaints, the dissatisfaction with the management of the Penitentiary began to assume the character of a public clamour; the dismissed officers and their friends, no doubt, contributed to it, and charges of cruelty and mis-management in the Institution found their way into the public journals. Early in 1847 the Warden addressed the head of the Government, asking for an inquiry into the general conduct of the Institution.

Discord within the walls continued to increase, and two officers (Reid and Fitzgerald) having been dismissed, under what one party believed to be harsh circumstances, matters became daily worse. The Warden and Inspectors, however, continued to act cordially together. A crisis was at last brought on by Dr. Sampson, Surgeon of the Institution, preferring formal charges against the Warden's son, Kitchen-keeper F. W. Smith. An investigation ensued on these charges. Kitchen Keeper Smith was acquitted by the Inspectors. Dr. Sampson conceived that the decision was not according to the evidence, and appealed to Your Excellency for redress. The following correspondence explains the case:—

Proceedings in the matter of Dr. Sampson's complaint against Kitchen Keeper, F. W. Smith, preferred before the Board of Inspectors.

No. 1.

Charges preferred by the Surgeon of Provincial Penitentiary, against Kitchen Keeper Francis W. Smith.

" 1st Charge.—Shooting arrows at the Convicts, whereby the Convict, John Abraham, lost an eye.

" 2nd Charge.—Improper conduct towards the Convicts.

" 3rd Charge.—Employing Convicts for his own benefit and amusement.

" 4th Charge.—Selling the Stores and Provisions of the Prison.

(Signed,) " JAS. SAMPSON,  
" Surgeon, P.P.

" KINGSTON, October 14th, 1847.

No. 2.

Copy.—Letter, Warden to Board of Inspectors.

" PROVINCIAL PENITENTIARY,  
" 9th October, 1847.

" SIR,

" I beg to inform you that the Surgeon of the Penitentiary has this day preferred a charge against the Kitchen Keeper, F. W. Smith, for shooting an arrow at one of the Convicts, whereby he lost the sight of an eye. Dr. Sampson also stated to me that he had been informed that the keeper in question has on some occasions sold provisions belonging to the Institution, and received money for the same, and that he has been in the habit of employing Convicts to fish for him.

" As these charges are of so grave a character, it becomes my duty to lay them before the Board of Inspectors, in order that they may be inquired into, agreeable to the terms of the statute.

" I am, Sir,  
" &c. &c. &c.

(Signed,) " H. SMITH,  
" Warden.

" T. A. CORBETT, Esquire,  
" &c. &c. &c.  
" President of the Board of Inspectors,  
" P.P."

No. 3.

Copy.—Letter, President Board of Inspectors to Warden.

" KINGSTON, 11th October, 1847.

" SIR,

" I beg to acknowledge the receipt of your letter of the 9th instant, relative to the charges preferred by the Surgeon of the Provincial Penitentiary against Kitchen Keeper F. W. Smith, and have to request you will be pleased to call a meeting of the Board at a very early day, for the purpose of taking the subject thereof into consideration.

" I am, Sir, &c.,

(Signed,) " THOMAS A. CORBETT,  
" President Board of Inspectors.

" HENRY SMITH, Esquire,  
" Warden,

" Provincial Penitentiary.

" P.S.—Please say to-morrow at half-past three o'clock.

(Signed,) " T. A. C."

No. 4.

Copy.—Decision of the Board of Inspectors upon the Charges against Kitchen Keeper F. W. Smith.

" PROVINCIAL PENITENTIARY,

" 29th October, 1847.

" The Board met.—Present: T. A. Corbett, Esq., President; G. Baker, J. Hopkirk and Henry Gildersleeve, Esqrs.

" The evidence taken in support of the charges brought by the Surgeon against the Keeper F. W. Smith, as well as that produced by the accused, having been carefully taken into consideration, the Board came to the following decision on the same:

" ' 1st Charge.—Shooting arrows at the Convicts, whereby the Convict John Abraham lost an eye.'

" The Board considers that this more properly resolves itself into two separate charges, viz.:

" ' 1st. The general charge of shooting arrows at the Convicts; and

" ' 2nd. The causing the loss of Convict Abraham's eye by so shooting.'

" As to the former of these, 'The general charge of shooting arrows at the Convicts,' the Board, while they acquit Keeper Francis William Smith of any intention of hitting the Convicts with arrows, and consider the evidence as to the fact of any Convicts being hit as very contradictory, are fully satisfied that arrows have been shot within the walls of the Prison, at marks, &c., both by Keeper Francis William Smith and by others of the Keepers and Guards, whereby Convicts may have occasionally been hit; and they take the present opportunity of expressing their highest disapprobation of all such practices, as leading to injure the discipline of the Prison, and their determination that none such shall for the future be permitted, under pain of

" the immediate dismissal of the parties who may be guilty of them. The Board have, however, ascertained that the use of arrows at all, within the Prison, has arisen from its having been considered necessary occasionally to shoot pigeons for the use of the sick, and they therefore desire, that for the future, whenever pigeons are required, they may be taken by some other method.

" With regard to the second and more serious part of the charge, viz., 'The causing the loss of Convict Abraham's eye,' the Board must entirely acquit Keeper Francis William Smith, it being distinctly shown by the statement of Abraham, at the time he sustained the injury to his eye, and on all other occasions, that the injury was caused by a splinter of wood getting into it while the Convict was employed in making baskets or brooms.

" 2nd. Charge.—Improper conduct to the Convicts. With regard to this charge, the Board are of opinion that Keeper Francis William Smith stands acquitted.

" 3rd. Charge.—Employing Convicts for his own benefit and amusement. The Board consider that Keeper Francis William Smith is fully acquitted of this charge.

" 4th. Charge.—Selling the Stores and Provisions of the Prison. With regard to this last and most serious charge, the Board most fully and entirely acquit Keeper Francis William Smith.

" The Board have however ascertained, that it has been a practice of long standing (indeed from the commencement of the Institution,) for the Kitchen Keeper occasionally to purchase provisions from vessels and waggons for the use of the Keepers and Guards; and as they consider that such practice is highly inexpedient, as giving rise to imputations of improper use of the Prison Stores, they direct that, for the future, all traffic in Provisions within the walls of the Prison be strictly and positively prohibited.

" The Board now direct, that a copy of the foregoing decision be furnished the Surgeon, and also the Keeper Francis William Smith.

(Signed,) " THOMAS A. CORBETT,  
" President.

" " GEO. BAKER,  
" " JAMES HOPKIRK,  
" " HENRY GILDERSLEEVE."

No. 5.

Copy.—Letter, Surgeon to President Board of Inspectors.

" KINGSTON, 1st November, 1847.

" Sir,

" I have to request, that the Board of Inspectors will be pleased to cause a Copy of the Evidence taken by them at the recent examination and Inquiry into the Charges preferred by me against Keeper F. W. Smith, to be furnished to me as soon as convenient.

" I have the honour to be,

" Sir,  
" &c. &c. &c.,

(Signed,) " JAS. SAMPSON,  
" Surgeon.

" T. A. CORBETT, Esquire,  
" Chairman."

No. 6.

Copy.—Letter, Warden to Surgeon.

" PROVINCIAL PENITENTIARY,  
" 4th November, 1847.

" Sir,

" I am directed by the Board of Inspectors to acknowledge the receipt of your letter of the 1st instant to the President, and I beg to inform you that the Board do not consider they would be justified in complying with your request, to cause a copy of the evidence taken by them at the recent examination and inquiry into the charges preferred by you against the Keeper, Francis W. Smith, to be furnished you.

" I am, Sir,

" Your most obedient Servant,

" (Signed,) H. SMITH,  
" Warden.

" JAMES SAMPSON, Esquire,  
" &c. &c. &c."

No. 7.

Copy.—Letter, Surgeon to Provincial Secretary.

" KINGSTON, 10th November, 1847.

" Sir,

" Having in the course of my daily attendance at the Provincial Penitentiary been informed that certain irregularities had been, from time to time, committed by one of the Keepers; I made a complaint of the same to the Warden, who reported the circumstances to the Board of Inspectors; by whom I was afterwards directed to make specific charges of the offences complained of, a copy of which will be found in the accompanying documents marked No. 1.

" The Board of Inspectors met on the 16th ultimo, heard the evidence in support of the charges, as well as that adduced by the defendant; and on the 29th I was furnished with a copy of their verdict, of which the accompanying document No. 2 is a copy.

" On the 1st instant, I addressed the Board, through the President, requesting a copy of the evidence taken by them on the inquiry into the charges against the Keeper; and to this request an answer was returned, a copy of which will be found in document No. 3.

" It will be perceived that the charges are of a serious nature, and such as no person should be pardoned for preferring, without good foundation for his complaint; and I fear that it may appear by the verdict of the Inspectors, that I stand in the position of a groundless accuser.

" The community is well aware of the decision of the Inspectors; but as the case was heard in a closed Court, when none but the parties immediately concerned could witness the proceedings, the public are not informed, by a knowledge of the evidence produced on the investigation, how far I was justified in making the accusation.

" I have, therefore, the honour to address you, in the hope that His Excellency the Governor Gene-

"ral will be pleased to take the case into his consideration, and to direct the Board of Inspectors to furnish me with an authenticated copy of the evidence taken on the late inquiry into a complaint preferred by me on the 14th ultimo against Francis W. Smith, Kitchen Keeper of the Provincial Penitentiary.

"I should furthermore humbly suggest, that His Excellency would be pleased to call for, and examine the original evidence taken by the Inspectors on the said inquiry, as I cannot but consider, that should His Excellency see fit to impose on himself the trouble, the result of such a perusal might prove beneficial to the interest of the Institution.

"I have the honour to be,  
"Sir,  
"Your most obedient Servant,  
"(Signed,) JAS. SAMPSON, M.D.,  
"Surgeon Provl. Penitentiary.

"To the Honourable  
"DOMINICK DALY,  
"Provincial Secretary."

No. 8.

Copy.—Letter, Assistant Provincial Secretary to President Board of Inspectors.

"SECRETARY'S OFFICE,  
"23rd November, 1847.

"Sir,

"I am commanded by the Governor General to inform you, that the subject of certain charges preferred by the Surgeon of the Provincial Penitentiary, against the Kitchen Keeper of that Institution, together with the decision of the Board of Inspectors thereon, has been brought under His Excellency's notice, and I am directed by His Excellency to request you will cause me to be furnished, for His Excellency's information, with a copy of the evidence taken before the Board in the investigation of these charges, and upon which their Report thereon was founded.

"I have, &c.,  
(Signed,) "E. A. MEREDITH,  
"Assistant Secretary.

"T. A. CORBETT, Esq.,  
"President, Inspectors of Penitentiary,  
"Kingston.

No. 9.

Copy.—Letter, President Board of Inspectors to Provincial Secretary.

"KINGSTON, 27th November, 1847.

"Sir,

"I have the honour to acknowledge the receipt of your letter of the 23rd instant, informing me that the subject of certain charges preferred by the Surgeon of the Provincial Penitentiary against the Kitchen Keeper of that Institution, together with the decision of the Inspectors thereon, has been brought under the notice of the Governor General, and that you have been directed by His Excellency, to request that you might be furnished, for his in-

formation, with a copy of the evidence taken before the Board in the investigation of those charges, and upon which that Report was founded.

"In reply, I am in the name of the Board to refer you to the Statute 9th Vic., Chap. 4, from which, you will perceive, that although the Board of Inspectors may, to a certain extent, be considered to have been erected into a Court for the purpose of investigating any alleged improper conduct on the part of any Officer of the Institution, and to decide thereon, yet they are not constituted a Court of Record, and are consequently not required to commit to writing the evidence brought before them; although therefore, it has been customary for each Member to take notes of the evidence for his own use, such notes have not always been preserved.

"On these grounds, therefore, the Inspectors on an application being made to them by the Surgeon for a copy of the evidence, felt bound to decline acceding to his request.

"As, however, in the present instance, one of the Members of the Board was requested by the others to take notes of the evidence for reference on forming their decision, and did accordingly take pretty full notes of what was considered relevant to the case, which the Board are happy to say, have been authenticated and preserved, they will have much pleasure in complying with the Governor General's desire to be furnished with a copy as soon as that Member can make it.

"The Board at the same time are led to conclude, both from the tenor of your letter and from statements which have reached them from other quarters, that their decision on the case in question formed a subject of complaint against them to His Excellency. And as they have been informed that it has been the uniform practice in all cases where it has been considered proper to take any notice of a complaint against a public Officer or Body, to furnish the Parties complained of with a copy of the complaint, as a matter of justice to them, and to enable them to make such remarks thereon as they may consider necessary for their justification, the Board feel assured that this equitable Rule will not be departed from on the present occasion; and therefore would, through me, respectfully request that they may be furnished with a copy of the communication which has led to their being called on to furnish the evidence in question.

"I have the honour to be,  
"Sir,  
"Your most obedient Servant,  
(Signed,) "THOMAS A. CORBETT,  
"Pres. of the Board of Ins. Prov. Pen.

"Honourable D. DALY,  
" &c. &c. &c.,  
"Provincial Secretary,  
"Montreal.

No. 10.

Copy.—Letter, President Board of Inspectors to Provincial Secretary.

"KINGSTON, 3rd December, 1847.

"Sir,

"Without waiting the receipt of the copy of the communication to His Excellency the Governor

“ General, which I requested in my letter of the  
 “ 27th ultimo, and with which I trust I shall be  
 “ speedily favoured, I have now the honour, in ac-  
 “ cordance with the promise contained in that letter,  
 “ to forward to you, for the information of His Ex-  
 “ cellency, a copy of the Minutes of Evidence taken  
 “ on the investigation of the charges lately preferred  
 “ by the Surgeon of the Provincial Penitentiary,  
 “ against the Kitchen Keeper of that Institution; and  
 “ I am at the same time directed by the Board of  
 “ Inspectors, to accompany it with copies of the  
 “ charges themselves, and of the decision of the  
 “ Board thereon.

“ With regard to the first charge, that of causing  
 “ the loss of Convict Abraham's eye, His Excel-  
 “ lency will perceive that the only evidence in sup-  
 “ port of it, is that of a discharged Convict, a negro  
 “ named Henry Wilson, who is completely contra-  
 “ dicted by many witnesses, both as to the spot where  
 “ the Convict worked at the time he received the in-  
 “ jury, and where it would have been impossible for  
 “ the witness to perceive the alleged transaction had  
 “ it occurred, and by the repeated statements of the  
 “ injured party himself, who is proved by the evi-  
 “ dence of no less than eleven witnesses, to have uni-  
 “ formly stated, both at the time and subsequent to  
 “ receiving the hurt, that it was caused by a splinter  
 “ getting into his eye; and even the witness Wilson's  
 “ own statement, proved to have been made to the  
 “ Hospital Keeper at the time, gives a very doubtful  
 “ account of the matter, and it may be further re-  
 “ marked that the Convict Abraham was discharged  
 “ from the Penitentiary nearly six months before the  
 “ charges were preferred, and that not having been  
 “ brought before the Board, they had no opportunity  
 “ of examining him on oath, and could therefore only  
 “ form their conclusions from the statements proved  
 “ to have been made by him at the time.

“ It will also be seen from the evidence, and ought  
 “ therefore perhaps to be mentioned, that it was  
 “ argued by the accused, not only that he never in-  
 “ jured the man's eye, but that the injury to it caused  
 “ by the splinter was slight, and might have had no  
 “ serious consequences, had it been properly treated;  
 “ that the Surgeon, as appears from the evidence,  
 “ did not see the eye till ten days or a fortnight after  
 “ the Convict first applied for assistance, during  
 “ which time it was treated by the Hospital Keeper  
 “ as a contusion, notwithstanding the Patient's own  
 “ statement of its having been caused by a splinter.  
 “ The Board, however, did not take this argument  
 “ into consideration, in arriving at their conclusion.

“ The Board might have rested their decision here  
 “ on the first charge, as framed by the prosecutor,  
 “ but they considered it their duty to go further and  
 “ to enquire into the fact, whether arrows had been  
 “ fired within the walls of the Penitentiary, inde-  
 “ pendent of that part of the charge which relates  
 “ to the Convict's eye; and although the testimony  
 “ of nine of the witnesses would tend to show that  
 “ Convicts were fired at, and hit by arrows—an equal  
 “ amount of evidence was produced tending to dis-  
 “ prove this. And with regard to the testimony of  
 “ Terence M'Garvey, the witness on whom, from his  
 “ situation in the Institution, they must otherwise  
 “ have placed the most reliance, it is within the  
 “ knowledge of the Board, that he could not, from  
 “ the position in which he describes himself to have  
 “ been at the time, have seen an arrow fired from the  
 “ tailor's shop.

“ The only conclusion, therefore, at which the  
 “ Board could arrive, was, that arrows had been shot

“ at pigeons, &c. in the yard, by the Kitchen Keeper  
 “ and other Officers; and as this was a practice of  
 “ which the Board entirely disapproved, they gave  
 “ peremptory orders for its immediate discontinuance.

“ In support of the second charge, of taking im-  
 “ proper liberties with Convicts; the evidence pro-  
 “ duced was that of the late Matron, but her testi-  
 “ mony was so indistinct that no reliance could be  
 “ placed on it, as she could neither tell when the  
 “ liberty said to have been taken with female Con-  
 “ victs occurred,—the name of the Convict with  
 “ whom it was taken,—nor on her first examination  
 “ could she mention what other officers were pre-  
 “ sent; although on her re-examination she swore to  
 “ the Head Keeper's having been along with the ac-  
 “ cused on the occasion referred to; and from his  
 “ evidence it appears that he was, as he distinctly  
 “ swears that he was along with the Kitchen Keeper  
 “ both on that, and the only other occasion when he  
 “ was within the walls of the Female Prison, and  
 “ that not only did no such occurrence take place,  
 “ but that it was impossible for it to have taken place  
 “ without his having seen it;—and the Board could  
 “ not but place great reliance on the Head Keeper's  
 “ evidence, from the excellence of his character, and  
 “ the distinct and positive manner in which it was  
 “ given.

“ The Board also could not but remark, that the  
 “ Matron was, by her oath of office, as well as by  
 “ the rules of the Institution, bound to have reported  
 “ the occurrence at the time it was said to have taken  
 “ place, which on her examination she admitted she  
 “ had not done.

“ Some of the witnesses have sworn to acts of an-  
 “ noyance on Convicts when confined in the box;  
 “ but these were disproved by the parties themselves  
 “ who are said to have been aggrieved; and more-  
 “ over the Board, of their own knowledge, can say  
 “ that the testimony of Wilson, as to his having,  
 “ when confined, seen the accused perpetrate those  
 “ acts, is false, as no person on either of the galleries  
 “ can be seen from the boxes; and it is moreover dis-  
 “ tinctly proved by the evidence of two highly re-  
 “ spectable witnesses, Samuel Pollard and George  
 “ Sexton; that the perpetrator of these very acts  
 “ was Fitzgerald, one of the witnesses produced in  
 “ support of the prosecution, a Guard who was a con-  
 “ siderable time before this investigation dismissed  
 “ for improper conduct. Moreover the only evidence  
 “ tending to show that the accused was guilty of  
 “ such acts of annoyance, beyond that of Convicts,  
 “ were those of the same Fitzgerald, and another  
 “ Guard who has also been dismissed for improper  
 “ conduct, and who, if the facts they state were true,  
 “ were guilty of a breach of duty, as well as a viola-  
 “ tion of their oath of office, for not reporting them  
 “ at the time, which they do not pretend to say they  
 “ did.

“ The third charge the Board considered of so  
 “ frivolous a nature, that they fully acquitted the  
 “ accused of any improper conduct in the matter;—  
 “ the whole having been founded in the gratification  
 “ of a Convict's request to learn to make nets, and  
 “ the time employed in teaching him having been  
 “ when the Convict, who was a Kitchen Waiter, had  
 “ finished his day's work, and that too with the con-  
 “ sent of the Head Keeper.

“ The fourth charge the Board considered as by  
 “ far the most serious of the whole. But after a most  
 “ patient and careful examination of it, they felt  
 “ bound wholly to acquit the accused;—sufficient

“ proof having been adduced to show that the Prison  
“ Stores had in no instance been sold by the Kitchen  
“ Keeper.

“ It appears, however, to have been the practice,  
“ from the commencement of the Institution, to per-  
“ mit the officers of the Establishment to purchase  
“ from waggons and boats bringing supplies to the  
“ Penitentiary, such provisions as they might require  
“ for the use of their families. It appears also to  
“ have been the practice of the several successive  
“ Kitchen Keepers from time to time, to purchase  
“ provisions, in order to supply the Keepers and  
“ Guards of the Institution for the convenience and  
“ at the request of these officers; as such a practice  
“ has however given rise to misconstruction, and  
“ may lead to abuses, the Board thought it right to  
“ direct its discontinuance.

“ In the course of the investigation it was promi-  
“ nently brought under the notice of the Board, and  
“ strongly urged by the accused, that the prosecutor,  
“ in bringing the charges forward, was actuated by  
“ malicious motives, and that the whole accusations  
“ took their rise in consequence of the presentation  
“ to the Board of a Petition, of which I enclose a  
“ copy, from the Officers of the Institution, com-  
“ plaining that the irregular attendance of the Sur-  
“ geon interfered with their dinner hours, and that  
“ they were subjected to much inconvenience in con-  
“ sequence—which Petition was written by the ac-  
“ cused, by the request of his brother Officers; that  
“ there was a reasonable coincidence between the  
“ time when the fact of the accused having been the  
“ author of this Petition came to the prosecutor’s  
“ knowledge, and the time when these accusations  
“ relative to circumstances of an old date were first  
“ brought forward; that they were supported by the  
“ evidence of discharged Convicts and dismissed Of-  
“ ficers of the Institution, some of whom the prose-  
“ cutor had provided with situations, and for others  
“ of whom he was using his influence; that he had  
“ delivered letters desiring parties to come forward  
“ to support his charges, &c. The Board, however,  
“ considers it due to themselves to state, that they  
“ thought it right to throw all such circumstances  
“ entirely out of view, and, without questioning the  
“ motives which had led to the preferring of the  
“ charges, to go into a full and careful examination  
“ of them, and to come to an impartial decision  
“ thereon.

“ These are the only remarks which the Board  
“ have thought it requisite to accompany the docu-  
“ ments now transmitted. Should it, however, appear  
“ necessary for them, on the receipt of the copy of  
“ the communication to the Governor General for  
“ which they have applied, to add anything further,  
“ they trust His Excellency will permit them to do  
“ so.

“ I have the honour to be,

“ Sir,

“ Your most obedient Servant,

“ (Signed,) THOMAS A. CORBETT,  
“ President Board of Inspectors,  
“ Provl. Penitentiary.

“ Honourable  
“ D. DALY,  
“ &c. &c. &c.”

No. 11.

Copy.—Letter, Assistant Provincial Secretary to  
President Board of Inspectors.

“ SECRETARY’S OFFICE,  
“ Montreal, 9th Dec. 1847.

“ Sir,

“ I have the honour, by command of the Governor  
“ General, to acknowledge the receipt of your letter  
“ of 27th ultimo, in reply to my communication of  
“ the 23d ultimo, upon the subject of certain charges  
“ lately preferred by the Surgeon of the Provincial  
“ Penitentiary against the Kitchen Keeper of that  
“ Institution, and in compliance with the request  
“ made by you on behalf of the Board of Inspectors,  
“ that they should be furnished with a copy of the  
“ communication which led to their being called upon  
“ to transmit the evidence referred to in my letter of  
“ the 23rd ultimo, I have the honour to transmit, for  
“ the information of the Board, a copy of the letter  
“ from Dr. Sampson which occasioned mine of the  
“ 23rd ultimo; the several documents alluded to in  
“ Dr. Sampson’s communication &c among those  
“ forwarded by you with your letter of the 3rd inst.

“ I have the honour to be,

“ Sir,

“ Your most obedient Servant,

(Signed,) “ E. A. MEREDITH.

“ THOMAS A. CORBETT, Esq.,  
“ President of the Board of Inspectors,  
“ Provincial Penitentiary,  
“ Kingston.”

In the course of our proceedings, Mr. Hopkirk, on behalf of the Board of Inspectors, preferred certain charges against Dr. Sampson before us. One of which was for refusing to appear before the Board of Inspectors; Dr. Sampson strove to justify his refusal on the ground that he had been subjected to a series of persecutions by the Board, that he could not expect justice at their hands, and that he had referred the whole matter between them to Your Excellency. To show the injustice he had received from the Inspectors, Dr. Sampson called Judge Kirkpatrick to prove that the Inspectors were not justified in acquitting Smith on the evidence before them. The evidence of this gentleman was given as follows (Mr. Hopkirk, on behalf of the Inspectors, being present):—

By Dr. Sampson:—

“ Is Judge of the Midland District Court; has  
“ been so between four and five years; is a Barrister  
“ of Upper Canada of 14 years standing.

“ Has examined the Depositions taken by the  
“ Board of Inspectors of the Provincial Penitentiary,  
“ on the trial of the charges preferred by Dr. Samp-  
“ son against Francis W. Smith, in October, 1847;  
“ has also perused the decision of the Board of In-  
“ spectors thereon. In witness’s opinion, the judg-  
“ ment of the Board was not in accordance with the  
“ evidence before them.”

It was agreed, by consent of all parties, that Mr. Kirkpatrick should be allowed to put his reasons in writing for expressing the opinion he had given on the evidence before the Board of Inspectors, and that said document shall form part of the evidence in Dr. Sampson’s defence. Mr. Kirkpatrick withdrew for that purpose.

Resumed—

“ Witness gave in a written statement in the following words:—

“ My reasons for forming the opinion I have done (on the proceedings in the trial of Kitchen Keeper Francis W. Smith), are as follows: I consider that there is ample direct proof, uncontradicted and unimpeached, that Keeper Francis W. Smith has been guilty of improper conduct to Convicts, in shooting at them with arrows, throwing water on them, throwing water or potatoes at them, sticking pins into them, knocking the heads of Convicts together, cruelty to Convicts while confined in the box, shooting arrows at or near the Hospital to the annoyance of Convicts confined there, some of whom were in a dying state; the witnesses who prove these charges have not been contradicted, otherwise than by the testimony of persons who swear that they did not see any of the acts alluded to, committed, which is not, in my opinion, receivable to rebut direct affirmative proof.

“ On the charge for employing Convicts for his own purposes, I consider that it is directly proved, that Keeper Francis W. Smith did employ Convicts to collect his arrows and wind twine; there is also direct evidence that a Convict has been seen with him fishing, although it does not appear that such Convict was doing any act assisting said Smith.

“ On the charge for injuring Convict Abraham's eye with an arrow, and thereby causing the loss of his sight, I consider the evidence contradictory, but in my opinion it strongly preponderates towards establishing the guilt of said Smith. In support of the charge, there is the testimony of Convict Wilson, who swears he saw the arrow fired which struck Abraham in the eye, by Keeper Francis W. Smith,—that said Smith immediately went up to Abraham and spoke to him.

“ There is also the evidence of Hospital Assistant Julien, who swears to the nature of the injury which the eye received—that it was a contusion, a description of hurt which, in my opinion, could not be created by the cause alleged by Abraham.

“ On the other hand, there are the statements made by Abraham, not under oath, or before the Inspectors, that the hurt was occasioned by a splinter or shaving while making baskets.

“ The inference that I draw from this is, that Convict Abraham was under duress, and afraid that if he gave information against Keeper Smith, his comfort, while he remained in the Prison, might be prejudiced.

“ On the charge of selling Prison Stores, I consider that it is proved, and not denied that Keeper Smith sold stores in the premises, and that such stores must be taken to be the public stores until the contrary was proved, which might easily have been done, by calling any one or more of the Contractors, or other persons from whom Keeper Smith purchased these supplies, and proving by them that they were purchased and paid for by Keeper Smith for the purpose of re-selling to the Keepers and Guards. I do not see that this has been attempted, neither is it shown that these Contractors are dead, or have left the country.

“ If the stores were public, Keeper Smith should have proved that he accounted to the Treasurer or Clerk of the Institution, for the proceeds of

“ sales. In the absence of such proof, I consider Keeper Smith in the situation of a person who, shortly after a larceny is committed, is found with the thing stolen in his possession; he is bound, in order to acquit himself, to prove how the article came to his possession.”

By Mr. Hopkirk:—

“ Was not summoned to appear before the Commissioners. When Dr. Sampson asked witness to read the evidence, witness expressed a wish that he should be formally summoned; was not requested by the Commissioners to read the evidence; was requested to do so by Dr. Sampson; read over the evidence three times carefully, before forming the opinion which he has given; giving opinions on matters of law and evidence forms part of the professional duty of a Barrister, but more particularly so of a Judge; when he says such duty is more particularly that of a Judge, witness means, that it is a Judge's special duty to weigh the value and bearing of evidence, and submit it to a jury; and with reference to new trials; when witness was asked to act along with Mr. Burroughs he refused to do so, as he considered that would be giving an opinion as a Barrister; in coming before the Commission, without having previously expressed any opinion on the question, and giving his opinion on the evidence to the Commissioners, witness considers he is not acting professionally.

“ The Messenger of the Commissioners came for witness to give testimony on behalf of Dr. Sampson. There were no proceedings before any Court under witness's jurisdiction, which required witness to examine the evidence in question, has never had any similar application to the present one, made to him before. It is a well-known rule in English Law, that no Judge of the Supreme Court can be called on to give opinions on law and evidence, except by the Court of Chancery, the Sovereign, or House of Lords; does not know whether such rule applies to English Judges holding jurisdiction parallel to that of witness; cannot say if Mr. Hopkirk wished to rebut the evidence given by witness, whether any other District Judge would read over the evidence and form an opinion on it, at the request of Mr. Hopkirk, or any other person; witness sees no impropriety in what he has done, as the matters at issue could not come before any Court in which he presides; witness has been for nearly twenty years on the most intimate terms with Dr. Sampson; there is no one in Kingston, except his own family, with whom witness is more intimate; cannot say if witness and Dr. Sampson were or are of the same political party; witness has been quite independent of politics since 1844, and when he did mix with them, he was a resident in the Newcastle District; in his opinion, Mr. Thomas Kirkpatrick did not owe his appointment to the Collectorship of Customs to Judge Hagerman, nor did Dr. Sampson owe his appointment to the Inspectorship of Licenses to Judge Hagerman.

“ Witness has stated that the preponderance of evidence goes to show that Abraham lost his eye through Frank Smith's conduct. If Abraham prosecuted Smith for the injury before the Quarter Sessions, witness is of opinion that no Grand Jury could find a true bill on the evidence; if they did find a true bill, witness would ask another Magistrate to preside at the trial, and he thinks it would be the duty of that Magistrate to charge the Jury that the prosecution could not be maintained, as there was no malice in the transaction; besides,

" Abraham resides in the west. If a witness is examined in Court, before the present witness, the present witness relies much upon the manner in which the first named witness gives his evidence. Witness would not be able to form quite so accurate an opinion upon evidence given in writing, as that taken *vivâ voce*, unless witness had a previous acquaintance with the character of the party whose evidence he was considering. It would depend upon the nature of the crime committed and the apparent motives which would actuate a witness, whether witness would give the same credibility to a person who had been convicted, and had undergone punishment in the Penitentiary, as he would to an unimpeached witness.

" The evidence of a Convict undergoing his sentence, is not legal testimony; considers the evidence of such a witness as moral testimony, unless he has a deep interest at stake; in point of fact, there is no difference between the moral evidence of one Convict undergoing the last day of his sentence, and that of a Convict one day discharged. Under the English Law, a Judge is Counsel for the accused, and in all cases of reasonable doubt, his charge should give the doubt in favour of the accused. Evidence of a witness which had been completely contradicted on one point, is received with doubt on other points of the same issue, although not contradicted; cannot particularize the evidence of each witness on whose testimony he formed his opinion upon the different points of the evidence.

" The only direct evidence of Frank Smith's having hit Abraham with an arrow, is that of discharged Convict Wilson; Wilson swore that Convict John Kelly had his face blackened by Frank Smith; John Kelly swore that his face had never been blackened, but witness received his testimony with doubt as that of a person under duress. Wilson swore as follows: 'At the corner of Blacksmith's Shop heard Convict Ilett tell the Warden that Keeper Smith threw water on him. He complained of it. The Warden made answer to Ilett, that he should take a brickbat and knock him down; Ilett said, that would not do, it would be contrary to the rules of the Prison.' The Warden swore directly contrary to the evidence of Wilson; witness has knowledge of the Warden and none of Wilson, and from that ground, would believe the Warden rather than Wilson; declines giving any opinion as to whether the Warden would be likely to desire a Convict to throw a brickbat at his son. In coming to his opinion upon the case of Abraham's eye, witness has said he depended much on the testimony of Hospital Keeper Julien; it appears from Julien's testimony that he treated Abraham's eye for ten days, without Dr. Sampson having seen it; Julien states that the eye continued swollen during the whole of that period; he states, that when the inflammation subsided, he saw a deep seated injury in the eye; it depends on the nature of the stroke whether a deep seated injury in the eye ought to be described as a contusion; a contusion means an outward injury; a deep seated injury in the eye might be occasioned either by an outward blow or by a splinter. Julien testifies, that 'when the eye was opened, the sight or centre of the pupil or cornea, seemed injured;' cannot say if a contusion would cause lividity; is not a medical man, and formed his opinion from the word contusion employed by Julien; believes it requires a great deal of study to gain an accurate knowledge of diseases of the eye; Julien appears to have been the most competent—the only competent person who gave evi-

dence on the case; has no knowledge of Julien's competency, except his being Hospital Keeper of the Penitentiary for 10 or 12 years; the treatment of the eye is not a separate branch of the medical profession, except in very large cities; has not seen the bow and arrow with which the injury to Abraham's eye was said to have been inflicted; thinks he would be just as competent to judge of the wound by the description of the bow and arrow given in the evidence, as the Inspectors were by seeing it, unless the Inspectors saw the wound.

" Witness being asked on whose testimony he considered it established that F. W. Smith had been guilty of shooting at Convicts with arrows, and of cruelty to Convicts while confined in the box; says he does not feel at liberty to answer without careful reference to the whole of the evidence extending over seventy-three pages.

" Witness gives the same answer to a question as to the employment of Convicts for F. W. Smith's private benefit, and as to the sale, by him, of Penitentiary stores.

" Several questions being put to witness as to the evidence, he declared his inability to answer them without deliberate reference to the evidence."

In Mr. Hopkirk's examination on the charges against the Warden, the following additional evidence was elicited:—

James Hopkirk, Esquire, by Mr. Smith:—

" Recollects examining into certain charges preferred by Dr. Sampson against Kitchen Keeper F. W. Smith, last October. F. W. Smith was acquitted. If the same evidence had been adduced against any other Officer, witness would have returned the same verdict. It did not appear on that trial that the Warden had concealed any alleged bad practice on the part of Frank Smith; had any such thing appeared, the Board would have felt it their duty to take notice of it; has no reason to suppose any time was lost by the Warden in making known to the Board the charges preferred by Dr. Sampson: they were made known to the President of the Board the same day they were preferred. Witness took down the evidence on the trial; as near as possible the *ipsissima verba* were taken down; the whole evidence of each witness was read over to him in presence of Dr. Sampson and Frank Smith; the witness, Dr. Sampson, and Frank Smith were all asked if they were satisfied the evidence was correctly taken down; and each witness was then made to sign his deposition. Dr. Sampson, after the trial was over, but before the decision was arrived at, stated that he had been present at many an examination of witnesses, and had never seen evidence taken down more fully, more fairly, and more impartially than on that occasion. These were his very words. Dr. Sampson asked on the occasion, whether he might be sworn as prosecutor to give evidence. Witness expressed an opinion that he could not be an evidence; but it having been stated that it had been customary to admit the prosecutor to testify on such trials before the Board of Inspectors, the Board (including witness) agreed to admit Dr. Sampson's testimony. Dr. Sampson, however, stated, that as Mr. Hopkirk had objected to it, he did not wish to give evidence. Witness then told Dr. Sampson that he had merely mentioned his opinion incidentally, as an individual member of the Board, but that the Board were now unanimously of opinion that his testimony could be admitted,

"and that they were ready to swear him. Dr. Sampson then stated, that on consideration he did not wish to be sworn. On the close of the evidence, Dr. Sampson said, 'I wish to have it recorded on your minutes that you have refused to swear me.' He was then informed that such was not the decision of the Board, and that they were now ready to swear him. Dr. Sampson stated thereupon, that he did not wish to be sworn, as he thought it was unnecessary."

By Commissioners:—

Q. Were not Dr. Sampson and yourself at one time on very intimate terms?

A. Yes, for several years.

Q. Was he your family physician?

A. He was.

Q. Are you now on good terms with him?

A. Has no quarrel with him, but they do not speak together.

Q. Are you not under bonds to keep the peace towards him?

A. Is not.

Q. Are not others under bonds for you?

A. No; never had the slightest intention of breaking the peace towards Dr. Sampson.

Q. Was there not recently a personal altercation between you on the streets, in which the magistrates interfered?

A. As witness was passing Dr. Sampson's door, Dr. Sampson hooted at witness; and the next time witness saw him on the streets, he told Dr. Sampson that his conduct was such as no gentleman would have been guilty of, and that he was no gentleman.

Q. Were not other persons present when the affair occurred, and heard you use the language?

A. Did not at first observe who were present, but afterwards knew that others were present.

Q. You have in your direct evidence detailed several conversations which you have had with Dr. Sampson. Were those private conversations had before your disagreement with him?

A. Part of them were subsequent to witness's having some dryness with Dr. Sampson.

Q. Were not these conversations of a confidential character?

A. Does not think they were; but if so, being asked the questions on oath, witness was bound to answer them.

Q. How did Mr. Warden Smith know how to put the questions so pointedly as to the facts you had to testify about?

A. Does not know that he put the questions very pointedly; does not remember the terms of them.

Q. You have said that the tone of Dr. Sampson's conversations led you to understand that he was hostile to the Warden,—what was the nature of these conversations?

A. Cannot detail the particulars of them.

Q. You have sworn that from your conversation with Dr. Sampson you were led to believe that "his object was to affect the Warden, and more particularly Mr. F. W. Smith,"—what was the nature of that conversation?

A. Refers to various conversations in which such an impression was conveyed to witness; he stated that the Warden and Mrs. Smith were anxious to get him out of the Surgeonship, and that they had employed Frank Smith to raise a cabal against him, or words to that effect; he also said that he was keeping his office for a particular object, and witness thought it was to aid in getting up charges against the Warden.

Q. Had you anything more than suspicion for thinking so?

A. Does not recollect any words used by Dr. Sampson, on the last occasion in question, against the Warden especially, but he spoke against Frank Smith, and recollecting previous conversations, witness formed the impression he has stated.

Q. Did Dr. Sampson ever tell you his object was to affect the Warden?

A. He never did so in direct words, to the best of witness's recollection.

Q. Did he ever express a determination to be revenged on the Warden?

A. Has no recollection of his doing so.

Q. You have said that Dr. Sampson told you, "Frank Smith was a rascal and a nuisance," have you never expressed yourself to the same import though in different language?

A. Most certainly not.

Q. Have you not stated that Frank Smith should never have been an Officer of the Penitentiary, and that had you been an Inspector, at the time of his appointment, you would have opposed it?

A. No; but witness did say that he had heard a great deal of Frank Smith since he was an Officer of the Penitentiary; that he, witness, was not an Inspector at the time of Frank's appointment; that had he been so, he did not know whether he might or might not have sanctioned that appointment. And witness also stated that nothing had come to his knowledge in Frank Smith's conduct which would induce him to remove him; that it was one thing to appoint a man and another to remove him without good cause. Remembers no occasion on which he expressed an opinion of Frank Smith's appointment further than he has now stated.

Q. Do you think Dr. Sampson has been concerned in the conspiracy against the Warden?

A. Cannot tell, but has heard that discharged Convicts and Officers were in the habit of meeting at his house.

Q. Did Dr. Sampson prefer the charges against Frank Smith on which that Officer was tried by the Inspectors in October, 1847.

A. He did.

Q. Was the investigation which ensued on the said charges, an inquiry into the conduct of Dr. Sampson as well as of Frank Smith?

A. It was not.

Q. Was there any issue before the Inspectors on that occasion which the good or bad conduct of Dr. Sampson in the slightest degree affected?

A. There was not.

Q. Did not several witnesses at that trial give evidence detrimental to Dr. Sampson on matters in no way affecting the issue of the trial?

A. Believes so; witness objected to some of the evidence offered, but did not press it to a decision by the Board, as it seemed to be the general impression of the Members of the Board, that all evidence offered should be taken and its relevancy considered before decision.

Q. Was the decision of the Inspectors to receive every sort of evidence, however irrelevant?

A. No objection was made to any evidence offered, as far as witness remembers.

Q. Did not Keeper Julien give evidence as to whether the Surgeon did justice to his patients?

A. He did.

Q. Did not Mrs. Cox give evidence as to Dr. Sampson's attention to his patients?

A. She did.

Q. Did not Convict Patrick Kelly give evidence as to the manner in which Dr. Sampson treated him, after an accident which he met with in the Penitentiary?

A. He did.

Q. Did not Martin Healy give evidence as to the manner in which Dr. Sampson treated his sore leg?

A. He did.

Q. Was not Convict M'Cormick examined solely upon the manner in which Dr. Sampson treated him for rheumatism?

A. He was.

Q. Was not Convict Patrick Carl examined about the manner in which Dr. Sampson treated his cold and swelled head?

A. He was.

Q. Was not Convict Matthew Udell examined solely upon his alleged improper treatment by the Surgeon when he had a pain in his stomach?

A. He was.

Q. Was not Mark Hermiston examined as to whether Dr. Sampson did his duty to the Convicts?

A. He was.

Q. Was not Guard Thomas Smith examined solely as to whether he had seen Dr. Sampson and his Assistant drunk?

A. Yes; and that Julien was not fit to give medicine to the sick.

Q. What had such testimony by these witnesses to do with Frank Smith's misconduct?

A. Part of Frank Smith's defence upon the charge of putting out Indian Arham's eye, was that the eye had not been properly treated, and in proof of that he endeavoured to show a general carelessness in the treatment of patients on the part of Dr. Sampson, and unfitness on the part of Julien; the Board, in coming to a decision, placed no reliance on this part of the evidence.

Q. How could the bad treatment of Abraham's eye affect the fact, whether Frank Smith did or did not inflict the wound?

A. Does not consider it affected it at all; but witness presumes that if the Board had been of opinion that Frank Smith inflicted the wound, it might have affected the decision of the Board; witness always thought that Frank Smith having placed his defence on the ground that he did not inflict the wound, the manner of its treatment was of no consequence to the issue.

Q. Were the nine witnesses in question called to establish the bad treatment of Abraham's eye?

A. They were called to establish the general careless treatment of patients by Dr. Sampson, and of unfitness by his Assistant, though some of them gave evidence on other points.

Q. Was there any attempt to show that Dr. Sampson, or Julien, had been drunk at the time of Abraham's injury and its treatment?

A. There was not.

Q. Was not the said evidence transmitted by the Inspectors to Government?

A. It was; an exact copy of it was.

Q. Were Dr. Sampson and Mr. Julien afforded an opportunity of defending themselves from the serious charges made against them through the said evidence?

A. They were never put on trial; Dr. Sampson was present and heard every word of it.

Q. Did not Dr. Sampson object to his conduct being made the subject of investigation at that time?

A. Thinks he did not make any special objection; he said, in a laughing way, "you seem to be trying 'the Surgeon,' and witness said, 'I think we are;'" he made no formal objection.

Q. What was the decision of the Board on the case?

A. They acquitted Frank Smith.

Q. Did not Dr. Sampson appeal to the Governor General against the decision of the Board?

A. He did; and requested that the original evidence might be sent down to Government, which was the reason for a full and exact copy being sent.

Q. Did you take down the evidence given on Frank Smith's trial?

A. Yes.

Q. Did you take down the testimony by desire of the Board, in accordance with the usual practice of

the Board to record the evidence in all such investigations ?

A. Yes ; it was taken down by witness, by desire of the Board, as a public record, and witness thinks it was the first case in which he had taken down the evidence for the Board.

Q. Did not a misunderstanding exist, from this date, between Dr. Sampson and the several members of the Board of Inspectors ?

A. Yes ; a dryness occurred very soon after Frank Smith's trial, but entirely on Dr. Sampson's part.

By Mr. Smith :—

“ Frank Smith was allowed to elicit at his trial before the Inspectors, whatever he considered favourable to himself, but witness considered a portion of what he did produce irrelevant. No objection was made to any evidence Dr. Sampson brought forward ; Dr. Sampson had the right to, and did cross-examine a number of the witnesses. Only one witness swore directly that Frank Smith shot Indian Abraham ; that witness did not contradict himself, but part of his evidence was disproved by other witnesses.”

Thomas A. Corbett, Esquire,—by Mr. Smith :—

“ When Dr. Sampson preferred charges against Frank Smith, the Warden made it known to the Inspectors at once.”

The depositions taken by the Board of Inspectors at the trial of Kitchen Keeper Smith will be found under Appendix A.

The effect of this enquiry into the conduct of the Warden's son, was to make a complete separation between the two parties in the Penitentiary ;—those officers who gave evidence unfavourable to Smith and their friends, ranged on one side, while such as testified for him and their friends, went on the other, and a bitterness of feeling between them gradually increased. The Warden had great power in his hands, and was generally supposed to be fully sustained by the Inspectors, and, as a natural consequence, one party gladly attached themselves to what was thought his interest, while the other were (with or without cause) in fear and trembling for their situations. Several Officers who gave evidence at Smith's trial were soon after dismissed from the Penitentiary, and we now propose to show the cause of their dismissals.

CASE OF MRS. COX.

Mrs. Cox was Matron of the Penitentiary, with a Salary of Seventy-five pounds per annum, at the time of Kitchen Keeper Smith's trial, and gave evidence unfavourable to Smith ; Mrs. Pollard, the Deputy Matron, on the contrary, gave evidence favourable to Smith. Mrs. Cox testifies that from the conduct of Mrs. Pollard towards her, in which she (Pollard) was sustained by the Warden, she found it impossible to retain her situation, and accordingly resigned on 1st November, shortly after Smith's trial. Mrs. Pollard was immediately appointed successor to Mrs. Cox.

CASE OF GUARD ROBINSON.

This Officer gave evidence unfavourable to Kitchen Keeper Smith ; fourteen days after Smith's trial by the Inspectors a charge was preferred against Robinson, and he was brought to trial.

Richard Robinson,—preliminary examination :—

“ Was a Guard in the Penitentiary four years and a half ; was dismissed in October or November last ; had no quarrel with the Warden or his family up to the time of the investigation on the complaint of Dr. Sampson against Frank Smith ; previous to this affair Mrs. Smith, the Warden's wife, had frequently told witness that the Warden was determined to give witness the first Keeper's situation which fell vacant. The circumstances attending witness's dismissal were as follows :— About four or five days after Frank Smith's trial, Warden came to witness and informed him that a complaint had been laid against him (witness) that he had left the outside wicket unlocked, and that the matter would be investigated on the Monday evening following ; the investigation did take place before Messrs. Hopkirk, Corbett, Baker, and Gildersleeve, Inspectors, and the Warden ; Mr. Costen, and Guard Bannister and Somerville, gave evidence that they found the wicket open ; witness swears positively that he locked the gate carefully, and tried it ; thinks that it was opened afterwards, and left so by some one ; there was an inner gate which prevented persons getting into the Prison although they had passed the wicket. The Inspectors decided that witness was guilty, but that in consideration of his previous good character, as testified to by the Warden, he was forgiven for that time. About four or five days after this decision, witness was again brought before the Inspectors, on the charge of having a stove-pipe stone in the North-west Watch-tower without leave, and for the purpose of stealing it. Witness declares that the charge is utterly false ; the said stone had been brought to the Tower by himself and Guard Fitzgerald with a small stove and some old pipe, to keep them warm when on duty during the previous winter, nearly a year before the charge was preferred ; and the whole of these articles had lain in the Tower during the whole summer of 1847, and must have been seen by the Warden, as he was often in the Tower while they lay there. Witness brought several witnesses to prove that they had seen the stone laying in the Tower for months before the charge was brought. Before the Inspectors had decided on the case, witness became so indignant at the treatment he had received, that he lost his temper, and told the Inspectors that he had no confidence in any decision they might give ; that Mr. Hopkirk used the Penitentiary as a convenience ; that he often got presents from the Warden ; that articles were sent him from the Penitentiary stores, and a Guard kept almost for his and the Warden's personal purposes. Witness likewise said that he knew the rest of the Inspectors to be the mere tools of the Warden. The Inspectors finally found witness innocent of the charge made against him by the Warden, as to the stove-pipe stone, but dismissed him for gross insolence to the Inspectors.”

James Hopkirk, Esquire,—by Mr. Smith :—

“ Recollects the case of Robinson, a Guard, who was discharged from the Penitentiary ; he was brought before the Inspectors on the charge of stealing or improperly concealing a stove-pipe stone ; thinks Robinson was found guilty of having the

“stove-pipe stone improperly where it was found, but acquitted of any intention to steal it. The cause of Robinson’s dismissal was insolent conduct to the Board of Inspectors at the close of the investigation.”

“Guard Robinson was dismissed for insolence to the Board of Inspectors; the Warden was not present when Robinson was guilty of the impertinence for which he was dismissed, or when the Board decided on the case; the Warden had nothing to do with his dismissal. Robinson did not say in witness’s hearing, when before the Board, that witness used the Penitentiary as a convenience; witness was present during the whole sitting, and had Robinson used such words, he must have heard them. Robinson did not say that witness got presents from the Warden, nor that articles were sent to witness from the Penitentiary Stores, nor that a Guard was kept almost for the Warden and witness’s personal purposes; he did not say that the other Inspectors were the mere tools of the Warden.”

By Commissioners:—

“Ex-Guard Robinson gave evidence at Frank Smith’s trial; thinks it was hostile to Smith; he was dismissed; the examination on Smith’s case was closed on 20th October, 1847, and a decision given on 29th October. On 3rd November Robinson was brought before the Board on a complaint of Head Keeper Costin, and found guilty of leaving the wicket open, but on account of his good character, as given by the Warden and Head Keeper, he was only reprimanded. Robinson was again brought before the Inspectors on 16th November, 1847, about the stove-pipe stone affair, and was acquitted of any intention to steal it, but was dismissed for insolence to the Inspectors. The insolence for which he was dismissed was, when asked if he had anything to say before the Board proceeded to their decision, he turned round and said, ‘I have no confidence in the present Board of Inspectors after their former decision; they are colleague’d with the Warden and certain other Officers of the Institution;’ being interrupted, and told to make no remarks on the conduct of the Board, but to confine himself to his defence, he repeated the same words; being told that the Board would not listen to remarks of that nature, he said; ‘If I am not allowed to speak my mind of the Board here, I will appeal to another quarter,’ and immediately left the room, saying, ‘I decline saying anything further.’ Witness presumes the former decision, alluded to by Robinson, was on Frank Smith’s trial, but Robinson did not say it was. The witness being called upon to produce the notes of evidence taken in the complaint of 3rd November against Robinson, says, notes were taken, but the Clerk has searched the records of the Institution, and cannot find them; presumes they were left under the care of the Warden after the trial. Witness being called upon to produce the notes of the evidence on the charge of the 16th November against Robinson, makes the same answer. Witness swore yesterday that he would not believe Robinson on his oath, from the evidence he gave before the Commissioners, as shown to witness by the Warden; alludes to what Robinson alleged to have passed between Robinson and the Inspectors. Is perfectly certain Robinson on that occasion made no other impertinent remarks other than witness has stated to-day. Has no other reason than this for discrediting any statement of Robinson’s. Up to Frank Smith’s trial

“Robinson bore a good character as an Officer of the Institution; does not know what his character has been since.”

Mr. Sheriff Corbett,—by Mr. Smith:—

“Guard Robinson was dismissed for impertinence; for saying ‘he had no confidence in the Board;’ the Warden had nothing to do with his dismissal; Robinson did not say to the Board that Mr. Hopkirk used the Penitentiary as a convenience, nor that Mr. Hopkirk got presents from the Warden, nor that articles were sent to Mr. Hopkirk’s from the Penitentiary stores; Robinson commenced a harangue, but the Inspectors told him that was no place for such language, and did not listen to him; Robinson said he would go, then, where he could speak and be listened to, and left the room; he did not say that a Guard was kept for Mr. Hopkirk’s and the Warden’s personal purposes; he did not say the other Inspectors were the mere tools of the Warden.”

By Commissioners:—

Q. Did not Robinson use some disrespectful language of Mr. Hopkirk when before the Inspectors?

A. Does not remember that he did so.

Q. What was it Robinson did say?

A. He said he had no confidence in the Board.

Q. State as near as you can the precise language used by Robinson?

A. Witness asked him what he had to say, and Robinson replied that he had no confidence in the Board, and that there was a plot to get him out of the Prison; witness stopped him, and Robinson said, “Well, if you won’t hear me, I’ll go elsewhere,” and left the room.

Q. Do you think this is all Robinson said?

A. Yes; he may have said something more; he was very violent; witness does not remember any more that he said.

#### CASE OF DR. SAMPSON.

Dr. Sampson has been Surgeon of the Penitentiary since it was opened, and up to the time when he brought the charges against Kitchen Keeper Smith he appears to have been on terms of perfect harmony with all the Officers of the Institution. About two months after Smith’s trial, however, and while his appeal to Government was in abeyance, he was called to pronounce on the fitness of Convict James Brown to receive corporal punishment. He reported that Brown was “fit as to bodily health;” the Inspectors thereupon demanded a report on the Convict’s mental condition, and Dr. Sampson pronounced him of “unsound mind.” About the same time, the Surgeon was called on to report on the mental condition of Convict Charlotte Reveille, which he did to the effect that she was labouring under “moral insanity.” The Inspectors did not concur in the opinion of the Surgeon, and delayed reporting the matter to Government for two months, contrary to the rules of the Institution, but desired to call in other medical advice on the cases. Your Excellency was pleased to decline acceding to the request of the Inspectors for further advice, on the ground that the report of the Surgeon of the Institution must be held conclusive.

A long correspondence took place as to the cases of Brown and Reveille, which will be found in Appendix B. The following evidence, however, shows the nature of the proceedings:—

James Hopkirk, Esq.,—by Commissioners:—

Q. Did not Dr. Sampson, on 30th December, 1847, when called upon to certify Convict James Brown's fitness for corporal punishment, enter on the punishment book, "Fit as to bodily health?"

A. Yes.

Q. Was the attention of the Board called to the said report?

A. It was; and the Board, on the 15th January, 1848, directed the Warden to call on the Surgeon "to furnish a full and explicit report as to the health, "both mental and bodily, of the said Convict."

Q. Did not the Surgeon, by letter of 24th January, 1848, write to the Warden in the following words:—"In order to enable me to form a more correct opinion with respect to the mental state of James Brown, it would be requisite that I should be acquainted with the several amounts and descriptions of punishments inflicted for the offences committed by him (Brown), since his admission to the Prison; and I beg to submit, that instead of calling on all the Guards and Keepers to answer such questions as I might put to them touching this case, it would be more convenient if I were furnished with the names of the Officers who reported the Convicts on the various occasions of violence for which he was punished?"

A. Has no doubt he did, and that the letter now shown is the letter in question.

Q. Was not the said letter laid before the Board on the 3rd February, 1848?

A. It was, along with another letter from Dr. Sampson of 18th.

Q. Did not the Board thereupon instruct the Warden in the following terms: "It appearing, from his (Dr. Sampson's) letter of 24th ultimo, that he is unable to make his report on this (Brown's) case, unless he is made acquainted with the several amounts and descriptions of punishments inflicted upon the Convict, the Warden is directed to furnish the statement required?"

A. They did.

Q. Did the Warden write to Dr. Sampson on 3rd February, 1848, as follows: "I have to inform you that your letters of the 18th and 24th ultimo, respecting the case of Convict James Brown, have been laid before the Board, and I am to say, they have directed me to lay the statements of punishments inflicted upon that Convict before you as soon as it can be prepared; although the Board is at a loss to conceive what assistance it will afford you in coming to a conclusion as to the present state of the prisoner's mind, as in neither of the cases of John Donovan and Michael Sheehan,—both of whom, before their being reported by you as insane, had been frequently punished for acts of violence,—was it deemed necessary by you to be put in possession of a similar statement to enable you to come to a decision on their respective cases?"

A. Sees a copy of a letter to this effect in the Warden's Letter Book, addressed to Dr. Sampson, but has no recollection of ever seeing it before.

Q. Please to look at the Minute Book and say if the Inspectors authorised the Warden to express any astonishment at the request of the Surgeon?

A. Sees no such authority or feeling, stated in the Minute.

Q. Do you not consider that by the Minute of the Board, the Warden was instructed to furnish Dr. Sampson with a list of the amount and description of all punishments inflicted on James Brown, since his admission to the Prison?

A. Does consider that such were the instructions of the Board, by their Minute.

Q. Did not Dr. Sampson report to the Inspectors on 16th February, 1848, that having maturely considered his case, he is of opinion that Convict James Brown was of "unsound mind"?

A. He did.

Q. Was it not the duty of the Warden, by the Rules of the Institution, immediately thereupon to communicate the said report of the Surgeon to the Government?

A. Yes; finds there was a rule of that kind passed 18th July, 1846, by the former Board, of which witness was not a member; but, witness thinks, that in his opinion, the Warden should first communicate with the Board of Inspectors, in such cases.

Q. Is there any Rule authorizing or instructing him so to communicate with the Inspectors, before obeying the Rule of 18th July, 1846?

A. Knows of no rule, but the Board sanctioned the departure from the Rule of 18th July, 1846, in this case and Reveille's.

Q. Can you show any Minute authorizing the Warden so to break the Rule in Brown or Reveille's cases?

A. Cannot; but sees that on 24th February, the Warden laid Dr. Sampson's report of 5th February, on the case of Reveille, and his report of 16th February, on the case of Brown, before the Board; and as the Board did not find fault with him for not communicating at once with the Government, witness regards it as a sanction of the breach of the Rule by the Warden.

Q. Were the Board aware on the 24th February, that the Rule of 18th July, 1846, existed?

A. Cannot say.

Q. Was there anything to justify the Warden's postponement of action on the reports of Dr. Sampson, of 3rd and 16th February, until 24th February?

A. Knows of nothing.

Q. Did the Inspectors communicate to Government, the Surgeon's Report on Brown's case, immediately after its being brought under their notice?

A. They did not.

Q. Why?

A. Because they desired to obtain the report of the Superintendent of the Provincial Lunatic Asylum, and of the Head of the Medical Staff on Brown's case, before taking further steps.

Q. Had the Surgeon's Reports ever been appealed from in any previous cases?

A. Knows of none.

Q. Did you conceive Dr. Sampson incompetent to pronounce an opinion on Brown's sanity?

A. It appears the Board wished to have some further advice on the subject.

Q. Why did they wish further advice,—was it because they doubted the skill of Dr. Sampson or his honesty?

A. Because the Inspectors had doubts of the sanity of Brown.

Q. Did the Inspectors think their opinions superior to that of the Surgeon?

A. If they had so, they would at once have decided that Brown was sane, without reference to other Surgeons. It was because they did not consider their judgment superior to the Doctor's, that they applied for further advice, and in the meantime Brown was treated as an insane person, in the terms of the Surgeon's Report.

Q. Did the Inspectors express any opinion on the sanity of Brown?

A. The Board entered on their Minutes on 24th February, 1848, that they "do not concur in the report of the Surgeon."

Q. Had the Inspectors any medical duties imposed on them by virtue of their Office?

A. Is not aware that they had.

Q. What had they to do with concurrence in the Surgeon's Report—was not Dr. Sampson solely responsible?

A. The Inspectors conceived they had a right to inquire into anything which they might think concerned the welfare of the Institution or its inmates.

Q. Is it usual to call in additional advice upon a case in the hands of a medical man, without previously consulting with the professional man in attendance?

A. Is not aware that it is usual.

Q. Did you communicate to Dr. Sampson that you intended to apply or had applied, to Drs. Bell and Telfer, to sit upon his judgment in the case of Brown?

A. Did not.

Q. Did Dr. Bell examine the case?

A. He did not.

Q. Why?

A. Thinks Dr. Bell was never asked.

Q. Was Dr. Telfer written to on the subject?

A. He was.

Q. Did he refuse to attend?

A. He did not; he agreed to attend, provided the Asylum Commissioners consented to his absence.

Q. Did the Inspectors inform these gentlemen that their services would be remunerated?

A. Dr. Telfer was so informed.

Q. Did the Inspectors not also write to parties in the West, for evidence to show that Brown was not insane?

A. Thinks the Warden wrote.

Q. Had he the authority of the Inspectors for doing so?

A. Does not know; he mentioned the circumstance to the Board, but whether before or after writing, does not know.

Q. Is there any Minute of the Board, authorizing him to write?

A. Thinks not.

Q. Did the Board communicate with the Government, while these negotiations to prove Dr. Sampson in error, were going on?

A. They did not, prior to the second letter (of 3rd April) from Dr. Sampson.

Q. Did not Dr. Sampson address a letter to the Inspectors, on 3rd April, 1848, requesting to know if his report on the case of Brown, had been submitted for the consideration of Government?

A. He did.

Q. Did not the Board on 8th April, 1848, instruct the Warden to reply to the Surgeon, that "the Board having already done all which they consider necessary as to the cases of the Convicts (Brown and Reveille) in question, do not feel that they are called upon to take any action on this letter. The Warden will, therefore, simply inform the Surgeon that the Board have taken and will, with the approval of His Excellency the Governor General, continue to take such steps with reference to the Convicts in question, as their cases may, from time to time, render expedient?"

A. They did.

Q. What did the Inspectors refer to, when they said, they had "already done all which they considered necessary" in the case of Brown?

A. Cannot precisely say; presumes they meant they had ordered Brown to be treated as an insane person, and had taken steps to ascertain if he were really insane.

Q. What did the Inspectors refer to, when they said, "the Board have taken, and will, with the approval of His Excellency the Governor General, continue to take such steps in reference to the Convicts in question, as their cases may, from time to time, appear to render expedient?"

A. By the steps taken, they referred to the directions given by them in Minute of 18th March, in reference to Reveille being put in a separate place of confinement; that Mrs. Pollard, in accordance with the Surgeon's directions, should not attend her, and that she should be treated with the greatest kindness and forbearance. By the steps to be taken, the Board referred to the decision come to on that day, to submit the whole case to the Governor General.

Q. What had the steps taken in Reveille's case to do with Brown's?

A. The two cases are mentioned together in the Surgeon's inquiry and in the Minute.

Resumed,—

Q. On what day did the Inspectors first address the Government as to Brown's case?

A. The Board agreed to address the Government at their meeting of 8th April, when Dr. Sampson's second letter was under discussion, and the letter thereupon was dated the 10th April.

Q. Was not the object of that letter contained in the following clause: "Under these circumstances, the Board feel disposed, should His Excellency see no objection to such a course, to obtain the opinion of the Medical Superintendent of the Provincial Lunatic Asylum at Toronto, and of the Head of the Military Staff of Upper Canada, respecting these cases?"

A. This was the principal object of the letter, but it also explained what the Inspectors had already done in the case, and their reasons for the course adopted.

Q. Did you tell the Government in that letter, that the Surgeon's Report had been in your hands three months, and that the Rules of the Penitentiary had for so long been broken through by the matter being kept from Government?

A. No; in witness's former evidence he explained that the Board sanctioned the breach of the Rule.

Q. Did you tell the Government in that letter, that you had already applied to Drs. Telfer and Bell to give an opinion in the case of Brown?

A. No.

Q. What greater necessity was there for writing the Government on Brown's case on 10th April than there was on 24th February, when Dr. Sampson's Report first came before the Board?

A. There was no immediate necessity for action in the case when Dr. Sampson first reported, as the Convict could not be removed by land; but the navigation was about to open when his second letter was received.

Q. Did not the Board inform the Government in their letter, that "in differing from the Surgeon in their opinion as to the insanity of the Convicts in question, they would not be held as casting any doubt on that Officer's professional skill."

A. They did; and added, "it being well known that nothing is so difficult as to determine the difference between an inferior grade of mental alienation and feigned insanity, and that it required very special attention to that particular branch of the profession to enable a physician to attain any great eminence in it."

Q. Had the Inspectors given "very special attention to that particular branch of the profession?"

A. Certainly not; and this was the reason why they wished advice.

Q. Do not cases of feigned insanity occur very frequently in Penitentiaries?

A. Yes; cases have frequently occurred in this Penitentiary, which was one reason why the Board were anxious to ascertain the real state of Brown's mind.

Q. After fourteen years experience as Surgeon of the Kingston Penitentiary, was there any person in the Province so qualified by personal experience as Dr. Sampson to decide on a case of feigned insanity?

A. Thinks however good any one's opinion might be, the opinion of three professional men better than that of one. Witness has also heard Dr. Sampson give as one reason why insane Convicts should be removed to the Lunatic Asylum, the fact that he had not given particular attention to the treatment of insane persons, or words to that effect.

Q. Did Dr. Sampson ever make such a Statement as this to the Board?

A. Thinks not formally, but whether he did so to other members of the Board cannot say.

Q. Did such a statement of Dr. Sampson's influence the Board in appealing from his decision?

A. Cannot say.

Q. Was such a statement urged at the Board?

A. Cannot say.

Q. In the Inspectors' letter to the Government did they enclose certain documents, and did their letter contain a series of arguments to shew that Brown was not insane?

A. They did enclose certain documents, and their letter contained arguments to show that there were doubts of Brown's insanity; also reasons for great care being used in deciding on such cases, and recommending such Convicts for a free pardon, that being the only mode of their removal to a Lunatic Asylum.

Q. Was a copy of that letter communicated to Dr. Sampson?

A. Thinks not.

Q. Was an answer received from Government to that letter?

A. Yes; under date, 25th April, 1848.

Q. Did that answer not contain the following passage, "The Surgeon of the Penitentiary, so long as he holds Her Majesty's Commission in that office, must be considered competent to express an opinion in all matters regarding the health of the prisoners under his medical charge. He must also, in the discharge of his duty, not be considered liable to be actuated by improper motives. It is a sufficient relief from responsibility of others concerned, to produce his report which is their justification, even if they should not concur with him in opinion; while, on the other hand, His Excellency knows of no justification for others if they should happen, mistakenly, to over-rule the professional opinion of the Surgeon, and to treat as criminal, acts proceeding from insanity?"

A. Yes; but there was nothing in the Board's letter imputing improper motives to the Surgeon, nor was there any thing in it which could have led the Provincial Secretary to the conclusion that the Board had treated as criminal, acts proceeding from insanity; the Board were therefore at a loss to conceive how these observations had found a place in the Secretary's letter.

Q. Did not the same letter contain the following passage: "His Excellency commands me to say, that he does not see fit at present to direct investigation by other medical men; for he does not see any thing very extraordinary in the fact, that a woman who, nearly three years ago, was outrageous and violent in her conduct, and reckless of continued punishment, and moreover suffering under disease, should have become insane, or in a state not any longer to be considered a moral agent; and he cannot see the probability of the suggestion, that the outrageous and violent conduct of the prisoner has been the result of a mere scheme to procure a pardon, when the term of imprisonment is to expire in next February, and the plea of feigning madness, if it existed at all, must have been in existence from the time the prisoner was in custody in Montreal, up to the present period. Neither in the case of the Convict James Brown, does His Excellency consider it any conclusive proof of the soundness of the Convict's mind, that for the space of eight years he has exposed himself to the severities consequent upon a perpetual breach of the prison rules, even in a remote hope that he might receive a pardon as an insane person?"

A. It did, and it showed that the Secretary, who was not a medical man, came to a different conclusion, without seeing the Convicts, to that which the Inspectors arrived at, after seeing them.

Q. Did the Inspectors make any reply to this letter of the Provincial Secretary's?

A. They did at great length on 29th April.

Q. In that letter, the Inspectors state, "As to the appointment of a Commission to inquire into the mental state of the Convicts, the Board suggested that course in consequence of the urgency of the Surgeon for their removal, as expressed by a letter to them." What letter did they refer to?

A. Presumes they referred to the letter of 3rd April, in which Dr. Sampson requests to be informed "if any and what steps have been taken for the future disposal of these two insane Convicts."

Q. Had the Inspectors not determined to summon a Commission to "inquire into the mental state of the Convicts" in question, two months and a half before the receipt of that letter?

A. They had on 24th February determined to apply to Drs. Telfer and Bell to inquire into their mental state, but these gentlemen had never seen the patients.

Q. How could the Board say that a course of action taken on 24th February was in consequence of a letter received on 8th April of the same year?

A. The Board did not say so; they referred to the communication which they had made on 10th April to the Government, as to what they intended to do, if His Excellency saw no objection to it.

Q. In the case of Convict Reveille, had not the Inspectors great doubt of her sanity, in consequence of which they applied to the Surgeon, on 17th January, 1848, for a Report on her case?

A. Yes.

Q. Did not the Warden, writing under direction of the Board for such Report, state, that "their attention had been called to the mental state of this Convict, in consequence of her having, since her first reception into the Penitentiary, manifested a most violent and insubordinate temper, by destroying her bedding and clothing, and breaking every article within her reach, and latterly having attempted suicide by hanging herself?"

A. There is a letter in the Warden's Letter Book to Dr. Sampson of date 17th January, 1848, to that effect.

Q. Did the Surgeon report, in answer to said application, on 18th January, 1848, that the Convict Reveille was labouring under "moral insanity?"

A. Has no doubt he did, but does not know the date exactly.

Q. Was not the future action of the Board in the Report on Reveille precisely the same as in that of Brown?

A. To the best of witness's recollection, the cases of Reveille and Brown were mixed up together in the future action of the Board.

Following quickly after the cases of Brown and Reveille, another subject of variance arose between the Warden and Inspectors and the Surgeon.

On an exceedingly cold day in January, 1848, Dr. Sampson observed a Convict, in the open air, with a heavy iron chain on his leg; Dr. Sampson felt it his duty to warn the Warden that it was dangerous to put irons on the limbs in such extremely cold weather in the open air, and recommended their removal for the moment. The Warden referred the matter to the Inspectors, who declined adopting the suggestion of the Surgeon. The following evidence was received on the point:—

James Hopkirk, Esq.,—by Commissioners:—

Q. Did Dr. Sampson apply to the Inspectors in January, 1847, representing that iron chains should not be put on a Convict named Roberts, while the frost was severe?

A. He did not; but the Warden on 15th January, 1848, reported to the Board that the Surgeon had sent him "a verbal message, through the Hospital Keeper, respecting the necessity of taking off the irons from such Convicts, as had been placed on them as a means of restraint and punishment, with a view of preventing their limbs from becoming frost-bitten."

Q. What action did the Board take upon the matter?

A. The Warden was directed to call on the Surgeon for a written report on the subject.

Q. Did not the Surgeon explain by letter of 19th January, in consequence, as follows:—"I have to state for the information of the Board of Inspectors,

“ that having accidentally observed a massive chain  
“ of iron applied to each leg of a Convict, extending  
“ from the ankle to the knee, on the forenoon of the  
“ instant,—on which day the thermometer ranged  
“ from 10 to 20 degrees below zero, and when it  
“ might have been obvious to a common observer  
“ that such applications, under these circumstances,  
“ would scarcely fail to chill the limbs to a dangerous  
“ extent, I took a ready means of apprising you  
“ of what might be the probable effect of this  
“ inadvertence ”?

A. Has no doubt he did.

Q. What was the decision of the Board, when this Report of the Surgeon's was laid before them?

A. They did not deem it expedient to comply with the Surgeon's suggestions, for certain reasons communicated to Dr. Sampson in the Warden's letter, and which were to the following effect:—1st, That no similar report had ever been made before. 2nd, That there were only three Convicts then or for sometime past in irons. 3rd, That for 12 years it had never been found necessary to take off irons from the Convicts during winter, however severe, and that the present season was unusually mild. 4th, That difficulty, if not danger, might ensue from the Convicts knowing that they were not to be ironed in winter. 5th, That the irons averaged 9½ lbs.—that the heaviest weighed 12, and the lightest 6,—and that the Board had ascertained the irons in the District Gaol weighed from 12 to 17 lbs.; and 6th, That no case of frost-bite had ever occurred in the Penitentiary to any Convict, from being ironed.

Q. Did Dr. Sampson ever apply to the Inspectors to pass a general order against putting irons on Convicts in winter time?

A. He did not.

Q. Did any of the six objections given by the Board apply to the special case alluded to by Dr. Sampson, viz., that of a Convict working in the open air with the thermometer from 10 to 20 degrees below zero?

A. The Board did not consider there was anything in that case which took it out of the operation of the general rule.

Q. What induced the Inspectors to give such a deliberate decision on an imaginary application from the Surgeon, which had never any existence?

A. Because the subject was brought under the consideration of the Board by the Surgeon's letter. It is quite a common thing to come to a general rule when a particular case is under consideration.

But an affair soon after arose, of a much more serious character than any that had preceded it. We give the documents at length, and feel that comment is unnecessary:—

No. 1.

Copy.—Report of Assistant Matron, E. Chase, to the Warden:

“ Report.—C. Reveille for improper conduct towards Dr. Sampson at 10 o'clock on Tuesday night, laughing and shaking hands, making a great noise, which, in my idea, was very improper.

(Signed,) “ E. CHASE.”

February 19, 1848.”

No. 2.

Copy.—Minute of Board of Inspectors of the Provincial Penitentiary, 24th February, 1848.

“ The Board having had under consideration, the  
“ Report of the Assistant Matron, against the Convict C. Reveille, and the statement made in support of that complaint, appearing to imply that in her opinion there had been undue familiarity on the part of the Surgeon of this Institution, towards the Convict in question, on the night of Friday last the 18th instant; the Board consider they are bound, in justice to that officer, to acquaint him therewith, in case he may desire to make any statement regarding it, or to call for any investigation on the subject. The Board further direct the Warden to transmit a copy of this Resolution to the Surgeon.

“ Truly extracted,

(Signed,) “ A. BICKERTON,  
Clerk.”

No. 3.

Copy.—Letter, Warden Provincial Penitentiary to the Surgeon, with Minutes of 24th February, 1848:—

“ PROVINCIAL PENITENTIARY,  
“ 25th February, 1848.

“ SIR,

“ Agreeable to the directions of the Board of Inspectors, I beg leave to enclose the copy of a minute made by them on the 24th instant:

“ I am,  
“ Sir, &c. &c.

“ (Signed,) HENRY SMITH,  
“ Warden.

“ JAMES SIMPSON, Esquire.”

No. 4.

Copy.—Letter, Surgeon to President Board of Inspectors.

“ KINGSTON, 26th February, 1848.

“ GENTLEMEN,

“ I beg leave to acknowledge the receipt of the  
“ Warden's letter of yesterday, addressed to me  
“ by your direction, with a minute of the Board of  
“ Inspectors of the 24th instant, with reference to a  
“ Report from the Assistant Matron of the Penitentiary, and I respectfully request that you will be pleased to transmit without delay a copy of these papers to His Excellency the Governor General, to whom it is my intention to address myself upon the subject.

“ I have the honour to be,  
“ Gentlemen,  
“ Your most obedient Servant,

“ (Signed,) JAS. SAMPSON,  
“ Surgeon, P. P.

“ To the  
“ Board of Inspectors, P. P.”

No. 5.

Copy.—Letter, President Board of Inspectors to Surgeon.

" KINGSTON, 28th February, 1848.

" SIR,

" I have the honour to acknowledge the receipt  
" of your letter of 26th instant, addressed to the In-  
" spectors of the Provincial Penitentiary, requesting,  
" with reference to the resolution of the Board of  
" the 24th instant, that copies of the papers might  
" be transmitted to the Governor General, to whom  
" you intend to address yourself on the subject.

" In reply, I am directed by the Board to ac-  
" quaint you that no charge of any kind was pre-  
" ferred against you to them, the matter having  
" arisen quite incidentally in consequence of a com-  
" plaint made by the Assistant Matron against the  
" Convict Reveille.

" The Board thought it right to question the As-  
" sistant Matron as to the particulars of the Con-  
" vict's conduct of which she complained, when in  
" the course of her statement it appeared that in her  
" opinion there had been undue familiarity on your  
" part towards the Convict.

" The Board, under these circumstances, felt some  
" difficulty how to act. While they did not consider  
" it proper without further evidence to entertain a  
" charge of that nature against an Officer of your  
" standing in the Institution, or to arrive at any  
" conclusion as to your conduct on the occasion re-  
" ferred to, they felt that they would not have been  
" acting fairly towards you had they not made you  
" aware of what had been stated, that you might  
" have an opportunity of requesting an enquiry into  
" the matter should you think it necessary to do so.

" While they therefore declined to take down in  
" writing the statement of the Assistant Matron in  
" which your name appeared, particularly as you  
" were not present, and had no opportunity of put-  
" ting any questions to her or offering any observa-  
" tions on her statement, they considered it due to  
" your character and position to notify you of what  
" she had said.

" As you have now requested that the matter  
" may be brought under the notice of the Governor  
" General, the Board feel that you have a right to  
" expect from them a full inquiry into the matter ;  
" they have, therefore, appointed Wednesday, the  
" 1st March next, at 2 o'clock P. M. for such in-  
" quiry and for taking the statements of such wit-  
" nesses as it may be necessary to examine on oath,  
" when they desire your attendance for the purpose  
" of putting any questions or offering any observa-  
" tions you may consider necessary.

" As soon as the inquiry shall have been completed  
" the Board will, as you request, transmit a copy of  
" the whole proceedings to the Governor General,  
" together with any opinions they may arrive at in  
" the matter.

" I have the honour to be,

" Sir,

" Your most obedient Servant,

" (Signed,) THOMAS A. CORBETT,  
" Prest. Bd. Inspectors, P. P.

" JAMES SAMPSON, Esquire,  
" M. D."

No. 6.

Copy.—Letter, Surgeon to Board of Inspectors.

" PENITENTIARY, 3d March, 1848.

" GENTLEMEN,

" In obedience to your directions, as contained in  
" your letter to me of the 28th February, I have  
" now attended your Board.

" It seems not to be in your recollection, that I  
" have already appealed against a verdict you pro-  
" nounced, as I think most unjustly, upon a case  
" that I thought fit to bring under your notice ; and  
" most assuredly whilst this appeal is under the con-  
" sideration of His Excellency the Governor Ge-  
" neral in Council, I will not enter before you upon  
" an investigation, in which my character and con-  
" duct is to become matter of inquiry ; and I so-  
" lemnly protest against your proceedings in doing  
" so.

" You have virtually refused to permit me to  
" place the justification of my character where alone  
" I will seek to defend it ; and it is therefore my  
" intention to transmit this day to His Excellency  
" the correspondence which has passed between us  
" on this subject.

" I have the honour to be,

" Your obedient Servant,

" (Signed,) JAS. SIMPSON,  
" Surgeon, P. P.

" To the  
" Board of Inspectors."

No. 7.

Copy.—Extracts from the Minutes of the Board of Inspectors of the Provincial Penitentiary, 3rd March, 1848.

" The Board having specially met this day to  
" take into consideration the verbal statements made  
" on the 24th ultimo, by the Assistant Matron, in  
" regard to the report on the misconduct of the  
" Convict Elizabeth C. Reveille, so far as they are  
" applicable to the Surgeon, of which meeting that  
" Officer had received due notice, he attended ac-  
" cordingly, but retired immediately, after deliver-  
" ing a letter addressed to the Board, in which he  
" protested against enquiry in regard to his charac-  
" ter being made by the Inspectors. As, however,  
" the Surgeon had previously requested in his letter  
" of the 26th ultimo, that the papers relating to the  
" matter in question, should be forwarded to the  
" Governor General with as little delay as possible ;  
" the Board proceeded to take the examination on  
" oath of the Matron and Assistant Matron, copies  
" of which, together with all other documents rela-  
" tive to this affair, were ordered to be forwarded  
" as early as convenient for His Excellency's con-  
" sideration ; and it was further ordered, that the  
" draft of a letter to accompany these statements be  
" prepared for the consideration of the Board at its  
" next meeting, and that a copy of the same be fur-  
" nished to the Surgeon.

" A true extract.

" (Signed,) " F. BICKERTON,  
" Clerk."

No. 8.

" Copy of the evidence taken relative to the Assistant Matron's allegation of undue familiarity of the Surgeon of the Provincial Penitentiary towards the Convict Elizabeth Reveille."

" Elizabeth Chase, Assistant Matron, Sworn :—

" On the 18th ultimo, Dr. Sampson came to visit the Convict Charlotte Reveille a little before 10 o'clock at night; when he came in he spoke to her several times; she told him she was very bad with a pain in her side, and she showed him where the pain was; he pressed her several times about the stomach, and she said it was not there, it was lower down; he told her she would be better to-morrow; he would send her some medicine, and he shook hands with her, and they were laughing for some time together and making a great noise. The Surgeon had his hand under the bed clothes when he pressed Reveille. Witness does not know if that was the place where the Convict complained of pain; she was complaining of pain there this morning. Reveille told the Surgeon to move his hand lower down, and to press hard; when he did so, she said, "oh, how nice that is;" then he and she would laugh together. Reveille often pulls the Doctor's hand down so. From his laughing and conduct witness thinks the Surgeon had been drinking. Reveille said "what a nice man you are, Doctor, you are the only gentleman ever comes to see me; if you had seen me some months ago you would have found what a nice woman I was." The Doctor smiled and laughed, told her to be quiet, and she would be a nice woman again. Witness does not think the Surgeon's conduct was right; she does not think it right for the Surgeon to put his hand where it was; it was on the lower part of the body under the clothes. Witness does not know if his hand was on her private parts, she thought so, but could not say for certain. The Doctor and Reveille were laughing at the time she said "how very nice it was." On the occasion, witness certainly thought his conduct most improper; she had often thought Reveille's conduct to the Surgeon disgusting; she told the Matron so.

" Reveille did not appear to be, that morning, any worse than she is at other times. Witness never saw the Surgeon, but once, come to the women's prison at night, since she was Assistant Matron. On that occasion, that is the former one, Reveille was very ill in the morning, and he said he would come again at night. The Surgeon had seen Reveille on the Friday morning, the 18th; he did not say he would come back again that night. Witness had no reason to suppose he would come. When he came at night, he asked witness how she (Reveille) was? Witness said, 'much as usual.' He then went to Reveille and said, 'you see I have come to see you again.' Reveille replied, 'Oh! Doctor, how kind you are.' The Doctor never expressed a wish that witness should leave the room when he was with Reveille. He went to see no other patient that night in the Wards; there were three or four other women sick, but not so sick as Reveille.

" Witness's reason for supposing the Surgeon the worse for liquor, was from his conduct, and smelling it on him.

" The other Convicts talked next morning of the Doctor's conduct, and of his laughing; saying, how

" kind he was in shaking hands with Reveille, he was more like a father to her than anything else.

" Reveille is regularly every day worse, as soon as she hears the bell, at which time the Doctor generally comes; she strains and pretends to be worse; she shows him stuff she pretends to throw up, but witness thinks it is her wine and arrow-root. The Doctor told Reveille he would give her whatever she wanted, if she would be good. The Surgeon told the Matron that she (Reveille) was to be indulged in everything she wanted. Witness has no doubt whatever, that Reveille is feigning to be ill, at least making herself worse than she is; such is every one's opinion. The Doctor says it was part cunning, part sickness, and part madness, which ailed her.

" Reveille often puts her hand in Dr. Sampson's pockets, but did not do so that night; she will pull his hand out of his pocket, or he pulls her's, witness does not know which, as she was quite disgusted with them. There is much more familiarity between Dr. Sampson and Reveille than between him and any of the other female Convicts. Witness cannot say if it has a bad effect on the discipline of the Prison.

" Reveille commences pretending to be ill, the moment the bell rings, and keeps on till she sees the Doctor; after he goes, she stops.

(Signed,) " E. CHASE."

Mary Pollard, Matron, Sworn :—

On the night of Friday the 18th February, the Doctor was in the women's ward  $\frac{1}{2}$  before 10 o'clock exactly; witness looked at her watch. She did not see him there, but heard him talking very loud; she listened, and heard Reveille tell the Doctor where to put his hand; heard her tell him to put it lower; heard nothing more between Reveille and the Surgeon, except a great deal of laughing—very loud laughing. He came up afterwards to the Hospital. Witness mentioned that a blister on another female Convict, had not risen, but the Doctor did not examine it. There was nothing improper in the Doctor's conduct to witness or to any other female Convict in Hospital. Witness considered the Doctor very much the worse of liquor. Had witness been sick, and not in the Penitentiary, and the Doctor had come to see her, she should have considered him not in a fit state to visit her as a Surgeon. Witness has several times seen him in a similar state; that is, the worse of liquor, when he has come of an evening to see Reveille. It is not usual for the Doctor to come at night, unless sent for. Never knew him on any other occasion, to come at night, unless he left word in the forenoon that he would be back at night; or unless he was sent for.

" Witness is not aware that he was expected back on Friday evening; she was very much astonished to see him there at night. Reveille was not more than usually sick; she pretended to be mad. Witness has not lately seen any unusual familiarity between the Doctor and Reveille, as she, (witness,) by Surgeon's orders, have been precluded from having any communication with Reveille. This has been for the last five weeks, during which time she never saw her until the day before yesterday, when she went to see her in consequence of the Assistant Matron's absence. The Assistant Matron came up that evening, the 18th February, as soon as the Doctor left, and told witness

“ what had passed between him and Reveille. The Assistant Matron told her Dr. Sampson's conduct was very bad indeed—very unbecoming as a gentleman—particularly as a Surgeon, towards a Convict woman. Witness asked what had been the matter between the Surgeon and Reveille: Assistant Matron explained the position in which they were; that Reveille was so pleased with the way he handled her, that she said he was a very nice gentleman, and his hands felt very nice. From the description Mrs. Chase gave, witness was led to believe the Doctor's conduct had been very indelicate; very gross indeed. Never heard Mrs. Chase expressly say the Doctor had his hands on Reveille's private parts, but from what she said, witness inferred that such was the case, and that such was the Assistant Matron's meaning and impression. The laughing between Reveille and the Doctor was heard by the Convict women generally, both in the little Ward where Reveille was, and now is, and in the large Ward. Witness considers that the familiarity of the Doctor with Reveille has a very bad effect on the discipline of the Institution. The other Convicts are continually remarking how very different his conduct to her is, to his behaviour to others, and how he shakes hands with her. Witness has, herself, observed a very great difference in his conduct towards Reveille and to the other sick female Convicts. He is very kind to her; he is not particularly kind to the others. He often speaks harsh to them; but witness has no doubt they deserve it. The Surgeon stated his reason for wishing witness not to go near Reveille, was, that Reveille had taken an antipathy to her, and that she had better stop away from her. The Surgeon gave orders that Reveille should have what she pleased, and do as she liked.

Witness thinks Reveille feigns indisposition. In the morning about 11 o'clock, before the Doctor comes, Reveille generally gets worse. As soon as he is gone, they hear nothing of Reveille's illness. It has been remarked in the Prison, that it was a pity the Warden had not had the bell muzzled, as if so, she would probably be better. Witness considers that the treatment ordered by Dr. Sampson to Reveille, and his conduct to her, has a very prejudicial influence on the discipline of the Institution.

“ Witness has heard the Doctor tell Reveille that he believed Reveille's ailment was hemorrhage; this was about three months ago, she had a discharge at the time, but not to any great extent. Witness has reason to believe that with reference to this disease Reveille made the Doctor believe she was worse than she was. Witness stated this from having seen certain things done by Reveille for the purpose.

(Signed,) “ M. POLLARD.”

“ I certify the foregoing to be true copies of the evidence of the Matron and Assistant Matron of the Provincial Penitentiary, taken before the Board, on the 3rd March, 1848.

(Signed,) “ THOMAS A. CORBETT,  
“ President, Board of Inspectors,  
“ Provincial Penitentiary.”

No. 9.

Copy.—Letter, President Board of Inspectors to Provincial Secretary.

“ KINGSTON, 8th March, 1848.

“ SIR,

“ I have the honour, by directions of the Board of Inspectors of the Provincial Penitentiary, to forward herewith, for the consideration of His Excellency the Governor General, the correspondence and proceedings of which the accompanying documents are copies.

“ By the 2nd clause of the Statute, 9 Victoria, chap. 4, it is the duty of the Board, among other things, to examine and enquire into all matters connected with the government, discipline, and police of the said Penitentiary—the punishment and employment of the Prisoners therein confined;” in the exercise of which duty a report of bad conduct on the part of one of the female convicts came under their notice; and in the enquiry which was made into the same, it was stated by the Assistant Matron to the Board, that there had been, in her opinion, undue familiarity on the part of the Surgeon of the Institution towards the Convict in question.

“ The Board, however, did not think it fair or just to the Surgeon to act upon the statement made, as he was not present on that occasion; and they therefore directed the Warden to communicate to that Officer a copy of the Minute made in consequence of what had been stated to them by the Assistant Matron; and they subsequently received from him a letter, stating that it was his intention to bring this affair under the consideration of His Excellency.

“ The Board, therefore, directed a reply to be made to the Surgeon, informing him that as he was not present on the said occasion, they had not thought it right to take the evidence in writing, and that they had come to no conclusion in the matter; but that they had appointed the 1st instant as the day on which they would meet to investigate it, and directed the Surgeon to attend accordingly.

“ In consequence of the death of the husband of the Assistant Matron, a principal witness in the case, the meeting of the Board was postponed until the 3rd instant, when the Surgeon attended, and handed in a letter, refusing to submit to any investigation respecting his conduct, and protesting against the proceedings of the Board; and he immediately retired, and instantly drove away from the Penitentiary, so that the Board had no opportunity of recalling him.

“ By the 3rd clause of the Statute before mentioned, it is enacted, “ that it shall be the duty of the said Inspectors to enquire into any improper conduct which may have been alleged to have been committed by any of the Officers or other persons employed in the said Penitentiary;” yet, notwithstanding this positive enactment, the Surgeon protested against the exercise of the power so vested in the Board; and they felt that if the Surgeon were permitted to call in question their authority, every other Officer in the Establishment might adopt the same course, by which the office and duties of the Inspectors would become a mere nullity, and would lead to a state of things subversive of the discipline and destructive to the best interests of the Penitentiary.

“ The Board did not conceive that they were bound to make any distinction in regard to the rank of an Officer, from the highest to the lowest, whenever his conduct became the subject of legitimate consideration; and so long as they were intrusted with the management of the Institution, they felt that they were bound, fearlessly and independently, to execute the trust assigned to them by the statute.

“ Under the circumstances, however, if the appeal made to the Governor General, while the Board came to no resolution on the impropriety of the Surgeon's conduct, in refusing to submit to their authority, a matter which they thought would be more properly left to His Excellency's decision; they considered it imperative on them to take the evidence of the Matron and Assistant Matron on oath, as to the alleged undue familiarity on the part of that Officer towards the Convict; as without a transcript of their statements, which the Board had on a former occasion declined to take in writing in the absence of the Surgeon, His Excellency would have been unable to form an opinion, either as to the correctness of the proceedings of the Board in this case, or the truth of the alleged undue familiarity on the part of the Surgeon.

“ Having, as before stated, taken the declarations of the Matron and Assistant Matron on oath, the Board herewith transmit full copies of the whole proceedings for the information of the Governor General; but have thought it advisable, pending the appeal to His Excellency, to come to no conclusion on the matter.

“ The Board, notwithstanding the Surgeon's having refused to acknowledge their authority, and having no desire to conceal any of these proceedings from him in this case, have thought proper to direct the Warden to furnish that Officer with a copy of this letter.

“ I have the honour to be,  
“ &c. &c. &c.

(Signed,) “ THOMAS A. CORBETT,  
“ President, Board Inspectors,  
“ Provincial Penitentiary.

“ Honourable D. DALY.”

No. 10.

Copy.—Letter, Surgeon Provincial Penitentiary to Provincial Secretary.

“ KINGSTON, 9th March, 1848.

“ Sir,

“ I received yesterday a letter from the President of the Board of Inspectors of the Provincial Penitentiary, enclosing the copy of a report which these gentlemen have thought proper to lay before His Excellency the Governor General, deeply affecting my character.

“ I am not informed by the Board what is the nature of the evidence they have thought fit to take on the subject in question; but I am very anxious that His Excellency would be pleased to afford me the earliest opportunity of meeting these charges before a competent tribunal.

“ The matter at issue relates to a female Convict whom I visited on the night of the 18th February last. I had some time previous reported her insane, and recommended her removal to a Lunatic Asylum, when it could be done with safety. I was in constant attendance on her for serious bodily infirmities, and I feared her death might take place on that day.

“ A recent order of the Board directed me to consider all Convicts reported insane, as upon my list; and under these circumstances the Board had, I conceive, no right to receive any communication whatever, respecting such Convicts, whether of complaint or otherwise, except through me; much less to receive and make Minutes of such case when I was not present; and their having done so in this instance, was in my opinion uncalled for, and improper interference with my professional duties and responsibility.

“ I have acted as Surgeon to the Penitentiary, for nearly fourteen years, and during all this time have endeavoured to fulfil my duty to the utmost, and especially in aiding to carry out its discipline by attention to the directions conveyed to me; and yet it is now attempted to be showed that I refuse to obey the orders of the Board. The present is not a question as to enforcing the Prison discipline, but an attempt to bring my character and conduct under a judgment. I am prepared to prove, when an opportunity is afforded me, in which I can neither expect justice nor impartiality; and it is for this reason, alone, I have declined submitting to it.

“ I have the honour to be,

“ Sir,

“ Your most obedient Servant,  
(Signed,) “ JAS. SAMPSON,  
“ Surgeon P.P.

“ To the Hon. D. DALY,  
“ Provincial Secretary.”

The foregoing Documents exhibit the case as we found it on our arrival at Kingston. We thought it right to re-examine Mrs. Chase and Mrs. Pollard; and we found a material difference between their depositions before us, and those given by them before the Inspectors. Their testimony, to us, was as follows:—

Elizabeth Chase—by Commissioners:—

Is Assistant Matron of the Penitentiary; went to the Institution, in this capacity, on the 15th of November, 1847; obtained the situation through Mr. Sheriff Corbett; has no idea on what subject witness has been brought here; recollects of giving evidence before the Inspectors, as to the matter of Dr. Sampson and Convict Reveille; has never seen or heard read the evidence she then gave, since the day it was given; has never been spoken to by any one on that subject, since witness gave her evidence; has a distinct recollection of the circumstances which occurred on the night of the affair alluded to. The way in which the affair became public, was as follows:—Mrs. Smith, the Warden's wife, sent for witness on the night in question, after the Surgeon had left, and asked witness what the noise she had heard was caused by; witness said it was Dr. Sampson and Convict Reveille; Mrs. Smith said, she (witness) must report the circumstance to the Warden, and desired her to go into the Warden's bed-room and do so; witness refused to go, as the Warden was in bed; next morning Mrs. Smith and the Warden both told witness that she must make

a written Report of the circumstance; witness did so make a written Report of the circumstance, and the matter came in this way, before the Inspectors; witness would have made a report whether the Warden had told her to do so or not. Witness being shewn a written Report, with her name attached to it, says, this is the Report she made of the matter; the affair happened on the 18th February last; the Surgeon visits the Prison daily, in the forenoon; Dr. Sampson visited the Penitentiary on the forenoon of the 18th February; he then saw Convict Reveille; does not know what was the matter with this Convict, she vomited blood; has seen Reveille vomit blood every day for a week; she discharged blood in her urine; she did so constantly, with slight interruptions; altogether she was a most disgusting person; her clothes were exceedingly filthy; she made herself quite a beast; the Doctor saw all this and used to be quite disgusted with her. Reveille was worse some days than others; she said she was worse than usual on the morning in question. Dr. Sampson had seen her in the morning; does not know whether she told the Doctor she was worse; Reveille was lively enough in the afternoon and evening. A little before 10 in the evening, Dr. Sampson came to see Reveille again; he rang the bell of the women's apartment, and witness got up and let him in; when he came in, Dr. Sampson said, "how is Reveille?" witness said, she thought she was better; witness then walked on before the Surgeon to the small Ward where Reveille was; the Surgeon went up to Reveille's bed, and witness stood close beside him the whole time he remained; the bed stood in the open Ward in front of, and close to the doors of three Cells, but there were no women in them; in the three next Cells, there were Convicts, and in some or all of the six Cells of the upper range; these Convicts must have heard all that passed, and some of them could see all that occurred. The Doctor said when he entered, "Well, you see I have come all the way from town to see you again"; Reveille said, "what a nice gentleman you are—you are so kind." Reveille had complained in the morning to the Surgeon, of having a lump in her side; she has it now; does not know whether it was a tumour; Dr. Sampson generally felt her side; he turned down the clothes to do so on this occasion, and put his hand on her side as usual; Reveille said the pain was lower down, and took hold of his hand and pressed it down on her stomach and began laughing; the Surgeon laughed also; thinks it was not on her private parts that Reveille placed Dr. Sampson's hand; thinks it was only on the lower part of the stomach; it was not a spontaneous act on the part of the Surgeon; Reveille had hold of his hand and pressed it on the spot she complained of the pain; when Reveille withdrew her hand, Dr. Sampson did so also; Reveille then laughed loudly, and Dr. Sampson also laughed loudly; witness herself could not refrain from laughing; the Doctor had not his hand under the clothes; the clothes were turned completely down, and Dr. Sampson laid his hand openly on Reveille's stomach, over her flannels; witness saw Dr. Sampson's hand all the time it was on Reveille's body; Dr. Sampson's hand was not on Reveille's body over a minute or two, in all; Dr. Sampson went to see Convict Cook (female), the same evening; witness was not aware of this when she gave evidence before the Inspectors; witness went after the Doctor left, for medicine which he had ordered, but does not recollect whether it was for Cook or Reveille; on reflection, she thinks it was for Reveille. When the Doctor had got through, he left the Ward, and witness went with him and locked the door; Dr. Sampson walked on while witness was locking the door, and when she came up to

him at the foot of the stairs, he was standing speaking to Mrs. Pollard. Witness thinks Dr. Sampson was not longer than five minutes in the Ward where Reveille was, altogether. Witness followed Dr. Sampson towards the Surgery to get the medicine; did get the medicine, but cannot recollect from whom she got it, whether from Dr. Sampson or Mr. Jones. The laughing was very loud; witness thought at the time that it was not proper in the Surgeon to stand laughing with the Convict, in the way he did; at the time witness thought that it was indelicate for a man to place his hand so low down on any woman's stomach. Witness never saw Dr. Sampson act in the same way before; never saw him, at any time, do anything otherwise than was becoming and proper, when visiting the sick Convicts; had seen Dr. Sampson laugh and joke with Reveille before, but never in an unbecoming manner; she used to complain to him that her teeth were all rotted out, and Dr. Sampson promised her a new set; she was always telling him she would have them when she got out. Dr. Sampson used to consider Reveille insane; he treated her as insane; he would never have taken her impudence as he did, if he had not thought her insane. The other day when Dr. Yates was visiting Reveille, she showed him some blood she had vomited into a tin dish; while he was looking at it, she deliberately threw the contents of the dish in Dr. Yates's face, and his shirt, coat and vest were covered with it. Witness smelt wine on Dr. Sampson, on the night in question; thought the Doctor had been out, and probably had taken an extra glass of wine; he talked well enough. Witness thinks that if she had been sick that night, and Dr. Sampson prescribed for her and made up the medicine, she would have had no hesitation in taking the medicine. Never, at any other time, discovered on the Surgeon any appearance that he had been drinking wine or other liquor. Dr. Sampson was very indulgent to Reveille at all times; witness and Mrs. Pollard were instructed by him to humour Reveille in all her whims; expected that the Surgeon did so as a part of his treatment of the case—as a case of insanity; witness thinks Reveille is not insane. Reveille was an Episcopalian; she became a Roman Catholic last week. The Convicts remarked about Dr. Sampson's conduct next day, after the circumstances related, occurred; they said how very kind Dr. Sampson was to Reveille; never heard that any of the Convicts complained of bad treatment from Dr. Sampson. Witness thinks Dr. Sampson performed his duties efficiently and humanely. When witness was examined on this matter, before the Inspectors, Messrs. Corbett, Hopkirk, Gildersleeve, and Baker, were present, and the Warden; Mr. Hopkirk put the questions and wrote the answers down. Dr. Yates has been the Surgeon of the Penitentiary for the last few months; Reveille is as unreasonable with him as she was with Dr. Sampson, but he does not humour her as Dr. Sampson did; he gives her the go-by. Reveille is still treated as an insane person; she has a separate room and a nurse to wait on her, and has indulgences which other Convicts have not.

Mary Pollard—by Commissioners:—

"Is Matron of the Provincial Penitentiary; went to the Institution as Assistant Matron on 1st May, 1847; was appointed Matron on 15th November, 1847. Recollects of giving evidence before the Inspectors as to the visit of Dr. Sampson to Convict Reveille on the evening of 18th February, 1848. It was about half-past 9 when Dr. Sampson visited Reveille on the night in question; witness was getting into bed when the bell rang; dressed herself again, so that she could appear be-

“fore the Doctor. Dr. went with Mrs. Chase, and saw Convict Reveille; heard a part of what passed between Surgeon and Reveille; heard Reveille say, ‘Lower, lower, oh, that is so very nice—you are such a dear good gentleman; no one is so kind to me as you are;’ that is all witness heard. As Dr. Sampson came up the stairs, witness said to him ‘there is a Convict in the hospital, I would wish you to see.’ He went with witness to see the said Convict; Cook was her name; he spoke to Cook; he also spoke to Cane, and looked at a blister she had on; he told her to keep it on longer; after he got through, he left the hospital and witness went to bed. The Doctor was not drunk when visiting the Prison on the night in question; he was merry, as if he had taken an extra glass of wine; he talked quite coherently; he walked quite steady. Witness would never have discovered any thing unusual about the Doctor that night, but for the merry mood he was in, and from smelling wine on him; thinks the Doctor was not exactly fit to administer medicine at the moment. Witness thinks that the time from Dr. Sampson’s entering the women’s apartments to his going with witness to see Cook and Cane, after being with Reveille, was from five to ten minutes; it was full five minutes. Dr. Sampson and Reveille laughed very loudly; the women in both wards heard them.”

“Convict Reveille vomits blood, and also discharges blood with her urine. Dr. Sampson has considered her insane; he has treated her as an insane patient. Witness does not consider her insane.”

“Dr. Sampson has treated witness very disrespectfully since 18th February; he treated her with the greatest respect before that; the women noticed it, and rebelled against her in consequence; they thought that witness was about to be kicked out in consequence of her disagreement with Dr. Sampson. Dr. Sampson has been the cause of great annoyance to witness, and she considers him a very rude man to her personally, and to Mrs. Chase.”

While Mr. Hopkirk was under examination on the charges against the Warden, the following evidence on this case was elicited from him:—

James Hopkirk, Esquire—by Commissioners:—

Q. Did the Inspectors ever investigate a charge brought by Mrs. Chase, Assistant Matron, against Dr. Sampson?

A. In the course of the inquiry into the complaint of Mrs. Chase against Reveille, some part of Mrs. Chase’s evidence appeared to affect the Surgeon; and the Board resolved that it was expedient to communicate the same to Dr. Sampson, in case he should feel inclined to make any statement regarding it, or to call for an investigation into the matter.

Q. Did not the Surgeon reply, on 26th February, in the following terms:—“I beg leave to acknowledge the receipt of the Warden’s letter of yesterday, addressed to me by your directions, with a Minute of the Board of Inspectors of 24th instant, with reference to a report from the Assistant Matron of the Penitentiary; and I respectfully request that you will be pleased to transmit, without delay, a copy of these papers to His Excellency the Governor General, to whom it is my intention to address myself upon the subject?”

A. He did; and it was laid before the Board on the 28th.

Q. What course did the Board take upon it?

A. They resolved at the meeting of 28th February, that a communication should be made to the Surgeon, “explaining the proceedings of the Board in the case of Convict E. C. Reveille, and directing his attendance at 2 o’clock, P. M. on 1st March next, (afterwards changed to 3rd March,) for the purpose of inquiring into the report made by the Assistant Matron on the conduct of that Convict; and to enable him to put any questions to the witnesses it may be necessary to examine, or to offer any observations he may consider necessary.” The letter written under direction of this Minute was in the following terms:—

“SIR,

“I have the honour to acknowledge the receipt of your letter of the 26th instant, addressed to the Inspectors of the Provincial Penitentiary, requesting, with reference to the resolution of the Board of 24th instant, that copies of the papers might be transmitted to the Governor General, to whom you intended to address yourself on the subject. In reply, I am instructed by the Board to acquaint you, that no charge of any kind was preferred against you to them, the matter having arisen quite incidentally in consequence of a complaint made by the Assistant Matron against the Convict Reveille. The Board thought it right to question the Assistant Matron as to the particulars of the Convict’s conduct of which she complained; when, in the course of her statement, it appeared that in her opinion there had been undue familiarity on your part towards the Convict. The Board, under these circumstances, felt some difficulty how to act; while they did not consider it proper, without further evidence, to entertain a charge of that nature against an Officer of your standing in the Institution, or to arrive at any conclusion as to your conduct on the occasion referred to, they felt that they would not have been acting fairly towards you had they not made you aware of what had been stated, that you might have an opportunity of requesting an inquiry into the matter, should you think it necessary to do so. While they therefore declined to take down in writing the statements of the Assistant Matron, in which your name appeared, particularly as you were not present, and had no opportunity of putting any questions to her, or offering any observations on her statements, they considered it due to your character and position to notify you of what she had said. As you have now requested that the matter may be brought under the notice of the Governor General, the Board feel that you have a right to expect from them a full inquiry into the matter; they have therefore appointed Wednesday, the 1st March next, at 2 o’clock, P. M. for such inquiry, and for taking the statements of such witnesses as it may be necessary to examine on oath, when they desire your attendance for the purpose of putting any questions, or offering any observations you may consider necessary. As soon as the inquiry shall have been completed, the Board will, at your request, transmit a copy of the whole proceedings to the Governor General, together with any opinion at which they may arrive in the matter.

“I have, &c.

(Signed,) “S. A. CORBETT,  
“President, Board of Inspectors.”

Q. What took place on 1st March?

A. There was no meeting on that day, but on the 3rd March, when the Board having assembled, Dr. Sampson handed in a letter protesting against any inquiry being made into his character by the Inspectors, and immediately retired. As, however, the Surgeon had previously requested in his letter of 26th February, that the papers in question should be forwarded to the Governor General with as little delay as possible, the Board proceeded to take the examination on oath of the Matron and Assistant Matron; copies of which, together with all other documents relative to this affair were ordered to be forwarded as soon as convenient for his Excellency's consideration, and that the draft of a letter to accompany the said statements be prepared for the consideration of the Board at its next meeting; and that a copy of the same be furnished to the Surgeon.

Q. What report was it which Mrs. Chase made against Convict Reveille?

A. It was a complaint against her for misconduct towards the Surgeon.

Q. How did such a report happen to come before the Inspectors?

A. Cannot tell. The Board sometimes inquire of Officers making complaints the particulars of the alleged misconduct; but cannot recollect if it was so in this case.

Q. Can you state any other case but this, in which you inquired into the particulars of a complaint made against a Convict.

A. Remembers one case in which a Convict had threatened to throw his Keeper from the Cupola; and there were others but cannot condescend on them at the moment.

Q. Did not the consideration of all these cases come up on the Warden's report for the infliction of corporal punishment?

A. Will not be certain.

Q. Is there any mention of any such complaint except this of Reveille's in the Minute-Book?

A. Does not know that there is; and does not know that Reveille's would, had it not appeared to affect the Surgeon.

Q. How did Reveille's case affect the Surgeon?

A. Mrs. Chase's explanations appeared to imply that there was blame attachable to the Surgeon as well as to Reveille.

Q. In what way was blame attached to the Surgeon? What was it he did?

A. The Board came to no conclusion as to the Doctor's conduct; they merely stated, both in their letters to the Government and in their minute, that it appeared from the Assistant Matron's statement, that in her opinion there had been undue familiarity on the part of the Surgeon towards the Convict in question.

Q. You say that Mrs. Chase brought no charge against the Surgeon?

A. She brought none.

Q. Then did the Inspectors voluntarily put Dr. Sampson on his trial on so serious a charge as that of "undue familiarity" with a female Convict on an "incidental" statement by Mrs. Chase, that in her opinion such undue familiarity had taken place?

A. They did not put Dr. Sampson on his trial in the first instance; but Mrs. Chase having stated, in the course of the inquiry about Reveille, that she thought Dr. Sampson had shown undue familiarity; they thought it right to notify the Doctor of it, in case he wished to make any statement or call for any investigation.

Q. When the Inspectors did at last put Dr. Sampson on his trial, was it solely upon the incidental statement of Mrs. Chase?

A. The Inspectors cannot be said, properly speaking, to have put Dr. Sampson on his trial; but they notified him to attend on 3d March, when the Inspectors meant to examine witnesses as to the conduct of Convict Reveille, when he would have an opportunity of putting any questions to them or offering observations, if he considered it necessary.

Q. Did the Inspectors consider Dr. Sampson's character involved in the trial of 3d March?

A. When they sent him the notification they did not know whether his character might or might not be involved in the examination about to take place; but they were led by the verbal statements of the Assistant Matron to expect that there might be matter which Dr. Sampson would desire to explain.

Q. Had not the verbal statement of Mrs. Chase given you a previous knowledge of the character of the evidence which would probably be elicited?

A. Yes; a general knowledge.

Q. Did Mrs. Chase not detail to the Inspectors, when the matter first came up, precisely what she swore to on 3d March?

A. She made a statement very much to the same effect, but does not know if it was quite as full, and it was not on oath.

Q. Provided Mrs. Chase's statements were true, did the Inspectors think there was sufficient ground in her evidence to place a gentleman of Dr. Sampson's character and standing on trial for undue familiarity with a female Convict?

A. The Board formed no opinion, and came to no conclusion on that subject.

Q. Was it not a right which every man had at the hands of a public body, before his character was injured by the name of such a charge having been publicly made against him, that some conviction should have existed in the minds of the Court that there was at least ground for the charge?

A. There was no charge publicly made against Dr. Sampson, and they wished him to be present at the investigation of the subject as he requested the matter might be referred to the Governor General.

Q. Was it "the matter" he wished referred to the Governor General, or only copies of the documents named in his letter of 26th February?

A. It was merely copies of papers the Surgeon asked to be sent; but as the Assistant Matron's statement, which was the foundation of the proceedings, had not been previously taken in writing, the Board thought it right now to take it in that way, that the Government might see what had given rise to the affair.

Q. Was there anything in Dr. Sampson's letters authorizing an investigation into his conduct?

A. On the contrary, he protested against it.

Q. What right had the Inspectors to call on Dr. Sampson to take part in an investigation into the conduct of Convict Reveille?

A. Because the Inspectors considered it due to him, as the statement appeared to affect himself.

Q. Was not the inquiry of 3d March a trial of Dr. Sampson?

A. Cannot say that it was.

Q. Was it a trial of Convict Reveille?

A. Cannot say it was.

Q. What was it then?

A. It was for the purpose of taking Mrs. Chase's Statement on oath; Dr. Sampson having requested that certain papers connected with the matter should be sent to the Governor General.

Q. Would the examination of 3d March not have taken place but for the said request of Dr. Sampson?

A. Cannot say what the Board would have determined to do; but thinks it very possible that but for Dr. Sampson's letter the matter would have dropped.

Q. What papers did Dr. Sampson ask to be sent to Government?

A. The only papers he asked to be sent, were the Warden's letter of 26th February, 1848, to Dr. Sampson, minute of the Board of Inspectors of 24th February, and possibly for Report of Mrs. Chase of 19th February; but the Inspectors did not consider the case complete without Mrs. Chase's evidence.

Q. Was there any object, as regards Reveille, in finding by the proceedings of 3d March what her conduct had been on the night in question: was it proposed to punish her?

A. Thinks not.

Q. Had she been declared insane by the Surgeon for a month previous to Mrs. Chase's Report?

A. Yes.

Q. Is it usual for the Officers to report the freaks of insane Convicts?

A. Thinks not; but the Board entertained doubts of her insanity.

Q. Is not the whole tenor of the examination of 3d March as to the conduct of Dr. Sampson?

A. The greater part of it is.

Q. Is there one topic in which Reveille is spoken of unconnected with the name of Dr. Sampson?

A. There is not; but there is a good deal in reference to Reveille's conduct in Dr. Sampson's absence, and pretending to be worse when the Surgeon came.

Q. (The copy of evidence taken in the case on 3d March, which was transmitted to Government, is put into witness's hands, and he is asked) What is the title placed over the said document?

A. The words are: "Copy of the evidence taken, relative to the Assistant Matron's allegations of undue familiarity of the Surgeon of the Provincial Penitentiary towards the Convict E. C. Reveille."

Q. Does it not seem then, there was an allegation against Dr. Sampson?

A. It does seem, from that title, that there was, on the part of the Assistant Matron.

Q. Whose handwriting is that title in?

A. In Warden Smith's handwriting, and the copy is certified by Thomas Corbett, President Board of Inspectors.

Q. Was Dr. Sampson ever informed that Mrs. Chase had made an allegation against him?

A. He was, by Minute of 24th February, and also by letter of 28th February.

Resumed:—

Q. Is there anything affecting Dr. Sampson as an Officer of the Penitentiary, in the testimony of Mrs. Chase?

A. Yes, to a certain extent.

Q. What improper act does she state him to have been guilty of?

A. Refers to the whole testimony.

Q. Of what acts on the part of Dr. Sampson, did the alleged "undue familiarity" consist?

A. The testimony is there, and speaks for itself.

Early in 1848, a general expectation existed in the Penitentiary, that a Commission of Inquiry, on the affairs of the Penitentiary, would be immediately appointed; and in the month of February, Your Excellency was pleased to direct the issuing of such a Commission.

#### CASE OF Keeper GLEESON.

This Officer gave evidence at the trial of Kitchen Keeper Smith, before the Inspectors, unfavourable to the accused, and in February following he was, himself, brought to trial:—

James Gleeson—Preliminary examination:—

"Was a Keeper in the Penitentiary for nearly three years; was Keeper in the Mason and Stone-cutting Department, the whole time; went into the Institution in April, 1845; left in February last; never had any difficulty with the Warden or any other Officer, while in the Penitentiary; never was

“reprimanded; is a Roman Catholic; was dismissed by the Inspectors, on a charge of having received some blacking for his own use, from a Convict employed in the Stable. The Inspectors said that witness had acknowledged the offence, but witness declares this is not true; says the circumstances of the said blacking are, as follows:—The said Stable Convict came into the shed, which is under charge of witness, about the 14th or 15th of February, and put a pot of blacking on the stove to heat; the messenger of the gang was beside it, and it having caught fire, the messenger's hands were severely burnt, and he was sent into Hospital. About 10 or 12 days after this, witness was sent for to the Office, to give information about some accounts; a Contractor, Conlan, had just sued the Warden on a disputed account for Stone. Witness was asked by Mr. Bickerton if he recollected that Mr. Conlan had expressed himself satisfied with the deductions made from his account? Witness said he recollected quite the contrary. About two days after this, witness was sent for to go before the Board of Inspectors, on the charge as to the blacking, and was dismissed the same evening. Witness thinks his dismissal was influenced by the hostility of the Warden to him, in consequence of the evidence he gave, in October previous, against his son Francis W. Smith, before the Inspectors; and also because he refused to vote for Mr. John A. McDonald, at the request of Mr. Smith, at the general election.”

By Mr. Smith:—

“Does not know who brought the charge on which witness was dismissed; no one was sworn against witness; does not recollect of the Inspectors reading to witness the charges preferred against him.”

James Hopkirk, Esq.,—By Mr. Smith:—

“Keeper Gleeson was dismissed in consequence of his own admission that he had used some ingredients, the property of the Penitentiary, for making blacking for his own use. The fact that a Convict was burnt in making the said blacking, may have also influenced the Board in the matter. The Warden had nothing to do with Gleeson's dismissal.”

By Commissioners:—

“Ex-keeper Gleeson gave evidence at Frank Smith's trial in October, 1847; does not recollect if it was prejudicial to Smith. Gleeson was dismissed on 24th February, 1848, for having used materials, the property of the Penitentiary, to make boot or harness blacking for his own use. Witness thinks the case was examined, and Convict witnesses called, but not sworn; the evidence was not taken down; it did not occupy any length of time. Gleeson admitted that he had been in the habit of getting blacking or boot varnish made from materials, the property of the Penitentiary. To the best of witness's belief, Gleeson admitted that the blacking in question, was preparing for him. Cannot tell who preferred the charges against Gleeson; it is not stated in the Minutes. Cannot say what the value of the blacking was, not great; cannot say if it was worth over or under 7½d. Has no recollection of Gleeson's stating that many of the Officers were in the habit of using the Penitentiary varnish for their boots, when working in the yard in snowy weather. Witness's impression is, that Gleeson intended to take the blacking outside, but he speaks entirely from memory. The complaint was, that the blacking was being made for Gleeson; it was not made; thinks the impres-

sion as to the destruction of the blacking, was taken from Gleeson's admission, but cannot say with any certainty; cannot say the Board came to the decision to dismiss Gleeson on the conviction that he was feloniously stealing the property of the Penitentiary; he was appropriating it to his own use. The words used in the Inspector's Minutes, are these:—‘The Board having taken into consideration, the case of Patrick Clark, a Convict, whose hands have been severely burnt while making blacking from materials, as admitted by Keeper James Gleeson, belonging to the Institution, for his, (Gleeson's) own private advantage; which, being in violation of the Oath of Office, and a flagrant breach of his duty, as an Officer of the Penitentiary, they now direct that he be dismissed from his situation.’ Clarke was a Convict in Gleeson's gang, witness thinks; does not remember if Clarke was making the blacking, but thinks he was. The Stable man (a Convict) was one of the witnesses examined; cannot recollect the evidence he gave; cannot recollect if he stated that he was making blacking for the use of the Stable; is certain if the Board had had reason to suppose that such was the fact that Gleeson would not have been dismissed. Witness would not swear positively that Gleeson admitted having taken materials for blacking, on any other occasion than the one in question; thinks he said that the materials used for blacking by him, on former occasions, might or might not be the property of the Penitentiary; has no reason to believe that Gleeson said blacking had been given to him on other occasions; does not now recollect at this moment, any other reason for Gleeson's dismissal, than his having taken the blacking; knows nothing to Gleeson's prejudice, except this affair of the blacking. As far as witness knows, his character is good.”

By Mr. Smith:—

“Q. Were there any other reasons for Gleeson's discharge, than those stated to the Commissioners?”

A. “None that witness recollects of.”

Q. Do you think the Inspectors were influenced in their decision, by the fact that a Convict's hands were burned?

A. “Does not think that this was one of the reasons, but it might possibly have influenced the minds of the Inspectors.”

Thomas Costen, (Head Keeper)—By Mr. Smith:

“Remembers the dismissal of Gleeson; he was dismissed for employing a Convict in making blacking for his use, with materials, the property of the Penitentiary; made inquiry as to the circumstances at the time; did not ask him where the materials were got; the Convict's name was Patrick Clarke.”

William Chapman—by Mr. Smith:—

“Is a Convict in the Penitentiary; recollects some blacking being made in Mr. Gleeson's shed; there was some turpentine put into the blacking; Gleeson said he got the turpentine for Convict Burgess' hands when they were burnt; Convict Clarke was making the blacking; the turpentine caught fire; there would have been danger of the shed being burnt down if assistance had not been at hand; Clarke got severely burnt; he was in the Hospital some time; witness worked at that time in the stable; Gleeson asked witness to come to his shed, and show him how to make blacking for

" his boots ; he asked witness several times to go to his shed before witness went ; the blacking was not being made for the Prison ; does not use the same articles for harness blacking that was in that blacking ; was called before the Inspectors at the time the affair occurred."

By Commissioners:—

" Was sentenced to five years imprisonment for robbery ; has been nearly four years in the Prison ; never was in any Prison before. Told all he had just stated to the Warden about two months ago, in this Office ; only spoke to him once on the subject ; the Warden wrote down what he said ; at the trial before the Inspectors witness told precisely the same import as now. Clark was making the blacking, and witness was showing him how ; it was being made in a tin cup ; a pint cup ; Mr. Gleeson owned the blacking ; the materials used were bees-wax, lamp-black, mutton suet, and turpentine ; does not know of his own knowledge where any of the articles came from ; Mr. Gleeson was standing past while the blacking was making ; had not spoken to Mr. Gleeson that morning ; had not told Mr. Gleeson that blacking was being for him ; the whole materials together did not exceed in value 7½d. Never made any blacking for any other Officer in the Penitentiary ; never gave them any, nor varnish."

Mr. Sheriff Corbett, President Board of Inspectors—  
by Mr. Smith:—

" Keeper Gleeson was dismissed for using the materials of the Penitentiary in making blacking or varnish ; and one of the Convicts had his hands burnt in making it. Gleeson admitted that he took the materials. The Warden had nothing to do with his dismissal."

Following immediately after the case of Keeper Gleeson, no fewer than three Keepers, (M'Carthy, Keely, and M'Garvey,) all of whom gave evidence at Kitchen Keeper Smith's trial unfavourable to Smith, were brought before the Inspectors on the same day. The avowed cause of this proceeding was a letter from Keeper Pollard, written at the request of the Warden, in which the three Officers in question were mentioned as knowing something against the Warden. Pollard's letter was as follows:—

Copy of Letter of Complaint of Samuel Pollard  
against Mr. Rowlands and others.

" To the Warden and Board of Inspectors,  
" Provincial Penitentiary.

" March 15, 1848.

" GENTLEMEN,

" Since my connection with the Provincial Penitentiary I had often heard mention made of a combination that was making ground, which had for its sole object the desire of destroying the fame, credit, good name, and public standing of the worthy Warden of this Institution. I therefore feel it my duty to lay before your notice the following statements :

" Being desirous to obtain a situation in the Penitentiary, I waited on the Rev. — Herchmer to solicit a recommendation in my behalf for the Warden of the Institution, which in the kindest manner he

" most readily furnished me with, at the same time directing me to the Rev. R. V. Rogers, the Chaplain, for another. I waited also on that gentleman, and on making known my desire, I was greatly surprised to hear the Reverend gentleman make use of very abusive and unchristian language towards the Warden of the Penitentiary ; telling me above all things to let this be my last thoughts of entering that Institution, for I would be nothing less than a slave ; I would have to bow in silent submission to the greatest tyranny exercised by the Warden. In confirmation of which, the Reverend gentleman assured me that the Head Keeper, Mr. Utting, had been used worse than a beast by the Warden. At this announcement, I replied, ' Sir, ' Yes, he continued, a beast was not too strong a language to use. I little knew what a tyrant the Warden was ; that he had robbed him and Mr. Coverdale of part of their salary, and put it into his own pocket. Nor was this all, for he warned me if I had any regard for my life not to enter that Institution ; in proof of which, the Reverend gentleman proceeded to state that since the Warden had turned the Architect and Head Keeper away, the Convicts had become insubordinate, and he was confident they would soon revolt ; in which case he would give very little for the life of the Keepers, (who were a company of brutes,) as the Convicts were determined to rid themselves of such tyrants ; and there was not one, with the exception of himself, who would be able to quell them. The Reverend gentleman here remarked, that he could go amongst them without danger.

" This account of the Penitentiary so alarmed me, that I resolved to forego my desire, and think no more of a place where such scenes as the above referred to were committed. Accordingly, I returned with all haste the recommendation the Rev. — Herchmer had so kindly given me ; saying, that the Chaplain had given me such an awful account of the place, that I dare not lay it before the Warden. The Reverend gentleman then, with parental kindness, desired me if at any time he could render any service not to forget to call on him.

" I beg, gentlemen, with respect to say, that the two years previous to this I had occasionally been engaged in repairs of the water-works within the walls of the Penitentiary, and often had some of the Convicts to assist ; and do here most solemnly state, that I never witnessed but the utmost kindness from the Warden, not only to myself but also to the Convicts who assisted me. I could enumerate more fully, but at present I beg leave with respect to decline. In the course of two month's circumstances induced me to alter my resolution, and I accepted a situation in the Penitentiary, which, from that time to the present, I have been agreeably surprised, for I have seen no tyranny from the Warden, and much less have I found the Keepers like brutes ; but deeply grieved am I to say that I have found a spirit of combination amongst some few of its Officers, growing more daring and insolent, whose object is to set at defiance the Warden of this Institution, and to trample upon any who dared to oppose their progress.

" Soon after my appointment, the Rev. R. V. Rogers wished me to take charge of the Library. I did so, as far as my limited time would allow me. The Rev. gentleman was not satisfied with my attention ; wished me to devote more time. I replied that my duties would not allow me. He then said, he would petition the Board to throw off my Sunday duty ; as he had not time to attend to the Li-

“ brary himself. In a few days afterwards, he told  
 “ me that the Board would not grant his request;  
 “ and it was just like them; any matter that was for  
 “ good, they took no heed of, but anything that done  
 “ no good, would be sure to receive their support.

“ From the first day of my appointment, I heard  
 “ much complaint among the Officers, that the Sur-  
 “ geon did not come early enough, thereby depriving  
 “ them of their dinner time; and on one occasion, a  
 “ Keeper informed me that he had mentioned the  
 “ circumstance to the Surgeon, who replied, ‘ what  
 “ the hell had he to do with his dinner.’ At length  
 “ it was determined to petition your Honourable  
 “ Board for redress; accordingly the petition was  
 “ framed, signed, and forwarded, and I believe, word-  
 “ ed in a respectful manner; among the signatures,  
 “ was my own. A few days after this, I accidentally  
 “ met the Surgeon, who abused me in a shameful  
 “ manner for signing the Petition; saying, he knew it  
 “ was the Steward and Warden that had made us  
 “ sign it; that it should do none of us any good; and  
 “ he cared not a damn for any one in the Prison—he  
 “ would fix us before long. I felt convinced, from  
 “ that moment, the Surgeon would not rest till he  
 “ had obtained revenge for an imaginary injury; and  
 “ hence I found, soon after, he brought some  
 “ vexatious charges against the Kitchen Steward.  
 “ Not content with this, he determined to get pub-  
 “ licity to a species of malice and calumny, in order  
 “ to excite the public, as well as the Council of the  
 “ Province, to look upon the Warden and your Hon-  
 “ ourable Board as a pestilential body, to be shunned  
 “ by society; and hence I found the ‘ *Chronicle and*  
 “ ‘ *News*’ took part in publishing, for the Surgeon,  
 “ most scandalous charges and wicked lies against  
 “ your Honourable Board. This grieved me; and  
 “ being a subscriber, I waited upon Mr. Rowlands,  
 “ in order to convince him, if possible, the cause of  
 “ the Surgeon’s anger. Our conversation ran thus:  
 “ He said the Warden was a bad man; that I knew  
 “ nothing of him; that he had taken the Chaplain’s  
 “ Salary from him; that he had turned the Head  
 “ Keeper away because he was too good a man for  
 “ him; that the Warden had taken half of Mr. Cover-  
 “ dale’s Salary from him, and used him in a most  
 “ shameful manner besides. I replied, that I could  
 “ not believe one word of it. He said, that was for  
 “ want of knowing the man, (meaning the Warden.)  
 “ However, he knew him, and he was determined to  
 “ write him down; the time had come when he and  
 “ the Surgeon, with one or two others, would drive  
 “ the Warden out of the Penitentiary; for they would  
 “ endeavour, by publishing charges against the War-  
 “ den, to incite the Governor and Council to insti-  
 “ tute an inquiry into the affairs of the Prison, when  
 “ there would be plenty to come forward and speak  
 “ against the Warden: out he must go, nothing could  
 “ save him. I said, I was sorry to see him give way  
 “ to everything the Surgeon would say, and I hoped  
 “ that he would not publish falsehoods; but that he  
 “ would keep a respectable journal fit for any gentle-  
 “ man’s drawing room. He also said, that the dis-  
 “ charged Guard Fitzgerald, the Guard Robinson,  
 “ the Hospital Steward Mr. Juliens, had been to the  
 “ Surgeon’s house, and sworn to things that would  
 “ surprise me. I answered, ‘ Oh no; what they would  
 “ say, could receive no belief from me.’ He also  
 “ stated, that the Surgeon had two or three Convicts  
 “ who would come forward and prove charges against  
 “ the Warden. At this stage, I remarked that I  
 “ could see plainly it was a conspiracy to injure the  
 “ Warden; and that I was sorry to see a gentleman  
 “ of the Surgeon’s standing in league with Convicts;  
 “ and that such evidence would not, in my opinion,  
 “ enhance his cause. In proof of which, I remarked

“ that I had Convicts under my charge, who, if the  
 “ Surgeon promised to use his influence to obtain  
 “ their liberty, would swear, with perfect freedom,  
 “ that I had committed murder, if he required it.  
 “ That I had never heard of Convicts being allowed  
 “ in England, the liberty of impeaching the charac-  
 “ ter of any one. Mr. Rollands then said, it did not  
 “ matter; and though he knew the Surgeon was a  
 “ man not to be trusted, yet it just served his pur-  
 “ pose for writing against the Warden. I here beg-  
 “ ged him to bear no malice or hatred towards any one,  
 “ but to no purpose; for he answered me that if he  
 “ and the Surgeon could turn the Warden out of  
 “ Office, they would. That the Surgeon had asked  
 “ the Sheriff, S. A. Corbett, Esq., for all the evi-  
 “ dence given before the Board, respecting the  
 “ charges against the Kitchen Keeper; that the  
 “ Sheriff would soon let him (Rowlands) have them  
 “ for publication, and which would soon finish the  
 “ Warden. There were also others who could tell  
 “ quite enough to ruin the Warden, and that was the  
 “ Keeper M’Garvey, M’Carthy, and Keely, who  
 “ had told the Surgeon things the Warden little  
 “ thought of. I said likely they might; but I bid  
 “ him take care they were all true, in case he got  
 “ himself into trouble; and that I could not see  
 “ how these things could affect him, or why he  
 “ should be so inveterate against the Warden, who  
 “ had done him no injury. He replied, ‘ yes he had;’  
 “ for he would not give him part of the advertise-  
 “ ments as well as the ‘ *Argus*’ and ‘ *Whig*.’ After  
 “ a few more minor remarks, we separated. All  
 “ which is respectfully submitted.

(Signed,) “ SAMUEL POLLARD,  
 “ Keeper.”

The three Officers referred to in this letter, were  
 called before the Board of Inspectors, separately, on  
 18th March, 1848, and we proposed giving the evi-  
 dence on each case.

#### CASE OF Keeper M’CARTHY.

The first of the three called before the Board was  
 M’Carthy, and the following is the evidence as to  
 what occurred:—

James M’Carthy—Preliminary examination:—

“ Was Keeper of the Blacksmiths in the Peniten-  
 “ tiary nearly 15 years; was in the Institution from  
 “ the commencement; was suspended on the 19th  
 “ March last (Sunday morning) at 8 o’clock; got a  
 “ letter, dated 10th April, intimating that he would  
 “ not be paid during his suspension; was dismissed  
 “ by letter of 1st June. Had no quarrels with the  
 “ Warden or his son while in the Institution; had  
 “ no reason to doubt, until he was suspended, that  
 “ he gave perfect satisfaction to the Warden and  
 “ Inspectors.” \* \* \*  
 “ The circumstances attending his dismissal from the  
 “ Penitentiary were as follows:—On Saturday, 18th  
 “ March last, he was sent for to go before the Board  
 “ of Inspectors; he went, and found Messrs: Hop-  
 “ kirk, Corbett, and Gilderslieve assembled. Mr.  
 “ Hopkirk asked witness if he was not the oldest  
 “ Keeper in the Prison? Witness said he was; and  
 “ added, that he had made the axes which cut down  
 “ the trees on the very spot they were then sitting  
 “ on. Mr. Hopkirk said, ‘ that was a good while  
 “ ago, M’Carthy?’ Witness said it was 15 years ago  
 “ come next August. Sheriff Corbett then said, ‘ the  
 “ Warden gives a very good character of you,  
 “ M’Carthy’ (the Warden was not present). Wit-  
 “ ness said he was obliged to the Warden; but he

“ had left nothing else in his power. Mr. Hopkirk then said, ‘ M’Carthy, a friend of the Warden’s ‘ has written him that you have a great many ‘ charges against the Warden.’ Witness said, he ‘ would like to know how this friend of the Warden’s could know whether he had charges against ‘ the Warden or not; and he asked Mr. Hopkirk to ‘ read the letter to him, or tell him what the charges ‘ were; and then he would give the Warden any ‘ satisfaction he required. Mr. Hopkirk said, ‘ no ‘ doubt witness was telling the truth,’ and Mr. ‘ Corbett said, ‘ Certainly he was.’ Mr. Hopkirk ‘ then asked witness, ‘ if he thought the Warden a ‘ fit and proper person for his situation as War- ‘ den?’ Witness said he thought he was. Mr. Hop- ‘ kirk asked witness, whether the Warden showed ‘ partiality in his conduct towards the Convicts, or ‘ if he did equal justice? Witness said, he thought the ‘ Warden acted impartially. Mr. Hopkirk then ‘ asked, if the Warden was impartial in his conduct ‘ towards the keepers? Witness said he was. Wit- ‘ ness was then asked, if the Warden was an honest ‘ man? Witness said, he thought he was. Mr. Hop- ‘ kirk then desired Mr. Corbett to swear witness. ‘ Mr. Corbett tendered the Bible to witness, but ‘ witness refused to swear. Sheriff Corbett then ‘ threatened him if he would not swear, and read to ‘ him the Clause of an Act of Parliament, giving ‘ the Inspectors the power to administer oaths to the ‘ Officers, and to dismiss them if they refused. Wit- ‘ ness said, he was well aware the Inspectors had that ‘ power. And Sheriff Corbett continuing to threaten ‘ him, he added, that he would be sorry to lose his ‘ situation, but the Inspectors might act their plea- ‘ sure, as he would not be sworn as to the truth of ‘ the answers he had given. Mr. Hopkirk then said ‘ to the other Inspectors, ‘ We have, however, to ‘ write this evening to the Governor; and as ‘ M’Carthy is so timid about swearing, we will take ‘ his statement.’ Mr. Hopkirk then wrote out a ‘ statement, embodying the replies he had given to ‘ the several questions; read it to witness, and asked ‘ him to sign it. Witness refused to sign the paper. ‘ Mr. Hopkirk then said to witness that he was a ‘ great rascal; that he regarded all he had said as ‘ lies; and that he could not believe a word he ut- ‘ tered. Witness said he was sorry Mr. Hopkirk ‘ had so poor an opinion of him; and Mr. Hopkirk ‘ remarked, ‘ Oh, I see he (meaning witness) does ‘ not understand it;’ and he read the paper to wit- ‘ ness again. Witness still refused to sign the state- ‘ ment. Witness further states that Sheriff Corbett ‘ tendered the Bible to him three times, and asked ‘ him each time to swear; witness steadily refused. ‘ Sheriff Corbett got quite angry; took up his stick, ‘ and paced the floor much excited. Finally, the ‘ Board dismissed witness to his work. Witness was ‘ suspended next morning by Head Keeper Costen, ‘ until next day at 1 o’clock. Witness went to the ‘ Prison next (Monday) morning at 10 o’clock, and ‘ saw the Warden. The Warden asked witness why ‘ he did not sign the statement? Witness said he did ‘ not wish to do so. The Warden said, it was no af- ‘ fair of his (the Warden’s); he had no hand in it; ‘ it was the Inspectors’ own act. Witness replied, that ‘ the Inspectors said otherwise; that they told wit- ‘ ness that he (the Warden) had received a letter, ‘ informing him that M’Carthy had charges against ‘ the Warden. The Warden said it was not so; that ‘ the Inspectors had received the letter themselves, ‘ and that he had nothing to do with it. Witness ‘ asked the Warden who he was to believe—him or ‘ the Inspectors—for they told a different story. ‘ Finally, the Warden told Witness that he was sus- ‘ pended until further orders; and he heard no more ‘ of the matter other than the two letters mentioned

“ at the beginning of his evidence.” And again:—  
 “ On the Monday morning, when witness was sus-  
 “ pended, witness met Mrs. Smith at the hall door  
 “ of the North Wing. Mrs. Smith said, ‘ Why did  
 “ you not do as the Inspectors wanted you, M’Car-  
 “ thy; you that have been so long under the mas-  
 “ ter?’ Witness said, he did not wish to swear to  
 “ the statement. Mrs. Smith said, ‘ Don’t you think  
 “ the master is an honest man?’ Witness said, he  
 “ did not doubt but he was. Mrs. Smith then said,  
 “ the Inspectors were sitting at the time; and pressed  
 “ witness to go before them and sign the paper; add-  
 “ ing that they (the Warden and his wife) had just  
 “ received a letter from her son Henry, at Montreal,  
 “ and that it was all right; there would be no inves-  
 “ tigation. Mrs. Smith took witness by the arm and  
 “ pulled him towards the door of the Inspector’s  
 “ room, but witness refused to go in.”

By Mr. Smith:—

“ Recollects being called before the Inspectors on  
 “ 18th March last, about the affair on which witness  
 “ was dismissed; was asked questions by the In-  
 “ spectors; will not be certain if his answers were  
 “ taken down; a paper was written out by Mr.  
 “ Hopkirk concerning the matter, which he said he  
 “ was to send to the Governor General that evening.  
 “ Witness refused to sign it. Mr. Hopkirk read out  
 “ the document; and when he would not sign it,  
 “ called witness a rascal or scoundrel, or something  
 “ of that kind; and said he believed all witness had  
 “ said was lies. Will not be certain whether he told  
 “ Mr. Hopkirk that the document he had written  
 “ out was true; if it had been true witness would  
 “ have signed it. He could not tell if the Warden  
 “ was an honest man, or fit for his situation; which  
 “ was in that paper: to the best of witness’s opinion  
 “ the Warden was not. Mr. Hopkirk asked witness  
 “ if the Warden was an honest man, and fit for his  
 “ situation; and witness thinks Mr. Corbett did so  
 “ also. Witness knew the Warden and Inspectors  
 “ were good friends, and ‘ to be sure’ he told them  
 “ everything that would please them. Thinks the  
 “ paper was read over to witness two or three times.  
 “ Thinks the Warden and Inspectors all wished to  
 “ have witness dismissed; certainly if they had not,  
 “ they would not have dismissed him. Was dismissed  
 “ by the Warden and his Inspectors. The Warden  
 “ was not present during the examination; but wit-  
 “ ness thinks he was not far off.”

James Hopkirk, Esquire—By Mr. Smith:—

Prior to the dismissal of Keely and M’Carthy, in  
 March, 1848, witness, at their examination, took  
 down accurately the answers they made to the ques-  
 tions, put to them by the Board; the answers were  
 read over to them before they were asked to sign  
 them. They did not then state that they knew any-  
 thing to the prejudice of the Warden; on the con-  
 trary, they said they knew nothing against him; they  
 declared that what had been taken down, was strictly  
 true; never used the words, “ we have to write this  
 “ evening to the Governor, and as you are so timid  
 “ about swearing, we will take your statement.”  
 M’Carthy was however told, that as he objected to  
 be sworn, “ the Board wished him to sign the state-  
 “ ment without swearing to it.” Keely and M’-  
 Carthy were dismissed, because they would not sign  
 or swear to what they had repeatedly declared to be  
 true; and the Board thought that men who would  
 act so, were not fit to be trusted in such responsible  
 situations. The Board thought that they must  
 either have stated what was not true, or that they  
 had some secret reason for refusing to verify what  
 they knew to be true; and that in either case they

were not to be trusted. The Warden was not present at the investigation or decision in the case. Witness never told M'Carthy on that occasion, that he was "a great rascal;" if he has sworn so, he has perjured himself, as witness has reason to believe he has done, on other occasions.

By Commissioners :—

" Ex-keeper M'Carthy, gave evidence at Frank Smith's trial, in October, 1847; his evidence, to the best of witness's recollections, was not unfavourable to Frank Smith; witness may be mistaken in this; he was one of the oldest Officers of the Penitentiary. M'Carthy was brought before the Inspectors, on 18th March, 1848; there was no complaint against him; he was brought before the Inspectors as a witness; he was brought up as a witness on an inquiry into the conduct of Warden Smith; there was no charge preferred against Warden Smith; the Inspectors wished to inquire into the Warden's conduct; they were informed that M'Carthy knew something to the Warden's prejudice, and they wished to know if such was the fact. One week previous to this investigation, viz., 11th March, 1848, the Board had written to the Government, asking that a Commission might issue to inquire into the whole affairs of the Penitentiary, to satisfy the public mind. On examining the Inspector's Letter-book, witness observes that reference was made in the Inspector's letter, to a letter from the Warden to Government, of 19th January, 1847, praying that a Commission might be appointed to inquire into the conduct of himself, and the other Officers of the Penitentiary. Has heard that a Commission was issued by the late Administration this spring, to inquire into the affairs of the Penitentiary, but had no official intimation of it; the first witness heard of such a Commission, was through a letter sent from Mr. Secretary Daly, to Dr. Sampson, which the Doctor left in the 'Chronicle and News' office, and witness saw there; it did not name the Commissioners, but stated that the Government had resolved to issue a Commission; cannot say if witness saw this previous to the 18th March; believes the late Government went out of Office early in March, previous to M'Carthy's being brought before the Board; at the time M'Carthy was before the Board, the Inspectors thought it very likely that a Government Commission would be shortly issued. The Inspectors did not know what the things were which M'Carthy knew to the Warden's prejudice; it was for the purpose of ascertaining them, that he was brought there; the knowledge that M'Carthy had such things to tell, was conveyed to the Inspectors in a letter from Keeper Pollard, addressed to the Inspectors or Warden; cannot say whether the letter came direct from Pollard to the Inspectors, or through the Warden; thinks the latter; the Warden expressed no disinclination to have the matter inquired into; on the contrary, he rather wished it; does not know who got Pollard to write this letter; presumes it was done of his own accord."

Resumed :—

" Witness explains that he has examined since yesterday, James M'Carthy's evidence on Frank Smith's trial, before the Inspectors, and the only evidence he gave on that occasion, was as to the credibility of two witnesses, Robinson and Fitzgerald, of whom, he said, he knew no reason why they should not be believed on Oath."

By Commissioners :—

" Witness is shown a letter signed 'Samuel Pollard, Keeper,' addressed to the Warden and Board of Inspectors, Provincial Penitentiary, and dated '15th March, 1848,' and says this is the letter on which M'Carthy was brought before the Board. Witness is asked to state the particular passage of this letter, which induced the Inspectors to institute an inquiry into the conduct of Warden Smith, and says, he thinks it likely, as far as his recollection serves him, that the following passage might be the one: In speaking of some conversation, he (Pollard) had with Mr. Rowlands of the 'Chronicle and News,' the latter says, Mr. Rowlands told him (the writer), there was also others who could tell quite enough to ruin the Warden, and that was the Keepers M'Garvey, M'Carthy, and Keely, who had told the Surgeon things the Warden little thought of. Thinks this must have been the principal passage which led the Inspectors to call upon M'Carthy, to know if he had anything to say; on examining the letter, says there is no other allusion made to M'Carthy, in it. Witness being asked whether the fact was not, that this inquiry into the conduct of the Warden was instituted on a report from a party, that he had been told by a second party, that he (the second party) had been told by a third party, that he (the third party) had been told by M'Carthy, 'things the Warden little thought of.' Says the Board considered themselves bound to inquire into anything affecting the character of any Officer of the Institution; and they did not think they would have been justified in shrinking from doing so in the case of the Warden, any more than in the case of an inferior Officer. A formal representation had been made to the Board, by one of the Officers, that certain other Officers were alleged to know something prejudicial to the character of the Warden, and the Board conceived themselves bound to inquire if such was the fact; they did not put the Warden on his trial; they merely called the parties before them, to know if there was any truth in what had been alleged; cannot say, at this distance of time, whether the Inspectors proceeded to the inquiry on a particular Clause of the Penitentiary Act, or on the general authority which they understood themselves to have; is not aware that any person called on the Inspectors to make any inquiry into the matter; has no doubt the Warden was quite willing to have the inquiry; cannot say, but supposes, from the address of Pollard's letter, that it may have communicated to the Board, through the Warden; it is not, however, so stated in the Minutes. When the Board of Inspectors examine charges against any Officer of the Institution, the habit is, that the party accused shall be present; sometimes preliminary inquiries have been made without the party accused being present; but in all cases when charges are gone into, he is present; the inquiry in question, into the conduct of the Warden, was a preliminary inquiry; there have been several other preliminary inquiries, as far as witness recollects, but he speaks from memory; has an impression that there was a preliminary inquiry into a charge against Guard Bannister, for taking out a bag of oats from the Institution, when the Board were satisfied he was not guilty; on reference to the Minutes, witness finds no mention of this inquiry, and if it is not there, it must have been omitted; to the best of witness's recollection, Bannister was not present at the whole of the inquiry, but was at a portion of it. The practice is, when a complaint is made by any one, the In-

"spectors examine him, and if they find ground sufficient for an investigation, the accused is called in and remains during the examination of witnesses on Oath. Bannister's case occurred since the Commission sat. There was a preliminary examination in the case of Dr. Sampson and the Convict Reveille; the inquiry was into the conduct of Convict Reveille, and it turned out in the course of that inquiry, that there appeared to be matter affecting the Surgeon; this inquiry (of 24th February), as to Reveille, was not a preliminary examination into the conduct of Dr. Sampson. The Board did not proceed further with the case of Reveille, as she was said to be insane, and the matter seemed to involve the Surgeon fully as much as her. Witness cannot condescend at this moment, upon any one instance but the Warden's, in which a preliminary examination was had on an Officer in his absence, but is of an impression that there have been such. The Warden was not present at the preliminary investigation in question; he was told he had a right to be present, but declined being so. Witness is asked what difference there is between the mode of conducting a regular examination and a preliminary examination by the Inspectors, and says there is not much difference; a regular examination is under Oath, and a preliminary one is not always so; in a regular examination, the accused is always called on to make his defence, and in a preliminary one, he is not always called upon to do so; the one is more of the nature of an inquiry, and the other of a trial. Witness is asked if he ever knew any other preliminary examination by the Inspectors, than the one in question, as to the conduct of the Warden, which was taken under Oath, and says he does not remember any other. When M'Carthy came before the Board, he was informed that the Board had received intimation that he could give some information as to some alleged improper conduct on the part of the Warden, and if so, it was his duty to make it known, which he was now called on to do; he was further told to tell the truth without fear, and that nothing he could say, would be turned to his disadvantage; that the Board were as much bound to listen to, and inquire into any alleged improper acts of the Warden, as of the lowest Officer of the Prison, and would visit such acts with the same displeasure; does not remember if M'Carthy made any reply before the Oath was tendered to him; does not recollect that M'Carthy told the Inspectors, before the Oath was tendered to him, that he had no information to give as to improper conduct on the part of the Warden; thinks no questions were put to M'Carthy before the Oath was tendered to him. When the Oath was tendered to M'Carthy, he refused to be sworn; stating that he would tell the truth the same as if he had been sworn. He was asked his reason for so declining. He said he had made a vow never to take another Oath in the Penitentiary. Believes he was reasoned with, on his refusal to be sworn. He was told that the Inspectors had the power to compel him to swear. Thinks he was told the Act gave the Inspectors this power; but cannot recollect if he was told what would be the penalty of his continuing to refuse. It is impossible for witness to recollect the precise words used, at this distance of time. He was pressed to swear. He may have been told, the Inspectors had the power to dismiss him. Dares to say he was so told. M'Carthy was not told he would be dismissed; as far as witness recollects. The Board then decided that it was not necessary to insist on M'Carthy's being sworn at that stage of the proceedings, and began

"to question him. He was asked if he knew anything against the Warden's character or conduct, or had stated so: and he answered, that he knew nothing whatever, against the Warden's character or conduct; that he knew nothing wrong of the Warden, or against his character or conduct. He replied, in answer to a question, that he had never stated to any one, that he knew anything against the Warden's character or conduct. He also added, that he never saw anything about the Warden, but what was honest and upright. Cannot say whether this last was in answer to a question, or given voluntarily. Witness gives this evidence from a memorandum taken at the time, signed with the initials of the three Inspectors present. Witness is shown the said memorandum, as found in the records of the Institution; and says, this is the document he alludes to. The said statement was taken down by witness, and read over to M'Carthy, who declared it correct. M'Carthy was then asked to swear to it, and refused to do so; he was asked to sign it, and refused; he was asked his reasons for refusing to sign, but gave none. Has no doubt he was asked more than once, to swear to the statement. Does not recollect if he was again warned of the consequences, if he still refused to swear; should think not. Either M'Carthy, Keely, or M'Garvey, (who were all examined on the same matter) asked where the Inspectors got their information. They were not told. The Board either declined to tell the one who asked the question, or gave no answer. There have been other complaints besides this, taken up by the Board, against Officers, on the written letters of complaint of other Officers. Mr. Rogers' complaint against Keeper Pollard, is one instance, and thinks, one by Skinner, against Pollard, was another. Does not remember any other. Both of these cases have occurred subsequent to M'Carthy's. The complainants in these two cases had the right to be present at the investigation, and were notified to be present. In M'Carthy's case, Pollard who wrote the letter was not present, nor was he notified. Is not aware that, until informed by the Commissioners many months afterwards, Pollard was ignorant that any investigation had taken place on his letter, or that M'Carthy and Keely were dismissed in consequence of what occurred at that investigation. The Minutes show that the Inspectors regarded the inquiry as one into the conduct of the Warden. M'Carthy was not asked if the Warden was a good man for his situation. He was asked no questions beyond those witness has mentioned. Before M'Carthy left the room, he was told, that if he wished to amend the answers he had given, he might still do so, but he said it was all correct. The decision on the matter given by the Board, after examination of the three Keepers, was as follows:—The Board, finding from this preliminary examination, that there is nothing to warrant the inference that the information laid before them was well founded, consider it unnecessary to proceed further with the investigation. With regard to the conduct of the Keepers M'Carthy and Keely, the Board postpone coming to a final determination thereon, till Monday next, at 9 o'clock, A.M., but direct the Warden to intimate to them that they are, in the meantime, suspended until after the next meeting of the Board. The Board took the matter up again on 20th March, and pronounced the following verdict:—With respect to the case of Keely, the Board could not conceive that any honest man, whatever his scruples might be, in taking an Oath, could have any objections to putting his sig-

“ nature to a statement which he knew to be true ;  
 “ and considering that a person who, when called  
 “ before them for examination as a witness, would  
 “ make a statement to which he was afraid to put  
 “ his name, must either be conscious that it was  
 “ untrue in some particulars, or have some improper  
 “ reason for refusing to authenticate it, which he was  
 “ afraid to divulge ; in either of which cases he would  
 “ be utterly unworthy to be intrusted with the res-  
 “ ponsible situation of Keeper : considering also the  
 “ general report of discipline in the gangs placed  
 “ under his charge, for which he was reprimanded on  
 “ the 8th October last, and the many instances of  
 “ misconduct recorded against him, and further con-  
 “ sidering the absolute necessity of enforcing due  
 “ subordination among all who are employed in the  
 “ Institution, would probably, under ordinary cir-  
 “ cumstances be called upon to direct his dismissal.”

“ With regard to the Keeper M'Carthy, for the  
 “ reasons first above stated, and also on account of the  
 “ numerous complaints of negligence and inattention  
 “ already existing against him, as well as from the  
 “ former Board having found it necessary to direct  
 “ his dismissal so soon as a suitable person could be  
 “ found to take his place, and from the present Board  
 “ having been called upon to reprimand him also for  
 “ not maintaining due subordination in his gang, and  
 “ the continual carelessness and inattention, they con-  
 “ sider that although his conduct to the Board was  
 “ not disrespectful, they would also probably under  
 “ ordinary circumstances be obliged to direct his dis-  
 “ missal. But taking into consideration that the  
 “ Board have applied to His Excellency the Govern-  
 “ or General for a Commission of Inquiry into the  
 “ affairs of the Penitentiary, they deem it more ex-  
 “ pedient, in the meantime, to suspend the two  
 “ Keepers above-mentioned until an intimation of  
 “ His Excellency's intentions as to the issue of a  
 “ Commission shall be made known, or until the  
 “ inquiries of such Commission shall be brought to a  
 “ close. The Board took the matter up again on 8th  
 “ April, and instructed the Warden to inform Keely  
 “ and M'Carthy that they would not be paid during  
 “ their suspension. Does not know whether the  
 “ habit was to pay suspended Officers ; but a doubt  
 “ having been raised on the subject, the Board then  
 “ decided that suspended Officers were not entitled  
 “ to be paid. The Inspectors did not expect that  
 “ these men would be paid when they suspended  
 “ them ; but they heard that Keely and M'Carthy  
 “ expected to be paid, and they thought it necessary  
 “ to inform them of the contrary. The opinion of  
 “ the Board was, that the proper punishment of  
 “ M'Carthy was dismissal ; and he would probably  
 “ have been dismissed but for the approaching sitting  
 “ of the Government Commission. Some of the In-  
 “ spectors thought that in the circumstances, the less  
 “ they meddled with the Officers of the Penitentiary  
 “ the better. The Board took up the matter again  
 “ on 31st May, and without any further inquiry  
 “ dismissed Keely and M'Carthy. At this meeting  
 “ Dr. Baker, who had been absent at the previous  
 “ meetings, was present. The Board had not then  
 “ received intimation that the present Commission  
 “ had been appointed ; they were informed five days  
 “ afterwards, (5th June,) by letter of 1st June, that  
 “ such was the fact. Thinks the reason for their  
 “ being dismissed was, that the Board had been in-  
 “ formed that Keely and M'Carthy might compel  
 “ them to pay their salaries until they were finally  
 “ dismissed, and the matter had lain so long that  
 “ blame might attach to the Inspectors. Remembers  
 “ no other reason for their dismissal. To the best  
 “ of witness's recollection, when M'Carthy and Keely  
 “ were dismissed the Board had no positive intimation

“ that Government was about to issue a Commission.  
 “ On reference to the Inspector's Letter Book, it  
 “ appears that the Inspectors had intimation from  
 “ Government by letter of 25th April of their inten-  
 “ tion to issue a Commission without delay, and  
 “ therefore that witness was in error in his previous  
 “ statement that they had no knowledge of it when  
 “ M'Carthy and Keely were dismissed. There is no  
 “ reason stated in the minutes for M'Carthy's and  
 “ Keely's dismissal. There was a greater certainty  
 “ that a Commission would be immediately issued at  
 “ the time of the dismissal than at the time of sus-  
 “ pension. Previous to M'Carthy's dismissal he had  
 “ been reprimanded for carelessness, and thinks also  
 “ for some bad work ; but otherwise, as far as wit-  
 “ ness knows, his character was good ; he was one of  
 “ the oldest Officers in the Prison ; never heard any  
 “ thing against his honesty or veracity. Witness  
 “ has sworn that he would not believe M'Carthy on  
 “ his oath ; did so from certain statements transmitted  
 “ by the Commissioners as having been made by  
 “ M'Carthy on oath before them which witness  
 “ knows to be untrue. A portion of the said state-  
 “ ments, if true, would have been very prejudicial to  
 “ witness. Witness has no other grounds for saying  
 “ that he would not believe M'Carthy on his oath  
 “ than these statements. Witness tried to have  
 “ M'Carthy criminally indicted at last Assizes on  
 “ account of part of the said statements, but was not  
 “ successful at that time in consequence of Mr. Com-  
 “ missioner Brown's having objected to testify before  
 “ the Grand Jury at last Assizes as to the evidence  
 “ given by M'Carthy before the Commissioners.  
 “ Witness intends to repeat the application at next  
 “ Assizes. If M'Carthy has not made the state-  
 “ ments before the Commissioners which he is said  
 “ to have made, witness could have no desire to pro-  
 “ ceed against him criminally or in any other way ;  
 “ nor would he have any reason for thinking that he  
 “ was not to be believed on oath.”

Resumed :—

“ Witness explains that he now remembers an-  
 “ other case wherein the Board inquired into a charge  
 “ made in writing by one Officer of the Institution  
 “ against another ; alludes to an entry made by Dr.  
 “ Sampson in the Hospital Register on the 9th day  
 “ of March, 1848, in which words were used reflect-  
 “ ing on some persons in office in the Penitentiary,  
 “ as being actuated by feelings of animosity and de-  
 “ ceit. The Warden called the attention of the  
 “ Board to the said entry. The Board summoned  
 “ by letter Dr. Sampson to come before the Board  
 “ and explain to whom he alluded, with the view of  
 “ examining into the matter. The Doctor refused  
 “ to appear. The Board did not proceed with the  
 “ investigation, as they had nothing on which to  
 “ proceed.”

By Mr. Smith :—

Q. Did the Inspectors ever use *ex parte* evidence against any Officer, or did they when they had held a preliminary examination go over all the evidence again ?

A. When the Inspectors found it necessary to go on with an investigation, they examined the witnesses on oath in presence of the accused.

Q. Were Keely and M'Carthy present together when examined on 18th March ?

A. No, they were examined separately.

Q. When the charges and evidence were served on the Warden by the Commissioners, do you not consider they became his property?

A. I do think so.

Q. Was it a publication of those charges, when the document left the hands of the Commissioners?

A. That is a question of law which witness is not prepared to decide, but thinks it was.

Q. Were you prevented from obtaining the object you had in view in going before the Grand Jury to complain against M'Carthy?

A. I was.

Q. Was there any case pending before the Government at the time relative to M'Carthy's alleged perjury?

A. Not that witness was aware of.

Q. Do you think the charge against Dr. Sampson for publishing a decision of the Board of Inspectors when it was before the Government, analogous to that made by you against M'Carthy?

A. Does not.

Q. Was Dr. Sampson an Officer of the Penitentiary when the complaint was made against him?

A. At the time of the occurrence he was.

Q. Was M'Carthy an Officer of the Penitentiary when you endeavoured to get him indicted for perjury?

A. He was not.

Q. Was not the complaint against Dr. Sampson an act of the Board of Inspectors?

A. Yes.

Q. Had the Inspectors anything to do with the charge of perjury against M'Carthy?

A. No, it was entirely an act of witness's own as an individual.

Q. Had your appeal to the Grand Jury any object to bring the Commissioners into contempt?

A. No.

Q. Do you think the Inspectors were influenced in their dismissal of M'Carthy, Keely, and M'Garvey by the evidence these men gave at Frank Smith's trial?

A. They were not.

\* \* \* \* \*

Q. Why was not Mr. Pollard called before the Inspectors as to his letter about the charges against the Warden in the same manner as Dr. Sampson was in the matter of the entry in the Hospital Register?

A. Because from Pollard's letter it appeared that he knew nothing of the charges personally, but mentioned other Officers who did, and who were called. In Dr. Sampson's case, it appeared that he only knew of the matter charged.

Samuel Pollard,—by Commissioners:—

Q. Did you make any complaint or lay any charge against Keepers M'Carthy, Keely, and M'Garvey, before the Inspectors or Warden?

A. No.

Q. Witness is shown a letter in his handwriting, dated 15th March, 1848, and is asked if he sent it to the Warden?

A. Yes.

Q. What was your object in sending that letter?

A. To let the Warden know what witness had heard was going on in the Town and Prison respecting himself (the Warden.)

Q. Had you any intention, in sending that letter, to call for an investigation into the conduct of any one?

A. None.

Q. Did you write that letter at the request of the Warden?

A. Wrote the part of it relating to Mr. Rogers, at the request of the Warden, the other part was written by witness voluntarily.

Q. Was not that part of your letter, referring to your conversation with Dr. Sampson, written at the suggestion of the Warden?

A. Is not positive, but thinks not.

Q. Was that part of your letter, referring to your conversation with Mr. Rowlands, written at the suggestion of the Warden?

A. Cannot say, the time is long past.

Q. How often did the Warden ask you to write; what was said about him, previously to your complying with his request?

A. To the best of witness's belief only once.

Q. How long was that one time before you wrote?

A. Cannot say.

Q. Where were you when the Warden spoke to you on the subject?

A. It was at the door of the Warden's office to the best of witness's belief.

Q. Did you ever speak to the Warden on the subjects contained in your letter of 15th March, 1848, except on the one occasion at his office door?

A. Cannot say positively, as it is nearly a year ago.

Q. Did the Warden ever speak to you on these subjects in his own apartments?

A. Cannot positively say now.

Q. Did you tell the Warden of your conversation with Mr. Rogers soon after you came to the Prison?

A. Cannot positively say.

Q. Did you tell the Warden of the conversation you held with Dr. Sampson at the Doctor's door?

A. Cannot say now.

Witness's evidence of 2nd October, 1848, was here read aloud in presence of Mr. Smith.

Q. Did you tell the Warden of the conversation you had held with Mr. Rowlands?

A. Is not sure whether he did or not.

Q. How long was it before you wrote the letter that the Warden asked you to write down what Mr. Rogers had said?

A. It was not long.

Q. Was it a month?

A. It was.

Q. Did you bring any charge against the Warden in your letter?

A. Not to his knowledge.

Q. Was your letter written with the view of bringing the Warden to trial before the Inspectors?

A. No.

Q. Was not that letter solely as a private communication for the information of the Warden?

A. It was.

By Mr. Smith:—

“ Considers it his duty to make the Warden and Inspectors acquainted with what was going on in the Institution; had no bad feeling against M'Carthy, Keely, and M'Garvey, in reporting what he had heard against them in Kingston; all witness wrote to the Warden, on 15th March, 1848, was not for the Inspectors, and was perfectly true. Witness is asked, how it came if the said letter was for the private information of the Warden; it was directed to the Warden and Inspectors? and witness (having referred to his letter) says that he had not seen the said letter since he wrote it, and had forgotten that he addressed it to the Warden and Inspectors.”

Q. Do you now consider it a private communication to the Warden only?

A. No.

Mr. Sheriff Corbett, President Board of Inspectors,—By Mr. Smith:—

“ Recollects the case of M'Carthy and Keely. It came to the knowledge of the Board, that these men knew something against the Warden. The Board sent for them, and witness told them what they had heard, and that the Inspectors were anxious to know the truth. Witness told them to say all they knew against the Warden, and assured them it would not prejudice their situations. They declared they knew nothing against him. Mr. Hopkirk wrote out their statements; they were severally read to them, and they acknowledged that what was written was correct, but refused to verify their statements on Oath. Witness then said, if they had stated anything incor-

rect, those statements would be destroyed, and others drawn up. Both refused: M'Carthy said he had made a vow never to take another Oath in the Penitentiary. Keely gave no reason but that it might come against him at some other time. The Warden was not present at the examination of Keely and M'Carthy. Mr. Hopkirk did not, in witness's hearing, tell M'Carthy that he was a great rascal.”

By Commissioners:—

Q. Who brought it to the knowledge of the Board, that M'Carthy and Keely knew something against the Warden?

A. A letter from Pollard.

Q. Did Pollard bring that letter to the Inspectors, or did the Warden do so?

A. The Warden did so.

Q. Was there any charge made in that letter, against the Warden?

A. No; it only stated that M'Carthy, Keely, and M'Garvey, had stated outside, that they knew something against the Warden.

Q. When the question was severally put to them, did not all of these men deny that such was the case?

A. They did.

Q. What necessity was there for taking depositions on Oath, that these men knew nothing against the Warden?

A. Witness, speaking for himself, was anxious to know if there was any truth in the reports against the Warden?

Q. That is not an answer to the question. What necessity was there for swearing these men to a negative?

A. To obtain the truth.

Q. Then, did you doubt their veracity when they said they knew nothing against the Warden?

A. Never doubted their veracity until they refused to be sworn.

Q. Was not the inquiry of the Board grounded upon the information they had received, that those men had charges to make against the Warden?

A. Yes.

Q. When those men declared before the Board that they had nothing to say against the Warden, was not the object of inquiry at an end?

A. As witness said before, the Inspectors desired to find the truth.

Q. Was it not in consequence of the refusal of M'Carthy and Keely to swear to their statements, that they were dismissed?

A. They were suspended and finally dismissed; because they would not verify their statements by an Oath.

## CASE OF Keeper KEELY.

Martin Keely,—Preliminary examination:—

“ Was Carpenter Keeper in the Penitentiary for 11 years; was suspended on 19th March last (on Sunday); was advised by letter that he would not be paid while suspended (on 10th April); and was dismissed by letter of 1st June; never had any difference with Warden; nor with any other Officer of the Institution; never had any occasion to doubt that the Warden and Inspectors were perfectly satisfied with him, up to the affair which caused his dismissal. The facts of witness's dismissal were as follows:—On Saturday, 18th March last, witness was sent for, to go to the Office immediately. Witness went, and found in the Inspector's Room Messrs. Hopkirk, Corbett, and Gildersleeve. Mr. Hopkirk said to witness he was sorry to hear there was some misunderstanding between witness and the Warden. Witness said he knew of none, and asked what Mr. Hopkirk alluded to. Mr. Hopkirk said not to mind, and that he would take down witness's statement. Mr. Hopkirk then asked witness if he intended to bring any charges against the Warden. Witness replied he did not. Mr. Hopkirk then asked him if he had observed any dishonesty in the Warden. Witness said he had never seen him steal anything. Mr. Hopkirk put his question again, and witness said he had not seen any dishonesty in the Warden. Mr. Hopkirk then asked if witness had seen the Warden display any partiality. Witness said he had not. Mr. Hopkirk then asked witness if he did not think Mr. Smith a fit and proper person to be Warden. Witness said he did. After some further questions, Mr. Hopkirk desired Mr. Corbett to swear witness. Witness refused to be sworn. Mr. Hopkirk asked witness if he would not swear to the truth of his statement; 'or,' added he, 'are we to take all you have said as lies?' Witness said he could not swear to any such statement as that elicited from him. Mr. Hopkirk asked witness to sign what he (Hopkirk) had written. Witness refused. Mr. Corbett then asked witness if he was not aware that the Board was authorized to take evidence, and that his present conduct endangered his situation. Witness said he knew this. Mr. Corbett asked why witness would neither sign nor swear to his statement. Witness said it was because he thought a few days would give more light on the subject, (alluding thereby to the charges preferred by Dr. Sampson, and to the reported issuing of a Commission to investigate the whole affairs of the Penitentiary,) and that he would not be tied up to any man. Witness then left the Office. At 8 next morning (Sunday) he was informed by Keeper Costen that he was suspended till next day, and at 10 o'clock next day (Monday 20th) witness was told by the Warden that he was suspended. Has had no explanation whatever, other than he has now given, of the cause of his suspension, and does not know why he was suspended, unless this narrative furnishes it. The answers made by witness to Mr. Hopkirk's questions were not witness's real sentiments. The reason why he did not give his real sentiments was, that he was afraid to do so: it was quite understood among the Keepers that any one who opposed the Warden's will would be got rid of on the first opportunity. Officers have been got rid of for no other apparent cause. King was thought to be one, and Fitzgerald and Robinson.”

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By Mr. Smith:—

“ Recollects being before the Inspectors at the time he was suspended, on 18th March, 1848. Mr. Hopkirk wrote down a lot of stuff, and wanted witness to swear to it. When witness refused to do so, Mr. Hopkirk wanted witness to sign it, which he also refused. Mr. Hopkirk read over to witness what he had written. Mr. Hopkirk asked the questions at witness; he wrote down pretty near the answers witness gave him; never told Mr. Hopkirk that what he had written, was correct; told him that he could not swear to the answers which had been elicited from witness.”

James Hopkirk, Esquire,—By Mr. Smith:—

“ Prior to the dismissal of Keely and M'Carthy, in March, 1848, witness at their examination took down accurately the answers they made to the questions put to them by the Board. The answers were read over to them before they were asked to sign them. They did not then state that they knew anything to the prejudice of the Warden; on the contrary, they said they knew nothing against him. They declared that what had been taken down, was strictly true. Keely and M'Carthy were dismissed because they would not sign or swear to what they had repeatedly declared to be true; and the Board thought that men who could act so, were not fit to be trusted in such responsible situations. The Board thought that they must either have stated what was not true, or that they had some secret reasons for refusing to verify what they knew to be true, and that in either case they were not to be trusted. The Warden was not present at the investigation or decision in their cases. Witness never told M'Carthy on that occasion, that he was 'a great rascal.' If he has sworn so, he has perjured himself, as witness has reason to believe he has done on other occasions.”

By Commissioners:—

“ Ex-keeper Keely gave evidence at Frank Smith's trial before the Inspectors, in October, 1847. As far as witness recollects, thinks his evidence was very little, either prejudicial or favourable to Frank Smith. On reference to the evidence, finds he was only called to speak to the character of two witnesses, Robinson and Fitzgerald, of whom he testified that they were worthy of belief. Robinson and Fitzgerald had given evidence highly unfavourable to Frank Smith, and an attempt was being made by Smith, to break down their character. Believes Keely was 11 years an Officer of the Penitentiary. Keely was brought before the Inspectors, on 18th March, 1848, (at the same time as M'Carthy), upon the investigation which ensued on Pollard's letter. The proceedings in the case of Keely, were nearly similar to those in the case of M'Carthy. Keely refused to be sworn or to sign his statements; he was asked to do so, two or three times; he was warned of the powers the Inspectors had, in case of his refusal to swear in a similar manner as M'Carthy. Witness refers to his evidence in the case of M'Carthy. Witness is shown a statement purporting to have been made by Keely, on 18th March, 1848, before the Board of Inspectors, and signed with the initials of three Members of the Board; and says, these were the notes taken by witness, of Keely's declarations, when before the Board. Keely did not give the same reasons for refusing to swear as M'Carthy did. The only reason he gave for declining to sign or swear, was, lest it might come against him again. Witness cannot tell what Keely meant by

" this; thinks he gave no explanation of what he  
 " meant; thinks he was asked what he meant;  
 " did not understand Keely referred to the ap-  
 " proaching meeting of the Commission, or to what  
 " he referred. Witness remembers nothing against  
 " Keely's character, previous to that date. Finds,  
 " on reference to the Minutes, that there had been  
 " several charges of misconduct against him. Does  
 " not remember what they were, but the particulars  
 " were before the Board when he was suspended.  
 " The Minutes show that he was reprimanded on  
 " 8th October, 1847, for laxity of discipline, and for  
 " allowing religious disputes in his gang. This was  
 " five months before his suspension. Witness is asked  
 " if he would believe Keely on Oath; and says, he is  
 " under the impression he has seen statements, said  
 " to have been made by Keely, before the Commis-  
 " sioners, on Oath, which witness knew to be untrue;  
 " and if he made these statements, witness would not  
 " believe him on Oath. If witness's impressions, as  
 " to these statements having been made, are errone-  
 " ous, he knows no grounds for disbelieving Keely's  
 " testimony on Oath. Witness did not try to get  
 " Keely criminally indicted at last Assizes, for testi-  
 " mony he gave before the Commissioners. Does  
 " not know if the Warden did. Witness handed to  
 " the Grand Jury, a sheet containing extracts from  
 " the evidence of certain witnesses, transmitted to  
 " Warden Smith, by the Commissioners. The con-  
 " tents of this sheet were copied from the evidence  
 " by Warden Smith, at witness's request. Cannot  
 " say from the evidence of how many witnesses, ex-  
 " tracts were given in the said sheet laid before the  
 " Grand Jury. Knows that extracts from the evi-  
 " dence of M'Carthy were given, and thinks also of  
 " Keely and M'Garvey and Robinson. Witness  
 " gave this sheet to the foreman of the Grand Jury,  
 " with reference only, however, to that part of  
 " M'Carthy's evidence in which witness was alleged  
 " to have sent Penitentiary tools to be repaired.  
 " Witness marked the particular portion of M'Car-  
 " thy's evidence on which he made complaint before  
 " the Grand Jury, and he informed the foreman that  
 " he did not wish any other portion of the matter on  
 " the sheet to be noticed criminally, or even to be  
 " read. There was no other reason whatsoever for  
 " the other extracts against M'Carthy and the other  
 " witnesses being laid before the Grand Jury, but  
 " that witness had not had time to make a copy of  
 " the particular portion of which he wished to make  
 " complaint. Cannot say how long the sheet was  
 " in his possession, before he put it in the hands of  
 " the Grand Jury; is sure he had it the day before  
 " he gave it in. Did not know, however, until the  
 " same morning, that he required to put the words  
 " of complaint in writing. Thinks he was asked by  
 " the foreman to give it in in writing, and that he  
 " handed to him, in consequence, the only copy he had.  
 " Witness conceived that in some of the other ex-  
 " tracts, perjury had been committed; has no doubt  
 " the Warden thought perjury had been committed  
 " in all of the extracts. Believes all the extracts  
 " were made on the sole ground that they contained  
 " perjury. Witness asked Warden Smith to extract  
 " every statement against witness, personally or offi-  
 " cially, in which he conceived the witnesses had  
 " perjured themselves. Warden Smith had pre-  
 " viously read over some of the passages to witness,  
 " from the charges transmitted to him by the Com-  
 " missioners, and witness had, himself, read over the  
 " others. Witness had no authority or wish to pro-  
 " ceed against any witness for statements prejudicial  
 " to the Board. Witness being asked why he got the  
 " extracts made, says, he wanted to see what they  
 " were, to consider them. Witness being asked if he  
 " considered that he violated the Rules of the Institu-

" tion, in communicating to the Grand Jury mat-  
 " ters connected with the Penitentiary, which were  
 " not officially before the Grand Jury, says, that  
 " he does not consider that he did so under the cir-  
 " cumstances already explained. Is aware that the  
 " statements handed by witness to the Grand Jury  
 " were extracts of evidence taken by the Commis-  
 " sioners for the information of His Excellency the  
 " Governor General, and he has no doubt they had  
 " not then been decided upon by His Excellency.  
 " Witness had not then obtained the sanction of the  
 " Government for his proceedings. Witness being  
 " asked if he had stated that the Government had  
 " sanctioned his proceedings in this matter of the  
 " Grand Jury, says, that he informed the Commis-  
 " sioners this morning, that he had no doubt the  
 " Government had been made aware of his proceed-  
 " ings in the matter, and must have sanctioned  
 " them. If witness used any other words than these,  
 " this was his meaning. Has no doubt the Govern-  
 " ment must have been made aware of the matter,  
 " by the Commissioners. Has no other reason for  
 " saying so, but from supposing that Mr. Brown  
 " must have communicated on the subject, with Go-  
 " vernment. Has no knowledge that Mr. Brown  
 " did so officially or otherwise. His only reason for  
 " saying that his proceedings must have been sanc-  
 " tioned by Government, was, that being an Officer  
 " of Government, had the Executive disapproved of  
 " his conduct, he presumes he would have received  
 " some notification of it. The Board of Inspectors,  
 " of which witness was a Member, through witness  
 " as their organ, preferred a charge before the Com-  
 " missioners against Dr. Sampson, for publishing  
 " proceedings of the Board of Inspectors, pending the  
 " decision of the Governor General in Council there-  
 " on; but in the said charge against Dr. Sampson,  
 " the following words are added: 'and endeavour-  
 " ing to bring the Board into contempt with the  
 " 'public.' Cannot say if the sheet was given back  
 " to witness by the Grand Jury, but thinks so.  
 " The result of Keely's case, as to suspension and  
 " dismissal, was the same as in M'Carthy's, though  
 " there was some slight difference in the grounds on  
 " which action was taken in the case of Keely, as  
 " stated in the Minute of 20th March, 1848. Keely  
 " was finally dismissed by the Board on 31st May,  
 " 1848."

By Mr. Smith:—

Q. Were Keely and M'Carthy present together when examined on 18th March?

A. No, they were examined separately.

Q. When the charges and evidence were served on the Warden by the Commissioners, do you not consider they became his property?

A. I do think so.

Q. Was it a publication of those charges, when the document left the hands of the Commissioners?

A. That is a question of law which witness is not prepared to decide, but thinks it was.

Q. Were you prevented from obtaining the object you had in view in going before the Grand Jury to complain against M'Carthy?

A. I was.

Q. Was there any case pending before the Government at the time, relative to M'Carthy's alleged perjury?

A. Not that witness was aware of.

Q. Do you think the charge against Dr. Sampson for publishing a decision of the Board of Inspectors when it was before the Government, analogous to that made by you against M'Carthy?

A. Does not.

Q. Was Dr. Sampson an Officer of the Penitentiary when the complaint was made against him?

A. At the time of the occurrence he was.

Q. Was M'Carthy an Officer of the Penitentiary when you endeavoured to get him indicted for perjury?

A. He was not.

Q. Was not the complaint against Dr. Sampson an act of the Board of Inspectors?

A. Yes.

Q. Had the Inspectors anything to do with the charge of perjury against M'Carthy?

A. No; it was entirely an act of witness's own, as an individual.

Q. Had your appeal to the Grand Jury any object to bring the Commissioners into contempt?

A. No.

Q. Do you think the Inspectors were influenced in their dismissal of M'Carthy, Keely, and M'Garvey, by the evidence these men gave at Frank Smith's trial?

A. They were not.

Q. Why was not Mr. Pollard called before the Inspectors as to his letter about the charges against the Warden, in the same manner as Dr. Sampson was in the matter of the entry in the Hospital Register?

A. Because, from Pollard's letter it appeared that he knew nothing of the charges personally, but mentioned other Officers who did, and who were called. In Dr. Sampson's case, it appeared that he only knew of the matter charged.

Samuel Pollard—by Commissioners:—

Q. Did you ever make any complaint, or lay any charge against Keepers M'Carthy, Keely, and M'Garvey, before the Inspectors or Warden?

A. No.

Q. Witness is shown a letter in his handwriting dated 15th March, 1848, and is asked if he sent it to the Warden?

A. Yes.

Q. What was your object in sending that letter?

A. To let the Warden know what witness had heard was going on in the Town and Prison respecting himself (the Warden).

Q. Had you any intention in sending that letter to call for an investigation into the conduct of any one?

A. None.

Q. Did you write that letter at the request of the Warden?

A. Wrote the part of it relating to Mr. Rogers at the request of the Warden; the other part of it was written by witness voluntarily.

Q. Was not that part of your letter, referring to your conversation with Dr. Sampson, written at the suggestion of the Warden?

A. Is not positive, but thinks not.

Q. Was that part of your letter, referring to your conversation with Mr. Rollands, written at the suggestion of the Warden?

A. Cannot say. The time is long past.

Q. How often did the Warden ask you to write what was said about him, previous to your complying with his request?

A. To the best of witness's belief, only once.

Q. How long was that one time before you wrote?

A. Cannot say.

Q. Where were you when the Warden spoke to you on the subject?

A. It was at the door of the Warden's office, to the best of witness's belief.

Q. Did you ever speak to the Warden on the subject contained in your letter of 15th March, 1848, except on the one occasion, at his office door?

A. Cannot say positively, as it is nearly a year ago.

Q. Did the Warden ever speak to you on the subject in his own apartments?

A. Cannot positively say now.

Q. Did you tell the Warden of your conversation with Mr. Rogers soon after you came to the prison?

A. Cannot positively say.

Q. Did you tell the Warden of the conversation you held with Dr. Sampson at the Doctor's door?

A. Cannot say now.

Witness's evidence of 2nd October, 1848, was here read aloud in presence of Mr. Smith.

Q. Did you tell the Warden of the conversation you had held with Mr. Rowlands?

A. Is not sure whether he did or not.

Q. How long was it before you wrote the letter, that the Warden asked you to write down what Mr. Rogers had said?

A. It was not long.

Q. Was it a month?

A. It was.

Q. Did you bring any charge against the Warden, in your letter?

A. Not to his knowledge.

Q. Was your letter written with the view of bringing the Warden to trial, before the Inspectors?

A. No.

Q. Was not that letter solely as a private communication for the information of the Warden?

A. It was.

By Mr. Smith:—

“ Considers it his duty to make the Warden and Inspectors acquainted with what was going on in the Institution; had no bad feeling against M'Carthy, Keely, and M'Garvey. In reporting what he had heard against them in Kingston, all witness wrote to the Warden on 15th March, 1848, was not for the Inspectors, and was perfectly true. Witness is asked how it came if the said letter was for the private information of the Warden, it was directed to the Warden and Inspectors; and witness, (having referred to his letter), says that he had not seen the said letter since he wrote it, and had forgotten that he had addressed it to the Warden and Inspectors.”

Q. Do you now consider it a private communication to the Warden only?

A. No.

Mr. Sheriff Corbett, President Board of Inspectors,—By Mr. Smith:—

“ Recollects the case of M'Carthy and Keely. It came to the knowledge of the Board that these men knew something against the Warden. The Board sent for them, and witness told them what they had heard, and that the Inspectors were anxious to know the truth. Witness told them to say all they knew against the Warden, and assured them it would not prejudice their situations. They declared they knew nothing against him. Mr. Hopkirk wrote out their statements; they were severally read to them, and they acknowledged that what was written was correct, but refused to verify their statements on Oath. Witness then said, if they had stated anything incorrect, these statements would be destroyed and others drawn up; both refused. M'Carthy said he had made a vow never to take another Oath in the Penitentiary. Keely gave no reason, but that it might come against him at some other time. The Warden was not present at the examination of Keely and M'Carthy. Mr. Hopkirk did not, in witness's hearing, tell M'Carthy that he was a great rascal.”

By Commissioners:—

Q. Who brought it to the knowledge of the Board, that M'Carthy and Keely knew something against the Warden?

A. A letter from Pollard.

Q. Did Pollard bring that letter to the Inspectors, or did the Warden do so?

A. The Warden did so.

Q. Was there any charge made in that letter, against the Warden?

A. No; it only stated that M'Carthy, Keely, and M'Garvey had stated outside, that they knew something against the Warden.

Q. When the question was severally put to them did not all of these men deny that such was the case?

A. They did.

Q. What necessity was there for taking depositions on oath, that these men knew nothing against the Warden?

A. Witness, speaking for himself, was anxious to know if there was any truth in the reports against the Warden.

Q. That is not in answer to the question—what necessity was there for swearing these men to a negative?

A. To obtain the truth.

Q. Then did you doubt their veracity when they said they knew nothing against the Warden?

A. Never doubted their veracity until they refused to be sworn.

Q. Was not the inquiry of the Board grounded upon the information they had received, that those men had charges to make against the Warden?

A. Yes.

Q. When these men declared before the Board that they had nothing to say against the Warden, was not the object of the inquiry at an end?

A. As witness said before, the Inspectors desired to find the truth.

Q. Was it not in consequence of the refusal of M'Carthy and Keely to swear to their statements that they were dismissed?

A. They were suspended and finally dismissed, because they would not verify their statements by an oath.

#### CASE OF Keeper M'GARVEY.

This case differs from the two last, inasmuch as M'Garvey signed and swore to the statement written out by the Inspectors.

Terence M'Garvey,—Preliminary examination:—

“ Was a Keeper in the Penitentiary 7 years; was dismissed on 5th June last; had no quarrels with the Warden while in the Penitentiary. Had a difficulty with Mr. Utting, the Deputy Warden, but was acquitted by the Board of Inspectors. Thinks he was not a favourite with Warden. Was under the impression that Warden wished to get quit of him, for several years before he was dismissed. Was dismissed because 2 pair of boots worth 18s. 9d. per pair were stolen from witness's shop. Witness was Keeper of the Shoemakers; is quite sure the boots were in the shop when he went to breakfast. About 20 minutes after returning from breakfast, witness missed the boots, and immediately reported the matter to the Warden. Witness made every effort to find out what became of the boots. The Warden instituted no investigation, to the knowledge of witness; believes one of the pairs has since been found. The same morning on which they disappeared, Head

“ Keeper Costen came to witness, and took him to Warden at Office door; witness explained what had occurred, to the Warden. A few days afterwards witness was brought before the Inspectors, and examined as to the loss of the boots, and as to an overcharge he was alleged to have made on some work done for Mr. Hopkirk. A few days after that again, a Guard named Wm. Martin came to witness to get him to make out a bill of the boots, charging them to himself (M'Garvey). Witness suspected some snare, and went to Mr. Bickerton to explain what was wanted. Mr. Bickerton told witness that he was to pay for the boots. Witness on that, said he would not pay for them; and he did not make out the bill, as he thought it would be an admission that he stole the boots. On Monday following witness was called before the Inspectors, and told that if he would not pay for the boots he would be dismissed. Witness refused to pay, and he was dismissed. Witness told the Inspectors he thought the whole thing was a snare to get him dismissed upon. He was dismissed for insolence, and for refusing to pay the boots. Articles had been taken from the shop before this transaction, but no noise was made about it. Two pairs of shoes were stolen only a fortnight before, reported to the Warden, and no notice taken. On witness being examined why he had said he considered the whole boot affair a snare set for him? He says, that he has no doubt the Warden and his son Frank were desirous of getting him dismissed before the Commission of Inquiry sat. Witness gave evidence against Frank Smith, on the investigation instituted on complaint of Dr. Sampson. On the 11th March last, witness was called before the Inspectors. Witness was asked, whether he had any charges to make against the Warden? Witness said he had not; but that if he were asked questions, the answers he would give might prove charges. Witness was then sworn, and Mr. Hopkirk proceeded to draw out an affidavit. Mr. Hopkirk read it and handed it to witness, and witness signed it. This affidavit was not founded on any question put to witness, or any statement he had made; it had no reference to any charges against the Warden, but had rather the appearance of being evidence to bolster up Warden's character. Witness had scarcely signed the paper, when he saw the impropriety of what he had done; he regrets it very much; he signed it thoughtlessly. There were statements made in that paper, which were not the real opinions of witness.”

By Mr. Smith:—

“ Thinks he swore before the Inspectors in 1848, that he knew of nothing against the Warden; but does not recollect the precise contents of the affidavit referred to. Mr. Corbett asked questions at witness, and Mr. Hopkirk then wrote down an affidavit for witness to sign it; but Mr. Corbett was talking to witness while Mr. Hopkirk was reading, and he did not make out its precise contents; signed it without reflection, and has regretted ever since; considers it was nothing but a snare the whole thing of having witness before the Inspectors at all, and putting questions to him. They had no charge against witness, and he had no charge against the Warden; told them that he knew things which might prove charges, but that he wished to bring no charges against the Warden. Had witness been as wide awake as others, he would not have been caught. The affidavit given to witness to sign, witness thinks was not according to his answers; did not read the affidavit; thinks the whole affair was an attempt

“ to bolster up the the Warden's character. Did not see the Warden present at the time; understands there are closets in the Board Room; he may have been in one of them.”

James Hopkirk, Esquire, by Mr. Smith:—

Keeper M'Garvey was dismissed in consequence of his refusing to pay for one or two pairs of boots which were stolen from his shop. The Board considered he had been guilty of carelessness, as it was not the first time articles had been stolen from his shop. Thinks M'Garvey admitted that he had a lock to his shop door, as well as to his cupboards. Recollects of M'Garvey's being brought before the Inspectors to say if he knew anything against the Warden; his answers were taken down in writing; he signed them and swore to them. M'Garvey was not kept in conversation by Sheriff Corbett, while witness read the depositions to him. M'Garvey did not say if certain questions were put to him, the answers might be the foundation of charges against the Warden; on the contrary, he said he had nothing to add to what had been taken down; he said his deposition was correct. The Warden was not present, and witness has no reason to believe he was concealed so as to overhear what passed.

By Commissioners:—

Ex-keeper M'Garvey, gave evidence at Frank Smith's trial before the Inspectors, in October, 1847: on reference to the evidence, he finds it was unfavourable to Frank Smith. He testified on that occasion, that he thought 'if he came forward voluntarily in a case affecting the character of Mr. F. Smith, it would have endangered his situation.' M'Garvey was brought before the Inspectors, on 18th March, 1848, on the inquiry as to the Warden's conduct, which ensued on Pollard's letter. M'Garvey was told the same thing as M'Carthy and Keely as to the cause and object of the investigation; but as he made no objections to be sworn, he was not told the power of the Board in that matter. M'Garvey was sworn and interrogated, and his answers written down by witness. The deposition was as follows:— 'Terence M'Garvey, Keeper, knows nothing against the Warden's character and conduct as Warden; knows nothing reprehensible which the Warden has done which he thinks the Board ought to be informed of; has no recollection of stating to any one, that he had any charge to prefer against the Warden, and knows of none. (Signed,) T. M'Garvey.' Being shown the deposition as found in the records of the Penitentiary, says this is the deposition, and it was from it he has now read the words here taken down. M'Garvey was brought before the Inspectors again, on 31st May, 1848, in consequence of two pairs of boots having been stolen from his shop; the Warden reported the matter to the Board; cannot tell the value of the boots; there was no charge against M'Garvey properly speaking, unless a charge of carelessness; he was called before the Board, and admitted that the boots had been stolen from his shop, and he was ordered to pay for them, unless they were found; had he paid for or found the boots, witness thinks no further proceedings would have been taken in the matter. M'Garvey refused to pay for the boots; and he was called before the Board at a subsequent meeting, and asked if he had found them? He said he had not: and he was then asked to pay for them? He positively refused to do so; saying he was not responsible for the articles under his

charge. He exhibited great indifference in the matter, and as to the loss sustained by the Institution, and was dismissed from his situation. On the same day that the Warden complained to the Inspectors about the boots against M'Garvey, witness preferred his own complaint to the Board as to the overcharge made against him personally for binding boots; that complaint was not made against M'Garvey, but merely with a view to having the charge reduced. M'Garvey was Keeper of the Shoe-shop, but witness has reason to believe that Hooper, the sailor, made the overcharge for binding. Witness was not present at the investigation, and speaks only from what he thinks he heard afterwards from some member of the Board. It has always been the habit for each Keeper to fix the price of work done in his own shop, and witness thinks he heard the binding was done in Hooper's (the Sailor's) shop, but he speaks from memory; has no reason to believe the Inspectors thought M'Garvey stole the boots; heard nothing of the kind, as far as he remembers; if the rules of the Prison had been observed, M'Garvey could not have stolen these boots; has no positive knowledge that anything ever was stolen from the Prison, but there have been suspicions of things having been stolen; things have often gone missing, but whether stolen by the officers, or given by the men to teamsters, or how got quit of, witness does not know. Thinks that if M'Garvey had paid for the boots, it would not have been a *quasi* admission that he had stolen them; if the Board had thought he had done so, the Board would have dismissed him at once; has no doubt witness was satisfied at the time, that the boots were so under the charge of M'Garvey, that they could not have been lost without carelessness or misconduct on his part. Thinks M'Garvey stated to the Board that other persons might have had access to the shop at the time when the boots were stolen; but, also, thinks he admitted that he had a lock and key to his shop, and also to his cupboards, and with proper precaution on his part, that the boots would not have been stolen. Does not remember that M'Garvey mentioned the names of others who might have had access to the shop when the boots were stolen; but he may have done so; thinks he was asked, however, if he had any suspicions of any party as having stolen the boots, and that he had said he had not; feels sure he did not say that he had suspicions of Mr. Frank Smith or of Mr. Costen as having removed or stolen the boots, as witness must have recollected it; Witness's impression is, that M'Garvey said he had left the door of the shop unlocked; cannot tell if there is any rule that the Keepers shall lock the door of their shops before going to meals; cannot tell how the loss of the boots was brought under the notice of the Warden; does not know if it was M'Garvey who reported the fact; has no recollection if the Warden mentioned to the Board who first reported the loss to him. Witness is asked whether from the manner in which the books and returns of the different shops are kept, such a loss as that of M'Garvey could have been detected if the Keeper himself concealed the loss; and says that he is not sufficiently acquainted with the details of the books to answer the question. Witness is asked if it was not the natural effect of dismissing M'Garvey for an occurrence which he might have concealed, to induce the other Keepers to conceal any similar loss sustained in their shops, and says that the effect of punishing a Keeper for an occurrence which he himself reported might have that effect on dishonest Keepers. Witness would not like to certify to the honesty of all the Keepers in the Penitentiary. Witness is under the impression that he heard from the Warden that either one or both pairs of boots

were found after M'Garvey's dismissal; does not remember where they were found, nor in whose possession, but may have been informed, though not officially; has no recollection of the fact being brought before the Board; is not aware that M'Garvey was ever informed that the boots had been found. Witness is asked whether after having dismissed a man because he would not pay for boots which had been stolen, he did not consider it was due to the dismissed officer to investigate the matter further, when the boots were afterwards found on the premises? Answers, that M'Garvey having stated at the time of his dismissal that he did not consider himself responsible for articles under his charge, and having on that ground refused to pay for the boots, witness does not think the Board was specially called upon to give him intimation when the boots were found. The matter, however, was never brought under consideration of the Board; and witness does not know what decision might have been arrived at had the matter been brought before them and fully considered. It has come to the knowledge of the Inspectors, that many articles have disappeared from the Penitentiary; said knowledge was partly gained from the Warden, and partly from Keeper Richardson and others, but witness does not recollect who the others were. Witness is asked if there has ever been a case but M'Garvey's in which an officer was called upon to pay for missing property which was under his charge? Says, he knows of no other case within his recollection. Witness is asked if any officer but M'Garvey was ever dismissed from the Penitentiary on account of property being lost or stolen when under his charge? and says he recollects no other case. Keeper M'Garvey was brought before the Inspectors on the boot affair on the very day Keely and M'Carthy were finally dismissed from the Penitentiary. M'Garvey was dismissed from the Penitentiary on the very day the Inspectors were officially informed that the Government had appointed the present Commission. Witness knew nothing against the character of M'Garvey up to the affair of the boots; he had been some years a Keeper in the Penitentiary. Witness is under the impression that he has seen statements made by M'Garvey under oath before the Commissioners, which witness knows to be untrue; and if he made those statements, witness would not believe M'Garvey upon oath; if otherwise, he had no reason for disbelieving him. Witness thinks M'Garvey's name was one of those mentioned on the paper which witness handed to the Grand Jury."

By Mr. Smith:—

Q. Did not M'Garvey say to the Board, he thought he had done quite enough in mentioning the fact that the boots had been stolen?

A. He said something to that effect; does not recollect the exact words.

Q. Did not M'Garvey say the Warden and Inspectors ought to search for the boots?

A. Does not recollect; he may have used some such expression.

Q. Would M'Garvey have been made to pay for the boots, had he not lost some articles previously?

A. Cannot say; but thinks it very likely the previous losses may have influenced the decision of the Board.

Q. Were all the Inspectors present when M'Garvey was ordered to be dismissed?

A. Yes; on 5th June.

Q. Was your complaint as to the overcharge for shoe-binding made at the first meeting of the Board after you got in your bill?

A. Thinks it was.

Q. Did you make your complaint on the day in question because another charge had been entered the same day against M'Garvey?

A. Certainly not; made no complaint against M'Garvey; only complained of the overcharge.

Q. Do you think the subsequent finding of the boots was any reason why M'Garvey should have been restored to his situation, considering his previous conduct in the matter?

A. Thinks not; because one of the main reasons for his dismissal was his declaration, that he was not responsible for articles under his care.

Q. Was it ever ascertained how the boots were stolen, or afterwards recovered?

A. Does not know.

Thomas Costen—by Mr. Smith:—

“Recollects boots being lost in the shoe-shop while M'Garvey was Keeper; there was a lock on the shop door at the time; there were locks on the cupboards. Previous to the loss of the boots, Witness gave the keys of the shops to the Keepers, and desired them to lock every man his own door, but does not recollect that he mentioned specially that they should do so at meal hours. One pair of the missing boots were found shortly afterwards; it was never ascertained who took them, that witness knows of.”

Mr. Sheriff Corbett—by Mr. Smith:—

“M'Garvey was dismissed by the Board without any interference by the Warden. The Board were very loth to dismiss him, but he would neither account for the boots which had been lost, nor pay for them. It was the second time articles had been lost from M'Garvey's shop. M'Garvey swore to his statements made before the Board, on 18th March. His answers were read over to him before he signed. Witness did not keep him in conversation while his answers were being read over to him. M'Garvey did not tell the Board, that if certain questions were put to him, they might prove charges against the Warden. Witness was never influenced in his proceedings, against any Officer, by his having given evidence against Frank Smith.”

“M'Garvey said it was the Warden's business to look after boots that were lost. He told the Board he thought the boots had been stolen from his shop, but that he had no suspicions as to who the thief was.”

CASE OF GUARD KEARNS.

This Officer was also a witness at Kitchen Keeper Smith's trial, and was removed to an outside post immediately afterwards; and was, at a later moment, brought to trial before the Inspectors.

James Kearns—Preliminary examination:—

“Gave evidence at Frank Smith's trial, last fall. Was called by Dr. Sampson, he thinks. The evidence he gave, was true, as far as it went; but witness might have given further testimony, had he been asked; was not asked at close of evidence, if he had anything further to say. Witness also gave evidence at Richard Robinson's trial, as to the stove-pipe stone in the watch-tower. Witness's evidence was in favour of Robinson.” \* \* \* \* \*  
“Immediately after Mr. Frank's trial, witness was removed from his situation within the Prison, to a post on the outside wooden wall, where he would have no opportunity of seeing what went on in the Prison. Witness felt this as a degradation, and it is regarded so by the Officers. A strange hand, named Rowe, who had just come into the Penitentiary, was placed in witness's situation in the Dining-hall, when witness was sent outside. A few nights after Frank Smith's trial, witness was on guard in the north-wing hall; Mrs. Smith, the Warden's wife, came to witness and said, that the Warden and she had a hard feeling against witness, since Mr. Frank Smith's trial, and recommended witness to go and speak to the Warden about it. Witness did not go to the Warden.”

By Mr. Smith:—

“It is one reason for witness being against the Warden, that immediately after Frank Smith's trial, last fall, witness was removed from the Dining-hall, to an outside post on the board fence. Mr. Costen, the Head Keeper, has the charge of posting the Guards at the different stations; had been stationed in the Dining-hall pretty nearly all the time he had been in the Prison, up to Frank Smith's trial. Witness was not stationed in the Dining-hall all day, but used to be stationed in one or other of the shops between meals. Went very seldom on the fence; took the place of some absent Guard occasionally.”

\* \* \* \* \*  
“Witness gave evidence at F. W. Smith's trial; answered all the questions put by Dr. Sampson, on that occasion, so far as witness recollects. Guards are in the habit of being removed from one station to another. The rule is, that Guards are under the direction of the Head Keeper, as to their posts. Sees no honour at any particular post in the Penitentiary. Considers it a degradation to be taken from an inside employment and placed at an outside post.”

James Hopkirk, Esq.—by Commissioners:—

Q. Did Guard James Kearns give the evidence at Frank Smith's trial before the Inspectors, in October, 1847?

A. He did.

Q. Was his evidence unfavourable to Frank Smith?

A. It was.

Q. Was Kearns's removal from his post inside the walls, to a post on the wooden fence outside, immediately after he gave such evidence, done with the knowledge of the Board of Inspectors?

A. Does not remember the case.

Q. Was Kearns brought before the Inspectors on 31st October, 1848?

A. He was.

Q. Who brought the complaint against him ?

A. Mr. Costen.

Q. What was that complaint ?

A. That he was asleep on his chair outside the partition dividing off the Roman Catholic Chapel, while service was going on.

Q. Had he any Convicts under his care at the time ?

A. Does not think he had any particular Convicts under his care ; he might have been there as a general Guard.

Q. Were notes of evidence taken in the matter ?

A. Thinks Mr. Costen's deposition was taken.

Q. Where is that deposition ?

A. The Clerk says he cannot find it among the records where it ought to be, and witness does not know what has become of it.

Q. Did you not think the complaint a very frivolous one ?

A. It did not strike witness so.

Q. Is it not usual for the Warden to decide on such complaints without reference to the Inspectors ?

A. Cannot say.

Q. Was Kearns reprimanded ?

A. He was.

Q. Was not so slight a punishment inflicted only on consideration of Kearns' previous good character ?

A. This reason is given in the Minutes, for so light a punishment and no other ?

Q. Would you believe Kearns on his oath ?

A. Has no reason to doubt his veracity on oath.

Q. Are you aware that Kearns gave evidence before the Commissioners ?

A. Yes ; witness is now aware.

Q. Were you aware that Kearns was before the Commissioners on 26th October, only five days before he was tried by the Inspectors, on Costen's complaint ?

A. Was not aware of it, and is not now.

Q. Was there any other witness but Costen, who swore Kearns was asleep ?

A. There was not, to the best of witness's recollection.

Q. Did not Kearns state that he was not asleep ?

A. He did state that he was not asleep.

By Mr. Smith :—

“ The Inspectors did not rely in the examination of the charge against Kearns, so much on the declaration of Kearns as on Costen's oath.”

Thomas Costen—By Mr. Smith :—

“ Kearns was in charge of the Patients in the Hospital, in absence of the Keeper, when the charge of being asleep, made by the witness against him, arose. He could not perform his duty when asleep. He was asleep at the time ; witness woke him up.”

CASE OF GUARD BANNISTER.

This case is similar to the last.

Edward Bannister—Preliminary examination :—

“ Was examined at Frank Smith's trial last fall. The evidence witness gave on that occasion, was true, as far as it went. Had witness been examined further, he could have given additional evidence.”

“ Witness has thought the Warden, Mr. Costen, and Mr. Francis Smith, have been trying to get a catch at him, on which to dismiss him.”

By Mr. Smith :—

“ Witness thought, at one time, that Head Keeper Costen was watching witness in order to get a complaint against him. Does not know that the Warden ever tried to do anything to get rid of him.”

Mr. Sheriff Corbett—by Mr. Smith :—

“ Recollects Guard Bannister being lately reported by the Warden for allowing bread to pass through the gate, after the new rule passed, subsequent to Frank Smith's trial. The reason why the matter was not taken up, was, because the facts on which the Warden reported had been previously elicited before the Commissioners, and the Inspectors did not wish to interfere with their proceedings.”

James Hopkirk, Esq.—by Mr. Smith :—

“ Recollects of the Inspectors passing an order that no traffic in provisions should take place in the Penitentiary, after the trial of Frank Smith, in October, 1847. Recollects of the Warden reporting the Guard Bannister for having disobeyed that order. There was some inquiry into the matter. He was not punished, because it was not altogether proved against him ; refers to a bag of oats, which Bannister was alleged to have carried out. The matter was not proved against him. He said he bought the oats outside, and the bag containing the oats, was carried inside by mistake, and brought back the moment the mistake was discovered : he said the team had only got the length of the garden corner. Recollects the Warden mentioning that in the charges brought against Frank Smith, before the Commissioners, it was alleged that Bannister had passed out bread contrary to the order in question. No inquiry was made into the conduct of Bannister, on that occasion. The reason why no inquiry was made, was because the Inspectors feared the Commissioners might think it an interference with them.”

By Commissioners :—

“ Has an impression that there was a preliminary inquiry into a charge against Guard Bannister, for

taking out a bag of oats from the Institution, when the Board were satisfied he was not guilty. On reference to the Minutes, witness finds no mention of this inquiry, and if it is not there, it must have been omitted. To the best of witness's recollection, Bannister was not present at the whole of the inquiry, but was at a portion of it. The practice is, when a complaint is made by any one, the Inspectors examine him, and if they find ground sufficient for an investigation, the accused is called in and remains during the examination of witnesses on Oath. Bannister's case occurred since the Commission sat."

Q. Did Guard Bannister give evidence before the Inspectors at Frank Smith's trial, in October, 1847?

A. He did.

Q. Was his evidence prejudicial to Frank Smith?

A. Thinks his evidence favourable to Frank Smith.

Q. Did he testify that he bought provisions from Frank Smith, within the walls?

A. Yes, but he stated that they were taken from a small heap in the Penitentiary cellar; that he supposed they were Frank Smith's; and that he understood he (F. W. S.) had received a load. He also stated that it was notorious, all the Guards and Keepers got potatoes from the Kitchen Keeper, which was greatly relied on by Frank Smith in his defence.

Q. Was not Bannister called as a witness by the prosecution?

A. He was.

Q. Are you aware that Bannister has given evidence before the Commissioners?

A. Yes.

Q. Do you think Bannister concerned in the conspiracy against Warden Smith?

A. Has no reason to think so, unless from one circumstance which has come to witness's knowledge within the last few days; and he does not know if that would show him to be in the conspiracy, or merely to have an unfriendly feeling towards the Warden.

Q. Was Bannister ever brought before the Inspectors for trafficking in provisions?

A. He was brought before the Inspectors on a charge of having taken a bag of oats from the Penitentiary, subsequent to the order passed after Frank Smith's trial.

Q. When was he brought before the Inspectors?

A. Does not remember.

Q. Was it since the sitting of the Commission?

A. Thinks it was.

Q. Who brought the complaint?

A. Thinks either the Warden or Mr. Costen; probably the former.

Q. Is there any minute of the matter in the Inspector's Minute Book?

A. There seems to be none.

Q. Were any witnesses examined?

A. Thinks none on oath.

Q. What were the circumstances of the charge?

A. As far as witness recollects, Bannister was seen carrying up a bag of oats to the gate, and he explained that he had bought the oats outside the gate, that they were taken inside on the cart, by mistake; that the moment he discovered the error, he ran after the cart and took the bag off, before the cart had got beyond the garden wall.

Q. Might not the Warden have decided on such a complaint, without reference to the Board?

A. Possibly he might.

Q. How did you testify on your examination by Mr. Smith, on 23rd October last, when such were the facts of the case, that "Bannister was not punished, because the case was not-altogether proved against him?"

A. Such was witness's impression at the time of giving that evidence. Bannister's offence might, strictly speaking, have been a breach of the letter of the rule, though not of the spirit.

Q. Was Bannister brought before the Inspectors on any future occasion?

A. He was.

Q. What is Bannister's character?

A. Knows nothing against him; his character is good.

Q. Would you believe him on oath?

A. Has no reason to say that he would not.

#### CASE OF GUARD WILSON.

This is a very marked case.

James Hopkirk, Esq.—by Commissioners:—

"Witness believes that Ex-Guard James Wilson, gave evidence before the Commissioners, prejudicial to the Warden; thinks Wilson is concerned in the conspiracy against Warden Smith. Wilson was brought before the Inspectors on 31st July, 1848. The Minutes contain the following entry on the subject:—'The Board having been informed that the Guard James Wilson was seen on the evening of the 24th instant, in company and in conversation with two discharged Convicts; he was called upon to explain if such was the case, and why he had committed an infraction of the rules of the Institution, and having admitted the information to be true; and further, that one of those persons was in his house on the same evening. The Board now direct that for such violation of his oath, that he be reprimanded, and that upon the next well founded complaint against him, of any dereliction of his duty, he will be immediately dismissed from his situation.' Cannot say whether it was the Warden or Mr. Costen, or who it was that brought the charge against Wilson; there is no entry of it in the book. The name

of the person bringing such charges is sometimes entered in the Minutes, but not uniformly. Finds no entry on this subject, in the daily report book. Thinks Guard Sexton was examined on the charge, but does not recollect if upon oath. Wilson's admissions may have rendered it unnecessary. Thinks Frank Smith also gave evidence against Wilson on the charge. Witness's impression is, that no notes were taken of the evidence on the examination, but will not be positive. Has inquired of the Clerk, if any notes of the evidence are among the records of the Institution, and learns that the Clerk can find none. The decision of the Inspectors as to Wilson's 'violation of his oath' refers to the general Oath of Office which all the Officers of the Institution are required to take. Witness is asked if the words of the oath are as follows:—'I (A. B.) do promise and swear that I will faithfully, diligently, and justly serve and perform the Office and duties of (——) of the Provincial Penitentiary, according to the best of my abilities, so help me God,' and says these are the words of the Oath, according to the Statute. Witness is asked wherein Wilson violated this Oath in the affair for which he was brought before the Inspectors? and says that he cannot conceive that a person can 'faithfully, diligently, and justly serve and perform' the duties of an Office, when he contravenes one of the Rules and Regulations made (by the authorities appointed by Law) for his guidance. Witness is asked what rule or regulation so made, Wilson contravened on the occasion in question? and says he contravened that Clause in the general Rules, which says:—'No discharged Convict is to be recognized by any Officer or other person belonging to the Institution, nor is he or she to be made known by them to any other person.' Witness is asked if he thinks this Rule prohibits conversation of every description, with every discharged Convict? and says he cannot say this, as he conceives a case might occur which would render it absolutely necessary; as for instance, an Officer might be sent by the Inspectors on an errand to a discharged Convict. Witness is asked if the words in the Rule, 'any Officer or other persons belonging to the Institution' do not include the Inspectors? and says he does not conceive they do. Witness is asked who the words 'other persons' apply to? and says he does not know who they apply to—they appear to be superfluous. Witness is asked if the said words would not apply very naturally to the Inspectors? and says he does not conceive they would, as he cannot see how the Inspectors could carry on their duty, if so restricted, as they might require to send for discharged Convicts. Witness is asked if he thinks an Inspector would violate this Rule, by pointing out one discharged Convict to another discharged Convict? and says that he thinks an Inspector by doing so, would not violate the Rule in question, as he conceives it does not apply to the Inspectors. The Inspectors are bound to pay respect to the Rules of the Institution. Witness is asked what is the object of the Rule in question? and says he did not make the Rule, and cannot say what is its object, but he can conjecture; presumes that it is intended to prevent Officers from pointing out parties as having been Convicts in the Penitentiary, and thereby injuring them. Witness thinks it has also been mentioned as an object of the Rule, to prevent Officers from keeping discharged Convicts about Kingston, in place of allowing them to go home to their friends at once, and as a general thing, this is advisable. Witness is asked if he thinks the Rule prohibits any Officer from doing a discharged Convict an act of kindness, such as purchasing from him in the ordinary course of business, procuring him a situation, or aiding him in returning to his friends? and says he considers that such acts would not involve a violation

of the spirit of the Rule, though it might of the letter of it. Witness is asked if it would be such a violation of the Rule, as to deserve reprimand? and says he thinks not. Witness is asked if the case is not that there is no crime in the fact *per se* an Officer speaking to a discharged Convict, but that the crime lays in the character of the communication? and says that in a great measure the crime depends on the character of the communication, and on the circumstances under which it is made. Witness is asked if there was anything before the Inspectors, to show the character of Guard Wilson's communication with the two discharged Convicts on which he was brought to trial? and says that he thinks on Wilson's own statement, he gave no good reason for his conversation with them, and for having had them in his house. Witness is asked if Wilson gave any explanation to the Inspectors, of how he came into their company? and says, that, to the best of his recollection, he stated that he came up with them when returning from, or going to, Kingston. Witness is asked if Wilson did not explain what he was doing in Kingston, and says he is under the impression he said he had been before the Commissioners. Thinks it very likely. Wilson said the two discharged Convicts were at the same time before the Commissioners. Witness, on reference to the Daily Report Book, and to the Minute, says he finds Wilson is reported to have been before the Commissioners on the day when his associating with discharged Convicts was said to have occurred. Witness is asked if Wilson told the Inspectors what conversation had passed between himself and the discharged Convicts? and says he did mention what it was, but witness does not remember particularly its purport. Witness is asked if there was anything improper in its character? and says not, as stated by Wilson. Witness is asked if there was any evidence on the part of others, to show its character? and says he thinks not. Witness has had a discharged Convict in his employment since 1st November, 1847; does not know of his own knowledge that Officers of the Penitentiary have had discharged Convicts in their employment, but has heard so, and has no doubt of it; has no recollection of talking to any discharged Convict but Ramsden, nor of any Officer having talked to discharged Convicts; has heard that a good deal of communication has lately taken place between Officers and discharged Convicts; has heard so from various quarters; has no doubt the Warden has told witness so. Witness is asked if he ever knew an instance of an Officer being brought to trial for communicating with discharged Convicts, but that of Guard Wilson, and says he has no recollection of any other case. Has no recollection that Wilson told the Inspectors that other Officers had communicated with discharged Convicts, but he may have done so. Wilson was subsequently brought before the Inspectors again on another charge, which was preferred against him by Keeper Wm. Smith. The charge was entered upon by the Inspectors on 31st October, 1848, as would appear from the Minute of 13th November; but there is no entry of the fact on 31st October. The Inspectors were occupied with the matter on 13th November, and twice on 14th, when the final decision was given that he be dismissed. Notes were taken of the evidence in the case by witness; cannot tell what has become of them; has inquired of the Clerk, and is told that they are not to be found among the records of the Institution. The nature of the charge against Wilson was using improper language and threats against Guard Fee, on a Sabbath morning. The improper language Wilson used witness does not recollect distinctly, but it was something about twisting Fee's nose; Wilson committed no violence. Thinks high

words took place between Wilson and Fee, principally on the part of Wilson; cannot remember any violent language used by Wilson on the occasion, but those he has named. The quarrel was about the key of one of the towers. Wilson accused Fee of having taken the key of a tower which he (Wilson) conceived was his station; he demanded the key from Fee, who refused it, Wilson then said if Fee would not give up the key, he would take it by force; Wilson did not attempt to take the key by force. Thinks that in an after part of the same day Wilson got possession of the key and hid it, and that Fee found it and took it; and that Wilson, finding this, went up to Fee and said, if he would not give it up, or if he interfered with it, he would twist his nose, or break his nose, or some such threat. All this occurred on one Sunday, to the best of witness's recollection. Wilson's defence was, that it had been arranged between Fee and him, that Fee should have the one tower and Wilson the other, and that the key Fee had taken was that of Wilson's tower. Wilson brought several witnesses to swear that it was the habit for the Guards to arrange in this way, and some of them may have sworn that they were cognizant of the said arrangement between Fee and Wilson. Wilson asserted, and witness thinks he brought witnesses who swore, that Wilson had for some considerable time past invariably taken his station in the tower of which he claimed the key, and that Fee had as invariably been stationed in the other. Has no recollection that this was denied by Fee. Wilson asserted that he had complained to Head Keeper Costen, of Fee's conduct. Cannot say if it was before the threats were used; thinks Costen admitted this; does not think Wilson asserted that Costen replied, upon his complaining, that Fee and he (Wilson) must settle the matter among themselves. Thinks Costen said he had authorized no arrangements between Wilson and Fee, and that whoever came first should take what key he chose. The Inspectors did not think Fee had behaved improperly; thinks Fee stated he would not give the key up unless the Head Keeper ordered him to do so, and that it was proved by Costen that he had not been ordered to give it up. Witness is asked if Wilson, up to the time of the charge made against him for recognizing discharged Convicts, had not always borne a good character as an Officer of the Institution? and says he recollects of nothing against him, previous to that date. The decision of the Board on the affair of the key, was as follows:—'That they find it clearly proved that Guard Wilson's conduct was most improper in using the language and threats which he did on the occasion referred to, and that too without any sufficient cause of provocation, in place of appealing to a superior Officer, as he ought to have done, if he considered himself aggrieved, and they are of opinion that a person guilty of such conduct, is unfit to be entrusted with the duties of a Guard in the Institution, and therefore dismiss him.' Witness, from reading the decision, is under the impression that Wilson's appeal to Costen must have been subsequent to his using the threats against Fee. Witness is asked whether if Wilson's appeal to Costen had been prior to using the threats, the decision of the Inspectors would have been just? and says it might have been just, though not exactly for the reasons mentioned in the decision. Witness is asked if he thinks the use of the words, 'I'll twist your nose if you don't give up that key,' without being followed or accompanied by any violence by an Officer of the Institution, made him unfit to be entrusted with the duties of a Guard? and says it would depend on the circumstances in which the words were used, and the provocation given. Recollects Keeper Pollard being brought before the Inspectors on a

charge of saying in the presence of a number of Officers, that the Rev. Mr. Rogers, the Chaplain of the Institution, was a liar. There was an investigation into the matter; thinks some of the witnesses swore that Pollard said if Mr. Rogers said so, and so he is a liar. Pollard alleged that he only said, if Mr. Rogers has stated so and so it is a lie, and this statement was corroborated by other witnesses. Does not remember who they were; possibly there may have only been one witness to Pollard's version of the affair, or to either version. Pollard was not dismissed; he was called before the Board, when the Inspectors expressed to him, their serious disapprobation of his conduct. Pollard expressed his regret, and offered to make an apology, and in consequence thereof, the Inspectors refrained from inflicting any more serious punishment than a reprimand. Witness is asked if he considers the language used by Wilson to Fee, as blameable as those used by Pollard of the Chaplain? and says, the language used of the Chaplain, was worse, it being spoken of a Clergyman. Witness swore that he would have doubts of believing Wilson on oath, in consequence of testimony which he has seen as given by Wilson before the Commissioners, and which witness conceives to be untrue; has no other reason but this, for disbelieving the Oath of Wilson. Cannot be positive whether Wilson's name was on the sheet handed by witness to the Grand Jury, at last Assizes, but at any rate, had no intention to proceed against him criminally."

Q. Did not Wilson express regret for using the words to Fee?

A. Does not remember that he did.

Q. Have the Inspectors ever received Convict evidence since they passed the rule against doing so, on the day when Skinner's charge against Manuel and Pollard was tried?

A. Except on the recent fire inquiry they have examined no Convicts on oath; statements may have been made to the Inspectors, but not on oath.

Q. Did the Inspectors receive statements from certain Convicts prejudicial to Guard Wilson?

A. Yes, but not on oath, and the Inspectors did not act on them.

Q. How many Convicts were examined?

A. Thinks two or three.

Q. Was Wilson present?

A. No, because the matter was not proceeded with.

Q. Was Wilson informed that such statements had been made to his prejudice?

A. No.

Q. Was Wilson dismissed the following day?

A. Cannot say, but he was not dismissed on that complaint at all.

Q. Who brought the matter of the statements by the said Convicts under the notice of the Board?

A. Has no doubt the matter was mentioned to the Board by the Warden, and that the Convicts were sent for in consequence. Speaks from memory.

CASE of Guard WALDRON.

Thomas Costen—Preliminary Examination of 9th August:—

“ On being asked if he has anything further to add, witness says that he found Convict M’Cormick one morning, working at a window in the South-west tower, along with Mr. Waldron; on inquiring of Keeper Richardson, he found that M’Cormick had been allowed to go there, without an order from the Warden or Head Keeper, contrary to the prison rules; this was about three weeks ago. Witness reported Waldron for this transaction but not Richardson; the case will come before the Inspectors at their next meeting. Witness made a special report of the affair.”

William Waldron—Preliminary Examination, of 19th August:—

“ The Officers of the Penitentiary are divided into two parties—the one for, and the other supposed to be against, the Smith influence; witness is conceived to be of the latter party. Witness never was reprimanded or brought before the Inspectors; a complaint has however been made against him by Mr. Costen, and is to be tried before the Inspectors to-night; does not know the ground of the charge brought against him; was told by Warden yesterday that a charge had been laid, but the Warden said he did not remember what it was for. Witness can only recollect of one incident which could afford ground for a complaint against him. A Convict, named M’Keener, was for some days employed electioneering among the prisoners for complaints against the Surgeon; Witness challenged M’Keener for doing so, and he replied that he was authorized to do so by the Warden, Mr. Costen, and Mr. Frank. On this day fortnight, Mr. Costen said to witness he should look sharper after the men in the mortar-shed, as they were making a great deal of noise; M’Keener works in the mortar-shed; witness replied to Mr. Costen that the men were encouraged to speak; Mr. Costen asked what he (witness) meant by that? witness said he knew very well what he meant, and turned away; witness had reference to the electioneering going on under the Warden’s directions.”

James Hopkirk, Esq.—By Commissioners:—

“ Has no recollection at this moment whether Guard Waldron has given evidence before the Commissioners, nor of having seen any evidence given by that Officer. Waldron was brought before the Inspectors on 19th August, 1848, on a charge preferred against him by Mr. Costen; the accusation was improper conduct while in charge of a gang of Convicts; there was an inquiry; has no doubt by reference to the minutes, that notes of the evidence were taken; does not know where the notes are; has searched for all notes of evidence and can find none of Waldron’s case in the records of the Institution. The improper conduct alleged against Waldron was for insolence towards Mr. Costen, the Head Keeper; finds the following entry of Waldron’s conduct in the daily report book of 5th August, 1848.—‘ Making impertinent remarks to Mr. Costen, when in the execution of his duty, in presence of James Skinner and George

\* Has been over 5 years in the Penitentiary—a Guard.

Fee, after the roll-call at 9 o’clock this forenoon. When directing him to take charge of a gang of mortar-makers in the shed at the new Hospital, told him he had better stand down with the Convicts as they could not be seen off the scaffold, and when by themselves they had too much of their own way. He (Waldron) in a very insolent manner replied that ‘ they were encouraged to that;’ when asked by the Head Keeper what he meant by saying so? in a very disrespectful way, turning on his heel, said, ‘ I know that myself.’ Witness has no recollection that Costen brought any other charge against Waldron before the Inspectors, but the minutes allude to Waldron’s, at the same time admitting ‘ his negligence in having allowed a Convict to leave his gang without permission.’ Does not know if Costen brought such a charge against Waldron. Waldron explained at the trial what he meant by saying, the Convicts were encouraged to have their own way; he said he referred to Convicts belonging to the mortar-gang being employed by Frank Smith to go about collecting evidence in matters before the Commission. The Warden and Frank Smith both swore that they gave no such authority to any Convict. Waldron has been some years an Officer of the Penitentiary; his character, by an entry in the Inspectors’ minutes, seems to have been generally good up to the charge in question; has no recollection of Waldron’s ever being before the Inspectors on any other charge. Waldron’s offence was committed on 5th August, but was not laid before the Board until the 19th; there was an intermediate meeting of the Board on the 17th; but the charge does not appear, by the minutes, to have been before the Inspectors. Is not aware that Waldron was before the Commissioners as a witness on the morning of the 19th August, being the same day on the evening of which he was brought before the Inspectors on Costen’s complaint. Witness is shown the following entry in the daily report book of 28th June, 1848:—‘ Guard William Waldron—admitting the Convict, T. M’Cormick, into the South-west Tower, when he was on that post, about 3 P.M., without having orders from the Warden or Head Keeper for doing so. M’Cormick has been several times admitted into this Tower when Waldron has been on duty there. (Signed,) Thomas Costen, Head Keeper;’ and is asked if this is not the ‘ negligence’ spoken of as a part of the charge tried by the Inspectors on the 19th and 23rd August, 1848? and says he has no recollection of its being so, but it very likely may have been, from the terms of the minute. Witness is asked if there were any meetings of the Inspectors between the 28th June and 19th August? and witness says there were meetings on 28th June, 1st July, 31st July, and on 17th August, 1848; there is no allusion made in the minutes of any of these meetings to the said report against Waldron. Has no reason to doubt any testimony which Waldron might give upon oath; as far as witness knows he bears a very good character. It is not usual to allow complaints against Officers to remain over for weeks without being taken up by the Inspectors when there are Board meetings intervening; reports have come before the Board which they could not take up at the same sitting, but the fact should be and is usually stated in the minutes. Believes this has not always been done; the case of Wilson is one; witness at present recollects no other case; has no reason to believe that Waldron’s case was ever brought before the Board previous to the 19th August, 1848. Witness is asked if he is not satisfied that Waldron’s case was never before the Board previous to 19th August? and says he is satisfied that it was not, as far as his present knowledge goes.”

## CASE OF Keeper SKINNER.

This is a very remarkable case.

James Hopkirk, Esq.,—by Commissioners:—

“ Witness is not aware of his own knowledge, that Ex-keeper Skinner has given evidence before the Commissioners, but has no doubt he has. Skinner was brought before the Inspectors on 17th August, 1848, on a charge preferred against him by Keeper Pollard, that Skinner had improperly interfered with him. The Board found both parties in the wrong, and admonished them, and warned them that if any well founded complaint against either of them should be hereafter established, he would be dismissed from his situation. Skinner was brought before the Board again on the 19th August, on a charge preferred against him by Pollard, for using language against him derogatory to his character as an Officer of the Institution. There was an inquiry into the matter; it turned out that the language was used during the progress of the trial of the 17th, and the Inspectors therefore determined not to interfere in the matter. Skinner next came before the Inspectors in the matter of a complaint made by him against Pollard, of business mismanagement on the part of Pollard. This was on 23rd August; consideration of the matter was adjourned to 29th August, when it was resumed, and another charge by Skinner, against Pollard and Manuel, was included in the same inquiry. Regular depositions on oath were taken in this examination of 29th August; cannot tell what has become of them. The Clerk says they are not to be found among the records of the Institution. The result of the investigation was the following decision by the Inspectors, on 30th August, 1848:—‘The Board resumed the consideration of the charges by the Master Whitesmith, James Skinner against the Keeper Samuel Pollard and Hugh Manuel, and having heard the evidence of the Architect, and taken the whole case into full consideration, they find that there has been, for a long time past, a great deal of jealousy between the aforesaid James Skinner and Samuel Pollard, which has been greatly derogatory to the interests of the Institution, and subversive of its discipline. That these two persons were on the 17th instant admonished by the Board, that if they did not conduct themselves with more propriety in future, the Board would feel it their duty to dismiss them. That on 19th instant, a complaint was again made against James Skinner for interfering with Samuel Pollard; but as it was not proved that the circumstances complained of had occurred since he was last admonished, the Board considered it unnecessary to do more than caution him again. That on the 21st instant Mr. Skinner came to the Warden and accused Mr. Pollard and Mr. Manuel of fraud, and therefore made certain allegations against them, and that on a full investigation of the same there appeared to be no ground whatever for such allegations, which the Board cannot suppose were made with the view of protecting the interests of the Institution, but solely from malice, and that the Board therefore deem it due to Messrs. Pollard and Manuel, to state that their conduct in the matter referred to by Mr. Skinner was entirely free from blame. That it further appeared from the evidence of the Master Builder, Head Keeper and others, as well as by Mr. Skinner’s own admissions, that he has been in the habit of talking to Convicts about matters unconnected with their work, that he keeps no discipline among them, and that some of them have actually sworn at him, and refused to obey orders, without his reporting them, all which is in direct infringement of its discipline. The Board therefore deem it their imperative duty to direct Mr.

Skinner’s immediate dismissal, and that this order be read to him in presence of the Keepers and Guards.’

“ There was no charge before the Board against Skinner. The charge preferred against Manuel and Pollard, was appropriating the property of the Penitentiary to their own use. Witness being asked why the Board could not suppose the charge to have been made with the view of protecting the interests of the Institution, but solely from malice; says, the Board came to that conclusion from the evidence. Cannot say whether Skinner would have been dismissed upon the proceedings of 29th and 30th August, had he proved his charge against Manuel and Pollard. He might possibly have been dismissed on matters which came out in the course of the trial. Does not know whether he would or not. Witness is asked if in Skinner’s letter of complaint, against Manuel and Pollard, he did not explain that the chief witnesses on which his charge rested for proof, were Convicts? and says that Skinner explains the particulars of the charge he prefers in his letter, and from it, it appears that Convicts are the chief witnesses to establish the case. Witness is asked if the Inspectors did not, on the 29th August, immediately before proceeding to examine Skinner’s charges, resolve to receive no Convicts’ evidence, and recorded seven reasons for the step, in their Minutes? says, that after consideration of the expediency of taking Convict’s evidence in such cases, they did so resolve to exclude Convict evidence in Skinner’s case, and in all similar cases for the future, and did record seven reasons in their Minutes for doing so. Witness is asked if the Board did not enter on their Minutes at the same *sedesunt*, that ‘the Board find it has been the custom of previous Boards to receive Convict evidence, and that they themselves have followed that custom in various cases?’ and says the Board did so. Witness knows no case in which Convict evidence was refused by the Inspectors. The Inspectors refused to receive Convict evidence in Skinner’s case. Witness knows nothing against Skinner’s character or credibility as a witness. Has no reason to disbelieve any statement he would make on oath. Witness is asked if he is aware that Skinner gave evidence before the Commissioners on 21st August, nine days before he was dismissed? and says he was not aware of it.”

Resumed:—

“The Secretary having produced notes of evidence taken by Inspectors, in case of Skinner against Pollard and Manuel, which, he finds, were yesterday in his (the Secretary’s) possession, witness says these are the notes referred to in his evidence of yesterday. They are in witness’s handwriting, and were taken by him at the time. Witness is asked if Skinner’s charge was not that Manuel and Pollard had applied certain brass wheels, wooden patterns, and large lead balls, the property of the Penitentiary, to their own use, in endeavouring to find perpetual motion? and says it was for so appropriating these articles, but he cannot say if all of the articles were for the perpetual motion machinery. Witness is asked if it was not sworn at the trial, that brass wheels were in the hands of Manuel and Pollard, within the walls of the Penitentiary? and says he thinks it was so sworn. Witness is asked if there was any evidence that the said wheels were paid for to the Institution? and says there was none, but there was evidence that they were charged to one of the defendants by a Foundry in town. Witness is shown the notes of evidence, and asked to show in what part of the evidence this was proved, and says it was proved by the production of an Account for the

castings, but as it was not on oath, this does not appear in the Minutes. There was no proof that the brass wheels were made in the Penitentiary, and witness considered the *onus* was on Skinner to show that they were made in the Penitentiary. Witness is asked if Skinner, in his letter, did not state that he could prove by Convict evidence, that the brass wheels were made in the Penitentiary? and says that he does not so find it stated in Skinner's letter. Witness is asked, if the following passage is not in Skinner's letter: 'The information of S. Bedford is as follows: that 3 or 4 weeks time was employed on work for Messrs. Manuel and Pollard—he believes it was for a perpetual motion; the men employed, were Burr, Morrison, and Campbell, with Mr. Pollard. Mr. Pollard and Burr filed up two brass wheels about 18 and 4 inches diameter?' and witness says it is in Skinner's letter, but there is nothing here as to the making of the wheels, merely as to filing up, and witness adds that he is under the impression Pollard or Manuel admitted that the brass wheels were filed up in the Penitentiary; and witness is further under the impression that a book was produced, showing that either Manuel or Pollard, he thinks the former, was charged for the work done on them."

Q. Does it appear by the evidence, that the said filing was charged to either Pollard or Manuel?

A. Witness does not think it likely; his impression is that the book was produced.

Q. Is there any minute that such a book was produced?

A. Does not know that there is; the Inspectors were not very particular as to the formality of their proceedings.

Q. By whom was the said book professed to have been kept?

A. Is not certain, but thinks it was the Warden's book.

Q. Does not the Warden state in his evidence before the Inspectors, that he does not recollect that they were booked; that they may be so, but he does not recollect, the Keepers are too much in the habit of breaking the rules as to Booking. By booking, witness means the order for the work being entered in the slop book prior to its being commenced?

A. On reference to the Warden's evidence, finds that he did so testify, but that the Warden adds that Mr. Pollard sent a bill of it the morning the wheel went out, otherwise a pass would not have been granted, and that this may have created the impression on witness's mind, that the book was produced. Witness, however, still thinks a book was produced, showing that the work was charged to either Pollard or Manuel. On now examining the Warden's Order Book, finds the following entry: 'July 13th, 1848. H. Manuel, small motion gearing to clean, 17th June.'

Q. Was the Warden's Order Book produced at the trial?

A. Witness thinks it was, and that this must have been the book he refers to, and the above the entry.

Q. Was there any proof that the bill shown for castings, from the foundry, was for the identical castings in question?

A. Thinks there was no such proof.

Q. Was there any proof before the Inspectors, that Pollard had charged Manuel for the filing, previous to the time when Skinner stopped the brass wheels, as they were passing out at the gate?

A. The Warden swore that a bill must have been given in to the Clerk, or a permit would not have been granted.

Q. Was the Clerk, Mr. Bickerton, called to state whether a bill had been so given in?

A. He was not.

Q. Was it not sworn at the trial, that Pollard or Manuel had wooden patterns for brass castings, within the walls of the Penitentiary?

A. Yes, it was sworn that there were wooden wheels, but whether patterns or not, cannot say.

Q. Was there any proof how they came there?

A. Thinks there was not.

Q. Was there any proof that the Institution was paid for the wooden wheels or patterns?

A. Thinks not; thinks it was alleged by defendant that they were not made in the Penitentiary.

Q. Was there any evidence of the truth of this allegation?

A. Thinks not; there was no proof that they were made in the Penitentiary.

Q. Was there any evidence given before the Inspectors, that Pollard or Manuel had large leaden balls in their possession, within the walls of the Penitentiary?

A. It was alleged and not denied, that Pollard had large leaden balls in his shop.

Q. Was it shown by whom these balls were made?

A. It was shown and admitted that they were made in Pollard's shop, with his knowledge.

Q. Was it shown for what purpose these balls were made?

A. It does not appear in the evidence.

Q. Was it shown that the Warden had authorized these balls to be made?

A. Thinks not; Pollard explained, but not on oath, that he turned the balls in a lathe for the purpose of teaching his Convicts how to turn copper or brass, and that it was cheaper to teach them on lead than on anything else, as it could be melted up again, and that he was frequently in the habit of doing so.

Q. Did Pollard produce any proof of this explanation?

A. Does not think he did; he proved the turning was done openly and without any concealment.

Q. Did Pollard show, by his weekly returns of the employment of his men each day, that his men were reported to have been employed as he represented?

A. He did not.

Q. Can you show that portion of the evidence which you yesterday testified, induced the Board to conclude Skinner did not make the charge with "the view of protecting the interest of the Institution?"

A. Referred to the tone of Skinner's own evidence before the Inspectors; also to the testimony by Costen and Horsey, that bad feeling had existed between Skinner and Pollard.

Q. Was there any evidence given by either of these parties or admission of Skinner's, that he (Skinner) acted from improper motives?

A. There is no direct evidence to that effect, but has no doubt the Board drew that inference.

Q. If Skinner had proved his case, would there have been any ground upon the evidence to impute improper motives to Skinner, in bringing the charge?

A. Thinks not.

Q. You swore yesterday, that even had Skinner proved his charge against Pollard and Manuel, he might possibly have been dismissed on matters which came out in the course of the trial, and which are referred to in the decision of the Board upon the case. Can you refer to the portions of evidence you then alluded to?

A. Referred to the evidence of Skinner himself and Horsey. Skinner admitted that Convicts Guard, Bedford and Briscoe, and another, all of Pollard's gang, had spoke to him on matters not referring to the business, and that he (Skinner) had not reported them to the Warden. He admitted that Bedford, Gerard, and Briscoe, spoke to him against Pollard. Horsey testified as follows:—"Skinner's Convicts do not pay him that respect which is due to a Keeper. Witness has seen them laugh and sneer behind his back; mentioned it to Skinner. Witness said although it was no duty of his, yet he could not help saying to Skinner that he regretted it, and wished to see the Convicts keep their own places. What made witness pay more attention, was from the Commissioners being round, and witness thought particular care should have been taken to keep Convicts in order. When Mr. Skinner was putting up the vane on the top of the shops, Mr. Skinner desired Convict Christmas to go up to the roof. The Convict replied, "I'll be d—d if I do." Witness was astonished. Christmas gave, as a reason for not going up, because he had been reported by Pollard, and put on bread and water. Christmas was, at that time, one of Skinner's gang. Mr. Skinner was close to him; the Convict turned right round and faced him, saying "I'll be d—d if I go up; it was about two months ago; it was as the Convicts were going to breakfast; the other Convicts turned right round and laughed. The Convict spoke quite loud and violent. Mr. Skinner was not more than the length of the Board table from him. Witness and all the other Convicts heard him; the other Convicts were round Mr. Skinner. Witness was farther from the Convict Christmas than Skinner, at the time, and distinctly heard what the Convict said."

Q. Was this evidence taken by the Inspectors as a portion of the evidence in the trial against Manuel and Pollard?

A. It was.

Q. What had Skinner's management of his Convicts to do with the charge of fraud against Manuel and Pollard?

A. Horsey was called for the defence.

Q. How could misconduct on the part of Skinner, even if true, be taken as an answer to a charge of fraud against Pollard and Manuel?

A. Mr. Horsey was called by Manuel to show that there were feelings of animosity between Pollard and Skinner, and that Mr. Skinner had passed over a flagrant piece of misconduct on the part of Convict Christmas, as witness thinks, because Christmas was hostile to Pollard.

Q. Was Christmas in any way interested in the charge before the Inspectors?

A. No.

Q. Was any proof offered, that Christmas was hostile to Pollard?

A. Nothing but what appears in Horsey's evidence.

Q. Is there any such evidence in Horsey's testimony?

A. The only such evidence, was Christmas's refusing to go up to the vane, because Pollard had reported him.

Q. Was there any proof that Skinner did not report Christmas's misconduct to the Warden, and had him punished for it?

A. Thinks not; does not think Skinner alleged that he had.

Q. Was Skinner told that he was on his own trial?

A. Does not know.

Q. Was Skinner present when Horsey gave the evidence against him?

A. Has no reason to doubt that he was.

Q. Have you any reason to know that he was?

A. Can only say that he thinks he was.

Q. Were not the Convicts whom Skinner admitted to have spoken to him, the very Convicts who Skinner alleged could have testified as to the perpetual motion affair?

A. Bedford is the only one, unless the fourth Convict, (whose name Skinner did not know) was another.

Q. Is not profane swearing by the Convicts a very frequent offence?

A. Yes, they are often reported for it.

Q. If Skinner reported Christmas, was there any evidence to show misconduct on his part, in Horsey's evidence?

A. There was a general allegation of laxity of discipline against Skinner.

Q. Was there any proof of such laxity of discipline?

A. Nothing beyond what appears in Horsey's evidence and Skinner's own admission.

Q. Was Skinner called upon for his own defence, before he was dismissed?

A. He was.

Q. When was he so called?

A. On the 29th August, 1848, witness thinks.

Q. Was he told on what charge he was to defend himself?

A. Does not recollect.

Q. Is there any minute of such a circumstance, in the Journals of the Board?

A. The only entry is as follows:—"The Board thereafter proceeded to the investigation of the before mentioned charges, and having heard evidence on both sides, and the explanation of the parties, adjourned to 9 o'clock to-morrow, to enable them to obtain the evidence of the Architect, who was absent on leave." Witness explains, that on reading the above Minute, he thinks that Mr. Skinner may have been called upon for his defence, on the 30th, as he could not have been on the 29th; Mr. Horsey not having given evidence at that time.

Q. Is there any entry in the Minutes, showing that Skinner was called on for his defence, on or after the 30th August?

A. There is not.

Q. Will you swear that he was called on for such defence, on or after 30th August?

A. Will not swear positively that he was, but such is witness's impression.

Q. Is there any entry in the Minutes, to show that any charge was preferred, or being tried before the Inspectors, against Skinner, during the progress of the perpetual motion investigation?

A. If by this is meant the charge preferred by Skinner against Pollard and Manuel, there is no such entry.

By Mr. Smith:—

"The Inspectors were not influenced by the evidence Pollard gave at Frank Smith's trial, in any of the subsequent proceedings in which Pollard was before them. It was not proved that Pollard's statements as to the books, were false. Witness's impression is, that his statements were corroborated, but he speaks from memory. Mr. Rogers refused to answer certain questions put to him by Mr. Pollard.

"The Board considered Skinner a very troublesome man.

"The rule as to Convict evidence was not made to deprive Skinner of the benefit of such testimony; the subject had been frequently talked of before, but the matter was never finally decided until then. There was a difference of opinion on the subject, previous to the resolutions being passed."

"At Pollard and Manuel's trial, Skinner had an opportunity of telling all he knew of the case. No part of Skinner's evidence was omitted in the notes of the trial. His deposition was taken into consideration, before the decision was arrived at.

"The entry in the Order Book, for the work done for Pollard and Manuel, was in June or July."

Samuel Pollard,—by Mr. Smith:—

"Witness and Manuel were brought before the Inspectors this year, on a charge of fraud. The charge was preferred by Skinner. Skinner was examined on oath, on that occasion. The fraud imputed to them was doing work for their own use, with the materials of the Institution, and not charging the same to their personal accounts. All the work alleged to have been done for Manuel and witness, was entered by the Warden in the Shop Books, before it was commenced, but not minutely described. Certain wheels and shafts were here shown to witness, and he says, these are the articles in question. It was never attempted to send out these articles from the Penitentiary, previous to a bill being sent of them to the Office. The full price of the work done on them, was charged; the brass wheels were cast at (Mason's) Kingston Foundry, and the wood patterns were made there also, and the wooden wheel also. A bill for the brass wheels was got from the Foundry. Witness is shewn a bill and asked if that was the one produced before the Inspectors? and says it was. A certified copy of it is handed in and marked Exhibit A. The work was done for Manuel, through witness.

"Witness turned some leaden balls for Manuel; he did not take them away; they were melted up again; he was charged for the labour of turning them. Skinner examined the witnesses called in the case."

By Commissioners:—

"Witness here produced the Shop Book in which the Warden's instructions for the work done on Manuel's perpetual motion, were entered."

Q. What are the words of the Warden's instructions, you have referred to in your direct evidence?

A. 29th February, 1848, S. Pollard, two small shafts, 2s. 3d. 17th June, 1848, small motion gearing to clean, 5s. 3d. There is no other entry.

Q. In the first of these entries, has not the original writing been erased and the figure 2 inserted?

A. It looks so in the book, but knows nothing of it.

Q. Has not a similar erasure occurred in the second entry?

A. Thinks not.

Q. Were these entries made in your Book, at the dates they bear?

A. The parts of the entries in the Warden's handwriting, were made at the dates they bear; the figures were not filled in for some months after?

Q. Will you swear that the entire entry of 17th June, 1848, at the foot of page 2, in your Shop Book, was made on the date it bears, with the exception of the figures 5s. 3d?

A. Yes.

Q. Does the Warden copy the entries into your Book, from his own Shop Book ?

A. Does not know.

Q. Did you send the perpetual motion articles to the gate to be passed out ?

A. No; sent them to the Warden's Office with a bill of them, according to the usual practice, before they went to the gate.

Witness is shown a bill in his handwriting, dated 25th August, 1848, containing the following items:

8 wedges for brass wheels.....	£0	0	4
2 small shafts.....	0	2	3

£0 2 7

and is asked if that is the bill sent to the Office to obtain a pass for the perpetual motion machinery ?

A. Cannot positively say.

Q. Was that bill sent to the Office along with said machinery ?

A. Cannot say.

Q. What was that bill made out for ?

A. Supposes it was sent to the Office to get a pass, but it is so long since, that he cannot be positive.

Q. Did not the articles referred to in the items of this bill, form part of the machinery stopped by Skinner at the gate ?

A. Yes.

Q. Are you in the habit of sending one bill for each job to get a pass upon, or do you send several bills for each job ?

A. If the job was sent out at one time, only one bill would be made.

Q. Did not the whole of Manuel's job go to the Office at once ?

A. Yes.

Q. Had you any interest in the experiment ?

A. None.

Q. Did you ever turn any leaden balls, before those you made for Manuel ?

A. Yes; witness has taught two Convicts to turn brass work, by making them practise upon lead.

Q. When did you begin that practice ?

A. From the time witness came to the Penitentiary as a Keeper.

Q. Did Manuel order the leaden balls to be made for his use ?

A. No; he asked only to know the weight of certain lead balls; they were turned for him, the weight ascertained, and the labour charged.

Q. Did not lead balls form a portion of the actual working machinery by which Manuel expected to discover perpetual motion ?

A. Yes; as far as witness knows.

Q. Just such balls as you say you made for him ?

A. Yes; just such balls, but perhaps not the same size.

Q. How much did you charge for turning the lead balls ?

A. Thinks 5s. 3d.

Q. Did the Warden authorize you by an entry in your Shop Book, to turn the lead balls ?

A. He did not; the balls were turned to show the Convicts how to do brass work.

Q. When were these balls turned ?

A. Cannot tell; thinks it was in July, 1848.

Q. Had you made any charge for turning these balls, previous to the rest of the machinery being stopped at the gate ?

A. Thinks he sent a bill for turning the balls, to the Office, with the machinery.

Q. Was there any work done on the brass wheels in the Penitentiary ?

A. Yes; the Moulder's sand was worked off by Convict labour.

Q. Did you charge Manuel for the work done ?

A. Yes.

Q. How much ?

A. Cannot say; it was included in the 5s. 3d. charged for the lead balls.

Q. Do you give a weekly return to the Office, of the manner in which your men have been employed ?

A. Yes.

Q. Did you ever report your men to have been engaged turning lead balls ?

A. No; the men who did such work, were labourers.

Q. How did you report these men as engaged, when they were turning ?

A. Their time was charged into the general work doing in the shop, as their work was done for the good of the Institution.

Q. Was the time of all these men returned as having produced 3s. 6d. per day, to the Institution ?

A. Yes; in the summer.

Q. Are you a blacksmith ?

A. No; knows something of it.

Q. Did you make any return to the Office, of the work ordered in February and June, until the day it went out in August ?

A. Thinks not.

By Mr. Smith :—

Q. How many bills did you send up for the work done for Manuel ?

A. Cannot say if there was more than one ?

By Commissioners :—

Q. What were the names of the two Convicts you taught brass work, by practising on lead balls ?

A. Morrison and Gilchrist ; they are both here now.

Q. Were these the men who turned the balls for Manuel ?

A. Morrison did the balls for Manuel.

Q. Did Convict Bedford work on the balls for Manuel ?

A. No.

Q. Did Convict Crandell ?

A. Thinks not ; but will not be confident.

Q. Did Convict Burr ?

A. He did not.

Hugh Manuel—by Mr. Smith :—

“ Witness does not know if he was ever charged by Skinner with committing a fraud on the Institution. Pollard and witness were so charged together. Skinner gave testimony on oath, at the trial. He had an opportunity of stating all he knew about the matter. Witness never had the articles referred to in Skinner's charge, in his hands, previous to the night of the trial before the Inspectors. All the work that was done on the brass wheels was rubbing the sand off them, and filing the teeth. The brass wheels were cast at the foundry in town. The wooden wheel was made at the foundry in town.”

By Commissioners :—

“ The perpetual motion experiment was exclusively the property, and at the risk of witness. Pollard ordered the articles to be made at the foundry, by witness's order. Never ordered any leaden balls to be made for him at the Penitentiary. Saw Pollard turning leaden balls in his shop one day, and asked him the weight of lead balls of 1, 2, 3 and 4 inch diameter ? Pollard said he would find out the weight for witness. He was either to cast or turn the balls, and give witness the weight. Expected to pay for the time of the men making the balls. Does not know that he has paid for making the balls. Does not know if the Warden consented to the balls being made. The machinery was never set up by witness. Never saw the leaden balls. Pollard sent the articles out of the Penitentiary for witness. Does not know by whom. Does not know who got the permit. Pollard told witness a week before, that he would send them home to witness. Pollard told witness that he would charge witness for the time of the men in turning the leaden balls. He said so on the Sunday-week preceding the day when the articles were stopped at the gate.”

Francis Bickerton—by Commissioners :—

“ Witness is shown a letter from Keeper Skinner to the Board of Inspectors, and is asked if that was the letter of complaint preferred by Skinner against Manuel and Pollard, after the perpetual motion machinery was stopped at the gate ? and says it is. Recollects of the said machinery being sent to the gate. Witness gave a pass for it. Witness got a bill of the articles to charge Manuel for the work, before he granted the pass. Witness is asked to produce the bill in question, and exhibits an account as follows :—

“ H. Manuel,  
Debtor, Provincial Penitentiary :  
8 wedges for brass wheels..... £0 0 4  
2 small shafts..... 0 2 3  
£0 2 7”

“ This is the only bill witness got, on which the pass for the whole perpetual motion machinery was granted. Had this bill before the pass was granted. The date of Skinner's complaint is 22nd August, 1848 ; the date of the bill is 25th August, 1848. Witness is asked how he could have granted a pass for articles previous to 22nd August, on a bill not made out until the 25th ? and says he cannot tell. Witness is asked to produce the Pass he granted for the articles ? and says he has searched the bundle of Passes returned for the month of August last, from the gate, and cannot find it.”

The following is Skinner's letter of complaint against Manuel and Pollard :—

“ Provincial Penitentiary, 22d August, 1848.

To the Gentlemen of the Honourable Board of Inspectors for the time being :—

Gentlemen,

In consequence of information given me by a Convict by the name of Stephen Bedford, things very forcibly engaged my attention, in what I had seen and handled myself. At the time of the Warden's sickness I went into Mr. Pollard's shop, (the time I there went, to the best of my knowledge, was from 12 to 1 o'clock at noon) I saw large lead balls, they were turned ; on looking round the shop saw a quantity of lead shavings under the lathe, I considered this was strange work, but named it not. The information of Stephen Bedford is as follows : That three or four weeks' time was employed on work for Messrs. Manuel & Pollard, he believes it was for a perpetual motion ; the men employed were Burr, Morrison, and Crandell, with Mr. Pollard. Mr. Pollard and Burr filed up two brass wheels about 18 and 4 inches diameter. A number of lead balls were cast of different sizes and turned in the lathe, weight about 40lb. down, he thinks about 8 or 10 in number. One new iron pot and one old do. was applied to the wheel of the lathe, one pot on each side ; in both of these pots were put lead balls and pieces of lead he supposes for the trial of some experiment : the new pot fell off the lathe-wheel and broke in pieces, another Iron pot was brought at the shop by the Messenger he expected from Kingston. A wood frame was made by the Carpenters for the same work ; he, the said Stephen Bedford, cut a shaft of ¼ inch Square Iron and forged 8 wedges, saw those wedges filed up by Burr, and fitted in the large wheel with shaft. This work was concealed by being removed to Mr. Pollard's Office.

This gave the Convicts reason to believe that this work was doing unknown to the Warden; he being sick at the time. Mr. Manuel was daily at the shop for the time consulting with Mr. Pollard; Mr. Costen found them together at different times in the office, when they hastily removed.

Stephen Bedford further states, that Messrs. Little, Smith, and he thinks Ballantine, Keepers, has since that time had those lead balls for the use of setting of Iron work.

Evidences collected from the following persons: 1st. on or about 29th ultimo, I inquired of Wm. Smith, Keeper, if he had in his possession any lead balls, as I wanted one? He said no. On further inquiry the said Wm. Smith said that he had a large lead ball from Mr. Pollard. Question, What weight? he said 50 lb.; it was beautifully turned. It was so large that he had no means of cutting it, but returned it again to Mr. Pollard.

(Signed,) "H. SKINNER."

2d. As a further demonstration, on the 18th instant, at 50 minutes past 5 o'clock, A.M., I inquired of F. Little, Keeper, if he had any lead balls? He said no. On further inquiry, said he had a quantity of lead balls from Mr. Pollard, the size of hen eggs, and some large balls about 4½ inches diameter, showing the size by opening both hands and fingers; had them for the use of setting Irons of forges in new shops; what he did not use he returned again to Mr. Pollard.

(Signed,) "SKINNER."

"N. B.—Please allow me to make a few remarks, which I hope will not be out of place, knowing, as I do, a little about machinery:—

1st. Were those brass wheels and wood collar, &c., booked in a regular way, previous to thus being worked?

2nd. From whence came the patterns of brass wheels and two bearings, or who made them?

3rd. By whom were the brass wheels &c., cast?

4th. By whom was the wood collar made?

5th. What price has been charged or paid for turning and filing the two brass wheels, and drilling and filing up the two brass bearings?

6th. What were all those lead balls made for?

7th. Who made the patterns of lead balls, or from whom were they obtained?

8th. And lastly, please examine Hardware accounts respecting the iron pots.

(Signed,) H. S."

"P. S.—L'Assage and Gerard can give some information, if it is agreeable to you to hear them."

"Provincial Penitentiary, 1848.

"Gentlemen,—

"Some time last winter, I believe, in the month of February, I walked in the new shops over the Smith's shop, where Mr. Manuel was with his gang at work. (Much had been said, about that time, respecting perpetual motion.)

"Mr. Manuel told me he had a plan, but that he was not well acquainted with machinery. He called me at his Office and handed me a draft-board, whereon was a chalk draft or sketch of his perpetual motion—the large wheel plainly shown. In answer to some questions which I put to him, he said that it would be propelled or worked by balls applied at side of wheel, and he had no doubt of its answering; that Mr. Pollard and himself was about trying it. Other conversations took place at various times, of which I do not remember,

(Signed,) H. SKINNER."

"N. B.—I had not, at that time, the least suspicion that this was working within the walls of the Penitentiary."

#### CASE OF Keeper RICHARDSON.

This Officer gave material evidence before the Commission, and the Warden endeavoured to impeach his character.

James Hopkirk, Esq.—by Commissioners:—

Q. Did Keeper Richardson give evidence at Frank Smith's trial, in October, 1847, before the Inspectors?

A. He did.

Q. Was his evidence in favour of Frank Smith?

A. He was only called to speak to the character of Robinson and Fitzgerald, two of the witnesses for the prosecution against Smith. His testimony was favourable to the credibility of the said witnesses.

Q. Did not the evidence of Robinson and Fitzgerald, materially affect the issue of the trial?

A. Yes.

Q. Are you aware Richardson has given evidence before the Commissioners?

A. Has reason to believe so.

Q. Do you know if it was favourable or unfavourable to the Warden?

A. Has been led to believe that it was unfavourable.

Q. Do you think Richardson has been concerned in the conspiracy against the Warden?

A. Cannot say.

Q. Has the Warden ever brought any charge before the Board of Inspectors, against Richardson?

A. The Warden mentioned to witness, early in September, 1848, that he had some charge to make against Richardson, and at the next meeting of the Board, the Warden wished to bring it up, when witness (who had spoken previously to some of his brother Inspectors, on the subject), said "you had better not." The other Inspectors were of the same opinion, and the matter was not pressed to an investigation, nor any minute of it made.

Q. What was the charge?

A. Thinks it was something about tools having gone amissing in his shop, but witness will not be positive.

Q. Did the Warden say how long the complaint as to the tools had been standing against Richardson?

A. Does not remember.

Q. There were only two meetings of the Board, in September, viz: on the 1st and 27th, at which of them did the matter come up?

A. Thinks it was at that of 27th, but it may possibly have been at that of the 1st; thinks the former.

Q. How long previous to the meeting when it came up, had the affair been known to you?

A. Perhaps a week; a short time.

Q. To which of the Inspectors had you communicated the matter?

A. To Mr. Corbett, and either to Mr. Gildersleeve or Dr. Baker.

Q. Why did you persuade the Warden not to bring up the matter before the Board?

A. Because witness understood Richardson either had been or was about to go before the Commissioners, and it might be considered an interference with them.

Q. Was there any reason why greater delicacy should have been shown as to interference with the Commissioners in the case of Richardson, than in those of Wilson, Waldron, Skinner, Watt, Kearns, Bannister, and Cooper, all of whom were before the Commissioners, and yet were each, once or oftener, tried by the Inspectors during the sitting of the Commission?

A. Cannot answer this question without a full consideration of each case. Some of the parties witness was not aware to have been before the Commissioners when they were tried by the Inspectors.

Q. But how does that affect the case, as you have just stated that you did not know whether Richardson had been before the Commissioners when the complaint against him came up?

A. Witness was aware that Richardson either had been or was about to go before the Commissioners, when the matter was before the Inspectors.

Q. Was not every Officer in the establishment in the same position either already or likely to be hereafter before the Commissioners?

A. Did not know for certainty, but has no doubt of it.

Q. Did you understand that Richardson was hostile to the Warden?

A. Had at the time the complaint was before the Inspectors, reason to believe that Richardson's evidence would be or had been hostile to the Warden.

Q. Was the Warden's charge against Richardson a grave one?

A. Cannot say. Never read the paper which the Warden tendered as to the affair.

Q. Did you consider the taking up of such complaints, an act of expediency or duty?

A. Witness personally thinks it was an act of duty to take up all such complaints under the Act.

Q. Were the papers tendered by the Warden, informal examinations of Convicts?

A. Does not know, as he did not read them.

Q. Did the Warden express any doubt of Richardson's honesty in the affair?

A. Thinks he did.

Q. Did you understand the dishonesty was to any extent?

A. Cannot tell.

Q. Was there any other charge but that of dishonesty, ever brought before the Board by the Warden, against Richardson?

A. Knows of none while witness was an Inspector, as far as he recollects; is sure there was none.

\* \* \* \* \*

Q. Has not Richardson been an Officer of the Penitentiary, nearly from its commencement?

A. He has been an Officer for a very long time.

Q. Do you know of anything against his character, previous to the affair of the tools mentioned to you by the Warden, in September of this year?

A. Does not.

Q. Would you believe Richardson on oath?

A. Has no reason to disbelieve him.

CASE OF Guard WATT.

Watt gave evidence at Kitchen-keeper Smith's trial, highly favourable to Smith. When examined on the same points by us, he distinctly contradicted his previous statements. The Inspectors desired to dismiss Watt when they learnt this, but knowing the effect such a step would have had on other witnesses, we declined aiding in his dismissal at that moment.

James Hopkirk, Esq. :—

"Has reason to believe that Guard John Watt gave evidence before the Commissioners prejudicial to Frank Smith. Watt gave evidence at Frank Smith's trial before the Inspectors, in October, 1847; his evidence was favourable to Frank Smith. The Inspectors placed great reliance on Watt's evidence, in deciding upon part of the charges against Frank Smith. Watt's evidence before the Commissioners materially differed on particular points, from the evidence he gave before the Inspectors. Either Warden Smith or Frank Smith brought the discrepancy in the evidence of Watt, under the notice of the Board. Witness is asked if the Board

resolved to apply to the Commissioners to furnish them with a copy of the evidence given to the Commissioners by Watt, for the purpose of dismissing him from his situation? and says the following is the Minute made on the matter in the Inspector's Minute Book, on 29th August:—"The Board resolve that application be made to the Secretary of the Commission, requesting to know whether the extract of the evidence furnished by Mr. F. W. Smith was a true copy of the evidence taken before that Court, and to inform them whether such evidence was taken under oath," and that this application was made with a view of dismissing Watt, if he had given contradictory evidence on oath."

Q. Was the original entry in the Minute Book, in these words, or has the original matter been defaced and the above words interlined?

A. There has been an alteration in the entry which witness has no doubt was done when the Minutes were revised, before signature.

Q. In whose handwriting is the alteration?

A. The whole of the above entry is in the handwriting of the Clerk. A subsequent interlined addition in the same entry, is in witness's handwriting, viz: the addition of the words, "was approved and ordered to be sent."

Q. Did you instruct the Clerk to make the alteration of the entry in question?

A. Has very little doubt that the alterations were made in pencil by witness, and copied over in ink by the Clerk.

Q. What were the words of the entry as it originally stood?

A. Instead of the words as now used, "to know whether the extracts of the evidence furnished by Mr. F. W. Smith, was a true copy," the original words were, "requesting him to furnish them with a copy of the evidence taken before that Court."

Q. Did the Commissioners reply that they declined "to furnish the Inspectors with any portion of the evidence received by them?"

A. They did, by letter of 31st August, 1848.

Q. After considering the reply of the Commissioners, did not the Board on the 1st September make the following Minute in their Journals:—"The Board observe that the Commissioners have fallen into an error in supposing that the Inspectors asked to be furnished with any portion of the evidence given before the Commissioners, which they never thought of doing?"

A. They did.

Q. Was the alteration of the Minute of the 29th August, made after receipt of the letter of 31st August, from the Secretary of the Commission?

A. Thinks it must have been.

Q. Why did you, in revising the Minutes of 29th August, make one correction in pencil and another in ink?

A. Does not know.

Q. Was Watt brought before the Inspectors upon the subject of the contradictory character of his evidence?

A. He was not.

Q. Have you ever spoken to him on the subject?

A. I have not.

Resumed:—

Witness desires to explain the circumstances under which the Minute of 29th August was made. He has been considering the matter since last evening, and thinks the following is a correct statement of the facts:—That the particular part of the Minute of 29th August, relating to the application to the Commissioners, on the subject of Watt's evidence, was not prepared at that meeting (of 29th) of the Board, but a short note or jotting of what was done was taken by the Warden, and that he drafted that part of the Minute, and had it inserted in the Minute Book, and that when the Minutes were read over by witness before the Board met on 1st September, witness discovered the error and corrected it in pencil, and afterwards pointed out the correction to his brethren when the minutes were read over, who approved of it; that witness then took the Minute Book to the Clerk, who made the correction in ink, and that it was then signed by the Members of the Board. Witness has no doubt whatever, that this was the first business done at the meeting of 1st September, and before the President laid the letter of the Secretary's of the Commissioners before the Board.

"Mr. Hopkirk here informed the Commissioners that he had sealed up the original documents alluded to in the Minute of yesterday, and placed the package in the hands of Mr. Warden M'Donell, on an understanding with that Officer that the package should not be opened without the special consent of Governor General; that he had reason to believe the original draft of the Minute of 29th August, 1848, in which the alteration and interlineations occurred, is among the said documents, and that he now applies to the Court to instruct the Warden to produce the package with a view of its being opened.

"Mr. Hopkirk was then called in and the above Minute read to him, to the correctness of which he assented.

"Mr. Hopkirk also added that he was now quite willing that the Commissioners should have all the drafts of Board Minutes which may be in said package. Mr. Hopkirk then withdrew.

"The Commission having taken Mr. Hopkirk's application into consideration, resolved that it was inexpedient to interfere in the matter.

"A letter was handed in from Mr. Hopkirk on the same subject, and the Secretary was instructed to read over the decision of the Court as an answer to both of his applications."

Resumed—by Commissioners:—

Q. You have said in your explanation of this morning, that you think the facts were as you have stated. Do you swear that such were the facts, or is it only supposition?

A. Swears to the facts as positively as he can swear to anything of the kind.

Q. Have you a distinct recollection of the facts ?

A. Yes, has a distinct recollection of the facts as he could have of anything of the kind.

Q. What has been the usual practice of the Board of Inspectors, as to their Minutes—who has usually drawn them up ?

A. Most commonly the routine part of them has been drawn up by the Warden or Clerk, previous to the meeting. In most instances, but not uniformly, since witness has been an Inspector, the important clauses have been drawn by witness, after having obtained the sense of the Board regarding them. Alterations have been frequently made on said drafts, before the Board broke up, at the suggestion of different members. In other cases, entire Minutes have been drawn up by witness, read to, altered and approved by the Board before they broke up. In other cases, parts of a Minute have been drawn up by witness, and part by the Warden, and submitted to the Board for approval or correction at the same meeting. It has frequently been the case that the draft of the Minutes of any meeting have not been submitted for approval at that meeting, but reserved for approval at a future sitting.

Q. When important business was transacted by the Board, have the members broken up without a draft of their transactions having been made ?

A. Sometimes they have ; they have given general instructions to witness or the Warden for the preparation of drafts.

Q. In such cases were drafts submitted to the Board, or regular entries in the Minute Book ?

A. In most cases the drafts were submitted, but entries in the Minute Book have been submitted in this way ; the practice was not very uniform.

Q. Are we to understand that the Inspectors gave general instructions to the Warden to draw up Minutes for them, on important business, stating their reasons for coming to grave determinations ?

A. Yes.

Q. Has the Warden ever written such Minutes, drawn up by him in the Minute Book, before submitting them to the Board for approval ?

A. Thinks that on several occasions the Clerk has inserted such Minutes in the Inspectors' Minute Book, when so drawn up by the Warden, without their having been previously submitted to the Inspectors. The Minutes were, however, always carefully read over before signature.

Q. Have the members of one Board meeting been always present when the said Minutes were read over at the next meeting ?

A. They generally have, but witness will not say on every occasion.

Q. In case one or more members were absent, what was the usual course ?

A. Such members present as were in attendance at the previous meeting, signed the Minutes, and the absent members signed next time they attended.

Q. Have not long intervals sometimes elapsed between the meetings of the Board ?

A. Considerable intervals have elapsed, but not very frequently, since witness was an Inspector.

Q. Were not the Minutes of 29th and 30th August, 1848, submitted to the Board for signature, as written in the Minute Book, together, on the 1st September ?

A. They were.

Q. Was a draft of the Minutes of the transactions of 29th August, ever submitted to the Board for approval ?

A. Thinks only a part of it.

Q. Was a draft of the Minutes of 30th August, submitted to the Board ?

A. Thinks a draft of the proceedings at that meeting was submitted at the same sitting and approved of.

Q. Why do you think so ?

A. Because witness remembers drawing it.

Q. How did it come that a draft of the proceedings of 30th was submitted and approved of before the draft of the previous meeting was submitted ?

A. Because the meeting of 30th took place at 9 in the morning, and the Minutes of 20th had not been entered into the Minute Book, and the meeting of 30th was specially to decide Skinner's case.

Q. You say the Minutes of 29th was not entered in the Minute Book at the meeting of 30th ; was the draft of it not ready on the 30th ?

A. Is sure it was not.

Q. How are you sure of this ?

A. Knows it from recollection ; is as positive of it as he can be of anything of the kind.

Q. Were all the proceedings of the 29th August written out from "a short note or jotting" by the Warden ?

A. No.

Q. Was the decision as to the Debentures upon Mr. Campbell's letter drawn up from such jotting ?

A. Cannot tell, but has no doubt it was part of the *pro forma* business.

Q. Was the decision of the Board upon the application to the Commissioners, as to Watt's evidence, drawn up from jottings by the Warden ?

A. Has no doubt it was.

Q. Why have you no doubt ; do you speak from knowledge or supposition ?

A. Has stated already, that he is as certain as he can be of anything of the kind.

Q. Will you swear you did not write that portion of the Minute ?

A. To the best of witness's knowledge and belief, he did not do so.

Q. Will you swear that a draft of that portion of the Minute was not submitted to the Board at the same meeting ?

A. Will swear to it as positively as he can to anything of the kind ; is certain it was not.

Q. Was the Minute as to the choice of a Kitchen keeper drawn up from jottings by the Warden ?

A. It was, but cannot say if it was submitted to the Board at that meeting ; thinks it was.

Q. Was the series of resolutions upon the decision of the Board as to the future rejection of Convict evidence, drawn up from jottings by the Warden ?

A. It was not ; it was drawn up by witness, at the request of the Board, and submitted at the same meeting for approval.

Q. Was the Minute, as to the investigation in the affair of Skinner, Pollard, and Manuel, (coming immediately after the resolution as to Convict evidence) drawn up from jottings by the Warden ?

A. Does not know.

Q. Do you know of your own knowledge that the Warden took any jottings at the meeting of 29th August ?

A. Saw him taking jottings at that meeting.

Q. Was a draft of the Minute of the Pollard investigation last referred to, submitted to the Board at same meeting ?

A. Is as sure that it was not as he can be of any thing of the kind.

Q. Then the only portion of the Minute of 29th August which you can positively swear to as not having been submitted in draft, is the portion in which the alteration and interline occur ?

A. That is the only portion of the Minute of 29th August which witness can positively swear was not submitted to the Board in draft.

Q. Did you see the letter of the Secretary of the Commission of 31st August, previous to the Board meeting of 1st September ?

A. I did not.

Q. At what time of day was the meeting of 1st September held ?

A. Thinks it was the evening, but is not certain.

Q. Did not Mr. Corbett communicate to you the contents of the Secretary's letter of 31st August, previous to the meeting of 1st September ?

A. He may have told witness generally that the Commissioners had refused the request of the Inspectors, but the contents of the letter were not otherwise communicated to witness.

Q. Was the alteration in the Minute made with the knowledge of your brother Inspectors ?

A. The alteration was made in pencil by witness, and submitted to the other Inspectors for their approval.

Q. Was their attention called to the alteration you had made ?

A. Most undoubtedly it was.

Q. Did any conversation arise upon it ?

A. Does not think there was much.

Q. Was Mr. Corbett present ?

A. He was, witness has no doubt.

Q. Had you seen the Secretary's letter of 31st August when you took the Minute Book to Mr. Bickerton to re-write your interlineation in ink ?

A. Is sure he had not seen it.

Q. Had Mr. Corbett seen it ?

A. He had ; witness has no doubt he had.

Q. Why did you make the correction in pencil, and not in ink ?

A. Because he first wished it submitted to his brethren for approval before finally altering it.

Q. Could you not more easily have re-written the interlineation in ink yourself, than take the Book to the Clerk's Office for that purpose ?

A. Possibly he might ; but most of the Books are in the Clerk's hand-writing, which was the reason for going to him.

Q. Did not the same reason apply to the interlineation made by you in ink, in another clause of the same Minute ?

A. It did ; but thinks it was written after the Clerk had re-written the other in ink.

Q. Does not the Minute Book contain many alterations in your hand-writing ?

A. There are only two corrections in witness's hand-writing, besides those of 29th August, during the two years he has been an Inspector, and these are only corrections of clerical errors.

Q. Are they in pencil or ink ?

A. They are in ink.

Q. Has not the Warden made frequent corrections in the Minutes ?

A. Only finds two instances during witness's incumbency.

Q. Are they in ink ?

A. They are.

Q. Has any other correction than the one of 29th August been made in pencil, and re-written in ink ?

A. Yes, one on 8th October, 1847. It is in the Warden's hand-writing in pencil in the margin, and the words are interlined by the Clerk. Can find no other during witness's incumbency.

Q. In what matter was this interlineation made by the Warden ?

A. It is in reference to a reprimand given to Keepers Keely and M'Carthy.

Q. Do you know if that interlineation was made with the sanction of the Board ?

A. Does not. But the words interlined are, "having called upon the Keepers for their explanation, and" which witness knows to be a correct account of the *Res gestæ* at the meeting.

Q. What is Guard Watt's character?

A. Knows nothing against him but his giving contradictory evidence on oath.

Q. If Watt gave the evidence he is said to have given before the Commissioners, would you believe him on oath?

A. I would not.

Q. Is Watt concerned in the conspiracy against the Warden?

A. Has no reason to suppose so.

Q. Did you try to get him indicted at the last Assizes?

A. He did not.

Q. Was his name in the list of alleged perjurers handed by you to the Grand Jury?

A. Thinks it was not in any list handed by witness to the Grand Jury; made no charge of perjury except against M'Carthy.

By Mr. Smith:—

"The letter of the President of the Inspectors to the Secretary of the Commission of 29th August, 1848, states that he is requested by the Inspectors 'to transmit for the information of the Commissioners extracts from the evidence taken before the Board of Inspectors, as well as extracts from that submitted by Mr. F. W. Smith as having been taken before the Commissioners, and have directed me to request that you will be pleased at your earliest convenience to acquaint them whether the latter evidence was actually given before you, and if so whether it was on oath; with a view of their immediately, on receipt of your answer, considering the propriety of their ordering Watt's instant dismissal.' No other application was ever made to the Commissioners on the same subject.

"The alteration on the Minute of 29th August was made prior to its being signed."

"The Warden has frequently shown witness rough drafts of Minutes of the Board of Inspectors, or of portions of them, before they were entered in the Minute Book. Is not aware that the Warden has ever exceeded the instructions of the Board in drawing up such Minutes. The Minutes were always read aloud before they were signed. Witness is asked to look at the Minute of the Inspectors of 8th October, 1847, and is asked if there is not an interlineation in that Minute, and if there is not a corresponding pencil memorandum in the margin, made by the Warden? and answers, there is such an interlineation and such a memorandum. Witness is asked what interlineation is made in the Minute of 3d February, 1848? and witness says, there is an addition, in the Warden's hand-writing on that date, of the words "See Warden's letter," within parenthesis. Considers this is not an alteration of the Minute, but only a reference added. Witness is

asked to say what is the interlineation of 17th August, 1848? and says the words "and estimate" are interlined in the Warden's hand-writing. Cannot tell whether these words were entered by order of the Board, but knows the words only stated what had occurred.

"Cannot say positively that these corrections were made before the Minutes were read, but has no reason to doubt they were."

"Is not aware that the Warden ever wrote a letter as from the Board, without having received instructions to do so."

Francis Bickerton—by Mr. Smith:—

"Witness is referred to the Minute Book of 8th October, 1847, and says there is an interlineation in that Minute in witness's hand-writing. Does not recollect whether witness made that interlineation in ink from the Warden's pencil memorandum in the margin before or after the Minute was signed. Should think it must have been before, or the Inspectors would not have signed it. Has no recollection of ever putting any interlineation in the Minutes after the Inspectors had signed them.

Mr. Kirkpatrick usually wrote the drafts of Minutes of the Board, of which he was President. The Warden sometimes wrote the Minutes of the Kirkpatrick Board. Witness always took the draft of those written by the Warden to Mr. Kirkpatrick for his approval, before entering them in the Minute Book."

By Commissioners:—

All the Minutes of the late Board of Inspectors were either written by the Warden or by Mr. Hopkirk. The Warden took possession of the draft Minutes when the Board rose, and usually handed them to witness to copy into the Book a day or two after. In many cases Minutes were often presented to the Inspectors cut and dry before the Board sat, that is in matters connected with the Institution. Some parts of these Minutes prepared beforehand were in the hand-writing of the Warden, and part of witness. The portions done by witness were the statistics, prisoners received, &c.; the Warden wrote such parts as related to the discipline, removal of Officers, &c. Entire Minutes may have been written out by the Warden before the Board met, but not very frequently; generally in trivial matters. When Mr. Hopkirk wrote out the draft Minutes, his original copy was handed to witness to copy into the Book. When the Warden wrote out the Minutes of the Corbett Board, the draft was not exhibited to the Inspectors before being copied into the Minute Book.

"The original Minutes of 1848 were written as follows:—

The meeting of 3d Feb'y, 1848,	by the Warden.
" 7th "	" cannot say.
" 24th "	" by the Warden.
" 28th "	" by do.
" 3d March,	" by do.
" 7th "	" by do.
" 10th "	" cannot say.
" 15th "	" by the Warden.
" 18th "	" by Mr. Hopkirk.
Second meet'g 18th "	" by do.
The meeting of 20th "	" by do.
" 8th April,	" by the Warden.
" 29th "	" by do.

The meeting of 31st May, 1848, by the Warden.  
 " 5th June, " by do.  
 " 13th " " cannot say.  
 " 19th " " by the Warden.  
 " 21st " " by do.  
 " 24th " " the first part by  
 the Warden, the two latter paragraphs by Mr. Hop-  
 kirk.

The meeting of 28th June, 1848, by the Warden.  
 " 1st July, " by Mr. Hopkirk.  
 " 31st " " by the Warden.  
 " 17th Aug., " by do.  
 " 19th " " by do.  
 " 23d " " by do.  
 " 29th " " by do. down  
 to the paragraph commencing "The Board before  
 proceeding," &c., and Mr. Hopkirk the rest.

The meeting of 30th Aug., 1848, by the Warden.  
 " 1st Sept., " by Mr. Hopkirk.  
 " 27th " " by the Warden.  
 " 3d Oct., " by Mr. Hopkirk.

No Minute written by the Warden was ever in  
 any instance altered or amended by the Corbett  
 Board, except in the one case of 29th August, 1848.

The Minute of 29th August, as drawn up by the  
 Warden, originally stood as follows, and was so  
 copied into the Book by witness:—"Whereupon  
 the Board resolve that application be made to the  
 Secretary of the Commission, requesting him to fur-  
 nish them with a copy of the evidence taken before  
 that Court, and to inform them whether such evi-  
 dence was taken under oath." Witness, by Mr.  
 Hopkirk's instructions, afterwards expunged the fol-  
 lowing words: "him to furnish them with a copy,"  
 and interlined in lieu thereof the following words:  
 "to know whether the extract of the evidence fur-  
 nished by Mr. F. W. Smith was a true copy." Witness  
 also added after the word "oath," by di-  
 rection of Mr. Hopkirk: "a draft of the necessary  
 letter having been prepared and submitted to the  
 Board." Mr. Hopkirk interlined the words used in  
 the first part of the above alterations in pencil, and  
 handed the latter alterations to witness on a slip of  
 paper. Both alterations were ordered by Mr. Hop-  
 kirk to be made on the same day. Mr. Hopkirk  
 gave witness these instructions while the Board were  
 sitting on 1st September; it was late in the evening,  
 by candle-light. Since witness made the alterations  
 referred to, another alteration has been made on the  
 same Minute, in ink, in Mr. Hopkirk's hand-writing:  
 after the words "submitted to the Board" Mr.  
 Hopkirk has added, "was approved and ordered to  
 be sent."

"Witness is referred to the Minute Book of 8th  
 October," 1847, and to the alterations in that Mi-  
 nute which witness testified was made by him from  
 a pencil memorandum in the Warden's hand-writing  
 in the margin. The entry, as it stood before cor-  
 rection in the Minute Book, was an exact copy of  
 the original Minute in the Warden's hand-writing.  
 Witness had no authority for making the interlinea-  
 tion, but the pencil mark; the Warden nor any of  
 the Inspectors did not explain to him that the cor-  
 rection was to be made; witness merely saw the  
 Warden's pencilling in the Book, and presuming it  
 was there for his guidance, made the correction."

By Mr. Smith:—

"Does not recollect of the Warden's having writ-  
 ten a Minute for the Board of Inspectors as to the  
 dismissal of an Officer, before he was actually dis-

missed. In the rough drafts of Minutes handed to  
 witness to copy into the Minute Book, witness has  
 occasionally seen the writing of witness, the Warden,  
 and Mr. Hopkirk all on the same sheet."

Witness cannot tell if the rough minutes handed  
 to witness, in the Warden's handwriting, were copied  
 by the Warden from original minutes composed by  
 Hopkirk; but has known the Warden to say that he  
 had copied over Mr. Hopkirk's writing, to save  
 witness trouble. Does not know if the drafts hand-  
 ed to witness by the Warden were his composition."

The following is the correspondence referred to  
 by the witnesses in the case of Guard John Watt:

No. 1.

F. W. Smith, to Board of Inspectors.

"KINGSTON, 28th August, 1848.

"Gentlemen,

"Although no longer an Officer in the Peniten-  
 tiary, I deem it due both to myself and you to call  
 your attention to the evidence given by John Watt,  
 Guard, before the Commissioners, an extract of  
 which they have furnished me, and a copy of which  
 I beg to lay before you, which you will perceive is  
 in direct contradiction to that given on oath before  
 you on the occasion of the investigation of certain  
 charges preferred against me in October last.

"I have the honour to be, &c.  
 (Signed,) "F. W. SMITH.

"To Inspectors of Provincial Penitentiary."

No. 2.

Copy.—Letter, President Board of Inspectors, to  
 Secretary Penitentiary Commissioners.

"PROVINCIAL PENITENTIARY,  
 "29th August, 1848.

"Sir,

"I am directed by the Board of Inspectors of the  
 Provincial Penitentiary, to enclose for the informa-  
 tion of the Commissioners of Inquiry into the man-  
 agement of that Institution, a copy of a letter ad-  
 dressed to them by the late Kitchen-keeper, F. W.  
 Smith, calling the attention of the Board to the dis-  
 crepancies between the evidence given by the Guard  
 John Watt, before the Board of Inspectors; and  
 that given before the Court of Commissioners.

"The Board of Inspectors desire me to observe,  
 that while the interest of the Institution does not  
 now require them to inquire so far as Mr. F. W.  
 Smith is concerned, (he being no longer an Officer  
 of the Penitentiary) whether the evidence given by  
 Guard Watt before the Commissioners, or that given  
 by him before the Inspectors, is the correct state-  
 ment of what he knows, relative to the subject of  
 inquiry, they feel satisfied that the Commissioners  
 will agree with the Inspectors that it is their duty  
 to inquire whether any person employed in the Pri-  
 son, particularly one holding the responsible situation  
 of Guard Watt, has been guilty of giving such con-  
 tradictory statements on oath. They have therefore  
 requested me to transmit for the information of the  
 Commissioners, extracts from the evidence taken be-  
 fore the Board of Inspectors, as well as extracts from  
 that transmitted to them by Mr. F. W. Smith as  
 having been taken before the Commissioners, and  
 have directed me to request that you will be pleased,

at your earliest convenience, to acquaint them whether the latter evidence was actually given before you; and if so, whether it was on oath, with a view of their immediately, on receipt of your answer, considering the propriety of ordering Watt's instant dismissal.

"I have the honour to be, &c.,

(Signed,) "THOMAS A. CORBETT,  
"President, Board of Inspectors, P. P.

"GEORGE BROWN, Esq.,  
" &c. &c. &c."

Extract from evidence of Guard John Watt, said to have been given before the Commissioners of Inquiry :—

John Watt, Kitchen Guard, another Assistant Keeper, throughout Frank Smith's time.

"Is aware that the Officers have been in the habit of buying provisions from Mr. Frank Smith; has known (certain Officers named) to get provisions from Frank Smith; has known one or more of these men to get one or more of the following articles: potatoes, bread, turnips, peas, oats, oatmeal, and vinegar. Mr. Smith ordered Tilletson to take them from the centre Bin in the west side of the Penitentiary cellar. He gave this order because he (Frank) stated that the potatoes in that bin were his own property, purchased for the convenience of the Officers. Does not know that these potatoes were Frank Smith's property. Had no more authority than Frank's word.

"Witness has no doubt that some of the potatoes which the Officers had, were taken from the Penitentiary Stores.

"When witness saw the Penitentiary potatoes sold by F. Smith, he expected that Frank paid in the money he received, to the Office. Witness has known several of the Officers get bread; it was taken out of the Penitentiary bin. Frank Smith had no bread of his own for sale. Has known both

Extract from the evidence of Guard John Watt, said to have been taken before the Inspectors :—

"Is aware that Frank Smith has bought potatoes, turnips, and meal; has seen him pay for them; never saw him sell anything belonging to Penitentiary, and does not believe he did so.

"No provisions or stores belonging to the Penitentiary could have been taken away without his knowledge. The potatoes Frank purchased were not mixed with the Prison store; they were put in the centre bin in the west side of the cellar. The peas were put in an empty bin in the west side of the bin where the peas lay.

white and brown bread sold by F. Smith. Witness has purchased turnips from F. Smith, three or four times, a bushel or half a bushel at a time; paid Frank Smith for them; they were taken from the Penitentiary Stores. Witness, by order of Frank Smith, has sent to the stable for oats to supply an Officer. Witness has no doubt these oats were taken from the Penitentiary Stores. Witness knows that Frank Smith has had potatoes sent home for his own use, from the Penitentiary. They must have been taken from the Penitentiary Stores. Witness knows that F. Smith has had bread regularly, almost daily, from the Penitentiary Stores, ever since he came. Witness has known F. Smith get turnips from the Penitentiary; several times they were taken from the Penitentiary Stores."

No. 3.

Copy.—Letter, Secretary to President Board of Inspectors.

"Provincial Penitentiary Commissioners' Room,  
"KINGSTON, 31st August, 1848.

"Sir,

"I have to acknowledge receipt of your letter of 29th instant, in reference to certain evidence given by Kitchen-guard, John Watt, on the trial of the charges against Francis W. Smith, recently dismissed from the Penitentiary, and requesting information as to the depositions made by said Watt, before the Commissioners, with a view to his instant dismissal thereon.

"I lost no time in laying your letter, with the documents accompanying it, before the Commissioners, and I am instructed to reply as follows :—

"The Commissioners were perfectly aware of the discrepancies existing between the evidence of Guard Watt before the Inspectors, and that given by him to the Commissioners, and they regret to say that this is not the only case in which such discrepancies have appeared. The Commissioners have felt it their duty to seek for the origin of these discrepancies, and they have also sought to discover in which case the truth has been told, and they will very shortly have the honour of laying their opinion on these points before His Excellency the Governor General.

"In the meantime, I am to suggest to the Board of Inspectors, that the Commissioners are in a position to judge of the conduct of any Officer of the Penitentiary who may have come before them, and give effect to their decision; and as they view any interference with their proceedings, by the Inspectors, as unnecessary and inconvenient, they must

decline to furnish you with any portion of the evidence received by them.

"I have the honour to be,  
" Sir,  
" Your most obedient Servant,  
  
(Signed,) "GEO. BROWN,  
" Secretary.

" THOS. A. CORBETT, Esq.,  
" President, Board of Inspectors,  
" Provincial Penitentiary."

No. 4.

Copy.—Letter, Warden to Secretary.

" PROVINCIAL PENITENTIARY,  
" 2nd September, 1848.

" Sir,

" I have the honour, by direction of the Board of Inspectors, to forward to you the accompanying copy of a Minute made by them yesterday, which I request you will be pleased to lay before the Commissioners:

" I have the honour to be,  
" Sir,  
" Your most obedient Servant,  
  
(Signed,) " H. SMITH,  
" Warden.

" GEO. BROWN, Esq.,  
" &c. &c. &c."

No. 5.

Copy of a Minute of the Board of Inspectors of the Provincial Penitentiary, 1st September, 1848.

" The President then laid before the Board a letter which he had received from the Secretary of the Commissioners, in reply to the Board's application to know whether certain evidence said to have been given by the Guard John Watt, before them, had actually been so given.

" In that letter, the Secretary acquainted the Board that there are discrepancies in the evidence given before the Commissioners, not only by Guard Watt, but by other Officers of the Institution, and that the Commissioners had sought to discover the cause of these discrepancies, and in which case the truth had been told, and would shortly lay their opinion on these points, before the Governor General. That in the meantime however, they would suggest to the Board of Inspectors, that the Commissioners were in a position to judge of the conduct of any Officer of the Penitentiary who might have come before them, and to give effect to that decision, and that as ' they viewed any interference with their proceedings as unnecessary and inconvenient, they must decline furnishing the Inspectors with any portion of the evidence taken by them.'

" The Board observe that the Commissioners have fallen into an error, in supposing that the Inspectors asked to be furnished with any portion of the evidence given before the Commissioners, which they never thought of doing; they merely wished to know whether the extracts of evidence transmitted to the Board by a person who stated that it had been fur-

nished to him by the Commissioners, had really been given before them. Their reasons for making such inquiry being, in their opinion, justified by their desire to remove without delay, from a responsible office, a person who was alleged to have been guilty of giving contradictory evidence under oath, and they cannot conceive that the course they took could possibly be construed as a desire on their part to interfere with the proceedings of the Commissioners, which they have all along most scrupulously avoided.

" Although the letter of the Secretary of the Commissioners establishes the fact of the Guard Watt having given contradictory evidence on the two occasions referred to, and although the Board would, under other circumstances, conceive that every instant that he remained in his present office, whatever may have been his inducement to act as he did, was highly detrimental to the interests of the Institution, and that they ought therefore to direct his immediate dismissal; yet, in deference to the suggestion of the Commissioners, who had doubtless good reasons for making that suggestion, the Board resolve in the meantime to postpone taking any steps regarding the conduct of the Guard Watt, in the matter referred to.

" The Warden is directed to furnish the Secretary to the Commissioners, with a copy of this Minute, for their information."

We have thus gone through the principal cases of officers unfavorable to Mr. Warden Smith and his Son, being dealt with by the Inspectors; and as all of these proceedings were taken either within a few months previous to our assembling, and after Your Excellency had been appealed to with every prospect of success for a general investigation, or while our inquiries were progressing at Kingston, Your Excellency will at once perceive how much our proceedings were embarrassed, and the difficulty we had to encounter in expiscating the truth. One extract from the evidence of Mr. Hopkirk shows the remarkable fatality which followed giving evidence against Mr. F. W. Smith:—

James Hopkirk, Esq.—By Commissioners:—

Q. Were not Mrs. Cox, C. Bannister, Gleeson, Kearns, Robinson, M'Garvey, Keely, M'Carthy, Swift, and Richardson, the only officers of the Institution who gave testimony at Frank Smith's trial in October, 1847, unfavorable to Smith?

A. Cannot tell without careful reference to all the evidence.

Q. Of these ten officers, have not five been since dismissed by the Inspectors, one resigned from dissatisfaction, two twice brought before the Board on various charges, and one reported against to the Government?

A. Five have been dismissed, cannot tell on what ground; Mrs. Cox resigned; another (Bannister) was twice before the Board—once about the bag of oats, and again about having taken money at the gate; one (Kearns) was once before the Board; as to the one reported against to the Government, the Warden objects to evidence being received, as it occurred since his dismissal, and the Court upheld him.

Q. Of the eighteen witnesses—officers of the Institution—who on the same occasion gave evidence in Frank Smith's favor, viz., Little, Hooper, Nur-

sey, O'Neil, Baldwin, Tyner, Thorpe, Mrs. Pollard, Bickerton, Hermiston, Matthews, Costen, Thomas Smith, Watts, Sexton, Martin, Manuel, and Pollard,—is there one who is not still an officer of the establishment?

A. These officers all gave evidence at Frank Smith's trial, but without careful perusal of the evidence, cannot distinctly say what the character of each officer's testimony was; they are all still in the establishment.

Q. Has any one of these officers ever been brought before the Board on any charge since Frank Smith's trial, with the exception of Manuel and Pollard, and these only on the Skinner affair, on which the complainant against them was dismissed for bringing the charge?

A. No, none of them have; Pollard, however, was brought up a second time on the complaint of Mr. Rogers, formerly referred to.

By Mr. Smith:—

“Wilson and Skinner are the only officers who have been dismissed by the Inspectors since the sitting of the Commission.

“Gleeson, Keely, M'Garvey, Robinson, and M'Carthy were discharged by the Board, of which witness was a member, and Fitzgerald by the Warden, previous to the sitting of the Commission.

“Bannister, Richardson, Kearns, Swift, Cooper, Watt, Costen, Waldron, Jones, and Horsey, gave evidence before the Commissioners, and still are officers of the Institution; also, the Chaplain, the Surgeon, and the Clerk, of whom the Board have not the dismissal in their power.”

The effect of these proceedings on the officers of the Penitentiary was to draw the line of demarcation between the two parties more strongly than ever, and to embitter still more the hostility existing between them.

The Warden or Inspectors held the power of dismissal in their hands; and the rules of the Prison, when the letter of them, and not the spirit, is looked to, are so stringent, that the officers composing one party felt they were liable to be removed at any moment.

On our arrival at Kingston, consequently, we found the Institution rent by internal discord, destructive of all discipline.

Before proceeding to the more immediate subjects of our inquiry, we deem it right, as the evidence of Mr. Hopkirk has been, and will be hereafter, referred to very fully, to show how far he is personally concerned in the matters at issue; and in doing so, we shall quote his own evidence solely.

James Hopkirk, Esq.—By Mr. Smith:—

“Recollects of an overcharge by Keeper M'Garvey for binding shoes for witness; M'Garvey charged 15s. or 15s. 6d. for binding seven or eight pairs of children's shoes, the material having been furnished by witness; he charged also a sufficient price for making the shoes; made inquiry as to the value of the binding, and found that from 3d. to 4d. per pair was the proper charge; referred the matter to the

Board, who decided, in witness's absence, to reduce the charge to 5s. or 5s. 6d.; witness took no part in the discussion.

Guard Kearns waited at witness's table on one occasion; he came to witness's house between 5 and 6 o'clock, P.M.; he is a waiter, and in the habit of going out to gentlemen's houses; paid him 5s. for his services on that occasion, being his usual charge.

“Got some vegetables from the Warden's private garden in 1847, as witness's own garden was not then in use; these vegetables principally consisted of lettuce, asparagus, and cabbage; a head of cabbage now and then; they were presents from the Warden or Mrs. Smith; got raspberries also, and currants: never got any peas, or carrots, or potatoes.

“Witness never got any vegetables, to his knowledge, from the Convicts' garden; got some cabbage plants from the Warden's hot-beds.

“Witness got a few cuttings of shrubs from the Warden's garden, but not a large supply; they were principally taken from what had been originally witness's own shrubs; they consisted of lilacs, snowberries, roses, snowball trees, gooseberries, and currants—all cuttings; witness had given the Warden two cart loads of shrubs in 1844, which were planted in his garden; never got any fruit trees.

“Witness got, last spring, under two dozen of boxes, containing green-house plants from the Warden's house; they were a present from Mr. and Mrs. Smith; Mrs. Smith told witness afterwards that she (Mrs. S.) had got some of these boxes and plants from Mrs. Pollard; witness purchased in December, 1847, from Mr. Baker, several dozens of green-house plants, in pots, which Mrs. Smith agreed to keep for witness in her house during the winter; they were returned in the spring, and the boxes above named were sent to witness with them at the same time.

“Witness had a cow killed in the Penitentiary early in 1848; has not got his account yet sent in for 1848.

“Witness hired a cart from the Penitentiary this year; has not paid for it yet, because it has not been returned yet; and the length of time to be charged is not yet ascertained.

“Witness never got any garden tools, the property of the Penitentiary; had once a garden roller, the property of the Penitentiary; never had any garden tools, the property of the Penitentiary, repaired at the Penitentiary.

“Witness did not get a full supply of vegetables from the Penitentiary, for the year 1848; scarcely got any at all. Thinks, on one or two occasions, got some lettuce and cucumbers from the Warden or Mrs. Smith; once a basket of asparagus and once a basket of raspberries. This includes, to the best of his recollection, all the vegetables got by witness from the Penitentiary, this year, having a full supply in his own garden.

“On one occasion got 5 cords of wood from the Penitentiary. When witness came to Kingston, in December, 1846, he could find no fire-wood to pur-

chase, on account of the absence of snow; applied to the Warden to sell him 5 cords from the Penitentiary stores. Warden declined, but agreed to lend witness 5 cords. Keeper Gleeson measured the 5 cords off, and teamsters employed by witness removed them to his house. In February following, witness delivered 5 cords to the Penitentiary, in return for what he had received, and he has Gleeson's receipt for the same, and the receipt of the owner of the wood who delivered it.

"The cord-wood returned was the best quality, better than that received. Witness never got cord-wood from the Penitentiary on any other occasion but that."

By Commissioners:—

"Witness never had any private money transactions with Mr. Warden Smith. Witness's furniture was not removed into the Penitentiary, prior to witness's removal from Kingston to Montreal; never had any furniture in the Penitentiary, but a sleigh, which is there now, as witness has no room on his own premises.

"Witness frequently corresponded with Warden Smith, privately and officially, while witness was at Montreal; not so much privately as officially. Part of witness's family resided some four or five days in the Penitentiary, when witness removed to Kingston from Montreal.

"Mr. Henry Smith, Junior, is one of witness's securities as Collector of Customs for the Port of Kingston, and Mr. John Ewart, of Toronto, is the other.

"When witness removed from Kingston to Montreal, he was indebted to the Penitentiary, principally for a carpenter's account; the whole debt was under £60.

"Shortly after he was appointed Inspector, being desirous of settling the balance of the debt, got the account made up and gave a note for it, including interest, which was retired when due.

"Several payments were made in cash on account, while witness was in Montreal; incurred no new debt to the Penitentiary while in Montreal.

"Witness paid part of the debt in hay; it was sold to the Penitentiary by Dr. Sampson, who was then acting for witness. Warden Smith wrote witness that it would have been better for witness had witness sold the hay elsewhere, as he could only give the contract price, which was, at the time, under the market value. The hay was delivered at the Penitentiary at witness's expense. The value of said hay, was £17 17s. 6d. The Warden paid (of this) £4 10s., to Dr. Sampson, on witness's account, by witness's desire, and over two pounds for cartage, and the balance was placed to witness's credit.

"Witness settled up his old account with the Penitentiary in full, by note, in March, 1847. The note was given at twelve month's date; did not pay interest on the account, there being none due on an open account, but included the year's interest on the note. The note was for £40 or £50. This sum covered the whole of witness's old balance of account; paid this note in cash, at maturity.

"Witness gave a note, when he left Kingston for Montreal, covering the balance of his old account, for £59 odds; it was payable on demand; it never was demanded; was nearly three years in Montreal; this note was paid by the hay, £11 12s. 6d., a stove £2, the twelve month's note for £40 odds, and cash for the balance, as far as witness recollects. The Board of Inspectors never demanded payment of the £59 note, as they knew witness would pay it as soon as he could, and he did so.

"After witness's return to Kingston, and before he gave the twelve month's note, and while it was running, witness incurred a new account to the Penitentiary. The amount of this new account, up to 31st December, 1847, was somewhere about £70. Thinks it very likely that no money was paid by witness, either on the old or new account, until the note for £40 odds was retired in March, 1848, which settled the old account; this is to the best of witness's recollection. Witness has paid £49 16s. 6d. in all, on account of the new indebtedness, and he claims deductions for returns, which in his opinion will settle the balance of his account for 1847. The deductions witness claims amount to about £15, more or less.

"Witness considers that he does not now owe the Penitentiary any money, except for this year's current account. Witness has been always ready to settle his new account, the moment the deductions he claims were inquired into, but the Inspectors and Warden did not wish to enter upon it at present.

"Witness's account with the Penitentiary was opened in June, 1842; cannot say whether he has paid more than between £6 or £7 in cash, to the Penitentiary, on his indebtedness from the first, up to March, 1848. Cannot say what he has paid, without reference to his books; when he says cash, he does not include the hay and stove which were turned in. Cannot say whether the Warden regularly informed the Inspectors of what work was done for private individuals in the shops, but has occasionally seen such statements before the Board.

"Believes it was quite customary for private individuals to run yearly accounts, in witness's opinion. The Inspectors knew of this; it was the habit before witness came into Office, and no contrary order was given by the present Board.

"Mr. Thomas Kirkpatrick, President of the late Board, ran an account, which, on reference to the book, was several years unpaid. Mr. Manahan is still due an old account. Witness cannot tell how much work is done yearly for private individuals. Is not aware that any considerable loss has been sustained by this practice of running accounts.

"Witness's furniture was landed from Montreal, on the Penitentiary wharf, in May, 1847; cannot say if any Officers of the Penitentiary were employed in disembarking the said furniture; cannot say whether any Officer assisted in taking witness's furniture to his house, as he was not present the whole time. Thomas Smith did bring one load of baggage or furniture, either from the Warden's house or wharf, to witness's residence; is not aware that the Penitentiary horses were employed on this matter, except the load in question. Is not aware that any Officers have worked in witness's house, except Mr. Pollard and Mr. Skinner and James Kearns. Skinner worked for witness on two occasions, after work hours, and witness paid him for what he did. Pollard worked only once for witness, as far as he recol-

lects, part of a day, and it was charged in the Penitentiary books.

"Witness has had a loaf of brown bread from the Penitentiary, on four different occasions; they are charged in witness's account for 1847; they were charged in the account rendered to witness in the beginning of 1848.

"Witness never got any soft soap from the Penitentiary, to his knowledge, but he may have done so; is not aware whether any has been charged to his account; has had presents of pigeons from Mrs. Smith, on one or two occasions; has had no pork from the Penitentiary; has had a pound of pork from the Warden, on one or two occasions, when the Warden was killing a pig.

"Witness did not see the fire-wood measured that he got from the Penitentiary; was an Inspector when it was got; has a crow-bar, the property of the Penitentiary, at present in his possession; got it some considerable time ago, cannot say how long; cannot say if he is to pay hire for it; would think it sharp if he had to do so; got stove-pipe from the Penitentiary; never got any that was not charged to his account; never got any stove-pipe from the Warden.

"Has a garden roller, the property of the Penitentiary, in his possession now; has had it some months; cannot tell whether he is to pay hire for it or not; would think it sharp if he had to do so.

"Had no vegetables from the Penitentiary or Warden Smith, in 1846; had vegetables occasionally from the Warden, in 1847, and very seldom in 1848. Cannot tell how much the original cost of the Penitentiary gardens was, as he was not an Inspector at the time; does not know the annual expense to the public for maintaining the gardens; believes the Warden is not charged for the labour put on his garden; it is kept by Convicts; understood the Board sanctioned his so employing Convicts; alludes to the order passed by the late Board, which has been in force ever since.

"Expects to be charged for the time employed by the Officers in killing the cow, the property of witness, which was sent into the Penitentiary to be killed; knew nothing personally about the transaction.

"Has a cart, the property of the Penitentiary, now in his possession; has had it several months, since March or April, 1848; sent a note to Warden Smith for the cart; asked him to send any cart not in use; nothing was said to the Warden about paying for the use of the cart, but witness expected to pay for the use of the cart, as of course it will be deteriorated; never spoke to the Warden on the subject of the hire of the cart; it has never been asked back from witness; it was a good second-hand cart; is not aware that another cart has been made in the Penitentiary, in the room of the one in witness's possession; does not know if it is a usual practice for Penitentiaries to hire out carts or other articles, but thinks they might as well have something for idle property; is not aware whether the cart in question has been wanted while witness has had it; presumes that if it had, it would have been sent for; is not aware whether any memorandum of the transaction has been handed to the clerk, to charge witness with it, as it was not witness's business to inquire.

"Never had any garden tools, but the roller, from the Penitentiary; never borrowed, hired, or received any garden tools from the Warden; has sent garden tools into the Penitentiary to be repaired, on several occasions; some of them was repaired by Keeper M'Carthy; never had garden tools repaired in the Penitentiary, which were not charged, except it may be this year, of which he can as yet say nothing, not having got the account.

"Since the Commission has sat in Kington, witness has written no article for any newspaper, upon Penitentiary matters. Dr. Barker of the 'British Whig,' has several times conversed with witness on Penitentiary matters, and witness has answered some of his questions. The first time he spoke to witness, was in reference to an article which alleged that the Commissioners had given insolence and annoyance to the Inspectors. Witness told Dr. Barker that they had received neither. Witness never gave any written memorandum or date, in reference to Penitentiary matters, for publication in any newspaper, directly or indirectly, since the sitting of the Commission, to the best of his knowledge and belief. Witness did write one article for the 'Whig,' and one for the 'Argus,' on Penitentiary matters, in his own defence, but it was prior to the assembling of the Commission; never gave any written memorandum to any one, on Penitentiary matters, since the Commissioners sat.

"On the same day that the Warden complained to the Inspectors about the boots, against M'Garvey, witness preferred his own complaint to the Board as to the overcharge made against him personally, for binding boots. That complaint was not made against M'Garvey, but merely with a view to having the charge reduced. M'Garvey was keeper of the Shoe-shop, but witness had reason to believe that Hooper the tailor made the overcharge for binding. Witness was not present at the investigation, and speaks only from what he thinks he heard afterwards from some member of the Board. It has always been the habit for each keeper to fix the price of work done in his own shop, and witness thinks he heard the binding was done in Hooper's (the tailor's) shop, but he speaks from memory.

Q. The plants you have testified to as having been presented to you by Mrs. Smith,—are you certain they were presented to you by her?

A. They were sent to witness by her, but Mrs. Smith has since told witness that some of them came from Mrs. Pollard.

Q. Were these plants not presented to you direct by Mrs. Pollard?

A. Not to witness's knowledge; the plants came to witness from the Penitentiary, and witness at the time understood that they were from Mrs. Smith, though he has since heard that part of them were sent to witness from Mrs. Pollard.

Q. When were you first told that Mrs. Pollard had sent you those plants?

A. Is not very positive; shortly after witness got them.

Q. What was it Mrs. Smith told you about them, that she had got the plants from Mrs. Pollard, and

presented them to you; or that Mrs. Pollard presented them to you direct?

A. Cannot tell which.

Q. Why did you not mention this circumstance in your direct examination, in which you state distinctly that 'they were a present from Mr. and Mrs. Smith. Mrs. Smith told witness afterwards that she (Mrs. S.) had got some of the boxes and plants from Mrs. Pollard?

A. Because the question was not particularly put to witness. The plants came as a present from Mrs. Smith, and witness's attention was not called particularly to how they came into Mrs. Smith's possession.

Q. Did not Mrs. Pollard personally ask your acceptance of these plants, and were they not sent direct to you by her, as a present from herself?

A. Recollects of Mrs. Pollard saying she could give witness a cutting of a rose and some other plants, before the plants in question were sent to witness, but has no recollection of any further conversation with her on the subject.

Q. Is the following evidence given by Mrs. Pollard before the Commissioners, true? "Witness (Mrs. Pollard) personally asked Mr. Hopkirk's acceptance of the plants; he accepted them, and witness sent them up by Thomas Smith, in the Penitentiary cart."

A. Cannot say if it is, or is not, true. Mrs. Pollard asked witness to accept some cuttings or plants, and he said he would be glad to have them, but whether these were the plants which came to witness's house, cannot say. Has no reason to suppose it untrue; it corresponds with what occurred.

Q. How could Mrs. Smith say these plants were from her?

A. Cannot tell; is certain that some of them were Mrs. Smith's property.

By Mr. Smith:—

"Witness's sleigh was stored in the Penitentiary at witness's request, as his own stable was being taken down; it was brought to the Penitentiary in spring, 1848.

"Witness owed nothing to the Penitentiary when he became an Inspector, but the balance of his old account; gave a note for it, about three months after becoming an Inspector. If the gross amount of the hay sold by witness to the Penitentiary had been credited to him, the amounts paid out of the sum on witness's account would have appeared in the books as money to him; understood the price of the hay was to include cartage; desired Dr. Sampson to receive £4 10s. out of the proceeds of the hay. Witness was residing at Montreal at the time. The longest time witness has owed any one account to the Penitentiary, since he became an Inspector, is about eighteen months. The first account commenced with witness, after his appointment as Inspector, in December 1846. Witness's account for 1847 was settled by note and cash, on 1st July, 1848. That account was not sent into witness for payment, he applied for it; had to ask for it several times before he got it. Witness's account for 1848,

is not yet rendered; does not know whether it is the custom to render such accounts as that of witness only once a year; should think such was the custom, as his own account has always been so rendered. Nothing has ever been charged to witness in the Penitentiary, at less price than to other people, to the best of witness's knowledge. In some instances, articles have been charged less than the town price, and in others more. To the best of his belief, nothing has been omitted to be charged to witness, that he got. Carefully examines his account, and if anything had been omitted, he must have known it. Witness never had any understanding with the Warden, that articles should not be charged to witness, or charged cheap. Has reason to believe the Kirkpatrick Board were aware that witness owed an account to the Penitentiary, when he left Kingston; presumes they were aware he still owed a balance when they resigned. The Warden has power to grant delay to debtors of the Penitentiary; believes so. On looking at Act, finds Warden has only power to compromise claims and grant time with security, with the sanction of the Inspectors. It would not have been for the benefit of the Penitentiary to have sued witness at that time; would have been necessitated to compromise with them, if they had.

"Has spoken to Guard Cooper about the five cords of wood witness had from the Penitentiary; it was after the Secretary of the Commission sent witness extracts of evidence given before the Commission in which witness's name was introduced. Cooper said he knew that witness had received the five cords, and that he also knew the wood had been returned. Witness has no reason to doubt the veracity of Cooper. Witness had a conversation with Guard Bannister, after getting the extract before mentioned, about the cord-wood. Bannister said he was aware that witness had got four or five cords of wood, and that they had been returned. Witness did not think it strange that Bannister made this reply, as witness asked him about the wood; cannot recollect what evidence Cooper gave before the Commissioners. Witness has no personal knowledge that any other Inspector had fire-wood or coal from the Penitentiary; has heard so.

"Witness had fresh pork from the Warden, as a present; got, two or three times, a small roasting piece; at most, three times; has sent similar presents to the Warden. Is not aware that fresh pork has been supplied to the Convicts."

Q. Was there any concealment in sending out the stove-pipes purchased by you from the Penitentiary?

A. Not that he is aware of; was not present.

Q. If the Gate-keepers allowed them to go through without a pass, did they not neglect their duty?

A. Yes.

Q. Have you ever got any second-hand stove-pipes from the Warden, or from the Penitentiary?

A. Never in his life.

Q. Have you paid the Penitentiary for the work done at the pump at your own house, by Pollard?

A. Yes ; once it was charged 6s. 3d. when Pol-  
lard came to the house, and for the other, when Pol-  
lard did not come to the house, 1s. 3d. or 1s. 10½d.  
The same description of work was done on both oc-  
casions.

Q. Was Mr. Henry Smith, M.P.P., one of your  
sureties as Collector, before you were appointed an  
Inspector ?

A. Yes ; a very short time before ; he had signed  
the bonds previous to either Commission issuing.

Q. How came you to ask him to be one of your  
sureties ?

A. Did not ask him at all ; he volunteered.

Q. Was he one of the parties you intended to  
ask ?

A. No.

Q. Was your furniture landed at the Penitentiary  
by your own desire ?

A. Gave orders to Mr. Greer to that effect ; did  
so because less cartage and less breakage were incur-  
red, the wharf being near his own house.

Q. Do you think the Warden could, with any  
propriety, have prevented you from doing so ?

A. Would have thought it very odd if he had ob-  
jected.

Q. When the messenger took the furniture to  
your house, did he bring back articles to the Peni-  
tentiary to be repaired ?

A. Believes he did.

Q. Is it not the habit for the messenger to take  
home articles made or repaired at the Penitentiary ?

A. Has understood it was ; he has done so for  
witness, and witness has seen him taking other arti-  
cles elsewhere, which he presumed were from the  
Penitentiary to customers.

Q. Did you pay Conlan for carting your furni-  
ture ?

A. Yes.

Q. Were your own horses employed in carrying  
the furniture ?

A. Yes, they took the light articles.

Q. Did you ever reside in the Penitentiary in the  
Warden's House ?

A. No.

Q. Was your complaint as to the overcharge for  
shoe-binding made at the first meeting of the Board  
after you got in your bill ?

A. Thinks it was.

Q. Did you make your complaint on the day in  
question, because another charge had been entered  
the same day against M'Garvey ?

A. Certainly not. Made no complaint against  
M'Garvey ; only complained of the over-charge.

The spade, shovel, and two hoes repaired for wit-  
ness in the Penitentiary in 1847, were purchased by  
witness in Kingston from different stores ; the two  
hoes from one store, the spade from another ; and  
the shovel from Watkins & Co., for ready money.  
Has a Bill for the hoes from C. W. Jenkins & Co.

Has returned a garden roller, the property of the  
Penitentiary, within the last three weeks, which he  
had the use of.

In addition to the complaints against the manage-  
ment which have been so fully referred to, the large  
and increasing sums of money annually drawn from  
the Public Exchequer to sustain the Penitentiary  
attracted general attention, and in view of the  
economical administration of similar Institutions in  
the neighbouring Republic, an investigation into the  
cause of so heavy an expenditure was urgently de-  
sired. When our Commission issued, the Peniten-  
tiary had been in operation thirteen years ; and  
during that period there had been drawn from the  
Public Treasury, towards the erection of Buildings  
and the maintenance of the Prisoners, £128,387  
12s. 8d.

The small amount of productive labour obtained  
from the Convicts in the thirteen years, also excited  
much notice—only £6,118 2s. 10d. having in that  
space been received in cash for the Convict labour.

PROCEEDINGS OF THE COMMIS-  
SIONERS.

Your Commission was opened at Kingston on 23d  
June, 1848 ; and, after due consideration, the fol-  
lowing notice was published in the newspapers :—

His Excellency the Governor General having is-  
sued a Commission to investigate divers charges and  
complaints respecting the conduct, economy, system  
of discipline, and management of the Provincial Pe-  
nitentiary, notice is hereby given that the Commis-  
sioners appointed in the said matter will sit at the  
Court House in the City of Kingston, on Monday,  
26th June, 1848, and following days, commencing  
at 10 o'clock, A.M., to receive such information and  
complaints as may be tendered.

By order of the Commissioners.

(Signed,) GEO. BROWN,  
Secretary.

Kingston, 23d June, 1848.

The mode in which we should proceed with our  
inquiries received grave consideration ; and the pe-  
culiar circumstances of the Institution made this a  
matter of some difficulty. It was obvious that if,  
without previous knowledge of the affairs of the Pe-  
nitentiary or the feelings of the parties, we called  
before us the Officers of the Institution and sought  
information from them, we would not get so safely  
at the true state of the case as we would by a direct  
examination on points with which we had been pre-  
viously made partially acquainted. We therefore  
resolved to invite gentlemen residing in the neigh-  
bourhood of Kingston, and reputed to be well ac-

quainted with the affairs of the Institution, to meet us, and afford us such information as lay in their power, in the form of conversation, not under oath. Hoping thus to obtain at least a knowledge of the parties likely to be well acquainted with the subjects of our inquiry, we resolved that our next step should be to take evidence on oath from such parties, beyond the walls of the Penitentiary, and to follow up the information obtained from them by the evidence of the Officers of the Institution.

The difficulty then presented itself as to the manner in which the evidence could be used, should matter be elicited so far affecting any Officer as to make it necessary to put him on trial. It was obvious, from the first, that the topics coming under our notice would be of the most diversified character, and affecting in a greater or less degree many persons. It was impossible, even if it had been desirable, to bring all interested, together at one time; and to call them separately for each witness would have been an endless proceeding. After the most mature deliberation, we resolved that the fairest and most satisfactory mode was to conduct the investigation, in the first place in private, and after maturing our inquiries to draw up from the evidence formal charges against any Officer who might appear to be implicated, and furnish him with a copy of such charges and the testimony to sustain them: and should such Officer deny the allegations made to his prejudice, we determined that he should have the opportunity of re-calling the witnesses for re-examination, or summoning such additional witnesses as he might think proper, for his defence.

We conceived that this mode of proceeding was highly advantageous to the accused; for though the preliminary evidence would thus be taken in his absence, the benefit from having the testimony in writing, with time to scan every line of it, instead of cross-examining on the moment, greatly overbalanced any slight disadvantage which might attend it. The main objection to this mode of proceeding, however, was the length of time it would occupy, and to this consideration we gave full weight; but we felt strongly that in dealing with such an Institution it was most desirable that there should be no room for complaint that injustice was done to any one, and that the fullest opportunity for explanation should be afforded to all. The extensive range of inquiry, which was opened to us by our instructions, including not only the past management of the Establishment in all its departments, but the system to be adopted, reformatory, industrial, financial, and disciplinary, for the future management of the Prison, made it absolutely necessary to give the whole affairs of the Institution a thorough examination, if our work was to be done effectually; and feeling that the more thorough our inquiry, the better would we be able to grapple with any existing abuses—feeling confident, also, that by proper management a large sum could be annually saved to this Province, and a much higher tone of moral feeling produced and maintained in the Prison—we became satisfied that the course thus marked out was the best: and now, that we can speak from experience, we feel assured that it was the only course by which a satisfactory result could have been obtained.

Communication with the Warden and Inspectors was opened immediately after our arrival, and we have to acknowledge the courtesy and attention with which we were received by these gentlemen. Mr. Hopkirk having been requested by his brother Inspectors to represent them in such matters of reference to the Board as the Commissioners might find needful, that gentleman and Mr. Warden Smith

were the first persons invited to meet us for conversation on the affairs of the Penitentiary. Accordingly, at 10 A.M., on 26th June, we held a long interview with Messrs. Hopkirk and Smith, in which much passed as to the affairs of the Institution and the system of management, as well as in regard to the complaints against the Officers. The course we intended to pursue in conducting the investigation was communicated to them, with which they expressed themselves highly satisfied.

Pursuing the course we had marked out, we were favoured with interviews by the following gentlemen, and received from them much valuable information:

Honorable P. B. DeBlaquière.

James Nickalls, Esquire, formerly President Board of Inspectors.

Dr. Sampson, Surgeon of the Penitentiary.

A. Manahan, Esquire, late an Inspector.

Thomas Kirkpatrick, Esquire, late President Board of Inspectors.

Samuel Rowlands, Esquire, Editor Kingston *Chronicle & News*.

J. B. Marks, Esquire, late an Inspector.

Rev. R. V. Rogers, Chaplain to the Penitentiary.

A. Pringle, Esquire, formerly an Inspector.

Major Sadleir, late an Inspector.

Honorable John Macaulay, first President Board of Inspectors.

His Lordship the Roman Catholic Bishop of Kingston.

Rev. Angus M'Donnell, Vicar General.

The information communicated to us by these gentlemen, directed our attention to those points which most needed inquiry, and greatly forwarded our proceedings; and on the 1st July, we commenced taking all evidence under oath.

During July and August we were constantly occupied in receiving evidence or in examining the books and accounts of the Institution, the latter engrossing a large portion of the time, from the very irregular manner in which they had been kept. Serious allegations were, however, early established against Kitchen-keeper Smith, and on the 12th July he was served with formal charges. When invited to cross-examine two witnesses, who were about to leave the Province, Smith protested against our inquiring into matters already pronounced on by the Inspectors; and after the charges were transmitted to him, he refused to meet them.

We brought the matter under the notice of Your Excellency, when you were pleased to order the immediate removal of this Officer from his situation.

A few days previous to the arrival of the Provincial Secretary's letter, however, the Board of Inspectors accepted Mr. Smith's resignation, and made the following entry of the circumstance in their minutes:—

“ Extract from the Minutes of the Board of Inspectors of the Provincial Penitentiary, 23rd August, 1848:—

“ The Keeper, F. W. Smith, presented to the Board, his resignation, for which step he assigned the following reasons:—

“ “ That it has been resolved by the Commissioners now engaged in the inquiry into the management of the Penitentiary, to make him again undergo a trial for charges of which, after a full and patient investigation, he had been already acquitted.

" That in reference to the charges, the Commissioners have resolved to receive as evidence, the testimony of discharged Convicts, and dismissed Officers of the Institution; and that in consequence of the removal of some of them to the United States, he cannot have the opportunity of cross-questioning them.

" That the Commissioners have expressed their determination to ground their report to Government on evidence taken in his absence."

" The Board accept the resignation of F. W. Smith, and direct the Warden to take necessary steps to procure a competent person to succeed him as Kitchen-keeper, and report the same for the consideration of the Board.

" A true Extract.

(Signed,) " F. BICKERTON,  
" Clerk."

Proceedings in the case of Kitchen-keeper Francis William Smith.

1.

Copy—Letter, Secretary to Keeper F. W. Smith.

" GRAND JURY ROOM, KINGSTON,  
" 27th June, 1848, 2 P. M.

" SIR,

" You will please attend before the Commissioners of the Penitentiary this afternoon at 3 o'clock.

" I am, &c.

(Signed,) " GEO. BROWN,  
" Secretary.

" Mr. FRANCIS W. SMITH,  
" Keeper, Penitentiary."

2.

Extract from Minutes of Commission, 27th June, 1848.

" Mr. Francis W. Smith appeared before the Commissioners at a quarter to four, and having heard the evidence of Phelan read over, he was informed that the Commissioners would recall the witness if he so desired, so as to enable him to be cross-examined. Mr. Smith denied the truth of Phelan's entire evidence, and declined to have him recalled.

" The Secretary was instructed to invite the attendance of Mr. Francis W. Smith, before the Commission to-morrow, should he desire to cross-examine Hiram B. White or James Thompson, witnesses expected to be before the Commission."

3.

Copy—Letter, Keeper F. W. Smith to Secretary.

" PENITENTIARY, 27th June, 1848.

" GENTLEMEN,

" I have the honor to state to you, that having reason to believe that it is intended to request you

to investigate certain charges made against me by the Surgeon of the Penitentiary in the month of October last; I hereby respectfully beg to remonstrate for the following reasons:

" Because—I have been already tried and acquitted by a legally competent tribunal.

" Because—I do not object to the consideration by the Commissioners of the judgment already pronounced upon me, by the Inspectors, provided it is founded on the evidence already given both for and against me.

" Because—I have it not now in my power to produce the same evidence as I formerly did—many of the witnesses having removed from Kingston to places I am ignorant of.

" Because—I have not yet learned the fact that the Government has expressed any disapprobation of the decision of the Inspectors in the case referred to, and that the examination was had and conducted strictly in accordance with the laws of the Country.

" Because—Even had a doubt existed in the minds of my judges, the Inspectors, as to my guilt or innocence, I, as the accused party, was entitled to the benefit of that doubt.

" Because—At the investigation of the charges referred to, I allowed the prosecutor the advantage of using my witnesses, for his own purposes, by examining them in chief independently of their cross-examination, being desirous that the truth and the truth only should be brought to light.

" Because it is unconstitutional to try a man twice for the same offence after a verdict has been rendered in his case.

" I have the honor to be,  
" Gentlemen,  
" Your most obedient Servant,

(Signed,) " F. W. SMITH,  
" Keeper."

" To the Commissioners appointed to investigate the management of the Provincial Penitentiary.

" 28th June, 1848.

" P. S.

" Since writing the foregoing, I have received your notice, requiring my attendance before you to hear the evidence of Mr. White and James Thompson, who, you state, may have charges to make against me; I shall attend in obedience to your directions, but should their statements refer to any of the charges for which I have already been tried and acquitted, I would respectfully protest against their being listened to, for the reasons before stated.

(Signed,) " F. W. S.

4.

Copy—Letter, Secretary to Keeper Smith.

" Provincial Penitentiary, Commission Room.  
" KINGSTON, 28th June, 1848.

" SIR,

" I have to acknowledge receipt of your letter of this day, in which you protest against the Commis-

sioners of the Penitentiary entertaining any charges against you, which were tried and pronounced upon by the Board of Inspectors in October last.

"The Commissioners have had your communication under consideration; and I am instructed to inform you, that this Commission is not a Criminal Court to try parties for offences committed against the peace and good order of the body politic, but simply a Court to inquire, on behalf of the Government, whether an important public establishment has been properly conducted, and the Officers have performed their duty, and to inquire into the present condition of every department of the Institution, without regard to the opinions or acts of others, however highly these may weigh with them.

"The course which the Commissioners intend pursuing is to collect all the information on the subject of their mission, within their power; and should reasonable evidence of misconduct on the part of any Officer of the Establishment be found, the party implicated will be informed of the several charges against him, and invited to defend himself by cross-examination of the witnesses, on whose testimony the Commissioners shall act, or by the production of other witnesses.

"I remain, &c.

(Signed,) "GEO. BROWN,  
" Secretary.

"MR. FRANCIS W. SMITH,  
" Keeper, Provincial Penitentiary."

CHARGES against Francis W. Smith, one of the Keepers in the Provincial Penitentiary, founded on evidence given before the Commissioners, appointed by His Excellency the Governor General, to investigate all charges and complaints respecting the conduct, economy, system of discipline and management of the Penitentiary.

I. CRUELTY TO THE PRISONERS IN THE PENITENTIARY.

II. PECULATION.

III. CONDUCT SUBVERSIVE OF THE RULES AND GOOD ORDER OF THE PRISON.

CHARGE I.

1. Throwing stones, potatoes, &c., at Convicts.
2. Hurting the religious feelings of Convicts.
3. Striking Convicts with a large key on elbow.
4. Compelling Convicts to open their mouths, under the pretence of searching for tobacco, and then throwing salt, snow, &c., into their mouths.
5. Aiding and abetting Convicts in throwing other Convicts into a water-butt.
5. Thrusting pins into Convicts.
7. Drenching Convicts with water from the fire engine.
8. Firing arrows at Convicts.
9. Sundry other acts of cruelty.

1. THROWING STONES, &c., AT CONVICTS.

Evidence:—

Martin Keely, (for eleven years an Officer of the Institution) "has seen Frank Smith throw stones, potatoes, and blocks of wood at Convicts; has seen him strike them with these articles."

Terence M'Garvey, (for seven years an Officer of the Institution) "has seen Frank Smith throw stones or potatoes at Convicts; has seen him hit them; they were not much hurt."

Richard Robinson, (for four and a-half years an Officer in the Penitentiary) "has known Frank Smith throw stones and potatoes at Convicts; recollects of his striking a coloured man, named Davis, in the eye, with a potato. Davis's eye was much swelled."

James M'Carthy, (for fifteen years an Officer of the Institution) "has seen Frank Smith throw potatoes, stones, or blocks of wood at Convicts; has seen him hit Convicts; on one occasion a man was thus badly hurt."

William Atkins, (for sixteen months a supernumerary Guard in the Penitentiary) "has seen Frank Smith throw potatoes at Convicts; has seen him hit them."

Thomas Fitzgerald, (for four years an Officer in the Penitentiary) "has known Frank Smith to throw potatoes, stones, and such things at Convicts; has seen him hit Convicts in this way, frequently; has seen him throw a potato or a small stone right in among the Convicts when they were at their buckets."

James Wilson, (at present a Guard in the Penitentiary) "has seen Frank Smith throwing stones, potatoes, and balls at the Convicts; has seen him hit them."

John Richardson, (at present a Guard in the Penitentiary) "has seen Frank Smith throw potatoes when the men were mustering at their buckets; was nearly hit one evening."

James Kearns, (at present a Guard in the Penitentiary) "has seen Frank Smith throw potatoes at Convicts; has seen him pelting the Convicts in this way, frequently; never saw him hit any one, but is sure he tried."

John Swift, (at present a Keeper in the Penitentiary) "has seen Frank Smith pelting the Convicts, when mustered at their buckets, with potatoes and small stones."

John Watt, (at present a Guard in the Penitentiary) "has seen Frank Smith throw potatoes at other Officers, but has no recollection of his throwing them at Convicts."

Thomas Costen, (at present Head Keeper) "never saw Frank Smith throw stones or potatoes, or any other missile at a Convict or Convicts; never saw him throw any such things at all."

Maurice Phelan, (for three years a prisoner in the Penitentiary: convicted of an assault with intent to kill;) "has seen F. W. Smith throw a stone, say an inch and half square, at Convict Freeland; it was in the evening when the men were mustering to their buckets; Smith was standing at the south wing door; it was flung with strength, particularly

at Freeland; it came very near him, but did not strike him; this took place shortly before witness was discharged."

James Brennan, (for three years a Prisoner in the Penitentiary, for larceny) "has seen Frank Smith throw potatoes and snowballs at Convicts; has seen him hit them."

Eustache Coté, (for seven years a Prisoner in the Penitentiary, for fire-raising; was twelve years of age when he committed the act, and his motive for it, he says, was to earn 7½d, given him by \_\_\_\_\_, to do the deed.) "Frank Smith has thrown potatoes at Convicts," and again, "witness has often struck Frank Smith with potatoes."

John H. Freeland, (a common school teacher at Smith's Falls, three years confined in the Penitentiary, for attempting to set fire to a mill; was pardoned) "has seen Frank Smith throw stones and potatoes at Convicts; he did so at witness twice; he did not hit witness; was going to his bucket at the time; there is no doubt that he tried to hit witness; he flung small stones the size of an egg."

## 2. HURTING THE RELIGIOUS FEELINGS OF THE CONVICTS.

Evidence:—

Maurice Phelan—"Frank Smith came to the Carpenters' Shop then, (summer of 1847,) and without any cause called witness a 'Papist b——r.' Witness made no reply, and never had any other difficulty with him. Witness spoke to his keeper, Keely, of the language F. W. Smith employed to him. John Freeland was present when Smith used this language on another occasion; thinks it was the second day after the previous occasion."

Richard Robinson—"Frank Smith was an Orangeman, but he was expelled for bad conduct. He was dismissed on account of some money transaction. Witness is an Orangeman. Frank Smith told witness he would soon have every Roman Catholic Officer turned out of the Institution. This was about a year ago. He frequently used the same language. Witness has heard Frank Smith talk of Roman Catholics in the Penitentiary as "d——d Papist b——rs," but not in the presence of Roman Catholics."

James Brennan—"Frank Smith insulted the Roman Catholics grossly on one occasion, by making an old Frenchman go round among a number of the Convicts sprinkling water, in derision of the Roman Catholic practice of sprinkling holy water."

James Wilson—"Frank Smith would often insult him, (witness,) calling him a 'd——d Papist.' Witness is a Free Church Presbyterian. When Frank called witness a Papist, witness considered it was in allusion to his (witness's) intimacy with M'Garvey, Keely, and M'Carthy."

Thomas Fitzgerald—"Frank Smith has frequently called witness a 'd——d Papist.'"

John H. Freeland—"Heard Frank Smith one day, in the Carpenters' Shop, call Convict Maurice Phelan 'a d——d Papist.' Some days after, witness heard Frank Smith call the same man 'a d——d Papist rascal,' or some such term."

## 3. STRIKING CONVICTS WITH A LARGE KEY ON THE ELBOW.

Evidence:—

Terence M'Garvey—"Has seen Frank Smith strike the Convicts with a large key on the elbow. The Convicts complained of this very much."

Richard Robinson—"Has seen Frank Smith hit the Convicts on the elbow with a large key, as they went to their cells. He frequently did so."

Maurice Phelan—"Has seen Francis W. Smith stand at the foot of the stairs when Convicts were going up to their berths, and strike the elbows of Prisoners with a heavy key. He did so often. Witness has seen this often. Smith has attempted to strike witness in this way, but he dodged. Prisoners have complained of this to Smith. Cannot name the men."

Thomas Fitzgerald—"Has known him (F.W.S.) to tip the elbows of Convicts with a large key."

John H. Freeland—"Has known Frank Smith to strike them (the Convicts) on the elbow with a large key."

James Wilson—"Has frequently seen Frank Smith striking the Convicts on the elbow with a large key, as they went to their cells."

John Swift—"Has seen Frank Smith strike the Convicts on the elbow with a large key, as they went up to their cells."

Thomas Costen—"Never saw him (F.W.S.) hit the Convicts on the elbow with a key."

## 4. THROWING THINGS INTO THE MOUTHS OF CONVICTS.

Evidence:—

James M'Carthy—"Has seen Frank Smith pretend to look for tobacco in the Convicts' mouths, and throw salt or little bits of coal, and even to spit into their mouths when they were open. Recollects Convict Brennan refusing to open his mouth to be examined, as witness thought, from fear that he (Frank) would throw something into it. Brennan was punished by being put in the Box, for so refusing to open his mouth."

William Atkins—"Has seen Frank Smith search the mouths of Convicts for tobacco, and throw salt into their mouths when they opened them."

Thomas Fitzgerald—"Has known Frank Smith make Convicts open their mouths, pretending to look for tobacco, and then throw salt or anything handy, into their mouths, and even to spit in their mouths."

James Wilson—"Has several times seen Frank Smith pretend to look into the mouths of Convicts for tobacco, and throw things into their mouths. Recollects one day, in the entrance to the dining-hall, Frank Smith asked Convict Tuey to open his mouth and let him look for tobacco. Tuey refused. Mr. Costen, who was standing past, said, 'Open your mouth sir, when you are desired;' Tuey did so; and Frank threw a ball of snow and mud into his mouth. He found no tobacco in Tuey's mouth."

James Kearns—"Has seen Frank Smith desire a Convict, named Wilson, to open his mouth that he might search for tobacco; and when so open, saw him throw salt into Wilson's mouth."

John Swift—"Has seen Frank Smith desire a Convict, named Wilson, to open his mouth that he might search for tobacco; and when so open, saw him throw salt into Wilson's mouth."

Maurice Phelan—"Has seen Francis W. Smith catch Convicts by the head, and make them open their mouths, on the pretext of looking for tobacco, and then throw salt, potato pairings, or snow into their mouths, and laugh at it. Once saw Welch, a Convict, abused in this way, last summer; it was at the meal-table; cannot say that he threw anything into Welch's mouth; cannot name any one who had anything thrown into his mouth."

James Brennan—"Has seen Frank Smith pretend to look into Convicts' mouths for tobacco, and throw things into their mouths when open; recollects his doing so to Desjardins, a French boy, in the Blacksmiths' Shop, and to Bernard, another French boy; Smith also did this to witness on one occasion, he threw snow into witness's mouth."

John H. Freeland—"Has known Frank Smith look into Convicts' mouths for tobacco, and throw salt or snow into their mouths; has had his own mouth searched for tobacco by Frank Smith, who chucked his chin in fun."

John Watt—"Has seen Frank Smith desire Convicts to open their mouths to let him search for tobacco, and when open has seen him throw salt or snow into their mouths."

Thomas Costen—"Has no recollection of seeing Frank Smith throw salt, or snow, or anything else into the mouths of Convicts when looking for tobacco; saw him look for tobacco in their mouths frequently."

#### ADING AND ABETTING IN THE DUCKING OF CONVICTS IN A WATER-BUTT.

##### Evidence:—

James Gleeson, (for three years an Officer in the Penitentiary:—) "Had two of his Convicts ducked over head into a water puncheon, in the wash-house in the winter time; they had gone for hot water for the grind stone; believes the first Convict was George Highgate, and the last was William Sampson. The men became hoarse in consequence, but being strong men, they took no serious harm from it; witness took no notice of the first case, but on the second occurring, he complained to Francis W. Smith, who, the Convicts told him, had ordered them to be ducked; Smith told witness it was a rule he had to duck all men who came for water before breakfast time. Witness knows that the other Keepers had the same complaint against Smith for ducking their men."

Martin Keely—"One of witness's men, named M'Mullen, came to witness one day, thoroughly drenched with water, and with his head cut, and blood running from the wound; M'Mullen told witness Frank Smith and his men had plunged him head-foremost into a water-butt, and he had received

the wound from a nail inside the cask; the man had been sent for a tackle-block when this occurred, and he had been told it was in the wash-house; it was not there, and witness presumes he was only told so to get him into the wash-house. A Convict named Côté told witness he had helped to plunge M'Mullen."

Richard Robinson—"Has known Convicts to be plunged into a butt of water by Frank Smith and his gang, in the wash-house. Recollects Convict M'Mullen complaining to witness that he had been plunged head-foremost into a butt of water by Frank Smith's orders; M'Mullen's head was cut and was bleeding; it was in the winter time. Recollects Convict Wilson reporting to witness that he had been thrown into a large hogshead of water by Frank Smith and his party; they (M'Mullen and Wilson) were both very much wet; the men were in the wash-house on duty, getting water for their Shops; witness sent Wilson to get hot water. Frank Smith had previously said to witness, jocularly,—"That d—d fellow Wilson, we must catch him to-day, and give him a ducking."

Thomas Fitzgerald—"Saw a Convict plunged into a water-butt in the wash-house by Frank Smith's men, in presence of Frank."

James Wilson—"Recollects M'Mullen being ducked in the water-butt; he said it was done by Frank Smith and his men; M'Mullen's head was much cut."

John Swift:—"Believes the kitchen or wash-house men, were in the habit, under Frank Smith's orders, of ducking Convicts head over heels, in a water butt; one of witness's men, named Conkwright, came to witness one afternoon dripping wet, and complained that he had been so ducked by Frank Smith's orders; it was in the winter time—winter before last; witness made him change his clothes."

Maurice Phelan:—"Has heard that men were plunged into water butts in the wash-house; never saw it himself; but was told by Convict M'Mullen that F. W. Smith and two Convicts plunged him in."

John H. Freeland:—"Recollects Convict M'Mullen being ducked in the water butt; witness did not see it, but M'Mullen told witness what had happened to him; M'Mullen had his head cut; M'Mullen said that Frank Smith was present when he was ducked in the wash-house."

John Watt:—"Has heard that Convicts were ducked head foremost in a water butt, in the wash-house, but never saw it; he has seen men quite wet who had been so ducked."

Thomas Costen:—"Has heard that Convicts were ducked head over heels in a water butt, in the wash-house, but never saw such a transaction; never heard of it previous to Frank Smith's trial."

#### 6. THRUSTING PINS INTO CONVICTS.

##### Evidence:—

James Gleeson:—"Has seen Francis W. Smith often push pins, or some other sharp instrument into Convicts, for his amusement, apparently; this happened at the dining-hall, as well as on the road com-

ing in; it was a very frequent trick of Smith's: it was certainly not done to keep the Convicts awake; this made the Convicts very angry; they sometimes laughed, and others would have resented if they dared."

Terence M'Garvey:—"Has known Frank Smith push pins, or other sharp instruments into Convicts; has seen this frequently; he did this often when Convicts were passing him to go into their cells with their buckets."

Richard Robinson:—"Has known Frank Smith to push pins into Convicts when at the meal-table; it was not to wake them up; the Convicts did sometimes get drowsy at the table; Frank Smith would pour water on their heads to wake them up. It appears to witness Smith did this to make fun; he would laugh when he did it."

James M'Carthy:—"Has known Frank Smith to push pins into the Convicts at the table, and to abuse them otherwise, frequently, at all times of the day; this was done out of fun or pure wantonness."

James Brennan:—"Has seen Frank Smith push pins and other sharp instruments into the Convicts often."

Thomas Fitzgerald:—"Has known Frank Smith to push pins into the Convicts' buttocks, as they went up the wings to their cells; this occurred often."

James Wilson:—"Has seen Frank Smith push pins into Convicts, at the dining-table, when going up to their cells, and while going along the yard; has seen him with a pin at the end of a stick thrusting it into the Convicts in this way."

Edward Bannister: (at present an Officer in the Penitentiary)—"Has seen Frank Smith push a pin into a Convict; the Convict smiled at it."

John Richardson:—"Has known Frank Smith to push what he (witness) conceived to be pins, or some sharp instrument, into Convicts as they passed him going up to their cells; has seen him do this frequently."

James Kearns:—"Has known Frank Smith to push pins into Convicts when sitting at table, or going up to their cells."

John Swift:—"Has known Frank Smith push pins into Convicts as they went to their cells in the evening; it was done for a lark."

John Cooper: (at present an Officer in the Penitentiary)—"Has seen Frank Smith on several occasions prick Convicts with pins, or some such sharp instrument: it was when the Convicts were going to their cells."

Maurice Phelan:—"Has often seen Frank Smith go round the dining-room among the Convicts, thrusting a sharp spike into them, apparently to make the Convicts laugh, and to amuse himself; witness has seen this more than fifty or a hundred times; he generally applied it to their thighs or arms."

John H. Freeland:—"Has known Frank Smith to push pins into the Convicts at the dining-table, and when the Convicts were going to their cells,"

John Watt:—"Has seen Frank Smith push pins into the Convicts when at table, and at other times."

Thomas Costen:—"Never saw Frank Smith push pins or other such sharp instruments into Convicts."

#### DRENCHING CONVICTS WITH FIRE-ENGINE.

##### Evidence:—

James Gleeson:—"Has seen Francis W. Smith going round the yard, playing the fire-engine; he did so under the pretext of trying the engine, but witness feels perfectly convinced it was only to amuse himself: on these occasions has seen Smith turn the flow of water on a gang of men at work, and thoroughly drench some of the men: has seen this from six to twelve times: is quite certain the wetting of the Convicts was not accidental; has seen the men run away from the water, and the flow of water turned after them, amid the laughter and amusement of all around; has seen Smith stand with the conductor in his hand watching persons approach and firing the water at them. Witness has been himself, with his gang, hunted from his work by Smith in this way, and has been individually fired at, and wetted by him.—Has seen Convicts deliberately drenched by Francis W. Smith.

Martin Keely:—"Has seen Frank Smith pour water on the Convicts from the fire engine; recollects when witness was working on a new building, with Keeper Little, and their respective gangs,—that said Smith drove the gangs away from their work by pouring water on them from the fire-engine; the Convicts were a good deal sprinkled, but most of them got off in time to escape drenching: Frank Smith evidently tried to wet them. Witness has often seen Frank Smith so throwing water at Convicts."

Terence M'Garvey:—"Has known Frank Smith to play the fire-engine on Convicts frequently; has known the Convicts to have their clothes thoroughly wet in this way; has known a gang of workmen to be driven away from their work, by the fire-engine being played on them: there was no mistake as to Smith's desire to wet the Convicts."

Richard Robinson:—"Has known Frank Smith to throw water from the fire engine, on the Convicts and Officers; has known him to drive gangs of workmen away from their work in this way; recollects a soldier, named Hylett, being thoroughly drenched in this way, by Frank Smith. Hylett took up a brick-bat and threw it at Frank Smith, and struck him on the hand; Hylett told witness he was punished for complaining to Warden, of Frank's conduct; this was about 16 or 18 months ago."

James M'Carthy:—"Has seen Frank Smith drench Convicts with water from the fire-engine; he poured water on whoever came in his way, Officers or men; has seen him hunt gangs of workmen away from their labour in this way; has seen this often; has seen him break panes of glass in the windows of shops, with water from the engine; has seen him pour water into the tailor's shop, from the fire-engine, through a broken pane of glass. The Warden saw his son drenching the Convicts in this way, on one occasion last summer, and he ordered a Con-

vict who had been so wet, to get his clothes changed. Next day at dinner, Frank Smith asked witness if he saw what passed? witness told him he had. Frank said, 'I will give him a hungry belly for one week for this, which will teach him not to change his clothes again, when I wet him; and he added that if he had known in time, he would have sent a note to Keeper Hooper to prevent his getting dry clothes. Witness saw this man fed for several days after, on bread and water, and he (Convict) told witness he was so hungry that he would stand three dozen with the cats, for one loaf of bread.'

William Atkins—"Has often seen Frank Smith pour water on the Convicts, from the fire-engine; is sure he did it intentionally."

Thomas Fitzgerald—"Has known Frank Smith to drench Convicts with water from the fire-engine; has known him to hunt away Reid's gang from their work, with the fire-engine."

James Wilson—"Has often seen Frank Smith and his men drench the Convicts with water from the fire-engine; has seen gangs driven away from their work in this way, without a dry stitch on them; has seen the men sent up to Mr. Hooper to have their clothes changed."

Edward Bannister—"Has seen Frank Smith pour water from the fire-engine, on Clement Reid's gang when working in the quarry; the men were driven away from their work."

John Richardson—"Has had water thrown in his face, by Frank Smith, from the fire-engine."

James Kearns—"Has seen Convicts wet by Frank Smith playing the fire-engine; it might not have been intentional; has seen him fire the water through the window into the blacksmith's shop."

John Swift—"Has seen Frank Smith pour water from the fire-engine, on Convicts; saw him once drive Little's and witness's gangs away from their work in this way; it was evidently done on purpose; several of the men were drenched; an old Canadian, named Russell, was wet to the skin; witness was really sorry for the old man."

Maurice Phelan—"Has seen Francis W. Smith turn the hose-pipe of a small fire-engine, on the Convicts; recollects on one occasion when Mr. Keely's gang were putting the roof on the new building, Smith did so; Mr. Little's gang was there also, and the men were driven away from their work; some of the men were very much wet. Keely and Little were present; does not know if they complained. Witness has seen F. W. Smith play the engine on the shoemaker's and tailor's shop windows, but does not recollect positively if the windows were up; thinks they were, as it was summer time. Has seen said Smith turn the hose-pipe on a soldier of the 46th Regiment, Hylett by name; has often seen said Smith go round the yard playing the engine on the stone-cutters, apparently amusing himself."

James Brennan—"Has seen Frank Smith drench Convicts with water from the fire-engine; has seen him hunt M'Carthy and his gang from their work, by pouring water through the window, into the blacksmith's shop."

John H. Freeland—"Has known Convicts to be drenched with water from the fire-engine; has known gangs to be so driven from their work."

Eustache Côté—"Has often helped Frank to drench Convicts and Keepers too; has made Mr. Reid's gang of men run away from their work in this way."

John Cooper—"Has seen Frank Smith pour water on a Convict, from the fire-engine; the man ran, but he caught some of the water. Witness was himself wet in this way, in presence of the Convicts; Smith laughed at it; has no doubt that in these cases Smith tried to wet the Convict and witness."

John Watt—"Has seen Frank Smith drench Convicts with water from the fire-engine, very often; has seen him stand with the hose in his hand, and fire at persons going through the yard; but generally the Convicts were not purposely wetted."

Thomas Costen—"Never saw Frank Smith wet any Convict with water from the fire-engine."

## 8. FIRING ARROWS FROM A BOW, AT CONVICTS.

### Evidence.—

James Gleeson—"Has known arrows made for Francis W. Smith in the Penitentiary; they were made by Indian Abraham and others; has seen Francis W. Smith fire arrows from a bow at Convicts; cannot say that he saw Smith hit any Convict;" and again, "Smith and other Keepers and Guards used to fire with the bow and arrow at targets, and at one another, while the Convicts were at meals; this happened very often."

Terence M'Garvey—"Has seen Frank Smith shooting arrows at Convicts; has seen him hit them."

Richard Robinson—"Knew Frank Smith to shoot at Convicts and Officers, with a bow and arrow; has known him to hit Convicts with an arrow; he hit a tailor in the eye, on one occasion; he knocked the skin off his face."

James M'Carthy—"Has known Frank Smith to shoot arrows at Convicts, from a bow; has known him to hit them."

William Atkins—"Has seen Frank Smith shooting at the Convicts with a bow and arrow; has frequently seen him hit them."

Thomas Fitzgerald—"Has seen Frank Smith shoot arrows at Convicts; has seen him hit them; has seen Convict Jones hit by Frank Smith, in this way with an arrow, in the eye."

James Wilson—"Has seen Frank Smith shoot arrows from a bow, at Convicts; has seen him hit them; recollects seeing him hit Convict Ross, a soldier."

John Richardson—"Has seen Frank Smith shooting in the yard with a bow and arrow, as well when the Convicts were at meals, as at other times."

James Kearns—"Has known Frank Smith to shoot with a bow and arrow in the yard; knew him to fire at a plate thrown up for him by a Convict."

Maurice Phelan—"Has known Francis W. Smith to shoot arrows from a large bow, at the Convicts; has seen him do so many times, at men passing across the yard."

James Brennan—"Has seen Frank Smith shoot arrows from a bow, at Convicts; has seen him hit Convicts in this way, several times; recollects his hitting an Indian in this way, and a man who went out some time ago, and was formerly in Mr. Little's gang."

John H. Freeland—"Has seen Frank Smith shooting arrows from a bow, at Convicts."

Eustache Coté—"Has seen Frank Smith hit Convicts with an arrow from a bow; has been often hit himself by Frank Smith, in this way. Witness saw Frank shoot an arrow at Convict Abraham, when witness was in the south wing, sweeping in the galleries; Abraham clapped his hand to his eye immediately, and witness believes the arrow hit him on the eye, or a chip was struck from the wall which went into it; Abraham lost the use of his eye from the occurrence of this day; witness did not see the arrow strike Abraham's eye. Abraham told witness that night, that the injury to his eye was caused by poison he used for dying his wooden baskets. Shortly after the occurrence, Frank Smith went up to Abraham, but Abraham would not allow him to come near him; he was angry."

Thomas Costen—"Never knew Frank Smith to hit a Convict with an arrow; has known him to shoot with bow and arrow in the yard."

Also, as secondary evidence, the affidavit of Isaac Evrett, an Oneida Indian, taken before Nathan Gage, Esquire, of Brantford, C.W., and compiled from Evrett's statements, by David Thorburn, Esquire, Indian Commissioner; affidavit dated 31st July, 1848:—

Isaac Evrett, (for three years a prisoner in the Penitentiary.) "John Abraham, of the same tribe of Indians, was a Convict in the said Penitentiary for the same period, with deponent, and while there thinks in the month of February in 1847, when entering the passage to their cells, No. 18 and 19, deponent was informed by Abraham that he had that day got one of his eyes injured, from the shot of a blunt arrow from a bow, by Frank Smith, one of the Stewards of the Institution. The day it was done, saw the said Smith have in his hands a bow; shortly after, saw the Convict Abraham's head tied up with a white cotton handkerchief. Subsequent to having seen Abraham's head tied up; the said Smith shot from the bow a blunt arrow at deponent, which struck him between the shoulders, which caused deponent to say to the said Smith, 'what made him do that?' if he served him so again, that although a Convict, he would break his arrows as well as his head, as he would not be so abused. On the day that deponent and Abraham (23rd May, 1847) left the Penitentiary, at the Queen's tavern outside the Penitentiary gate, saw the said Frank Smith on the side walk walking towards them; when Abraham said to deponent to stand back, which he did, a little distance. Smith came up to Abraham, when a conversation between them took place; saw Smith hand to Abraham paper money, which Abraham received and put into his pocket. On Smith leaving, deponent inquired at Abraham what he had received? answered money; asked what it was for, to which no reply was made; both left in a steamboat the following day for home, via Hamilton; when on the boat, made frequent inquiries at Abraham, what the money was given to him by Smith, for; always evaded giving a direct answer; said at Hamilton, that he had spent nine dollars since leaving the Penitentiary, and had yet

four and one-half dollars. The sum each of them, on leaving, received, was three dollars and one-half, and knows that Abraham had no money, except the three dollars and one-half, handed to him by —; from this, the sum he must have received from Frank Smith, would be ten dollars; believes he spent many dollars in drinking, on the way; saw, at Hamilton, in Abraham's possession, four and one-half dollars. Deponent was informed by Abraham, the night the eye was injured, that Abraham saw Smith with the arrow and bow, immediately before he was struck, as well as after, when he came to himself; the said Smith desired Abraham to say it was a chip of a stone that hurt him. On Abraham replying to the said Smith, he had not been working on stones that day, but making baskets; he was then desired to say it was from a splinter in making the baskets, and that he would give him something on leaving, if he did not tell the cause of the injury, so that he would be satisfied. Deponent has no complaints to make or prefer against the Warden."

## 9. SUNDRY ACTS OF CRUELTY.

### Evidence:—

Terence M'Garvey:—"Has often seen Frank Smith use familiarity with Convicts, such as no Keeper ought to use; has seen him catch them by the hair of the head, and pull them back; some of the Convicts when so treated, would laugh, and others would be angry."

William Atkins:—"Has frequently seen Frank Smith strike Convicts with the cats in fun; some of them would laugh, and others be angry."

James Brennan:—"On one occasion Frank Smith came into the blacksmith's shop, and ordered witness to open his mouth; witness refused to do so, because it was not Smith's duty, it was the Keeper's duty alone to look after his own gang; M'Carthy, the Keeper, sat by and said nothing; Smith stripped witness naked to the skin to look for tobacco, as he pretended, but found none; Smith, however, reported witness for not opening his mouth, and witness was confined nine hours in the box."

James Brennan:—"Recollects seeing Frank Smith kicking a Convict, a coloured man, very brutally."

John Swift:—"A coloured man, named Johnston, was sent to the Hospital, it was said on account of a kick received from Frank Smith."

Thomas Fitzgerald:—"Has known Convicts in the box to be ill-treated by Frank Smith, has seen men in the south wing, under Frank's directions, shake about the box, and throw water in upon them through the air holes above. Has also seen Frank Smith himself thus shake about the box, and pour water in upon the Convicts in the box, and has also seen him poking at the Convicts with an arrow or small stick through the lower air holes. Recollects M'Keener and Lafleur and other Convicts being so treated: and again, witness has thrown water himself upon Convicts in the box, through the top air holes; he was ordered to do so by Frank Smith; would never have done so of his own thought or choice."

Eustache Coté:—"On another occasion (about two o'clock), Frank came to the box, and saying he would 'fix' witness, threw water on him from the

top of the box; witness threatened to tell his father on him, and Frank said he was only in fun; witness was kept in the box, quite wet, until six o'clock in the evening: witness knows it was Frank who threw the water, because he saw him through a crack in the box, and knew his voice."

James Kearns:—"Has seen Frank Smith throw water on Convicts confined in the box; he threw it on the top of the box, and it went down upon them through the air holes; has seen him do so frequently."

James Kearns:—"Has seen him (Frank Smith) carry a squirt, and pour water from it upon the Convicts, as he passed through the yard or buildings."

John Cooper:—"Saw Convict Day used most cruelly in the lodge, by Frank Smith, about a year ago; Day was white-washing in the lodge; he was standing on a table about two feet and a half high; Smith rushed at the table and knocked it from under the man, who fell on his head and was much hurt; Smith said he would make it all right with a ration of bread; Smith seemed quite delighted with the sport; Day was a very sickly man, and has died since of consumption. Bannister saw this."

James Wilson:—"On one occasion, saw Frank Smith give Conkwright brown bread, equal to six brown bread rations, to see how much he could eat; he ate it all up at once. This occurred last year."

Maurice Phelan:—"Has known prisoners punished for complaining of smallness of rations, by F. W. Smith; sometimes after looking at their rations and sometimes not."

James Gleeson:—"The Convicts often complained of the badness and shortness of the provisions; they very seldom got redress; they sometimes got punished for complaining: recollects one case in which a convict named Pat Martin said to Kitchen Keeper F. W. Smith, as he passed him in the dining hall, 'this is a small ration, Mr. Smith,' 'Mr. Smith said you'll get less to-morrow.' Next day Martin got four meals of bread and water, and on his coming to the shed, witness had to relieve him from work, as the man was totally unable to work from absolute starvation. Witness did not hear what passed in the dining-hall, but from what he heard of it, at the time, he is sure this is a correct statement of the case."

## CHARGE II.—PECULATION.

1. Selling Penitentiary Stores to the Officers of the Institution, and appropriating the proceeds to his own use.

2. Appropriating to his own use the stores of the Penitentiary.

3. Employing Convicts in making nets for his own use, the labour not being charged to him.

4. Appropriating brushes, toys, baskets, mats, &c., made by the Convicts, which were not charged to him.

5. Sundry other acts of peculation.

## 1. SELLING PENITENTIARY STORES.

Evidence:—

James Gleeson:—"Has purchased two loaves of bread from Frank Smith, from the Penitentiary stores, and paid him for them; one was handed to witness from the Penitentiary bin, and the other was given to witness's Convict Messenger, whom witness sent for the loaf to F. W. Smith; the money was paid to Smith. Witness has seen potatoes in the hands of other Keepers, which they told him they bought from, and paid to F. W. Smith. Keeper Swift told witness he had bought oats from Smith."

Edward Bannister:—"The Officers were in the habit of buying provisions from Kitchen-keeper Smith. Witness has seen quantities of provisions going out regularly, from the time Frank Smith was appointed up to his trial last fall. Witness himself bought a bushel of potatoes, and a bushel of turnips from Frank Smith; they were taken from the Penitentiary stores in the cellars; got them himself from the cellar; there were several heaps of potatoes in the cellar at the time, but they were lying open and witness selected what he got from the best heap he could find; the turnips were brought from the cellar by a Convict; there was but one heap of turnips; witness paid Frank Smith for these things; when witness bought these things he understood they were taken from the Penitentiary stores, but thought that Frank Smith got supplies from the Contractors afterwards to replace them, for which he paid the Contractors direct. Smith expressed himself to this effect—it was generally understood. Witness never knew any provisions to come into the Penitentiary for Frank Smith; never heard of Frank Smith buying any articles from the Contractors. Witness has known potatoes, turnips, peas, oatmeal, oats, bread, vinegar and fire-wood, to go out of the Prison for the Officers; considerable quantities of these things have gone out during Frank Smith's time. Witness has known Mr. Bickerton, Mr. Costen, Swift, Skinner, Pollard, Watt, E. Crawford, Mills, Cooper, W. Crawford, Sexton, Kearns, and Martin, to get one or all of these things." (This witness keeps the front gate.)

James Kearns:—"Is aware that Frank Smith was in the habit of selling provisions to the Officers; witness has purchased potatoes from him four or five times; got a bushel at a time; saw them taken from the cellar of the Penitentiary; has no doubt they were from the Penitentiary stores: paid Frank Smith for them: has also had oatmeal three or four times; had 25lb each time; has no doubt the meal came from the Penitentiary bin; Watt, the Guard, weighed it; paid Frank Smith for it. Has known other Officers to get provisions in this way from Frank Smith; has known Ballantyne, Swift, Watt, E. Crawford, Mills, Tyner, O'Neil, W. Crawford, Bannister, Martin and Robinson to do so; these men have at different times had supplies of one or more of the following articles:—potatoes, turnips, oats and pork. Wm. Crawford got the pork. And again, always understood that the provisions he and the other Officers got from the kitchen, were the property of the Penitentiary, and that Frank Smith paid over the money he received to the Clerk; Frank Smith has told witness that this was the case; Frank Smith has endeavoured to persuade witness since his trial, that witness misunderstood him in this matter, and that he only meant to say, that he got money in advance from the Clerk to pay for the supply of provisions he kept on hand for the Officers; witness

is quite sure this is a very different statement from what he originally made."

John Swift:—"Knows that Frank Smith was in the habit of selling provisions to the Officers; witness has himself bought eight bushels of oats from Frank Smith; they were got at different times, paid Frank Smith for them at the rate of from 1s. 8d. to 2s. 3d. per bushel; these oats were got from the stable, out of the Penitentiary stores; witness thought Frank Smith paid for such articles as he sold, to the Clerk; has heard Frank say that this was his practice."

John Cooper: (the Front-gate Keeper, associated with Bannister,)—"Is aware that Frank Smith was in the habit of selling provisions to the Officers; witness has himself bought potatoes from Frank Smith, at least two bushels; they were got from the Penitentiary stores in the kitchen cellar; paid Frank Smith for them. Witness has known Officers, at various times, to get potatoes and other articles; recollects of Mr. Costen getting potatoes on several occasions; also, Kearns got potatoes and oatmeal; Bannister got potatoes; Watt got oatmeal; Robinson got potatoes; Fitzgerald, also; and Wm. Crawford and Skinner. Many of the Officers got turnips,—it was an every day occurrence. M'Garvey, Swift, and Mr. Bickerton got oats; O'Neil got pease. Witness believes that all these articles came from the Penitentiary stores. *Never knew of any provisions coming into the Penitentiary for Frank Smith.*"

John Watt: (Kitchen-guard, or rather assistant Kitchen-keeper, throughout Frank Smith's time,)—"Is aware that the Officers have been in the habit of buying provisions from Mr. Frank Smith; has known Mr. Bickerton, Mr. Costen, Ballantyne, Hooper, Swift, Matthews, Manuel, Little, Har-  
miston, Skinner, Wm. Smith, Pollard, E. Crawford, Mills, Waldron, Tynor, O'Neil, W. Crawford, Bannister, Thorp, Sexton, Kearns, Bowers and Martin to get provisions from Frank Smith; has known one or more of these men to get one or more of the following articles:—potatoes, bread, turnips, peas, oats, oatmeal and vinegar; has no recollection of any one getting pork. Witness has himself purchased provisions from Frank Smith; has purchased a bushel of potatoes from him, two or three times; perhaps oftener; the Convict in the cellar, named Tilletson, measured them; did not see where they were taken from; Mr. Smith ordered Tilletson to take them from the centre bin, on the west side of the Penitentiary cellar; he gave this order, because he (Frank) stated that the potatoes in that bin were his own property, purchased for the convenience of the Officers. Witness does not know that these potatoes were Frank Smith's property; had no more authority for it than Frank's word. Witness has known potatoes come in specially for Frank Smith; once or twice; he thinks twice; cannot recollect the time; it was previous to Frank Smith's trial, last fall; recollects one wagon load coming in, of potatoes, on two different occasions; there would be 12 or 14 bushels in each wagon; cannot tell who brought them in. The only reason for witness saying that these potatoes were Frank Smith's, is that Frank told witness so, and witness heard Frank make a bargain with the teamsters for them; the bargains were made at the kitchen door, within the walls; does not expect that these loads were sent in by the Contractors; there was not much wiggling about the price; Frank offered the man less than he asked; he took what Frank offered; in both instances this was the case; cannot recollect the time of day when these transactions took place; no one was standing near when

the bargains were made; cannot recollect whether the potatoes were in bags or open in the cart; it was not usual for teamsters to come in with loads of provisions to try to effect a sale; never knew of this occurring, except in these two instances; witness did not see the money paid; witness saw them measured; the Convicts measured them; the Convicts carried them down into the cellar; there were not many potatoes in the cellar at the time, belonging to the Penitentiary; there were none in the same bin, as Frank Smith's potatoes were put in; there was not over a month elapsed between the two transactions; never saw Frank Smith get potatoes at any other time; had he got any others, witness thinks he would have heard of it. Witness has often agreed to let Officers have potatoes; he told Tilletson to measure them, in such cases, from Frank Smith's bin. The Officers were in the habit of getting potatoes from Frank Smith, from the time Frank came to the time of his trial last fall. Witness has no doubt that some of the potatoes which the Officers had were taken from the Penitentiary stores. Witness recollects of Guard Fitzgerald picking a bushel of potatoes from out of several heaps, the property of the Penitentiary; he took more than a bushel, and witness made him return the balance. There were some Officers who used to get a few potatoes daily; these were taken from the Penitentiary stores. Edward Crawford and Little did so. Witness was daily in the cellar, often many times a-day; Frank Smith's bin had not always potatoes in it; the Penitentiary potatoes were frequently put in the same bin—Frank's bin; not while Frank's potatoes were in it. Tilletson measured out the potatoes for the several meals; he has done so ever since witness was in the Kitchen. When witness saw the Penitentiary potatoes sold by Frank Smith, he expected that Frank paid in the money he received, to the Office. Witness has known several of the Officers get bread; it was taken out of the Penitentiary bin. Frank Smith had no bread of his own for sale; has known both white and brown bread to be sold by Frank Smith. Witness has purchased turnips from Frank Smith, three or four times; a bushel or half a bushel at a time; paid Frank Smith for them; they were taken from the Penitentiary stores; Frank Smith had no turnips of his own, that witness knows of. Some of the Officers had peas from Frank Smith; the peas were kept in the dining-hall lobby; does not know from what source the Officers got their peas; remembers Frank Smith buying one bag of peas containing about two bushels; they were put in the west end of the Penitentiary peas bin; the bin is divided into two; part of the pease sold to the Officers must have come out of the Penitentiary stores; Frank Smith never had but the one bag of peas to witness's knowledge; witness would have known had Frank Smith received any others; the bag of peas Frank bought came in on the top of a load of potatoes; witness does not know who brought them; did not see them paid for. Some of the Officers bought oats from Frank Smith; witness, by order of Frank Smith, has sent to the stable for oats to supply an Officer; witness has no doubt these oats were taken from the Penitentiary stores; Frank Smith had no oats to witness's knowledge. Several of the Officers got oatmeal; it was sold them out of the Penitentiary bin. Witness never knew Frank Smith get oatmeal brought for him into the Penitentiary, does not think he had. Recollects of one Officer getting half a gallon of vinegar; it was taken from the Penitentiary cask; Frank Smith had no vinegar. Witness, when these transactions in provisions were going on, always thought that Frank Smith paid over the money he received to Bickerton; had he known that he did not do so, witness would have reported the matter to the Warden."

Terence M'Garvey—"Knows that the Officers were in the habit of buying stores from the Kitchen-keeper Smith; has bought stores from Smith himself; bought two bushels of oats at a time, on several occasions, and once a bushel of potatoes; has known other Officers to buy potatoes; these oats and potatoes came out of the Penitentiary stores."

Richard Robinson—"Officers were in the habit of buying provisions from Kitchen-keeper Smith. Witness has bought potatoes, ten or twelve times, from Smith; from one to two bushels each time; witness bought a bushel of turnips once; in all these cases the articles got by witness were taken from the Penitentiary stores. Has known Guard Fitzgerald to get potatoes out of the Penitentiary stores; has seen them taken out of the nets after they had been measured out for the use of the Convicts. Witness paid for part of the articles he had, to Frank Smith, and part he has not paid for yet; was asked for payment of the balance he yet owes, by Frank Smith, who said Mr. Bickerton had stopped part of his (Smith's) salary, for the provisions he had sold to the Officers."

And again—"Kitchen-keeper Costen was in the habit of getting provisions for the Officers, but in a different way from Frank Smith; Costen only bespoke them from the persons who brought in provisions for the Penitentiary, but never supplied them from the Convict's stores, after delivered. Frank Smith, on the contrary, sold the articles out of the Penitentiary cellars."

James M'Carthy—"Has heard that Frank Smith sold provisions to the Officers, but does not know anything of such transactions. Witness knew that it was against the rules of the Prison, and never received any article."

James Wilson—"Frank Smith was in the habit of selling provisions to the Officers previous to his trial last fall, but he has not done so since. Witness once got a bushel of potatoes from him; they were taken from the Penitentiary stores; witness is quite certain of this. Frank Smith charged witness 5s. for drawing up the application for the situation which he (Wilson) got in the Penitentiary, and when witness paid him for this job, they could not make change nearer than 7s. 6d., so that Frank Smith owed witness 2s. 6d. on this transaction. When witness offered to pay Smith for the potatoes, he said, 'never mind, its all right,' meaning, witness thought, that the half dollar he (Smith) owed witness, would pay for them. Witness once saw Guard Kearns pay Frank Smith 3s. for potatoes; Frank said to Kearns, 'I wish they would all pay up as you do, for I have the money to return to the Office.' Edward Crawford got potatoes daily from Frank Smith all the time witness was there, previous to Frank's trial, and when there were potatoes supplied; these potatoes came from the Penitentiary stores, and Crawford paid Frank for them, at the rate of one bushel to every eleven days; they were cooked in the Penitentiary."

Thomas Fitzgerald—"Frank Smith was Kitchen-keeper some time, while witness was in the Penitentiary; he was in the habit of selling provisions to the Officers; witness has known him to sell oats, turnips, and potatoes; witness has himself bought turnips and potatoes from Frank Smith, to the amount of £1 8s. 10d. currency, between the time Frank came to the Institution, and witness left it. Witness paid £1 4s. 2d. of this to Frank Smith, and yet owes him the balance of 4s. 8d.; witness helped himself to potatoes, by direction of Frank

Smith, out of the Penitentiary stores; the turnips were also given out of the Penitentiary stores. When witness settled his account at the Office he expected Mr. Bickerton would have deducted the 4s. 8d. from his pay, because Frank told him that his own pay was stopped at the Office, for these articles furnished to the Officers. Witness has known Bannister, the Crawfords, O'Neil, Harmiston, Costen, Richardson, Little, Watt, Mills, Tyner, and Baldwin, get provisions from Frank Smith, out of the Penitentiary stores, in the same way as witness did." And again: "No provisions came into the Penitentiary Kitchen or cellars, but those delivered by the Contractors, and the Contractors invariably sent in whole loads of articles, which were all charged in full to the Institution. Witness does not believe that Frank Smith purchased articles for the use of the Officers, and sold them out to them. It was always well understood, and witness has heard Frank say, that the provisions sold to the Officers were the property of the Penitentiary, and that he (Frank) accounted for them at the Office."

Eustache Coté—"Knows that Frank Smith sold potatoes to the Officers, from the Penitentiary stores; has himself (witness) measured out potatoes for Guard Fitzgerald, by the instructions of Frank Smith; there was only one heap of potatoes while witness was there; there were different bins, but they were all used for the Convicts alike. Witness has known Frank Smith to sell oats, potatoes, bread, and turnips, to the Keepers and Guards."

Thomas Costen—"Did not know that Frank Smith was in the habit of selling provisions to the Officers, until his trial last fall; was not aware until then that any Officer had purchased provisions of any kind from Frank Smith. Witness never bought any provisions from Mr. Frank Smith, while he (Frank Smith) was Kitchen-keeper, nor from any other Officer of the Institution; never had provisions from the Institution, since Frank Smith came to it, he believes." And again: "Witness repeats that he never knew an instance of Frank Smith selling provisions to any of the Officers." And again: "Never knew Frank Smith to purchase any potatoes from the carts in the Penitentiary; nor any peas, nor oats, nor oatmeal, nor bread, nor vinegar."

## 2. APPROPRIATING THE STORES OF THE PENITENTIARY.

### Evidence:—

James Wilson—"Frank Smith has had bread sent out of the Penitentiary for his own use regularly since witness went to the Prison. Witness has seen him take it out himself, and has seen him bring it to the lodge for Sexton, or Matthews, or Harmiston, to take home for him; has likewise known Convicts to bring bread to the lodge, from Frank Smith, to be taken home for him by those men. Witness knows this bread was for Frank Smith, and it was wrapped in his handkerchief; he has likewise seen beef and potatoes, and lettuce, and onions, and oatmeal, go out in this way for Frank Smith; he likewise gets about two quarts of milk sent home from the Penitentiary, twice a-day. It was against the rules of the Prison for these things to go out without the Warden's special order, but Frank instructed the Guards to let all articles for his use pass out without any order, and as he was their superior Officer they were bound to obey."

Thomas Fitzgerald—"Has known Guard Sexton to take home bread for Frank Smith from the Penitentiary stores; has frequently known potatoes to be left at the lodge to be sent home for Mr. Frank."

Edward Bannister—"Has often seen provisions go out for Mr. Frank Smith; he gets a pail of milk regularly every day, and occasionally twice; he has had bread very regularly; usually a loaf at a time." And again: "Potatoes have gone out for him at least 10 times; turnips also, and oatmeal, and vinegar. These things have generally been sent to the gate for Mr. Frank, and Sexton and Harmiston take them home. Witness has seen provisions sent home to Mr. Frank's house, in the butcher's cart and in the baker's cart."

James Kearns:—"Knows that Frank Smith got provisions sent home for him, from the Penitentiary; knew him to have bread and vegetables sent home."

John Cooper:—"He (Frank Smith) has also had potatoes and vinegar."

Michael B. White:—"Recollects being told by Guard Baldwin, that he and Guard Morsey had to take milk to Francis W. Smith from the Penitentiary every night. Witness saw Baldwin have the milk in his hands one evening."

John Watt: (Assistant Kitchen-keeper)—"Knows that Frank Smith has had potatoes sent home for his own use, from the Penitentiary; has known of this occurring four or five times, not more than two bushels at a time; they were sent home in the butcher's or baker's cart, or in any chance waggon which had been in with stones; they must have been taken from the Penitentiary stores. On one or two occasions Mr. Owens, the Contractor, gave Frank Smith the present of a bag of potatoes. Witness knows that Frank Smith has had bread regularly, almost daily, from the Penitentiary stores, ever since he came; and again, witness has known Frank Smith to get turnips from the Penitentiary several times; they were taken from the Penitentiary stores. Witness has known Frank Smith to have peas sent home for him two or three times, about a peck at a time, they were taken from the Penitentiary stores. Witness has known Frank Smith get oatmeal three or four times, from the Penitentiary stores. Witness has known Frank Smith to take vinegar two or three times; once in a half gallon jar, at other times in a glass bottle."

Thomas Costen:—"Never knew Frank Smith to have provisions sent home from the Penitentiary, except fresh pork which he got from his mother."

James Wilson:—"The Messenger, Thomas Smith, has often taken bundles of articles home in the Penitentiary waggon for Frank Smith. The guards did not know what were in these bundles; but vegetables of all kinds were frequently sent home to Frank by the messenger in the cart."

The Commissioners observe that an order was passed by the Inspectors, in October last, after their trial of F. W. Smith, that no provisions should pass the gate. Francis W. Smith is charged with having broken this rule.

Edward Bannister:—"After Frank Smith's trial, an order was passed that no provisions should go out—that no traffic within the yard should go on: no one has broken this new rule but Frank Smith, that witness recollects."

John Cooper:—"Previous to Frank Smith's trial last fall, there was no pass necessary for such things (provisions); witness was given to understand by Frank Smith that the rule only applied to manufactured articles, or articles the property of the Prison. After Frank Smith's trial a rule was passed making an order necessary for everything: Frank has had bread, potatoes and milk passed through without an order, notwithstanding the new rule: and again, Frank gets milk twice a-day from the Penitentiary; he gets bread pretty regularly, sometimes once a-day, and sometimes only two or three times a week."

James Wilson:—"Saw Convict Davis, on the 13th of this month, (July, 1848,) bring two loaves of bread to the lodge, from the Penitentiary kitchen, to be taken home to Frank Smith's house; on the 16th witness saw one loaf of bread, and on the 19th another loaf in Frank Smith's basket, concealed under bundles of lettuce; the basket was lying in the lodge ready to be taken home."

Edward Bannister:—"Saw a loaf go for him (Frank Smith) on March 9th, 11th and 16th, and on April 3rd, 4th, 6th and 8th,—made a note of these transactions; he might have had more during the same period, but these instances witness saw."

John Watt:—"Frank has continued to take it (bread) since his trial, last fall; he has only dropped getting it very recently; and again, Frank has had none of these things (potatoes, &c.) since his trial, but bread; witness has seen Frank Smith take bread for his own use, while the Baker was there, and deduct it from the quantity for which he gave the Baker credit; never saw him pay the Baker for such bread. Witness spoke to Frank Smith about the impropriety of taking bread in this way, and Frank promised to stop it; he did stop taking it; this is three, four or five weeks ago. White, the Baker, was standing past at the time."

MEMORANDUM AS TO NOS. 1 AND 2, CHARGE 2.

The Commissioners having procured from the Warden a certified statement of all the money paid into the funds of the Penitentiary, for provisions, &c., sold during the period Francis W. Smith has been Kitchen-keeper;—find that only the following transactions have been accounted for:—

		1846.	£	s.	d.
Dec.	Thos. Costen,	2 bush. Pease,	0	4	6
		1 " Turnips,	0	1	5
		1 " Oats,	0	1	5
Dec.	Mr. Bickerton,	2 " Pease,	0	4	6
		1 gall. Vinegar,	0	1	3
		4 lb Candles,	0	2	6
		1 bush. Turnips,	0	1	5
		10 " Oats,	0	14	2
Dec.	Wm. Martin,	2 " Pease,	0	4	6
		½ " Salt,	0	1	3
1847.					
March.	Wm. Martin,	1 cord Wood,	0	9	0
Aug.	Sam. Pollard,	2 " " "	1	2	0
	Mr. Bickerton,	1 gall. Vinegar,	0	1	3
Sept.	Wm. Martin,	12 bundles straw,	0	2	0
Nov.	Mr. Bickerton,	1 gall. Vinegar,	0	1	3
	" "	1 peck Potatoes,	0	0	6
1848.					
Jany.	Wm. Martin,	2 cords Wood,	0	16	9
	S. Pollard,	3 " " "	1	13	0
	John Swift,	1 " " "	0	8	6
Feb'y.	Thos. Costen,	3 " " "	1	5	6
	F. W. Smith,	3 " " "	1	5	6

### 3. EMPLOYING CONVICTS, MAKING NETS—LABOUR NOT CHARGED TO HIM.

Evidence :—

Martin Keely :—“ Has seen Convicts making fishing nets for Frank Smith.”

Terence M'Garvey :—“ Has seen Convicts making fishing nets, which were said to be for Frank Smith.”

Richard Robinson :—“ Has known Frank Smith to have fishing nets made for him, by Convicts, in the Penitentiary.”

James M'Carthy :—“ Knew Frank Smith to get fishing nets made by the Convicts, part of three years in succession. Witness knew at least 100 lb of lead to be taken to put on them; Smith was not charged with the lead.”

Thomas Fitzgerald :—“ Knows that Frank Smith had fishing nets made for him in the Penitentiary.”

John H. Freeland :—“ Knew Frank Smith to have nets made at the Penitentiary.”

James Wilson :—“ Knows that Frank Smith has had nets for fishing made in the Penitentiary; he gets them made now (July 1848) every day; witness saw three Convicts working at them on Saturday last (22nd July); Convicts are at work constantly on them, shut up in the old shoemaker's shop.”

James Kearns :—“ Knows that Frank Smith had fishing nets made in the Penitentiary.”

John Cooper :—“ Has known fishing nets brought from the kitchen to the lodge, to be sent out for Frank Smith on two occasions, there was no pass; witness has seen Guard Sexton take out another net from the Penitentiary.”

John Watt :—“ Frank Smith has had fishing nets made for him by the Convicts in the Penitentiary; witness has seen three complete nets there at different times; they were made of whitey-brown thread.”

#### MEMORANDUM.

The Commissioners find no entry in the books for the labour employed on these nets.

### 4. APPROPRIATING BRUSHES, TOYS, BASKETS, MATS, &c.

Evidence :—

Maurice Phelan :—“ Knew a French boy, named Braban, to make shoe-brushes, small boxes, flower boxes, &c. for Francis W. Smith; was told by Braban that Smith gave him tobacco for this work. Has known Braban called out for punishment, but it was not inflicted; was told by Braban that Francis W. Smith forgave him, in consideration of the work done by him for the said Smith: again, was one afternoon taken from his work to catch grasshoppers for Francis W. Smith to fish with; spent best part of afternoon so employed: and again, was one afternoon employed in splitting fire-wood, to make torches for F. W. Smith to fish with; was told by Mr. Martin that this was the purpose they were to be put to.”

James M'Carthy :—“ Has known Frank Smith to have fancy baskets, a bow and arrow, fancy sticks, &c. made for him in the Penitentiary, by Convict Abraham.”

James Wilson :—“ Has known Leparge to make toys for Frank Smith, and he has known Braban to make brushes and other articles for him.”

John Cooper :—“ Frank Smith has passed out baskets on many occasions.”

Edward Bannister :—“ Articles, not provisions, have been passed through the gate on Mr. Frank Smith's pass; passed brooms in this way, for Mr. Frank himself and other Officers; these passes were sent to the office with the rest, and accepted; a large mat was once passed out for Mr. Frank without an order.”

### 5. SUNDRY ACTS OF PECULATION.

Evidence :—

Edward Bannister :—“ Recollects of Frank Smith sending a bushel of pease to the gate for Mrs. M'Nider; she did not come for them; some Officer bought them and took them away.”

James Wilson :—“ Frank Smith had two hogs in the Penitentiary to be fattened; they were fed with the Penitentiary oats and offal; they were taken away because a complaint was threatened about them, by some of the Guards and Keepers.”

Eustache Coté :—“ Frank Smith told witness to cheat the butcher of as much meat as possible; and witness, with Smith's knowledge, used to steal meat from the cart before it was weighed; Frank would take the butcher's man to the desk on purpose, and when his back was turned, witness would snatch a piece of meat, and throw it down into the cellar; has taken a piece of meat from twenty to thirty pounds; has done this a dozen of times; the butcher's boy suspected witness of stealing the meat, and watched him very close; he used to complain that he did not get the right weight; this happened just before witness left the Penitentiary. A soldier Convict from the 24th Regt., witness thinks, also took the meat in this way, by Frank Smith's direction. Dyas, the Cook, knew well of this matter; Guard Watt also knew of it; he checked witness for doing it, and said he would not allow it; did not tell Watt that Frank Smith desired him; all the Convicts in the kitchen knew of it. Turney, Boulton or Moulton, a coloured man, and Jim Johnston, in Mr. Little's gang knew of it.”

John Watt :—“ Recollects that Convict Hall was punished for stealing meat from the butcher's cart; recollects of being told by the Kitchen waiters, that Convict Coté had stolen meat from the butcher. Witness may have rebuked Coté, but does not recollect of it. Mr. Frank received the meat from the butcher the day when Coté stole from the butcher; cannot recollect the names of the waiters who mentioned this fact to him; was told of the circumstance the very day it happened; cannot say if the meat was stolen with Mr. Frank's knowledge. Has no recollection of the butcher complaining that he was not credited for the proper weight of meat.”

John Cooper :—“ Has known the butcher's meat to be sent back, as witness was told by the butcher, in consequence of Guard Watt having decided that

it was unfit for use; has known Frank Smith meet the butcher's cart on its way into town with the condemned meat, and tell the butcher's boy to take it back to the Penitentiary; the butcher has brought it back accordingly, and the meat was accepted. Has seen this frequently, and has also known the butcher's messenger, when the Guard refused to receive his meat, wait until Frank Smith came in, when it was taken from him."

John Watt—"Never knew nor heard of the meat, when rejected by witness, being brought back again and accepted; has known three or four instances in which, when witness had rejected the meat, the butcher waited till Mr. Frank Smith came, and Mr. Smith then accepted part of the meat which witness had rejected. As to meat being sent back and stopped on the way to town, by the Kitchen-keeper, and accepted,—witness further says that he has known the butcher bring meat in at breakfast time, when Frank Smith was in town at breakfast, and during a term when a rule existed that no meat should be accepted without having been inspected by the Kitchen-keeper, the butcher, instead of waiting for Mr. Smith's arrival, would drive it to Mr. Smith's house, and have it inspected there, and bring it back; has known this three or four times. The rule referred to, was in force in March, April, and May, of this year; has known the meat to come in from the butcher in the morning about 8 o'clock, twenty or thirty times in the last two years." Afterwards, he says: "In the instances alluded to, of the butcher going to Mr. Frank's house, witness would not have accepted part of that which was taken by Mr. Smith; may have told the boy the meat was bad, and could not be accepted, but has no recollection of it; would not have received the meat had it been of excellent quality, without Mr. Frank's having inspected it."

Thomas Costen—"It is the Kitchen-keeper's duty to receive it, (the butcher's meat) and in his absence, this is the duty of the Kitchen-guard. \* \* \* \* "Witness never knew of any order forbidding Kitchen-guard to receive meat from the butcher. Witness recollects of meat coming in from the butcher, and seeing the waggon stand at the Kitchen door for some time, he asked Watt why it stood there? Watt said he could not receive the meat until Mr. Frank came; this happened twice; he gave some reason for it—some fault he found with the meat; this could only have been the cause. Witness has heard Watt say that he has rejected meat sent in by the butcher; that the lad took it out of the Prison to Mr. Frank's house, and brought it back again, by his orders. Watt had rejected the meat for some cause." And again: "The meat usually comes in the afternoon; never saw the meat come in before 11 o'clock. During the five years witness was Kitchen-keeper, the meat never came in before that hour; and had it come in before that hour, in Mr. Frank Smith's time, witness must have known it."

### CHARGE III.—DISORDERLY CONDUCT.

1. Behaving indecorously towards the females.
2. Taking Convicts outside the walls to fish.
3. Remitting punishment clandestinely.
4. Showing favouritism to particular Convicts.
5. Sundry acts of misconduct.

### 1. BEHAVING INDECOROUSLY TOWARDS THE FEMALES.

Evidence:—

Richard Robinson—"Once saw very indecorous conduct on the part of Frank Smith and the head Matron, Mrs. Pollard. One afternoon Frank Smith was standing at the dining-room door when Mrs. Pollard was coming towards him, through the south wing passage; Smith opened his arms and Mrs. Pollard threw herself into them, and Smith carried her off in his arms towards the dining-hall; a number of Convicts were looking on, and witness observed, 'that was pretty conduct to display before them.' Witness thinks what he said was overheard, and helped to hurry his dismissal from the Prison; this affair occurred shortly before witness was dismissed."

James McCarthy:—"Has seen Frank Smith coming out of the women's apartments several times: on one occasion, while Mrs. Cox was there, met him coming out pretty tipsy; he said he had been down there regulating the women."

Julia Cox:—"Frank Smith behaved indecorously in the women's department on one occasion; the women were going down stairs and Smith was coming up; he put his hand on the shoulder of one of the women as she passed; he held out his finger and chattered to another, and he called 'there goes beauty,' to a coloured woman. Witness expressed her disapprobation, but did not report the circumstance to the Warden; Smith went away whistling. Mrs. Shaw was present."

James Wilson:—"On one occasion saw Frank Smith put his arm round the waist of one of the Convict women, and pretend to kiss her; it was on a Sunday morning, as the women came down to church; does not know the names of any of the women; this was last summer. Witness was door-keeper that day at the kitchen entrance."

Thomas Costen:—"Never knew Frank Smith to take liberties with any of the Convict women; he may have done so, but witness has no recollection of it."

### 2. TAKING CONVICTS OUT TO FISH.

Evidence:—

Maurice Phelan:—"Has known Convict Brennan to be out fishing with Francis W. Smith, and another a soldier, named Pritchard; these men have been often so employed; witness has himself seen them."

Richard Robinson:—"Has known Frank Smith to take a Convict outside the gate, to fish with him on the wharf; his name was Brennan. The man was in good health."

Thomas Fitzgerald:—"Has seen Frank Smith fishing on the wharf, with Convict Brennan, the Barber, along side of him. Brennan was an able bodied man."

John H. Freeland:—"Has seen Frank Smith fishing on the wharf, with Convict Brennan, and a man of the name of Coté assisting him; he (witness) saw them from the top of the factories."

James Wilson :—" Has seen Frank Smith take a Convict (the Barber,) named Brennan, and a boy named Matthews out to fish with him, on the west wharf; has seen them fish together."

Eustache Coté :—" Has fished three or four times on the west wharf, while in the Penitentiary; got the hook from Frank Smith, and made the line in the Ropery; caught fish, and cooked them and eat them in the wash-house with other Convicts."

James Kearns :—" Has seen Convicts fishing with Frank Smith on the wharf; Pritchard was one of them, and Caldwell was another."

John Swift :—" Has seen Frank Smith frequently take Convicts out to fish with him; has seen him take an Indian, and a boy, Matthews, and Brennan the Barber. Witness has seen this when loading schooners with stone."

James Brennan :—" Has seen Frederick Brennan fishing on the wharf with Frank Smith; was measuring coal with Keeper M'Carthy when he saw this."

Thomas Costen :—" Has seen Convict Matthews fishing on the wharf with Frank Smith; has also seen Brennan fishing with him. These cases occurred last fall."

### 3. REMITTING PUNISHMENT, CLANDESTINELY.

Evidence :—

Maurice Phelan :—" Has known Braban called out for punishment, but it was not inflicted; was told by Braban that Francis W. Smith forgave him in consideration of the work done by him for said Smith."

James Wilson :—" Has known several instances lately, of Convicts being canvassed as to the evidence they should give before this Commission. \* \* \* There is a black Convict in the Penitentiary, committed this time under the name of M'Nair, but who was formerly committed under the name of M'Keener, who has been employed for some days in getting up evidence against the Doctor. Witness on several occasions saw this man talking to Convicts, and stopped him; M'Nair said he was electioneering against the Doctor, and had been permitted to do so by Frank Smith. Witness reported this man for so electioneering, contrary to the rules of the prison on four several occasions, but he was not punished for any of these offences. Witness reported him, as the Guards usually do, to the Kitchen-keeper, who wrote the complaints down on a slip of paper; this memorandum should have been copied into the punishment-book, and read out next morning, with the Warden's prescribed punishment to each offence, but in no one of these four instances was any notice taken of witness's report. This affair of M'Nair's occurred early last month. (June.)" And again :—" Recollects of Convict Burns being punished about a fortnight ago; he had only bread and water the whole day; next day at breakfast time Frank Smith asked him what he had been punished for, although he (Frank) must have well known what it was for, as he read out the list of punishments from the book. Witness did not hear what passed between them, but he knows that Burns got an extra ration served to him at that meal."

Thomas Fitzgerald :—" Has known Frank Smith to let Convicts out of the box before their sentence was completed, and he has also known him to keep

Convicts longer in the box than their proper time; recollects of coloured Wilson being so let out of the box before his time was completed, but cannot name an instance of the other, at this moment. Witness recollects of Coté being read out one morning, to go into the box that day; Frank Smith forgave him the sentence, however, and Coté was not punished."

Eustache Coté :—" Has been a week in which he got only one full Prison ration, legally, but he got meat during the time, clandestinely. Witness has been often sentenced to the box; Frank Smith had the charge of putting the men in the box, and he favoured witness. Several times when witness was read out for the box, he was not put in it at all; once, when sentenced to it for a whole day, Frank let him out in an hour and half; and on another occasion when sentenced to three days in the box, witness was only in one day; Frank Smith forgave him the two other day's punishment."

### 4. SHEWING FAVOURITISM TO PARTICULAR CONVICTS.

Evidence :—

Thomas Fitzgerald :—" Frank Smith and the Kitchen men frequently gave extra rations to their favourites among the Convicts. Witness has often seen Convicts get extra quantities of bread, meat, and potatoes put on their plates, after the gangs had taken their seats, at the table, and especially there was favouritism on Sundays when the men had particular seats."

John H. Freeland :—" There were favourite Convicts who used to get extra rations, very commonly; the waiters used to come up, after the gangs had taken their seats, and give particular men extra supplies; sometimes the waiters did this of their own accord, and at other times it was under the directions of Frank Smith."

James Wilson :—" Has frequently seen very marked favouritism displayed by Frank Smith towards particular Convicts; one day last week, witness thinks on Tuesday, Frank Smith sent Convict Burns from the Kitchen, by another Convict, two fishes, a quantity of pork and a supply of bread; this was given to Burns, in addition to his usual ration; he was unable to eat it all, and divided it amongst his neighbours."

Eustache Coté :—" Has known the Kitchen men to give extra rations to particular Convicts, after the gangs had taken their seats at the table, and they used to get tobacco for so favouring them. Frank Smith used frequently to give extra rations to his favourites, in the same way."

James Kearns :—" Is aware that the Kitchen waiters, under the direction of the Kitchen-keeper, used to go round the tables and serve out any potatoes which might remain over, to such Convicts as they chose."

Martin Keely :—" Has known Convicts get bread from the Kitchen-keeper between meals."

James Wilson :—" Convicts very often go to Frank Smith, between meals, and ask him for food; he gives it to his favourites and refuses it to others; has known M'Nair and Conkwright, and M'Namara, and Lescur, get provisions in this way."

Thomas Fitzgerald :—" Has known Convicts to get provisions between meals, from the Kitchen; Frank supplied his favourites when they applied, but no others; Coté, Lewis, Pritchard, and Brennan, and coloured Wilson, used to get food between meals, whenever they wanted it."

Eustache Coté:—"Could easily get provisions from the Kitchen, between meals; whenever he liked, he could go and get what he wanted, or 'hook' it; the Convicts generally could not do so; it was only Frank Smith's favourites who could do so." And again: "Was pretty comfortable at times when in the Penitentiary" (a prisoner) "was good friends with Frank Smith; he would play with witness one hour, and punish him the next; had no regular quarrel with him; gave evidence against Frank at his trial last fall; was not a willing witness; had no personal cause to speak against Frank; was subpoenaed."

#### 5. SUNDRY ACTS OF MISCONDUCT.

##### Evidence:—

Thomas Fitzgerald:—"Has frequently known Convicts complain of the bad quality and short quantity of their rations, and he punished for so complaining; Mr. Frank reported against the Convicts for so complaining, and they would be read out for punishment next morning, for speaking during meals, or standing up during meals, or some such offence."

James Kearns:—"Has known Convicts complain of the shortness and poorness of their rations, at the dinner table, very often; they were frequently punished for it, by the Kitchen-keeper; they were entered in the punishment book for getting off their seats, or speaking to their Keepers, during meal time."

Edward Utting:—"The moment F. W. Smith was permanently appointed, his conduct towards witness, which had previously been respectful, changed very much; he became disrespectful, careless, and took liberties; going to his apartment at his father's house, contrary to orders."

James Gleeson:—"Smith and other Keepers and Guards used to fire with the bow and arrow at targets and at one another, while the Convicts were at meals; this happened very often."

James Brennan:—"Frank Smith was the first person who gave witness tobacco in the Penitentiary."

Thomas Hendry, (a Contractor):—"Had much trouble in getting proper receipts from Frank Smith, for the articles he delivered to the Penitentiary; the Pass-book would often remain for a fortnight at a time in the Penitentiary, and his (witness's) messengers would often be told by Frank Smith that he had no time to give them a receipt; all witness's endeavours to get regular receipts for what he delivered, were fruitless and no reliance whatever can be placed on the general correctness of the provision Pass-books."

James Wilson:—"At the same time (during Frank Smith's trial by the Inspectors, last fall) Frank told witness that he was determined to have Guard Robinson out of the Institution, as he was an impertinent villain; and a few nights after he told witness, that he (Smith) had given Robinson pork, &c., and helped him along as much as possible, but that the villain had turned against him, and he would have him out of the place. This was said in the presence of Guard Sexton and Keeper Matthews."

Kingston, 12th August, 1848. Truly extracted from the Minutes of the Penitentiary Commission.

(Signed,) GEO. BROWN,  
Secretary.

#### SUPPLEMENT TO 5.—CHARGE III.

Thomas Costen—"He (Frank Smith) is very irregular; seldom present when the Roll is called; there never was any other Officer so irregular as Mr. Frank Smith; it would not have been right to allow any other Officer to remain in the Institution, who attended so irregularly; no Officer could so do his duty properly."

1.

Copy.—Letter, Secretary to Kitchen-keeper Smith.

"Provincial Penitentiary, Commission Room,  
" KINGSTON, 12th August, 1848.

" Sir,

" I herewith enclose statements of charges against you, as a Keeper of the Provincial Penitentiary, elicited by the Commissioners in their examination into the general management of the Prison.

" The Commissioners are desirous to learn from you, as soon as possible, what course you intend pursuing in reference to these charges, and by what day you will be prepared to enter on your defence.

" I remain,

" Sir,

" Your most obedient Servant,

(Signed,) " GEO. BROWN,  
" Secretary.

" Mr. FRANCIS W. SMITH,

" Keeper,

" Provincial Penitentiary."

2.

Copy.—Letter, Kitchen-keeper Smith, to Secretary.

" PENITENTIARY, 14th August, 1848.

" Sir,

" I have the honour to acknowledge the receipt of your letter of the 12th instant, accompanied by certain charges against me, and I have to request you will be good enough to inform me by whom they are preferred, in order that I may shape my defence accordingly, to such parts of them as may be necessary; this, I believe, is always accorded to an accused person, as being a matter of justice towards him.

" I do most respectfully protest against the examination of any charges against me, which has already been heard and decided upon by the Inspectors of the Penitentiary, agreeable to the 3rd Section of the Statute 9 Victoria, chap. 4, whereby they are constituted the legal tribunal to enquire into any improper conduct which may have been alleged to have been committed by any of the Officers or other persons employed in said Penitentiary, but although by the Statute of the same year, chap. 38, it does not appear that any Commission shall be ap-

pointed for an inquiry to be made into or concerning any matter connected with the good government of this Province, otherwise than where such inquiry shall not be regulated by any special Act; yet, I shall be prepared to defend myself from any new charges that may be brought against me, in which case I shall claim the right of examining the witnesses with whose testimony you have been pleased to furnish me, as I do not conceive it would be just to permit *ex parte* statements to be used as legal evidence against me, when I am not informed if the examination was under oath; and even if so, I think that I have the right to be present for the purpose of cross-examination.

"I have the honour to be,

"Sir,

"Your obedient Servant,

(Signed,) "F. W. SMITH.

"GEO. BROWN, Esquire,

"Secretary, Penitentiary Commission."

3.

Copy.—Letter, Secretary to Kitchen-keeper Smith.

"Provincial Penitentiary Commission Room,

"KINGSTON, 15th August, 1848.

"Sir,

"I have to acknowledge receipt of your letter of yesterday, and having laid it before the Commissioners, I am instructed to make you the following reply:—

"There is no prosecutor who formally prefers the charges transmitted to you on the 12th instant. The Commissioners have received a vast amount of evidence on the general management of the Penitentiary, and in the course of their inquiries, the statements furnished you, were made on oath by the parties named. These statements are not *ex parte* evidence as you designate them. The Commissioners have known no party in the course of their inquiries; their whole endeavour has been to elicit truth, whether it told for or against any of the Officers of the Penitentiary; and you will find that the testimony favourable to you has been furnished with that of a different character.

"As regards your opinion of the legality of the proceedings of the Commission, it is for you to choose your own course; but it only remains for me to refer you to my letter of 28th June, and to add, that upon the *whole evidence* transmitted to you, the report of the Commissioners to Government will be founded, without reference to any previous action of the Board of Inspectors.

"You are, of course, entitled to cross-examine any of the witnesses whose testimony is used against you, and when informed of the day on which you will be prepared to enter on your defence, I will furnish you with subpoenas for such persons as you desire to call before us.

"I remain,

"Sir,

"Your most obedient Servant,

(Signed,) "GEO. BROWN,

"Secretary.

"MR. FRANCIS W. SMITH,

"Kitchen-keeper,

"Provincial Penitentiary."

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4.

Copy.—Letter, Kitchen-keeper to Secretary.

"PENITENTIARY, 17th August, 1848.

"Sir,

"I have the honor to acknowledge the receipt of your letter of the fifteenth instant, and I fear that my communication of the previous day was not so explicit as I intended, and therefore I have not been understood by the Commissioners.

"In that letter I have stated that I will be prepared to answer any new charges against me, but it is obviously necessary, that I should first know whether the written testimony already taken *ex parte* by the Commissioners, will be held to be evidence against me on my trial, or whether that testimony will be re-produced, and the witnesses examined *vis à voce* in my presence, and with the usual liberty on my part to cross-examine them as in an ordinary Court of Justice.

"I have the honour to be,

"Sir,

"Your obedient servant,

(Signed,) "F. W. SMITH.

"GEO. BROWN, Esquire,

"Secretary, P. Penitentiary Commission."

5.

Copy.—Letter, Secretary to Kitchen-keeper Smith.

"Provincial Penitentiary Commission Room,

"KINGSTON, 17th August, 1848.

"Sir,

"I have received your letter of this date. The Commissioners perfectly apprehended the meaning of your former communication, and thought they had already given you the explanation you seek with sufficient explicitness.

"The evidence sent you will be used as valid testimony, and will not be re-produced *vis à voce*. If you do not show that the testimony of these witnesses is incorrect, or explain it away, the report of the Commissioners will be formed upon it. But do not misunderstand your position; you are quite at liberty to re-produce these witnesses, or any others you think proper, and to examine them in the fullest manner on all the points laid to your charge, or on any other point relative to the matter at issue. You will have every assistance rendered you by the Commissioners, in the production of such witnesses as you desire to call.

"I beg to be informed, in the course of tomorrow, when you will be prepared to enter on your defence, and I remain,

"Sir,

"Your obedient Servant,

(Signed,) "GEO. BROWN,

"Secretary.

"MR. FRANCIS W. SMITH,

"Kitchen-keeper,

"Provincial Penitentiary."

6.

Copy.—Letter, Kitchen-keeper Smith to Secretary.

PENITENTIARY, 18th August, 1848.

“ Sir,

“ I beg to acknowledge the receipt of your letter of yesterday's date, in which you state that the written evidence sent to me will be used as valid testimony against me, and will not be re-produced *in à voce*.

“ Are the Commissioners aware of the credibility of all the witnesses who have appeared against me? Are they sure that it is possible to procure their attendance for my defence?

“ To my knowledge several of those witnesses have left the country; one of whom, and a principal witness against me, after breaking open the shop of his late employer, has absconded to the United States.

“ Under all these circumstances, I must beg to decline entering into any defence, and therefore, leave the matter to such decision as the Commissioners may please to arrive at.

“ I have the honor to be,

“ Sir,

“ Your obedient Servant,

(Signed,) “ F. W. SMITH.

“ GEO. BROWN, Esquire,  
“ Secretary, Penitentiary Commission.”

Copy.—Letter, Secretary to Provincial Secretary.

“ Provincial Penitentiary Commission Room,  
“ KINGSTON, 19th August, 1848.

“ Sir,

“ I am instructed by the Commissioners of the Penitentiary Inquiry, to advise you that they have closed their proceedings in the matter Francis W. Smith, Kitchen-keeper of the Penitentiary.

“ On the 12th instant, the Commissioners served Mr. Smith with written charges, and a copy of the evidence in support of each charge. The charges were:—

1. Cruelty to the Prisoners in the Penitentiary.
2. Peculation.
3. Conduct subversive of the rules and good order of the Prison.

“ The evidence to sustain all these charges was most complete, and Mr. Smith has declined to enter into any defence of his conduct. He says he was tried on the same charges by the Board of Inspectors, and acquitted, and he will not plead to them again. It is true that the same ground was gone over that the Inspectors investigated, but much new matter has been added.

“ Under these circumstances, the Commissioners recommend the immediate dismissal of Francis W. Smith, from the Institution.

“ The Commissioners cannot close this communication without expressing the painful impression produced on their minds by the conduct of the Board of Inspectors, in reference to this case. The Commissioners are of opinion that the Inspectors did not investigate the charges preferred by Dr. Sampson, against Kitchen-keeper Smith, so closely as they ought to have done; that the evidence actually obtained by them did not warrant their acquitting Smith; and that the palliations voluntarily made for Smith's conduct, in their decision on two of the charges, were without just foundation.

“ I have the honour to be,

“ Sir,

“ Your most obedient Servant,

(Signed,) “ GEO. BROWN,  
“ Secretary.

“ Hon. R. B. SULLIVAN,  
“ Provincial Secretary.”

PROCEEDINGS IN THE CASE OF HENRY SMITH, ESQUIRE, WARDEN PROVINCIAL PENITENTIARY.

Having closed the evidence in the case of Kitchen-keeper Smith, we proceeded to complete the investigation in as far as Mr. Warden Smith was affected, including a thorough examination of the books and accounts. As some time was necessarily required by the Secretary to arrange the charges, transcribe the evidence, and transmit the same to the Warden, as well as to enable Mr. Smith to prepare his defence, we deemed it expedient to adjourn on the 5th September, for three weeks. The Secretary completed his task on 23rd September, and served the Warden on that day, with a copy of the charges and evidence, occupying 301 pages. We re-assembled on 29th September, and the following correspondence shows the further proceedings in the Warden's case:—

No. 1.

Copy.—Letter, Secretary to Warden.

“ Provincial Penitentiary Commission Room,  
“ KINGSTON, 23rd September, 1848.

“ Sir,

“ You will receive herewith, copy of charges preferred against you before the Commissioners of the Penitentiary Inquiry, and of the evidence in support of each charge; and as soon as you are ready, the Commissioners will be prepared to hear your defence.

“ You will have every assistance in the production of witnesses which the Commissioners can give you.

“ You will be entitled to re-produce the same witnesses, if you think proper, or any others you may require.

“ Should it be found impossible to procure the attendance of any of the witnesses who have given testimony against you, (which I do not anticipate,)

the evidence of such parties will only be used against you as corroborative testimony.

"I will thank you to inform me at your earliest convenience, on what day you will be prepared to enter on your defence.

"I remain,  
"Sir,  
"Your obedient Servant,  
(Signed,) "GEO. BROWN,  
"Secretary.

"H. SMITH, Esquire,  
"Warden,  
"Provincial Penitentiary."

2.

Copy.—Letter, Warden to Secretary.

PENITENTIARY, 23rd September, 1848.

"Sir,

"I beg to acknowledge the receipt of your letter of this date, accompanied by certain charges made against me. But before I shall be able to state at what time I shall be in a condition to meet them, I request you will be pleased to inform me who I am to consider as my accusers; also, whether the Commissioners intend to expunge and do away with any evidence that has been given by parties who have left the Province, or whose residence is now not known, and therefore cannot be produced; or if in such cases the testimony given against me, whether true or false, will be used by the Commissioners to my prejudice in making their report to the Government, although I may not have had the opportunity of cross-questioning the witnesses who have given such testimony.

"I also request you will be pleased to inform me of the dates (which you have given in some few instances) when the evidence was taken, and the times to which the several charges refer, to enable me to rebut the testimony given before the Commissioners; and, that you will be good enough to state the names of the witnesses who have given their evidence on oath.

"I have the honor to be,  
"Sir,  
"Your most obedient Servant,  
(Signed,) "H. SMITH.  
"Warden.

"GEO. BROWN, Esquire,  
" &c. &c. &c."

3.

Copy.—Letter, Secretary to Warden.

"Provincial Penitentiary Commission Room,  
"KINGSRON, 25th September, 1848.

"Sir,

"Your letter of 23rd was put into my hands yesterday afternoon, and I take the earliest opportunity of giving you the information you desire.

"In reply to your question, as to who your accuser is? I have to state, that the Commissioners were appointed by His Excellency the Governor-General, to enquire into 'divers charges and complaints,' made to our Governor-General of our said Province, respecting the conduct, economy, system of discipline, and management of our Provincial Penitentiary, 'and concerning all other charges and complaints, which, during the continuance of the powers hereby committed unto you, shall or may be referred to you, by any person or persons whomsoever,' or which you 'may see fit to be preferred or investigated;' 'and also into, of, and concerning the whole conduct, economy, system of discipline and management pursued in, or with respect to our said Penitentiary.' In performing the duties thus entrusted to them, the Commissioners have received a large amount of evidence as to the general management of the Penitentiary and its affairs; in that evidence there is much seriously affecting your conduct as an Officer of the Institution; and before submitting it to the Head of the Government, the Commissioners have deemed fit to arrange and classify the testimony personally affecting you, and give you an opportunity of offering such explanations or counter evidence as you may see fit.

"On the second point of your enquiries, I have to inform you that should it be found impossible to procure the attendance, for cross-examination, of any one or more witnesses, whose evidence has been used in the document transmitted to you, the Commissioners will take the circumstance into consideration in making their report to Government.

"The times to which the several charges refer, you will find in the evidence furnished you, as accurately as the several witnesses could testify.

"The names of the witnesses who gave evidence, which has been used in the document transmitted to you, and the dates of their examination are as follows:—

Henry Smith, Esquire,.....	Warden.....	June	26	Not Sworn.
Maurice Phelan,.....	Discharged Convict.....	"	27	Sworn.
M. B. White,.....	Formerly a Guard.....	"	28	"
Hon. John Macaulay,.....	Formerly an Inspector.....	"	30	Not Sworn.
Wm. Coverdale,.....	Formerly Architect.....	"	30	Sworn.
Edward Utting,.....	Late Deputy Warden.....	July	1	"
James Gleeson,.....	Late a Keeper.....	"	3	"
Edward Utting,.....	Recalled.....	"	4	"
Martin Keely,.....	Late a Keeper.....	"	4	"
Martin Keely,.....	Recalled.....	"	5	"
Eliza Quinn,.....	Discharged Convict.....	"	5	"
Terence M'Garvey,.....	Late a Keeper.....	"	5	"
Edward Utting,.....	Recalled.....	"	5	"
Terence M'Garvey,.....	Recalled.....	"	6	"
Richard Robinson,.....	Late a Guard.....	"	6	"
James M'Carthy,.....	Late a Keeper.....	"	6	"
Robert Seatch,.....	Storekeeper.....	"	7	"
James M'Carthy,.....	Recalled.....	"	7	"
Julia Cox,.....	Late Matron.....	"	8	"
Patrick Coulan,.....	A Contractor.....	"	8	"
John Lennon,.....	A Farmer.....	"	8	"
William Atkins,.....	Supernumerary Guard.....	"	8	"

		July	15	Sworn.
James Brennan,.....	Discharged Convict.....	"	17	"
Catharine Coulter,.....	Late Matron.....	"	21	"
David Seley,.....	Landing Waiter.....	"	21	"
Thomas Hendry,.....	A Contractor.....	"	21	"
James Wilson,.....	Now a Guard.....	"	22	"
Thomas Fitzgerald,.....	Late a Guard.....	"	24	"
John H. Erecland,.....	Discharged Convict.....	"	24	"
James Wilson,.....	Recalled.....	"	25	"
Eustache Côté,.....	Discharged Convict.....	"	25	"
Thomas Hems,.....	Discharged Convict.....	"	27	"
Samuel Breden,.....	A Contractor.....	"	27	"
John Breden,.....	A Contractor.....	"	28	"
Edward Bannister,.....	Now a Guard.....	"	28	"
John Richardson,.....	Now a Keeper.....	"	29	"
James Kearns,.....	Now a Guard.....	"	29	"
John Swift,.....	Now a Keeper.....	August	4	"
John Swift,.....	Recalled.....	"	4	"
John Cooper,.....	Now a Guard.....	"	8	"
John Watt,.....	Now a Guard.....	"	9	"
Thomas Costen,.....	Now Head-keeper.....	"	19	"
William Waldron,.....	Now a Guard.....	"	21	"
James Skinner,.....	Now a Keeper.....	"	30	"
Rev. R. V. Rogers,.....	Chaplain.....	"	30	"
Robert Allen,.....	A Contractor.....	September	1	"
A. B. DeBlois,.....	A Convict.....	"	1	"
William Jones,.....	Now a Keeper.....	"	2	"
Dennis Chaguor,.....	A Convict.....	"	2	"
John Dyas,.....	A Convict.....	"	2	"
Thomas D. M'Cormick,.....	A Convict.....	"	4	"
James Sampson, Esq.....	Surgeon.....	"	4	"
Samuel Mackleston,.....	A Contractor.....	"	4	"
Henry Sadleir, Esq.....	Late Inspector.....	"	4	"
Hugh Cameron,.....	A Convict.....	"	5	"
Edward Horsey,.....	Architect of Penitentiary.....	"	5	"
Lewis Jackson,.....	A Convict.....	"	5	"
Coulthard Travis,.....	A Convict.....	"	5	"
James Henesey,.....	A Convict.....	"	5	"
Joseph Christmas,.....	A Convict.....	"	5	"
Henry Smith,.....	A Convict.....	"	5	"
Richard Gibson,.....	Now a Keeper.....	"	5	"
Thomas Costen,.....	Recalled.....	"	5	"
William Martin,.....	Now a Guard.....	"	5	"
Francis Bickerton,.....	Clerk of Penitentiary.....	"	5	"
James M'Carthy,.....	Recalled.....	"	5	"
Patrick Quinn,.....	Tavern-keeper.....	"	5	"

" I will thank you to name a day when you will enter on your defence, at your earliest convenience, and am.

" Sir,

" Your most obedient Servant,

(Signed,) " GEO. BROWN,

" Secretary.

" HENRY SMITH, Esquire,  
" Warden Provincial Penitentiary."

No. 4.

Copy.—Letter, Secretary to Warden.

" Provincial Penitentiary, Commission Room,

" KINGSTON, 27th September, 1848.

" Sir,

" I am very desirous of knowing, in the course of this day, when you will be prepared to enter on your defence, as the future proceedings of the Commission will be regulated by your answer, and I am detained here until I know what that answer may be.

" You will therefore oblige me by advising me on this point.

" I have the honour to be,

" Sir,

" Your most obedient Servant.

(Signed,) " GEO. BROWN,

" Secretary

" HENRY SMITH, Esquire,

" Warden,

" Provincial Penitentiary."

No. 5.

Copy.—Letter, Warden to Secretary.

" PENITENTIARY, 27th September, 1848.

" Sir,

" I have to acknowledge the receipt of your letter of this date, and beg to inform you that I shall not be able to state the precise date when I shall be prepared to answer the charges made against me by the Commissioners, until the present Assizes for the Midland District have terminated, as I shall re-

quire the assistance of Counsel, all of whom are at present engaged in other professional duties.

"I am,  
"Sir,  
Your most obedient Servant,  
(Signed,) "H. SMITH,  
"Warden.

"GEO. BROWN, Esquire,  
"&c. &c. &c."

No. 6.

Copy.—Letter, Secretary to Warden.

"Provincial Penitentiary Commission Room,  
"KINGSTON, 30th September, 1848.

"Sir,

"I was duly in receipt of your letter of 27th instant, in which you intimate that you will not be able to state the precise date when you will be prepared to answer the charges transmitted to you on 23rd instant, until the present Assizes have terminated.

"I have submitted your letter to the Commissioners, and I am now instructed to say that they cannot understand why the sitting of the Assizes should be any bar to your entering on your defence. I am also to state that the Commissioners are now ready to hear you, and to request that you will name an early day for proceeding in the matter.

"I have the honour to be,  
"Sir,  
"Your most obedient Servant,  
(Signed,) "GEO. BROWN,  
"Secretary.

"HENRY SMITH, Esquire,  
"Warden,  
"Provincial Penitentiary."

No. 7.

Copy.—Letter, Warden to Secretary.

"PENITENTIARY, 2nd October, 1848.

"Sir,

"I beg to acknowledge the receipt of your letter of the 30th ultimo, in which you request me to name the precise date upon which I shall be able to answer the charges preferred against me, and transmitted in your letter of the 23rd ultimo. In reply thereto, I have to acquaint you that it will require some time to procure witnesses and examine the testimony they can give in answer to charges and evidence contained in a volume of 301 pages, and therefore I do not think it possible to name an earlier day than the 1st proximo, for the purpose of commencing my defence, unless I should be able by the advice and assistance of my Counsel, to be ready at an earlier date, in which case I shall not fail to give you due notice thereof.

"I have the honour to be,  
"Sir,  
"Your most obedient Servant,  
(Signed,) "H. SMITH,  
"Warden.

"GEO. BROWN, Esquire,  
"&c. &c. &c."

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No. 8.

Copy.—Letter, Secretary to Warden.

"Provincial Penitentiary Commission Room,  
"KINGSTON, 2nd October, 1848.

"Sir,

"I have to acknowledge receipt of your letter of this day, in which you state, in reply to my letter of 30th ultimo, that it will require some time to procure witnesses and examine the testimony they can give in answer to charges and evidence contained in a volume of 301 pages, and that, therefore, you do not think it possible to name an earlier day than the 1st November, for the purpose of commencing your defence, unless you should be able by the advice and assistance of your Counsel to be ready at an earlier date, in which case you will not fail to give me due notice.

"I have submitted your letter to the Commissioners, and I am now instructed to say, that as a large proportion of the charges transmitted to you, rest on the evidence of parties on the spot, or upon books and papers now in your possession, they cannot see why you should require 29 days of preparation before entering on your defence. The Commissioners are still more at a loss to know in what way legal advice can be necessary to you in answering truly, allegations upon matters of fact. They conceive that you should be prepared to enter on your defence at once; no special reason being shown for deferring your answer to any portion of the charges, they would deem you entitled to a reasonable postponement; but as to the great body of the charges, they can discover no real necessity for further delay.

"The Commissioners, however, are anxious to avoid the appearance of pressing you too closely, and they have therefore instructed me to name Monday, 9th instant, for the commencement of your defence, with the intimation, that should you not then proceed, they will conclude you have no real intention of meeting the charges, and will act accordingly.

"I have the honour to be,  
"Sir,  
"Your most obedient Servant,  
(Signed,) "GEO. BROWN,  
"Secretary.

"HENRY SMITH, Esquire,  
"Warden,  
"Provincial Penitentiary."

No. 9.

Copy.—Letter, Warden to Secretary.

"PROVINCIAL PENITENTIARY,  
"3rd October, 1848.

"Sir,

"I beg to acknowledge the receipt of your letter of yesterday's date, wherein you state that the Commissioners have instructed you to name Monday, the 9th instant, for the commencement of my defence, and that should I not then proceed, they will conclude I have no real intention of meeting the charges, and will act accordingly.

" I beg most distinctly to state, that it is my intention fully to meet all and every charge preferred against me; but, that in order to do so, it is absolutely necessary that I should have a reasonable time allowed me to prepare my defence, to examine my witnesses, and to ascertain where they reside.

" Under these circumstances, and considering the mass of evidence which I have to go over, and the long series of years over which it extends, I conceive that the 1st November next is as early a day as I can with certainty name; it is therefore quite impossible for me to commence on the 9th instant; and I feel assured that if the Commissioners intend to do me justice, they will not take an unfair advantage of me by putting me on my defence before I am prepared for it; if otherwise, I must trust to the justice of the Government, who will doubtless not refuse this, my reasonable request.

" I beg also to bring to the notice of the Commissioners, that it is necessary and reasonable that I should have the assistance of my son Mr. Henry Smith, Junior, or of some other professional adviser, and that their other avocations render it impossible for them to afford me that assistance, until the termination of the Assizes now sitting.

" The Commissioners will also recollect that one of their charges against me, refers to a certain over-payment to Messrs. Hendry and Blacklock, which is at present the subject of discussion before the Court, and which will be tried at the end of the present or the beginning of the ensuing week, when my personal presence will be required. You will please also to bear in mind that the decision of this case will materially affect my defence.

" I have the honour to be,

" Sir,

" Your most obedient Servant,

(Signed,) " H. SMITH,  
" Warden.

" GEO. BROWN, Esquire,  
" &c. &c. &c."

No. 10.

Copy.—Letter, Secretary to Warden.

" Provincial Penitentiary Commission Room,  
" KINGSTON, 4th October, 1848.

" Sir,

" I have to acknowledge receipt of your letter of yesterday, in rejoinder to mine of 2nd instant. The Commissioners have taken the contents of the same into consideration, and I am instructed, in reply, simply to reiterate what I said in my last letter.

" The Commissioners can see no argument for delay in what you have advanced. The witnesses, on the great majority of the charges, are on the spot, and can be produced at any moment; and if any special difficulty in meeting any portion of the charges which delay would remove, can be shown, a postponement as to such charges will be readily granted. Your plea, that time is required by you to examine the evidence which parties can give, before producing them as witnesses, does not appear to have any force; a large proportion of the charges rest on occurrences in the Penitentiary, and can only be met by the evidence of persons now or heretofore

within the walls, so that the proper persons to prove or disprove any given allegation can be known at once.

" As to the difficulty you allege in procuring the aid of Counsel, in consequence of the Assizes now sitting, the Commissioners cannot understand how this circumstance can prevent your obtaining any advice which the case will admit of: and if you mean that the Assizes prevent your securing the attendance of Counsel to cross-examine the witnesses, I am instructed to say that the Commissioners could not consent to such an arrangement. This is not a Court of Law before which you are arraigned and are to be found guilty or innocent, on legal forms and technicalities; it is simply an inquiry to find what has been the true position of an important public Institution, and what has been your conduct as its Chief Officer; and to get at the truth on either point, the presence of legal gentlemen cannot be necessary.

" The Commissioners do not see in what way the result of the trial now pending between you and Messrs. Hendry and Blacklock can affect any of the charges which you are called upon to answer. If you should recover the money from the sureties of that firm, the facts that you over-paid them a large sum of money, and did not discover the error until it was pointed out by the Commissioners, remain as they were.

" The Commissioners must therefore adhere to their previous intimation; they do not demand that you shall come prepared with your whole case on the 9th instant, but they expect you to commence your defence then, and continue it from day to day, until closed, on the understanding that when you can show a reasonable cause for postponement, at any time, it will be granted.

" I have the honour to be,

" Sir,

" Your most obedient Servant,

(Signed,) " GEO. BROWN,  
" Secretary.

" HENRY SMITH, Esquire,  
" Warden,  
" Provincial Penitentiary."

No. 11.

Copy.—Letter, Warden to Secretary.

" PROVINCIAL PENITENTIARY,  
" 4th October, 1848.

" Sir,

" I beg to acknowledge the receipt of your letter of this date, and I cannot but express my surprise that the Commissioners will not permit the attendance of Counsel on my behalf, at the examination of the charges preferred against me; as I thought from their previous proceedings they were desirous of coming at the truth only, and would therefore readily accede to any arrangement that would have this purpose in view. I therefore trust the Commissioners will re-consider their determination and consent to allow me the assistance of Counsel, which I believe has been hitherto the case on examinations

taken before Commissioners appointed by the Government.

" I have the honour to be,  
 " Sir,  
 " Your most obedient Servant,  
 (Signed,) " H. SMITH,  
 " Warden.  
 " GEO. BROWN, Esquire,  
 " &c. &c. &c."

No. 12.

Copy.—Letter, Secretary to Warden.

" Provincial Penitentiary Commission Room,  
 " KINGSTON, 5th October, 1848.  
 " Sir,

" I was duly in receipt of your letter of yesterday, in which you request that the Commissioners will re-consider their determination not to permit legal gentlemen to be present at their investigations into the affairs of the Penitentiary, or the conduct of its Officers. I have submitted your letter to the Commissioners, and am now to say that they adhere, in every particular, to their letter of 4th instant.

" I have the honour to be,  
 " Sir,  
 " Your most obedient Servant,  
 (Signed,) " GEO. BROWN,  
 " Secretary.  
 " HENRY SMITH, Esquire,  
 " Warden,  
 " Provincial Penitentiary."

No. 13.

Copy.—Letter, Secretary to Warden.

" Provincial Penitentiary Commission Room,  
 " KINGSTON, 7th October, 1848.  
 " Sir,

" I am requested by the Commissioners to intimate to you that all evidence, in which reference to the books requires to be made, and any Convict evidence you may desire to produce in your defence, on the charges transmitted to you by the Commissioners, will be received at the Penitentiary; and that all other witnesses will be examined at the Commission Room, British American Hotel.

" Should you intend to commence your defence on Monday, with other than Convict witnesses, you will be good enough to furnish me with a list of them this afternoon, in something like the order you desire to produce them, so that subpoenas may issue for their attendance.

" The hour of meeting, each day, will be 10 o'clock.

" I have the honour to be,  
 " Sir,  
 " Your most obedient Servant,  
 (Signed,) " GEO. BROWN,  
 " Secretary.  
 " HENRY SMITH, Esquire,  
 " Warden,  
 " Provincial Penitentiary."

No. 14.

Copy.—Letter, Warden to Secretary.

" PENITENTIARY, 8th October, 1848.

" Sir,

" Having been detained at the Court House nearly the whole of yesterday, I was unable to reply to your letter of that date until now, and as I have had so short a time to prepare any part of my defence to the charges against me, I am unable at present to give you a list of the witnesses for whom I shall require subpoenas; but in order that the Commissioners may experience no delay in the business, I shall be ready (although but very imperfectly prepared) to proceed to-morrow morning with the cross-examination of such witnesses as have testified against me, in the first four charges with which I have been served, who are to be found at the Penitentiary.

" I beg to state that as I require no concealment in the investigation of these charges, it is my intention to have some of my friends present on the occasion, as the greater publicity that is given to the proceedings will be more satisfactory to the country.

" I have the honor to be,  
 " Sir,  
 " Your most obedient Servant,  
 (Signed,) " H. SMITH,  
 " Warden.

" GEO. BROWN, Esquire,  
 " &c. &c. &c."

No. 15.

Copy.—Letter, Secretary to Warden.

" Provincial Penitentiary Commission Room,  
 " KINGSTON, 8th October, 1848.

" Sir,

" I have just received your letter of this morning, in which you inform me that you will proceed with your defence, to-morrow morning at the Penitentiary. The Commissioners will accordingly meet at the Penitentiary at ten o'clock.

" In reference to that part of your letter in which you say, that as you 'require no concealment in the investigation of these charges, it is your intention to have some of your friends present on the occasion, as the greater publicity that is given to the proceedings will be more satisfactory to the country,' I am instructed to advise you, that the Commissioners can see no occasion for the presence of any persons unconnected with the Inquiry, and that they cannot admit of such an arrangement as you propose.

" I have the honor to be,  
 " Sir,  
 " Your most obedient Servant,  
 (Signed,) " GEO. BROWN,  
 " Secretary.

" HENRY SMITH, Esquire,  
 " Warden, Provincial Penitentiary."

## No. 16.

Copy.—Extract from Minutes of Commission, 9th October, 1848.

“The Commissioners were met at the Penitentiary, by Mr. Smith and Alexander Campbell, Esq., Barrister-at-Law, the latter stating that he appeared as Counsel for the former.

“Mr. Smith handed to the Secretary a letter addressed to the Commissioners, signed by himself, protesting that he was compelled by the decision of the Commissioners, to proceed with his defence against his will, not having had sufficient time afforded him for preparation, and the assistance of counsel being denied to him.”

## No. 17.

Copy.—Protest of Warden against Proceedings.

“PROVINCIAL PENITENTIARY,  
9th October, 1848.

“Gentlemen,

“I appear before you in obedience to your express commands, that I should enter this day on my defence against the charges with which I have been served by you, under the penalty of your reporting to the Government that I had no defence to make, in case I had failed to do so.

“I come before you therefore, under protest that I am not fairly dealt with, in having been denied that measure of justice accorded to the lowest criminal arraigned at the bar of his country, for the commission of any crime,—who is uniformly permitted both time for his defence, and the assistance of counsel in conducting it.

“The charges against me have taken three months in their preparation, and my enemies have been for nearly a year indefatigably employed in seeking out evidence to criminate me. The testimony adduced is of the most extraordinary character, part of it hearsay evidence, part of it in reference to alleged occurrences, the particular dates of which are not stated, and which may, therefore, afterwards be alleged to have taken place at any period during the thirteen years that I have been Warden of the Penitentiary.

“The bearings of all the charges, and of the evidence adduced in support of them, on my case and on my defence, it requires time and consideration to understand.

“The witnesses are, generally speaking, persons who have no friendly feelings towards me, many of them having held offices in the Institution, from which they have been discharged for misconduct; and who in some cases truly, in others untruly, look upon me as the proximate cause of their having been so discharged. Others of the witnesses have been or still are Convicts in the Prison, who have been punished under my directions for infractions of its rules, and must naturally harbour those feelings of revenge inherent in minds constituted like theirs.

“Many of the witnesses are scattered over various parts of the Province, and even of the United States, from which they have been collected at great pains and expense; examined in my absence, and allowed again to return to their residences, with which I am unacquainted.

“The charges relate to alleged offences extending over a long series of years, the dates of such offences are but in a few instances given; and I am forced therefore to undergo the hardship of doing what is unknown in law, viz: proving negatives, and that too under peculiar disadvantages.

“Under all these circumstances, therefore, and considering the necessity which there is for me to endeavour to recall to my recollection all the particulars of transactions, the minutes of which have long since passed from my mind, as well as for endeavouring to bring to my remembrance the particular witnesses who were cognizant of such transactions, and for ascertaining what testimony their memory of them would enable them to give before you; considering also, that I must endeavour to discover what particular witnesses were about the Institution at certain periods, and where they now are, with the view of my being able to shew by them, that certain other alleged matters laid to my charge never did, because they never could, have occurred; I might reasonably have expected a more than usually large share of indulgence, both as to the measure of time and amount of assistance afforded me for my defence.

“I asked for that purpose, until 1st November, pledging myself that I would then be fully prepared. You have refused that request, and have compelled me to enter on my defence to-day, although personally aware that the hardship of obliging me to do so on so short a notice, is rendered doubly hard by the circumstance of the Assizes having been sitting during almost the whole period which has elapsed since you served me with the charges; that I have consequently been unable to obtain the assistance of legal advisers, who have necessarily been otherwise engaged; that I have myself been occupied in the preparation of a case at the suit of the Penitentiary, expected to be tried at this time, and have been several days in Court awaiting its trial; that I have been also called as a witness before you, and required to furnish you with returns and other information, relative to matters under your investigation; and that my time has been therefore necessarily, almost wholly, occupied with other matters, thus precluding the possibility of my giving that attention and calm and uninterrupted consideration to the preparation of my defence which it imperatively demanded.

“It is true that you have informed me that you do not insist on my entering on my whole defence to-day, and that you will allow me an extension of time relative to any particular point which I can show peculiarly to require it; but it is self-evident that it is impossible for me, except at the greatest disadvantage, to enter on my defence against any one charge, without being fully prepared on all, since any failure or partial failure, or omission in the defence of one, would naturally operate to my prejudice in the others, particularly where both the charges and evidence are so much blended, and where the testimony given under one head is referred to as supporting the others, as is frequently the case.

“You have also debarred me from the right of having Counsel to advise and assist me in the course of my defence, a privilege which has never before been in a free country, refused to any accused; and the depriving me of which is peculiarly oppressive under the circumstances before detailed.

“While, therefore, I am compelled by your orders, to enter into a part of my defence of the first

four charges this day, I protest that for the reasons and under the circumstances before stated, I do so against my will, and without having had due time for preparation, and without the assistance to which I am entitled, and that my failure therefore in rebutting all and every charge made against me, shall not be attributed to my being unable to do so, if justice were accorded to me, but to the impossibility of doing so within the time and under the disadvantage imposed on me by you.

"I have only to add, with reference to your refusal to allow publicity to be given to your proceedings in the investigation of the charges, and to permit me to have any of my friends present on the occasion, that it has hitherto been customary for Commissioners of Inquiry to conduct their investigations openly, as to satisfy the public mind that they are made fully and impartially; and that as it has been alleged that there is an impression on the part of the public, that there has been misconduct in the management of the Institution, it would have been satisfactory to me that all should have an opportunity of judging for themselves, whether such misconduct is chargeable on me.

"I have the honour to be,  
"Gentlemen,  
"Your most obedient Servant,

(Signed,) "H. SMITH,  
"Warden.

"To the Commissioners of Inquiry  
"into the management of  
"the Provincial Penitentiary."

No. 18.

Copy.—Extract from Minutes of Commission, 9th October, 1848.

"Mr. Smith and Mr. Campbell were requested to withdraw, and the Commissioners then took the Warden's letter into consideration, and resolved that it should be again taken up at an evening *sederunt*.

"The Warden was then called before the Commission, the decision of the Commission having been communicated to him, he asked that Mr. Campbell might appear as his Counsel, and that he might be allowed to have a person present to take notes of the evidence. He was instructed to put his application in writing, when he withdrew for that purpose.

"Mr. Campbell came to the door of the Commission Room and asked to be admitted as Counsel for Mr. Smith. The Secretary communicated his request to the Commissioners, which, on discussion, was refused."

No. 19.

Copy.—Letter, Warden to Secretary.

"PENITENTIARY, 9th October, 1848.

"Sir,

"I beg leave to request that you will be pleased to allow me the assistance of Counsel, for the purpose of advising me on my defence, or for taking minutes of the evidence about to be adduced in the examination of the witnesses that may be called be-

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fore you during the investigation you are now about to commence.

"I have the honour to be,  
"Sir,  
"Your most obedient Servant,

(Signed,) "H. SMITH,  
"Warden.

"To GEO. BROWN, Esquire,  
"Secretary,  
"Penitentiary Commission."

"P.S.—I beg to inform you that a Counsel is now in attendance, so that the Commissioners will not experience any delay.

(Signed,) "H. SMITH,  
"Warden."

No. 20.

Copy.—Extract from Minutes of Commission, 9th October, 1848.

"A letter was shortly afterwards handed in from the Warden, asking that Counsel might be allowed to be present on his behalf, or for taking minutes of the evidence. On consideration, it was resolved, that the Warden should be allowed to have some person present, for the purpose, simply, of taking notes of the evidence, but that no Counsel should be admitted in his professional capacity, and the Secretary was instructed to write the Warden to that effect.

The Secretary submitted draft of letter in accordance, which was as follows, and was approved:—

Sir,

"I have laid your letter of this morning before the Commissioners, and I am instructed to say in reply, that you will be entitled to have a person present, simply to take notes of the evidence given by the witnesses. The Commissioners cannot consent that any Counsel shall be present in his professional capacity.

"I have, &c.,

(Signed,) "GEO. BROWN,  
"Secretary."

"The Warden was called before the Commission and asked who the person was he intended to have present to take notes? He stated that he proposed to have Henry Smith, Esquire, M.P.P. The Warden was asked if he intended to call that gentleman as a witness in his defence? and he replied that he would not do so. The Warden was then told, the Commissioners did not consider Mr. Henry Smith, Junior, a fit person to be present at the investigations, as his name was seriously connected with some of the charges; but that if he (the Warden) insisted on it, the Commissioners desiring to throw no unnecessary obstacles in his way, would not object.

"The Warden and Mr. Henry Smith, M. P. P., were then introduced, and it having been arranged that the Secretary should read out the answer to each question as he had written it, and not proceed until the witness and the Warden were satisfied that the answer was correctly written down,—the Warden proceeded with his defence."

It was not without deep consideration that we limited the time within which the Warden had to enter on his defence. We felt strongly that every man under accusation should be afforded the fullest opportunity of making his defence, and we were not unmindful of the sensitiveness of public opinion in Canada to anything which might be construed as harshness; but we felt, at the same time, that the public interests were not to be sacrificed to an unreasonable demand, even when sheltered by a commendable popular sympathy; and casting aside all other considerations, we determined to look only to what was just and reasonable in the premises.

It had been forced on our conviction, that the Penitentiary was then, and had been for many months, in a state of complete disorganization; that the officers and convicts were divided into two parties, one for and the other against the Warden; that the Warden and Chaplain were at open warfare; that secret caballing was constantly going on among the officers and convicts; and that extravagance and mismanagement pervaded every branch of the establishment; we, therefore, felt it desirable that not an hour should be lost in restoring order to the Institution.

We weighed with deliberation the character of the charges against the Warden, and the way in which they must be met; and the result was a firm conviction that to meet the far greater portion of them, not one day's delay could be necessary. Out of 121 transactions, or practices, or omissions of duty, which the Warden was called on to explain, we found that 109 or 111 related to occurrences within the walls of the Penitentiary, and which, if not met by the evidence of persons then connected with the Institution, could not be properly met at all; and we were further convinced, that the charges were all of so plain a character, and so easily refuted if untrue, and the witnesses on every one of them were so readily to be had, that the demand of Mr. Smith for 39 days to prepare his defence, was unreasonable and vexatious.

However much, therefore, we might have personally preferred to free ourselves from unpleasant responsibility on so delicate a point, by granting all the Warden demanded, yet in the conscientious discharge of the duty committed to us by Your Excellency, we felt that we could not comply with Mr. Smith's request; and as the Warden was only called on to commence his defence on the 9th October, and as we were prepared to grant him every facility by delay or otherwise, on probable cause shown, we feel that the most ample justice was done him.

As regards the demand of the Warden, to have his case conducted before us by Counsel, we could see no propriety in such a request. Had the Warden been an illiterate person, unfit to conduct his own case, there might have been justice in such a demand; as it was, and with the superior knowledge which he possessed of persons and facts, a legal adviser could only have aided him by raising technical objections.

The Warden was in error when he stated in his Protest that the charges against him had taken "three months in their preparation," only about one-half of that space having been so occupied.

As regards the character of the witnesses, fifty-four in number, whose testimony was used in the charges against the Warden, and the difficulty he

complains of in bringing them together, we find that they may be analyzed as follows:—

Officers of the Penitentiary.....	16
do. formerly in the Penitentiary (re- signed) .....	4
Parties unconnected with the Institution...	11
	— 30
Discharged Officers.....	8
Convicts .....	10
Discharged Convicts .....	6
	— 24
	— 54

44 of these witnesses were residing in Kingston when the charges were served, 7 more within a day's journey of Kingston, 1 in Pennsylvania, and 2 uncertain.

51 of the 54 could have been produced on forty-eight hours' notice; and the Warden was expressly assured, that should it be found impossible to procure the attendance of any of them, that circumstance would be considered by us in reporting to Your Excellency.

And as to Convict testimony, it was only used in the charges to complete the evidence of other witnesses; and even then to so small extent, that had it been expunged altogether, the charges would not have been materially affected.

It was never intended that any charge should be considered established against Mr. Smith, or any other officer, by Convict evidence.

The Warden having commenced his defence on the 9th Oct., continued it, from day to day, up to the 28th Oct., confining his attention entirely to the first four charges. He then made a halt, and the following correspondence ensued:—

No. 1.

Copy.—Extract Minutes of Commission 28th October, 1848.

"The Warden then declared that he had closed his defence on the first four charges, with the exception of re-examining Edward Utting and John H. Freeland, and producing any testimony which may become necessary in rebuttal of the evidence of these two witnesses.

"The Warden then intimated that he was not prepared to proceed further in his defence at present, and proposed that he should be allowed one week to prepare his defence on the fifth charge, with a longer or shorter space, further, before proceeding with each of the other six charges; or that he should have until 21st November to prepare his case so as to go on uninterruptedly to the close. The Warden declared that it would be impossible for him to proceed at any earlier dates.

"The Commissioners informed the Warden that they would consider his propositions, and the witnesses Utting and Freeland not being in attendance, he withdrew at 4 o'clock."

No. 2.

Copy.—Letter, Secretary to Warden.

“ Provincial Penitentiary Commission Room,  
“ KINGSTON, 30th October, 1848.

“ Sir,

“ The Commissioners have had under consideration the two propositions you made to them on Saturday, for further delay in meeting the remaining charges preferred against you, viz: 1st, one week to prepare your defence on the fifth charge, and a longer or shorter time, further, before proceeding with each of the other six charges; on 2nd, that you should have until the 21st November, to prepare your case so as to go on uninterruptedly to the close.

“ The Commissioners can see no reason for altering their opinion, so often repeated, that you are entitled to no further delay than you have already had, except for cause specially shown; you have averred no special reason for the long delay you now ask, and they feel compelled, by many considerations, to decline acceding to either of your propositions.

“ At the same time the Commissioners have instructed me to say that they are anxious to remove every question of complaint on this score, and feel disposed to adjourn the investigation to 6th November, if such delay will secure your proceeding with your defence uninterruptedly to its termination.

“ The Commissioners were not prepared for the demand you have now made, and they feel bound to protect themselves from its repetition at a future stage of the proceedings; and I am therefore to add that the delay they are now disposed to concede, can only be granted on the express understanding, that no similar application shall be made hereafter, except upon special causes shown.

“ You will be good enough to advise me, at once, as to your decision in the premises.

“ I have the honor to be,  
“ Sir,  
“ Your most obedient Servant,

(Signed,) “ GEO. BROWN,  
“ Secretary.

“ HENRY SMITH, Esquire,  
“ Warden, Provincial Penitentiary.”

No. 3.

Copy.—Letter, Warden to Secretary.  
PENITENTIARY, 30th October, 1848.

“ Sir,

“ I beg to acknowledge the receipt of your letter of this date, wherein I am required by the Commissioners to proceed with my defence on the 6th proximo, and to continue therein uninterruptedly until the close of it.

“ I must again repeat, that it will be impossible for me to do so, owing to the necessary research I am compelled to make into the various books and documents of the office, relative to matters which have occurred a long time ago, as well as my own private

papers, extending over a term of several years, and some of which being lost or mislaid, it will become necessary to supply their deficiency by oral testimony, which it will take some time to seek for; besides which, as you are well aware, I have for the last three weeks been constantly engaged in my defence of the first four charges made against me, and have thus been precluded from making further preparation for my defence against the remainder.

“ I beg to add that I shall be ready to proceed with the examination of the fifth charge, on the 6th November next.

“ I have the honour to be,  
“ Sir,  
“ Your most obedient Servant,

(Signed,) “ H. SMITH,  
“ Warden.

“ GEO. BROWN, Esquire,  
“ &c. &c. &c.”

No. 4.

Copy.—Letter, Secretary to Provincial Secretary.

“ Provincial Penitentiary Commission Room,  
“ KINGSTON, 31st October, 1848.

“ Sir,

“ I had the honour on the 16th instant, to report to you for the information of His Excellency the Governor General, the state of the Inquiry into the past conduct of the Warden of the Provincial Penitentiary, and I am now instructed by the Commissioners to address you again on the same subject.

“ On Saturday last, 28th instant, the Warden closed his defence on the first four of the eleven charges preferred against him; his defence upon them occupied three weeks, and the line of evidence, to the close, was not different from what I have already communicated as to the first week. During the three weeks, he recalled twenty-seven of the witnesses in support of the charges, and carried them over the same ground, though at much greater length than they had gone with the Commissioners; and he called thirty-four new witnesses, of whom twelve were Convicts; but far from answering satisfactorily any one of the twenty-eight counts comprised in the four charges; in the opinion of the Commissioners, the evidence of his own witnesses greatly strengthened the case of the prosecution.

“ When the Warden had closed his case so far, he intimated to the Commissioners that he could not proceed further in his defence, without time being afforded him for preparation; and at the same time, he submitted two propositions, viz: that he should be allowed one week to prepare his defence on the 5th charge, and a longer or shorter time, additional, before proceeding with each of the other six charges; or that he should have until 21st November to prepare his case so as to go on uninterruptedly to the close.

“ On mature consideration of all the circumstances, the Commissioners found no reason to alter their previous opinion, that the Warden was not justified in asking any delay in the matter; but being desirous to remove every shadow of just complaint on this score, they resolved to offer him a delay of one week, provided he would then proceed without

further interruption. A letter was accordingly transmitted to the Warden, on 30th instant, communicating the views of the Commissioners; but an answer was received the same day, intimating that the Warden could not proceed at earlier dates than those named by him on Saturday.

"Were the Warden's demands to be complied with, and should his defence on the remaining charges proceed no faster than on the first four, it would occupy over four months; and an earlier termination than 10 or 12 weeks could not be hoped for. But setting aside the procrastinating character of the evidence produced by the Warden, and the unreasonable time demanded for preparation, the Commissioners feel that his own witnesses have so completely established the total disorganization pervading every part of the Institution, that they could not, with justice to the public interests, entertain any propositions which would leave matters as they now are, for an extended period.

"The Commissioners are, however, unwilling to allow the Warden the opportunity of saying that he could have met all the charges against him if he had only been allowed time for preparation; and to take away every such pretext, and at the same time protect the public interests, they have resolved to suggest, for the consideration of the Head of the Government, the suspension of the Warden during the further progress of this investigation.

"Apart from the necessity of the case, the Commissioners see great public advantage in such a course. Should the Government see proper to suspend Mr. Smith and to appoint a *locum tenens*, with instructions to act under the advice of the Commissioners, they feel assured that improvements may be effected more satisfactorily, and with greater promptitude than by any other course; a stop will be immediately put to the systematic caballing and espionage among Officers and Convicts, now going on within the walls; the waste and extravagances in several departments may be at once curtailed, and while the Warden will be afforded any length of time he may desire for preparation, it is probable that the time occupied in his defence will be shortened in consequence.

"Should His Excellency act on this recommendation, the Commissioners would respectfully suggest that the gentleman temporarily appointed may be given to understand that his permanent appointment to the situation (should further action in the case of the Warden become necessary) is not to be calculated upon. It has been constantly forced on the observation of the Commissioners, that however good the rules of a Penitentiary may be, unless a man who knows his duties and has his feelings heartily engaged in them is at the head of its affairs, all will be fruitless.

"It is obvious that the views of the Commissioners could not be effectually carried out, while the present Inspectors of the Penitentiary continue to control the affairs of the Institution; and to obviate the inconvenience which may arise in consequence, it is respectfully submitted, whether the functions of the Board of Inspectors would not also be advantageously suspended during the further existence of the Commission.

"If the Government see proper to adopt the measures herein recommended, the Commissioners intend to go on, at once, with the second branch of

their inquiry, viz: the improvement of the Penitentiary system in all its branches; they propose to send a deputation of their number, to examine the practical working of three or four similar Institutions in the neighbouring States, and to embody their whole proceedings in one final report. In this way, they feel assured that their whole proceedings may be satisfactorily closed within the present year.

"I have the honour to be,  
"Sir,  
"Your most obedient Servant,

(Signed,) "GEO. BROWN,  
"Secretary.

"To JAMES LESLIE,  
"Provincial Secretary."

No. 5.

Copy.—Letter, Warden to Secretary.

"PENITENTIARY, 4th November, 1848.

"Sir,

"With reference to the conversation that passed between me and the Commissioners, on the 21st ultimo, I have now to request you will be pleased to inform me of the names of the witnesses whose evidence you intend to expunge in the charges made against me; or on the other hand, if it is the intention of the Commissioners to produce all the witnesses whose testimony has been taken in my absence, for the purpose of being cross-examined by me.

"I have further to request you will be good enough to inform me whether it is the intention of the Commissioners to resume the inquiry into my case, on the 6th instant, at the Penitentiary, or in the Commission Room in Kingston.

"I have the honour to be,  
"Sir,  
"Your most obedient Servant,

(Signed,) "H. SMITH,  
"Warden.

"GEO. BROWN, Esquire,  
"&c. &c. &c."

No. 6.

Copy.—Letter, Secretary to Warden.

"Provincial Penitentiary Commission Room,  
"4th November, 1848.

"Sir,

"I am in receipt of your letter of this day, and having submitted it to the Commissioners, I am instructed to refer you in reply to my letter of 30th ultimo, and to add, that until you declare your readiness to proceed with your defence to its close without interruption, the Commissioners will not proceed further in the matter. They will then examine Officers and Convicts at the Penitentiary, and other parties at the Commission Room, Kingston.

"The following extracts from the Minutes of the Commission of 28th ultimo will give you the further information you desire:—

"It was mutually agreed between the Commissioners and the Warden, that in as far as the first four charges are concerned the Warden shall dispense with re-examination of the following witnesses, viz:—Maurice Phelan, Eustache Coté, Eliza Quinn, James Brennan, Thomas Hems, M. B. White, and Henry Robinson,\* and that as regards the said four charges, the Commissioners shall not use the evidence of the said witnesses in making their report to the head of the Government.

"Edward Utting and John H. Freeland are the only other witnesses on the first four charges yet to be re-examined, and the Commissioners hope to secure their attendance on Thursday next.

"I have the honour to be,  
"Sir,  
"Your most obedient Servant,  
(Signed,) "GEO. BROWN,  
"Secretary.

"HENRY SMITH, Esquire,  
"Warden, Provincial Penitentiary."

No. 7.

Copy.—Letter, Warden to Secretary.

"PENITENTIARY, 5th November, 1848.

"Sir,

"I beg to acknowledge the receipt of your letter of yesterday's date, which reached me this day; in reply to which I have to state that I perfectly understood I was to be prepared to go through the several charges, each charge to be completed before going into the succeeding one, and so to continue without delay until the whole were investigated; for which purpose I shall be ready to proceed to-morrow morning, notwithstanding my doubts to the contrary as expressed in my letter of the 30th ult. You will no doubt recollect when I was before the Commissioners on the 28th ult., it was suggested I should cross-examine the evidence count by count, but this was abandoned on account of the frequent attendance that would be required of the several witnesses, and it was then agreed that each charge, whatever the number of counts in it, should be taken separately, with which understanding I left the Commissioners, and shall accordingly be ready to resume my defence in the manner stated without causing them any delay. I have therefore, again, to request you will be pleased to let me know, whether it is the intention of the Commissioners to re-commence to-morrow, and where they will hold their sitting, in order that I may be prepared for the same.

"I noticed among the names of the witnesses, whose evidence you intend to expunge, that of Henry Robinson, which does not appear in the charge, so that I suppose it is intended for Richard Robinson.

"I have the honour to be,  
"Sir,  
"Your most obedient Servant,  
(Signed,) "H. SMITH.  
"Warden.

"Geo. Brown, Esquire,  
" &c. &c. &c."

\* Read Richard Robin a.

No. 8.

Copy.—Letter, Secretary *pro tem.* to Warden.

"Provincial Penitentiary Commission Room,  
"KINGSTON, 6th November, 1848.

"Sir,

"I am in receipt of your letter of yesterday's date, in which you express your readiness to proceed forthwith with the fifth charge, and to continue without delay your defence of the remaining charges.

"I have to inform you that the Commissioners not anticipating from the tenor of your letter of 30th ultimo, that you would be prepared to comply with the stipulations which the Commissioners then required, have under their consideration matters which may probably occupy them for a day or two longer; they will lose no time, however, in acquainting you with the earliest moment at which they will be disengaged.

"The Commissioners hope that Mr. Utting and J. H. Freeland will be in attendance on Thursday next.

"I have the honor to be,  
"Sir,  
"Yours, very faithfully,

"E. CARTWRIGHT THOMAS,  
"Commissioner.

"HENRY SMITH, Esquire,  
"Warden."

The Warden resumed his defence on 10th November, and continued it until the 15th, when another interruption occurred, which the following documents explain:—

No. 9.

Extracts from Minute Board of Inspectors, 13th November, 1848.

\* \* \* \* \*

"The Board took into consideration the Warden's Report of the 31st ultimo, respecting the Gate-keeper, Edward Bannister, and he having acknowledged that he had received fees from visitors, the Board directed his removal to some other post in the Institution."

\* \* \* \* \*

"The Board proceeded with the investigation of the complaint against the Guard James Wilson, (which was commenced on the 31st ultimo,) for using improper language and threats towards Guard George Fee, and having heard the remainder of the evidence against him, as well as a portion of his defence, adjourned till to-morrow morning at eight o'clock, for the purpose of enabling the accused to produce further evidence in his favour."

No. 10.

Copy.—Minute, Board of Inspectors, Provincial Penitentiary, 14th November, 1848.

"The Board met at 8 o'clock A.M., pursuant to adjournment. Present:—Thomas A. Corbett, Esquire, President; James Hopkirk and Henry Guildersleeve, Esquires.

"The Board having taken into consideration the Warden's report of the 31st ultimo, relative to the Gate-keeper, John Cooper, and he having acknowledged that he had put into his pocket money left by visitors on the lodge table; direct that the Head Keeper remove him to some other post in the Establishment.

"The Board proceeded with the examination of the witnesses brought forward by James Wilson, in his defence, and having completed the same, adjourned for the final consideration of the case until 3 o'clock, P.M.

"KINGSTON, 14th November, 1848.

"The Board met at 3 o'clock P.M., agreeable to adjournment. Present: T. A. Corbett, Esquire, President; Geo. Baker, James Hopkirk, and Henry Gildersleeve, Esquires.

"The Board resumed the consideration of the complaint brought by Keeper William Smith, against Guard James Wilson; and having heard the witnesses produced by him, in his defence, and taken the whole case into consideration, find it clearly proved that Guard Wilson's conduct was most improper in using the language and threats which he did on the occasion referred to, and that too, without any sufficient cause of provocation, in place of appealing to his superior Officer as he ought to have done, if he considered himself aggrieved. And they are of opinion, that a person guilty of such conduct is unfit to be intrusted with the duties of Guard in the Institution; they therefore direct his dismissal. The Head Keeper will read this decision of the Board to Guard Wilson, in presence of the other Keepers and Guards."

No. 11.

Extract from Minutes of Penitentiary Commission, 15th November, 1848.

"The Warden was called in, and his explanation was required of the circumstances which led to his having reported to the Board of Inspectors, the conduct of Guards Bannister and Cooper, in having received money from visitors; a knowledge of such conduct, on the part of the Guards in question, having been elicited upon their cross-examination before the Commissioners, in the matter of the Warden's defence.

"The Warden explained that he had reported the matter, as he did everything to the Board of Inspectors.

"The Chairman having called the Warden's attention to a pledge given to the Board, in reference to this subject; the Warden explained that he had undertaken that the witnesses should not 'suffer,' and in his opinion they had not 'suffered,' as these men had not been 'dismissed,' but had only been removed from their station at the gate.

"The Warden was then requested to retire. The Commissioners deliberated on the foregoing circumstances, and adopted the following resolutions:

"That the Warden, having given his pledge to the Commissioners that no witnesses under examination by him, should suffer any annoyance on account of anything which the said witness may disclose in evidence; has notwithstanding, and in direct violation of his pledge, reported to the Board of Inspectors

the evidence of Guards Cooper and Bannister, given before the Commissioners, and upon which report the said Guards have been removed from their position at the gate.

"The Commissioners, considering the conduct of the Warden highly culpable, decline to continue the defence of the Warden upon the remaining charges until Guards Cooper and Bannister shall be restored to their former position in the Institution; and until the restoration of the said Guards shall have been publicly notified at a general Roll-call of the Officers of the Penitentiary, upon which occasion the Commissioners purpose to be present.

Resolved,

"That the question now under consideration, be immediately referred to His Excellency in Council.

"The Warden was again summoned to attend the Board, and the foregoing resolution having been read to him, he declared that he had undertaken that the men should not be 'dismissed,' but not that they should not 'suffer any annoyance.' A written pledge was then shown to the Warden, as having been obtained from him on behalf of all witnesses, and which pledge had especial reference to the witnesses Cooper and Bannister. The Warden admitted the pledge produced, to have been signed by him; but expressed his inability to comply with the requirements of the resolution, the matter having been now referred to the Board of Inspectors.

"The written pledge which had been given by the Warden, on the occasion referred to, was put in and ordered to be recorded on the Minutes, as follows:—

"I hereby engage that no witness shall suffer any annoyance for giving his answers to questions put by me before the Commissioners, except for perjury.

(Signed,) "H. SMITH,  
"Warden."

No. 12.

Copy.—Letter, President of Commissioners to President Board of Inspectors.

"Provincial Penitentiary Commission Room,  
"KINGSTON, 15th November, 1848.

"Sir,

"I have to forward for the information of the Board of Inspectors, the following resolutions which have been adopted by the Commissioners this morning.

Resolved,

"That the Warden having given a pledge to the Commissioners that no witness, under examination by him, should suffer any annoyance on account of anything which the said witness may disclose in evidence, has notwithstanding and in direct violation of his pledge, reported to the Board of Inspectors the evidence of Guards Cooper and Bannister, given before the Commissioners on the 18th of October last, and upon which report the said Guards have been removed from their position at the gate.

"The Commissioners considering the conduct of the Warden highly culpable, decline to continue the defence of the Warden upon the remaining charges, until Guards Cooper and Bannister shall be restored to their former position in the Institution, and until the restoration of the said Guards shall have been publicly notified at a general Roll-call of the Officers of the Penitentiary, upon which occasion the Commissioners purpose to be present.

It is further resolved,

"That the question now under consideration, be immediately referred to His Excellency in Council.

"The Warden having stated that in consequence of having referred the conduct of Guards Cooper and Bannister to the Inspectors, he had no longer the power of complying with the terms of the accompanying resolutions. I have to direct the attention of the Board of Inspectors, to the decision of the Commissioners on this subject.

"I have also to express the Commissioners' regret that the Board of Inspectors should have thought it necessary to come to any decision upon the conduct of Cooper and Bannister, with reference to the charges reported by the Warden during so important a period of the Commissioners' labours; as the Commissioners cannot but feel that the matter might have been deferred without detriment to the Institution; while the decision of the Board of Inspectors, in the opinion of the Commissioners, is calculated to deter the Officers of the Institution from giving unreserved evidence before the Commissioners.

"I have the honour to be,

"Sir,

"Your obedient Servant,

(Signed,) "ADAM FERGUSSON,  
"Chairman.

"To T. A. CORBETT, Esq.,  
"Chairman of the  
"Board of Inspectors."

No. 13.

Copy.—Letter, Chairman of Commission to Provincial Secretary.

"Provincial Penitentiary Commission Room,  
"KINGSTON, 15th November, 1848.

"Sir,

"I have to inform you, for the information of His Excellency in Council, of the following circumstances in reference to our proceedings as Commissioners of the Provincial Penitentiary:—

"In the course of the Warden's cross-examination of certain Guards of the Penitentiary, named Cooper and Bannister, on the 13th of October last, in his defence of the charges then under consideration, each of these witnesses was asked by him if he had ever received money from visitors of the Penitentiary? The witnesses appealed to the Commissioners whether they were obliged to enter into explanations calculated to injure themselves? and the Commissioners being desirous to afford the Warden full latitude in his defence, decided that they should make the required admissions, upon the full assurance,

both from the Warden and the Commissioners, that no witness should suffer annoyance of any kind, on account of the evidence which such witness might give.

"In the course of Monday last, these same Guards were again called by the Warden, for further cross-examination in defence, when they gave their testimony as before, very much to the satisfaction of the Commissioners, but without reference to the subject upon which they had been formerly examined. In the course of yesterday, the Commissioners were greatly surprised to learn from these Guards, that the Board of Inspectors had had their conduct under consideration, on a charge by the Warden, of having received money from visitors; and that having been found guilty upon their own evidence, the Board of Inspectors had publicly ordered that they should be removed from the station which they had long occupied, to one which the Guards generally consider to be of an inferior character.

"The Commissioners having inquired, this morning, into the circumstances of this case, have found that the foregoing statements have been fully confirmed; and an explanation from the Warden having been requested, that Officer remarked that he had felt it to be his duty to report the admissions of the Guards to the Inspectors, as he did all other matters connected with the Institution. The Warden was reminded of the pledge which he had given to the Commissioners in relation to all witnesses, and especially with reference to these particular Guards: upon which he replied that he had undertaken they should not 'suffer' by their evidence, and he considered that they had not 'suffered,' as they had not been dismissed, but had merely been removed from one place to another. The Warden was then shewn a *written* pledge from himself, in which he had engaged that no witness should 'suffer any annoyance' on account of the evidence which he might give before the Commissioners. His reply to this was, that he considered his promise had reference only to dismissal. It may be observed that there has never been any room for difference of opinion on this subject; the witnesses have been continually informed in the Warden's presence, that they might give their evidence freely and without fear of the consequences; and the Warden has as frequently observed, that 'no notice' would be taken of their evidence as long as they abstained from perjury.

"The Commissioners have felt their position to be greatly compromised by the foregoing proceedings; and cannot resist the impression that the course which has thus been taken by the Warden and Inspectors is not only calculated to deter witnesses from giving unbiassed evidence before them, but that it has been adopted with this view and for this purpose.

"In corroboration of this opinion, the Commissioners would direct His Excellency's attention to the circumstances that the evidence which furnished the accusatory matter against Cooper and Bannister, was delivered on the 18th of October last; that no notice was taken until these persons had been further and perhaps finally examined on the charges against the Warden; and that, on the evening of the very day on which such evidence had been given, the Board of Inspectors held a meeting, at which they decided on the case of Bannister; and on the following morning at eight o'clock, they again sat on adjournment on the case of Cooper.

"Independently of gross impropriety on the part of the Warden, in having directly violated his solemn pledge, the Commissioners feel that they have just right of complaint that the Board of Inspectors should have entertained and decided upon the charge of the Warden without reference to the Commissioners. The Commissioners conceive that the position which, by the favour of His Excellency, they have been called upon to fulfil, rendered it but an act of courtesy on the part of the Inspectors that under the particular circumstances of this case, the Commissioners should have been consulted, at least prior to decision upon the charge; and they cannot but feel that the whole matter is calculated to lessen their usefulness, in the investigation of the important duties entrusted to them. So deeply are they convinced of the necessity of correcting the impression which these proceedings are calculated to convey, and so satisfied are they that the further investigation of the Warden's conduct will be much restricted if these impressions are not removed, that they have felt themselves justified in suspending their labours, until the Guards in question shall have been restored to their former position, or until the decision of His Excellency upon the circumstances shall be made known.

"I have to forward, for His Excellency's further consideration, a copy of the resolution which the Commissioners have adopted on this subject: also, an extract from the Minutes of the Board of Inspectors of the 13th and 14th instant.

"I have the honour to be,

"Sir,

"Your most obedient Servant,

(Signed,) "ADAM FERGUSSON,  
"Chairman.

"The Honourable

"The Provincial Secretary."

No. 14.

Copy.—Letter, President Board of Inspectors to Chairman of Provincial Penitentiary Commission.

"PROVINCIAL PENITENTIARY,  
"16th November, 1848.

"Sir,

"I have the honour to acknowledge the receipt of your letter of last evening, relative to the cases of the Guards Cooper and Bannister, which I lost no time in bringing before the Board of Inspectors at a meeting held this morning, and I now beg leave to enclose a copy of the Resolutions at which they have arrived on the subject.

"I have the honour to be,

"Sir,

"Your most obedient Servant,

(Signed,) "THOMAS A. CORBETT,  
"President, Board Inspectors, P. P.

"HON. ADAM FERGUSSON,

"Chairman,

"Penitentiary Commission."

Copy.—Extract from the Minutes of the Board of Inspectors of the Provincial Penitentiary, 16th November, 1848.

"The President laid before the Board a letter from the Chairman of the Commissioners, dated yesterday, and also one from the Warden of the same date, relative to the cases of the Guards Cooper and Bannister; and the Board having taken these communications and the whole subject into their most careful consideration, they came to the following resolutions:—

"That the Warden would have been highly culpable, had he not reported to the Board of Inspectors the cases of the two Guards employed as Gatekeepers, receiving money contrary to the Statute, as well as to the Rules and Regulations of the Institution.

"That while the Inspectors deem it inexpedient to express any opinion as to the propriety of the Commissioners exacting a pledge from the Warden that no witness shall suffer any annoyance on account of any evidence given before the Commissioners, and are not altogether satisfied that the Warden was justified in giving one, and are clearly of opinion that no such pledge could be in the slightest degree binding on them; nevertheless they did, under the circumstances of the case, and in deference to the wishes of the Commissioners as communicated to them by the Warden, give full effect to the pledge, by neither dismissing nor suspending the Guards in question, notwithstanding the gross breach of the statute, and the rules of the prison, of which on their own confession they were guilty; but contenting themselves with simply directing their removal to other stations where they would not be exposed to the same temptations. And the Board consider that with a due regard to the interests of the Institution, they could not possibly have done less, since it is clear that persons who, notwithstanding the solemn oath of office taken by them, and the express enactments of the statute, could not resist the temptation of illegally accepting money, might be liable under similar temptations to be induced to connive at the forwarding of communications to and from the Convicts, which might at any moment lead to escapes, as well as to other and more fatal consequences; and under these circumstances the Inspectors could not without serious detriment to the Institution, have for a moment deferred consideration of the matter.

"The Board further conceive that to direct the removal of any Guard from one station to another in the Prison cannot possibly be construed into any annoyance, since it is in conformity with the constant practice of the Institution to do so at all times when it may be considered expedient, and since such removals are not considered as inferring any degradation; and in the present instance the Guards in question have not been lowered in their stations, as they receive the same pay, and the immediate reasons which operated with the Inspectors in directing the change in their stations were not publicly announced, nor did they receive any reprimand or even admonition.

"That in the exercise of the powers conferred on them by the law, and which so long as they hold their position of Inspectors they are bound to use in the manner which they consider most conducive to the interest of the Institution, the Inspectors neither in the remotest manner intended to interfere, nor did interfere with the proceedings of the Commissioners,

a course which they have on all occasions most scrupulously avoided, so much so that the Board have, for the purpose of avoiding the semblance of such interference, omitted on several occasions to notice the improper conduct of some of the subordinate Officers of the Institution, in consideration of the cognizance of such conduct having transpired in the course of the inquiry before the Commissioners.

"That the Board, from their anxiety to afford the Commissioners every facility in the course of their inquiries, gave immediate directions on their arrival that the whole books and papers should be opened to them, and that every information should be afforded to them; and they likewise directed their Board Room to be placed at their disposal, and put themselves to the inconvenience of meeting when necessary at most unseasonable early and late hours, rather than hold such meetings at such times as the Commissioners were assembled, and of so causing delay or inconvenience to them.

"That in the opinion of the Board, it is the duty of the Warden to carry these orders into full effect; and they take the present opportunity of expressing their satisfaction with the manner in which he has at all times done so; and had that Officer, in defiance of their orders, directed that the Gate-keepers should return to their former stations, they would have deemed it a gross violation of his duty.

"That while the Inspectors are not aware that the powers conferred on the Commissioners authorize them to interfere directly with the discipline of the Institution, they have been at all times most ready to meet their wishes and to attend to their suggestions, where they could do so consistently with what they considered their duty. They, therefore, regret that in the present instance, a sense of that duty prevents them from permitting the Warden to direct the late Gate-keepers to return to their former stations; still less could they comply with the requirements of the Commissioners, that the restoration of the Guards shall be publicly notified 'at a general Roll-call of the Officers of the Penitentiary, upon which occasion the Commissioners propose to be present;' a course which would be bringing the authority of the Inspectors into the greatest contempt with all the Officers of the Institution; a degradation to which the Board can on no account submit.

"That a copy of these Resolutions be forwarded by the President with a suitable letter to the Secretary of the Province for the information of His Excellency the Governor General, and that a similar copy be forwarded by him to the Chairman of the Commissioners for their information.

"A true Copy."

(Signed,) "F. BICKERTON,  
"Clerk."

No. 15.

Copy.—Letter, Chairman of Commission to President Board of Inspectors.

"Provincial Penitentiary Commission Room,  
"KINGSTON, 17th November, 1848.

"Sir,

"I have the honour to acknowledge the receipt of your letter of yesterday's date, enclosing certain

resolutions adopted by the Board of Inspectors at a meeting held yesterday morning.

"I am, Sir,  
"Your obedient Servant,

"Signed,) "ADAM FERGUSSON,  
"Chairman.

"To A. CORBETT, Esquire,  
" &c. &c. &c."

On 20th November Mr. Smith was removed from the Wardenship of the Penitentiary, until the result of the Inquiry be known, and Donald A. M'Donell, Esquire, was appointed *pro tem*.

No 16.

Copy.—Letter, Chairman of Commission to Mr. Warden Smith.

"Provincial Penitentiary Commission Room,  
"KINGSTON, 21st November, 1848.

"Sir,

"I have to inform you that the Commissioners, taking into their consideration the altered position which you now occupy in relation to the Provincial Penitentiary, no longer deem it necessary to enforce their resolution of the 15th instant; so far as, by that resolution they had determined upon postponing the further prosecution of your defence until certain Guards had been re-instated in the position which they had held.

"The main object which the Commissioners had in view, in coming to the resolution referred to, was to afford an assurance of protection to the witnesses who might be summoned before them to give evidence; this assurance the Commissioners consider your interim removal from the Penitentiary will effectually guarantee; and they therefore see no longer any obstacle to the continuance of your defence, as soon as you shall have notified them that you have removed from your present residence within the walls of the Penitentiary.

"I have the honour to be,

"Sir,  
"Your obedient Servant,

(Signed,) "ADAM FERGUSSON,  
"Chairman.

"To HENRY SMITH, Senior, Esquire,  
" &c. &c. &c."

As comments have been made on the ejection of the ex-Warden from the apartments occupied by him, immediately on his removal from his office, it is necessary to explain the motives which actuated us in the line of conduct which we adopted.

The act of Parliament assigning to the Warden a residence within the walls of the Prison, and it being absolutely necessary to the safety of the Institution that he should be actually on the spot, no alternative appeared to be offered with relation to Mr. Warden M'Donell's immediate possession of the residence assigned to him by virtue of his office. Taking into consideration the relative positions of the ex-Warden and his successor, it is manifest that a joint occupancy by them of the Warden's apartments would have placed both in a most disagreeable

situation; one which could not fail to lead to personal disputes and collisions. The cabals amongst the Officers, which had already arisen to such a height as to be destructive of the discipline and consequently dangerous to the security of the Prison, would derive support and encouragement, even without any participation in them by Mr. Smith, from such an arrangement; and the new Warden on entering on the duties of his office, under doubly arduous and responsible circumstances, would have appeared in their eyes as holding a divided authority with his predecessor, or at all events as deprived of some portion of that almost absolute power which his predecessor formerly wielded and which the Warden of such an Institution must necessarily enjoy. We felt that our duty to the public was paramount to all private considerations, and that duty distinctly pointed out the proper course to pursue.

No. 17.

Copy.—Letter, Mr. Warden Smith to Chairman of Commission.

PENITENTIARY, 22nd November, 1848.

“Sir,

“I beg to acknowledge the receipt of your communication of yesterday's date which reached me this morning, and in reply thereto I have to state that having referred the matter of my immediate removal from the Dwelling-house, in the Penitentiary, to the Government, I shall not be able to remove from my present residence until I get an answer thereto. In the meantime I have to inform you that I have this day taken a house which although not altogether ready for my reception, will be so by the time I receive the reply referred to.

“I have the honour to be,

“Sir,

“Your most obedient Servant,

(Signed,) “H. SMITH.

“Hon. A. FERGUSSON,

“&c. &c. &c.”

No. 18.

Copy.—Letter, Chairman of Commission to Mr. Warden Smith.

“Provincial Penitentiary Commission Room,  
KINGSTON, 26th November, 1848.

“Sir,

“Referring to my letter of the 21st instant, I have now to inform you that the Commissioners hope there will be no obstacle to the continuance of your defence to-morrow morning at ten o'clock, at the Penitentiary; at which hour the Commissioners intend to be in readiness.

“I am, Sir,

“Your obedient Servant,

(Signed,) “ADAM FERGUSSON,  
“Chairman.”

“HENRY SMITH, Senior, Esquire,  
“&c. &c. &c.”

The Warden having resumed his defence on the 28th November, continued it from day to day (with one intermission of four days, at our instance) until the 19th January. The utmost latitude was allowed him as to the line of defence and the manner of examining the witnesses, and every facility was afforded him for meeting the charges. On 19th December, Mr. Smith, on an application to the Commissioners, was informed that he will be entitled to call any of the Commissioners to disprove any fact or circumstance alleged against him in the charges, in case he cannot effect the same by other witnesses.

Mr. Smith had gone through all the charges with numerous witnesses, and were hourly expecting him to close his case, when, on 19th January, he requested Mr. Commissioner Brown might be sworn. This having been done, Mr. Smith proceeded to ask a number of questions of the witness, as to the proceedings of the Commissioners and the manner in which they obtained their information, which were all quite irrelevant and were accordingly over-ruled by us. Thereupon, Mr. Smith rose and said: ‘Now, gentlemen, since you refuse to give me the information which you promised, such as cannot be got elsewhere, I shall not pursue my defence further before you, but shall apply to another quarter,’ and then left the room.

We have no doubt that the Warden had entirely exhausted his case.

We lost no time after Mr. Smith closed, in proceeding to sift the evidence before us; and as over 1300 pages of testimony were recorded on our minutes, the task was not a light one. We have weighed the testimony with great care, and now respectfully present the charges with a digest of the evidence thereupon as the result of our deliberations:—

## REPORT ON CHARGES PREFERRED AGAINST THE WARDEN.

### CHARGE I.

PERMITTING IRREGULAR PRACTICES IN THE PENITENTIARY, DESTRUCTIVE OF THE DISCIPLINE NECESSARY IN SUCH AN INSTITUTION.

#### 1st. Favouritism towards particular Convicts.

Under this count several distinct points of favouritism were charged, on the evidence of a number of witnesses. It is proved and uncontradicted, that Convicts Young, Cameron, and DeBlois had particular seats in the Dining-hall, and we think it proved that they were supplied occasionally with articles of food which the other Convicts did not get. It is proved and not denied, that the Kitchen-waiters and Stable-men had particular seats in the Dining-hall; we think it is proved by the testimony of M'Garvey, Wilson, and Fitzgerald, that these men supplied themselves better than the other Convicts. Mr. Utting, Fitzgerald, Kearns, Watt, Pollard, and Convict Henry Smith, prove that extra food has been at various times given to particular Convicts at the mere will of the Kitchen-keeper, or his Convict assistants.

George Sexton testifies, that, “the Kitchen-keeper always decided upon the complaints of the Convicts as to the insufficiency of their food. When Frank Smith thought the Convict complaining had enough of food, he refused his application; when not enough he gave him more; he was the sole

judge of the matter. And it is proved by Head-keeper Costen, that the Kitchen-keeper sometimes gave, and at other times withheld, further supplies when complaints were made."

The Warden, in defence, called witnesses to prove generally that they had never seen any favouritism.

William Atkins, a Supernumerary Guard, thinks "there was no favouritism."

Guard Watt says, he "never knew any favouritism shown," but he himself gives instances of such.

Guard Rowe says, he "has never seen any partiality," but had been only seven months in the Prison when the Commissioners first sat.

Guard Tyner says, he "never saw any favouritism."

Mr. Costen, speaking of the table where the Kitchenmen and Stablemen sit, says, "there is not more food at these than the other tables."

Guard Martin says, he "never observed any partiality," but it afterwards appears that he has only been occasionally down in the Dining-hall for the last three years, for the purpose of keeping quietness among the Convicts.

George Sexton says, he has "never noticed that one Convict is fed better than another," but in his cross-examination he gives instances of favouritism.

Guard Thomas Smith says, he "never saw a bit of partiality," but it afterwards appears that he has not attended in the Dining-hall within the last five years.

Thomas Somerville says, "he never saw any partiality," but he was only three months a Guard in the Dining-hall, and that last winter."

It is evident that these general denials do not meet the specific cases established by the other witnesses.

The charge of favouritism in giving out clothing to discharged Convicts has not been sustained; better suits have been given at one time than another; but there is no ground to impute improper motives therein.

From these practices, we are of opinion, that a feeling has sprung up in the Prison, that the Convicts are not placed on a footing of perfect equality; and no more injurious impression could be made on men over whose minds it is sought to obtain an influence. There can be little reform in a Prison when the Convicts have not perfect confidence in the Officers, and there can be no confidence where partiality exists; even the appearance of favouritism should be studiously avoided, for no class of men can be found more sharp in discovering the failings of others than the inmates of Prisons.

## 2. GIVING FOOD TO CONVICTS BETWEEN MEALS.

Guard Kearns says:—"Convicts are often in the habit of getting extra provisions from the Kitchen between meals; some of the Convicts only can get this privilege, and it was considered a great thing to stand well with the Kitchen-keeper."

Ex-Keeper James Gleeson, "Knows that provisions were often obtained by Convicts between meals."

Keeper John Swift, "Knows that favourite Convicts could get extra rations before meals."

This testimony is fully corroborated by Wilson, Fitzgerald, Freeland, and Watt, and it is met by the defence with the statements of Head-keeper Costen, that he "never knew an instance of a Convict getting food of any kind between meals from the Kitchen or Dining-hall. Two or three times men discharged from sick-list when going out to work have got some food, but never in any other case;" and by that of Guard Sexton who says, "he has heard of such a thing, but never saw it, or knew of it from his own observation."

We are therefore of opinion, that the charge is established, and we regard it as a serious irregularity, fraught with all the moral evils adverted to under the last count, as well as destructive of discipline. The dietary and meal hours are fixed by regulations, and it must be presumed that the wants of all the Convicts are properly provided for.

## 3. PERMITTING TEAMSTERS, AND ALL OTHER PERSONS ON BUSINESS, TO GO AMONG THE CONVICTS UNACCOMPANIED BY A GUARD.

Edward Bannister (Gate-keeper,) in his preliminary examination says:—"Teamsters coming in and going out of the Penitentiary are not searched, unless they have something suspicious about them; there are teams going and coming constantly every day. Has opened the team gate one hundred and fifty times in one day; the teamsters go right in among the Convicts; they have no Guard with them, and can wander all over the yard. \* \* \* Only the names of visitors—strangers inspecting the Institution are entered in the book at the gate. Persons visiting the Warden, and those on business are not entered: nothing like the whole number of persons have their names registered."

By Mr. Smith:—

"Never heard of any Rules of the Prison for searching individuals; heard of such a rule as to wag-gons; would think it hard to search a decent man; but if there was a general rule no decent man would object to it. Witness sometimes goes into the yard with teamsters having hay, oats and straw, and sometimes shows the way to the Kitchen to others; has shown strangers down to the office; comes sometimes to the office with strangers who don't know the way; sometimes cannot get down with such strangers, being alone at the Gate. It would only require one extra Guard to enable every cart to be accompanied by a Guard into the Prison; he would take one in at a time, and any others would remain till he returned; there would be detention until the Guard could return; there is detention as it is now from the meal hours; there is no other detention, except when the Guard at the Gate thinks too many carts are within the walls at once; this does not happen often. There is also sometimes detention with hay and oats, if Cooper or witness are absent from the Lodge, in which case such loads have to wait until a Guard comes."

"The attention of the Convicts is often taken off their work by visitors, especially if they (the Convicts) know any of them. Witness has received money from visitors when they pressed it upon him."

There is a rule against taking money from visitors. Has no recollection that any visitors who gave witness money, ever told witness that he knew any of the Convicts."

John Cooper, (Gate-Keeper,) in his preliminary examination says:—"The names of parties only visiting the Institution are entered in the Book at the gate; persons on business and those coming to see the Warden, are not registered. On the 2d instant (August) the wicket was opened one hundred and ten times, and the large gate sixty-three times; and as many more times when the same parties were going out. Only thirteen of them were entered on the Book. None of these one hundred and seventy-three parties were searched. A good many of these persons so passing were Convicts working outside the stone wall, who went in for water, sharpening tools, &c. Teamsters of all kinds, as a general rule, go right into the yard among the Convicts, unaccompanied by a Guard. Witness has seen over one hundred teams go in in one day."

By Mr. Smith:—

"Goes down into the Prison with Teamsters bringing oats; goes down with persons wishing to purchase stone; after the stone is cut, goes down with the teams to fetch it away; he does not mean always, but sometimes; sometimes no one goes down with teams coming for cut stone; sometimes bring strangers on business down to the Office. Witness cannot tell how many extra Guards it would take to send one with each team into the Prison, so that there would be no detention. It would require more than the one there is now. Does not know if the introduction of visitors into the Penitentiary is hurtful. Gate-keepers are not allowed to take any fee from visitors; has received fees which visitors left on the table."

For the defence James Hopkirk, Esquire, was called, when he testified as follows:—"The subject of the Convicts' getting tobacco, and getting news from outside, has often been matter of conversation with the Inspectors, but does not think any minute of the tobacco was ever made. The Inspectors were led to believe that the Convicts got the tobacco and news, but more particularly the former, from Teamsters coming into the Prison. The Inspectors also suspected that some of the Officers must have participated in the introduction of news, and that they must have been privy to the bringing in of so much tobacco. The Convicts were constantly punished for having tobacco. The introduction of newspapers into the Prison was the subject of correspondence between the Government and the Inspectors. If a trust-worthy Guard were to go down the yard with every Teamster and other visitor, it would prevent the introduction of tobacco in a great measure; two Gate-keepers could not do this without great detention to the vehicles and visitors. Witness would not think the Inspectors warranted in incurring so great an expense as would be necessary to send a Guard into the yard with every vehicle and visitor. Does not know how many vehicles enter the Prison. Thinks it would require very nearly a dozen of extra Guards if there were one hundred vehicles coming in daily. The Inspectors consider the introduction of tobacco a temporary evil, which would soon be obviated by the completion of the buildings, and the consequent exclusion of Teamsters, and other arrangements."

We are of opinion that great injury has arisen from the unrestrained manner in which persons have

been admitted to the Penitentiary, very many abuses which will be hereafter detailed having flowed from it. The introduction of large quantities of tobacco, the dissemination of news among the Convicts, and the purloining of the property of the Institution, are among these abuses; and they have been in existence for a series of years without any attempt at reformation, as far as appears. We are of opinion that the completion of the buildings was too remote a prospect to justify the sufferance of such an evil, and that the expense of the remedy is not a good plea for the continuance of an abuse which to a great extent frustrated the primary object of the Institution. We think the Warden should have brought this subject earnestly before the Inspectors, but there is no mention in the records of the matter having ever been before them.

We are therefore of opinion that the first charge, "Permitting irregular practices in the Penitentiary, destructive of the discipline necessary in such an Institution," has been proved against the Warden on all three counts.

## CHARGE II.

BY MISMANAGEMENT OR NEGLIGENCE REDUCING THE PENITENTIARY TO A STATE OF THE UTMOST DISORDER.

1. The Convicts talk freely to one another.

Rev. R. V. Rogers, (Chaplain)—Preliminary examination:—

"The silent system is not at all carried out; the men talk and laugh in groups together through the yard, constantly; they know every thing going on outside, and the want of discipline is quite notorious and often noticed by strangers."

By Mr. Smith:—

"Cannot say how often he goes through the yard, certainly once a week; and more frequently some weeks; has seen the Convicts talking and laughing in groups frequently; is not always in the yard, but when he has been there, has seen such conduct going on constantly. Visitors have made the same remark; it is a common saying in town. Does not recollect the names of any parties who have spoken to witness of this, and if he did, he would not name them without their permission."

Ex-keeper James M'Carthy—Preliminary examination:—

"The Convicts talk constantly among themselves, and they hear pretty much all that goes on outside; you can't keep anything from them, they are so sharp."

By Mr. Smith:—

"Convicts were in the habit of talking in witness's shop when he could not help it; always reported them except when talking about their work."

\* \* \* "Thinks the Convicts learnt what was going on outside from new-come Convicts, and Soldiers, and a great part of it from the Warden's house and office; they got stories and news from the Warden's house; cannot recollect any particulars of the news which came through the Warden's house."

John Cooper—Preliminary examination :—

“The Convicts talk quite freely in the Penitentiary; there is no discipline whatever in the Institution; they talk openly together, and witness is often ashamed to see them do so openly, when he is going round with visitors; they know very well what is going on outside. A Convict told witness yesterday, that he (witness) was not called up before the Commissioners on Monday, (he was summoned for that day but not called,) and asked witness what he would think if Mr. Brown brought up different orders from Montreal to finish the job.”

By Mr. Smith :—

“Witness thinks the discipline very bad in the Penitentiary; sees the Convicts talking; could not say how many Convicts he has seen talking in the last six months; has seen a dozen talking together at one time in the mortar shed, and no one with them; reported the whole of them to Mr. Costen; it was this year, within three months. Sees the Convicts frequently talking; reports them when he knows their names, and has asked themselves their names and also their Keepers; cannot say how many Convicts he has reported for talking in the last three months; does not know that he has reported one; does not report every Convict he sees talking; has not always an opportunity of doing so. The Convicts learn a good deal of what goes on outside, witness thinks; does not know how they learn it; does not know if the Keepers or Guards tell them. Convicts have spoken to witness about matters not relating to their business; they have spoken about the present Commission, and witness referred them to the Warden; Cameron is one; and several others have spoken when witness was going round at night trying the cell levers; witness did not stay to see who they were.”

Keeper John Swift—Preliminary examination :—

“The Convicts talk a great deal to one another; to say that the silent system is carried out is a humbug. Many of the Convicts know all that is going on outside; they get the news from the new Convicts, Soldiers and Teamsters.”

By Mr. Smith :—

“The Convicts talk together in the yard; cannot say it is any fault of the Warden's that they do so talk; as far as witness knows the Convicts are punished for talking, when reported.”

John H. Freeland—(a discharged Convict)—Preliminary examination :—

“There is a great deal of talking among the Convicts; if a man wanted to talk to another he could easily manage it, even although he belonged to another gang; the Convicts told their histories to one another, and the men generally knew what their fellows were in the Prison for. They knew pretty well what went on outside; news went from one to the other, and it was soon known over the whole establishment. The chance of escape was very much the topic of conversation; it is now considered almost hopeless.”

By Mr. Smith :—

“The Convicts talked much when witness was at the Penitentiary; the Keeper reported those who talked when he found them out; the Convicts sometimes talked about trying to make their escapes.”

Mr. Utting, Keely, M'Garvey, Atkins, Fitzgerald, Wilson, and Kearns, all testify that there is a great deal of talking among the Convicts, and that they know pretty much all that goes on outside.

To meet this, the Warden brings Convicts Parker, Price, Montgomery, Crandel, Smith *alias* Johnston, M'Donagh, and Feely, all working in the Carpenter's shop, who testify that there is no talking when the Warden goes into the shop. He also elicits from Richardson, Cooper, and Fitzgerald, that they do not report every Convict they catch talking; from Keely that he always reports such cases; and from Guard Wilson, that he and other Officers speak to the Convicts about other matters than the business of the Prison.

The Warden also produced the following testimony :—

Keeper Manuel :—“Does not allow his men to stand talking in groups, but sometimes cannot help their doing so.”

James Hopkirk, Esquire :—“Witness has never seen the Convicts standing laughing and talking on his visits to the Prison; if it had existed it would have attracted witness's particular attention. Witness has been a frequent visitor at the Penitentiary.”

Guard Sexton :—“Has never seen Convicts laughing or talking in groups in the yard.”

Mr. Sheriff Corbett :—“Visits the Penitentiary frequently; has seen the Convicts talking in a group in a building fronting the new shops; on one occasion called the Keeper, and spoke to him about it; has not seen such things constantly; never saw talking and laughing in the yard.”

Head-Keeper Costen :—“Goes round the yard regularly every day; has not seen the Convicts constantly standing, laughing, and talking in groups.”  
\* \* \* “Has reason to know that Convicts have recently been made acquainted with matters they ought not to have known.”

The evidence of Mrs. Cox, Mrs. Coulter, and Mrs. Pollard, establishes that there has been a great deal of talking in the female department; the only defence being that the Matrons tried to prevent talking as much as possible: and the testimony of Convict Grace Marks, that “There has been a great improvement among the female Convicts during the last eight and nine months; they have been kept more under subjection. There have been only three or four serious quarrels in that time.”

From the evidence adduced directly on this point, and from the facts which have come out accidentally in every stage of the enquiry, we are satisfied that the Convicts have had easy and continual opportunities of making evil communications to one another; and we are satisfied that the benefits to be derived from the silent system have not been realized; but, on the contrary, that prisoners not thoroughly contaminated when they arrived were exposed to very injurious influences.

## 2. THE CONVICTS GET TOBACCO CONSTANTLY BY STEALTH.

Edward Utting—Preliminary examination :—

"There was a great loss of tools, such as planes, chisels, crowbars, gimblets, and other implements; they were stolen and sold to teamsters for tobacco; tools were often found hidden in the yard; some of the Convicts were detected in making away with some of the articles and punished."

Thomas Fitzgerald—Preliminary examination :—

"The Convicts have always a good deal of tobacco among them; twenty-two or twenty-one plugs of tobacco were found on one Convict."

By Mr. Smith :—

"The Convicts get tobacco; witness has taken it from them frequently; cannot tell how they get it. One man had about twenty plugs of tobacco at the woodpile; part of it was found on him."

John H. Freeland—Preliminary examination :—

"The Convicts got a deal of tobacco into their hands, one way and another; they got it from the teamsters; the men used to give them tools and bits of rope, and other things picked up about the yard for it; this was the general understanding of the way that the tobacco came in, and witness has seen Convicts with tools hidden on their persons."

By Mr. Smith :—

"There was generally tobacco through the Prison; there were few gangs that tobacco could not be found among them; does not know how the Convicts got tobacco. Knows that they sometimes sold tools to teamsters and others for tobacco; witness has found tools hid, and has given them to the Keepers; has seen a Convict pass by with a mortice chisel, and on returning he has been without it; witness asked what had become of it, and the Convict stated that he had sold it for tobacco; Convict showed witness the tobacco; witness generally got tobacco from some of the Convicts, used very little of it."

Mr. Hopkirk, Mr. Costen, M'Carthy, Atkins, Wilson, Kearns, Swift, Cooper, and Sexton, all agree that the Convicts constantly get tobacco in some way or other.

The defence made by the Warden is, that he always punished Convicts when tobacco was found upon them; that some of the Officers who have testified to the existence of the abuse, have themselves given tobacco to Convicts; and that that portion of the evil arising from teamsters coming in with materials for carrying on the buildings would terminate with their completion.

It is clear that punishing the Convicts on whom tobacco was found, was years ago discovered to be ineffectual to remedy the evil, and it was the duty of the Warden to have directed his earnest attention towards preventing its introduction within the walls by teamsters and strangers. We think that it was inexcusable, his waiting passively for years in the hope that the completion of the buildings would put a stop to the abuse. It was not only the constant breach of discipline which this evil produced that called for an immediate remedy, nor even the loss of property to the Institution from it; far

above these is the consideration that the whole of this tobacco was obtained by stealth, and that in their efforts to procure it, the Convicts served an apprenticeship to all the arts of petty thieving and deceit. We can find no apology, but deeper censure, for the Warden in the allegation, (were it proved) that the Keepers and Guards themselves gave tobacco to the Convicts, contrary to the rules; as the Warden himself selected the Officers and had complete control over them, and some of the Officers, against whom this charge is made, have been in the Institution almost from its commencement, without being called in question for such misconduct.

## 3. THE CONVICTS STEAL FROM THE TRADESMEN COMING IN WITH PROVISIONS.

It appears from the evidence of Keeper Swift, Guard Watt, and Convicts Chagnon and Dyas, that meat and bread have been stolen from the tradesmen's carts on several occasions; but it does not appear to have been a frequent occurrence, and though it is a proof of the exceeding laxity of discipline in the Prison that such a thing could happen, we cannot hold it as a serious charge against the Warden, and we therefore acquit him upon it.

## 4 THE CONVICTS OBTAIN INTOXICATING LIQUORS BY STEALTH.

Martin Keely—Preliminary examination :—

"Has known Convicts to be drunk in the Penitentiary. Soldier White, the Stableman, was horridly drunk one evening; Mr. Utting and all the Keepers were present; he refused to tell where he got the spirits, on examination by Mr. Utting; he was flogged with the cats for being so drunk; this was about three years ago. Recollects another Convict, named Daly, a few months afterwards being drunk; he was employed jobbing about the yard and house; he was examined next day; he refused to tell where he got the spirits; was punished by flogging with the cats; he was very drunk. Has smelt liquor on a man named O'Connor, a tailor, who was frequently employed in Warden's house and store-room."

By Mr. Smith :—

Recollects Convict O'Connor, who used to be about the Store-room; saw him there frequently while witness was passing to the office on errands. Has reason to suppose O'Connor went into the Warden's apartments, but cannot say he ever saw him going in; never saw O'Connor intoxicated, but has heard that he smelt of liquor; witness never smelt liquor on him. Has seen Convict White drunk, and has seen him punished for it; does not know how he got the liquor; it was supposed he got it from the Warden's Kitchen, on account of his having recourse there. White would not tell where he got the liquor; recollects something about beer; cannot tell if White fed the hogs; recollects seeing him kill hogs. Recollects Convict Daly being drunk; he told witness Mrs. Smith gave the liquor to him; does not recollect if he named what the liquor was; it appears to witness it was brandy; may have told some one that it was brandy. Cannot tell if it was O'Connor's business to go to the Store-room, but he did go.

Edward Utting—Preliminary examination :—

"Has known Convicts to be drunk in the Penitentiary. By reference to his notes, says, that on

19th December, 1843, a prisoner, named White was drunk in the afternoon; witness ordered him to be put in his cell; White refused to say where he got the spirits; witness reported the case to Warden; Warden made no inquiry to witness's knowledge, as to where White got the spirits; White received corporal punishment. Witness has had reports from Keepers that their men had smelt of liquor. Convict Daly was reported to witness as having smelt of liquor; witness examined Daly on the subject, and Daly admitted that Mrs. Smith had given him drink on the 19th December, 1843. Witness reported Daly's statement to the Warden; does not recollect whether he was punished. On 23d December, following, Daly stated to witness that Warden sent for him to the office, and told him he would flog the flesh off his back for saying that Mrs. Smith had given him liquor."

By Mr. Smith:—

"Recollects Convict White being flogged for drunkenness by the Warden's order. Witness reported the drunkenness to the Warden. White stated after he left the Penitentiary that he had got the drink in the Warden's Kitchen, but when asked about it at the time of the occurrence, he told witness that "he would not tell if witness were Jesus Christ." Never heard what the drink was; but from the smell witness judged it to be spirits. Mrs. Smith stated to witness that it must have been stale beer which was in the Warden's Kitchen for the purpose of making blacking; and she ordered her servant to fetch witness some of the beer to taste. Keepers have reported to witness that Convicts in their gangs have smelt of liquor; M'Garvey was one and Esly another. Witness never gave a Convict anything to drink any where. Recollects Daly being reported for smelling of liquor. Witness did not smell it himself, but reported it to Warden. Questioned Daly as to where he got the drink; Daly stated that Mrs. Smith gave him the liquor, on the day that M'Garvey smelt it. Knows nothing of where Convict Daly got the liquor excepting from Convict's own statement; does not recollect whether Daly was punished for this offence or not."

Terence M'Garvey—Preliminary examination:—

"Knew Stableman White, to be drunk; very drunk; it was in the evening; this was some years ago. Recollects a man in the Tailor's Shop, named O'Connor, who frequently smelt of liquor. Both of these men were in the habit of going to the Warden's apartments. Has been told by Convict Daly that Mrs. Smith had given him brandy the same evening White was drunk; witness reported him."

By Mr. Smith:—

"Recollects a man named O'Connor in the Tailor's Shop; the Tailor's Shop was close to that of witness. Understood O'Connor was in the habit of going to the Warden's house; has seen him coming out of it. Witness's Shop was in different parts of the yard at different times; his Shop was once in the North wing beside the Dining-hall; and at another time, where the Roman Catholic Chapel now is; from neither of these places could witness see the door leading to the Warden's house. Witness saw O'Connor going in and coming out of the Warden's house when about the yard, or when on errands to the Clerk's or Warden's offices; believes he has smelt liquor on O'Connor a few times—three or four times; cannot tell exactly what the liquor was; O'Connor told witness that he had such re-

course to the Warden's kitchen, that he could get anything he wished, and witness considered he got the liquor there; does not recollect if O'Connor told witness that he got the liquor there. Witness has seen Convict Daly pretty well intoxicated; he was not drunk; he told witness he got brandy; believes he said brandy; he said Mrs. Smith gave it to him; it was at witness's shop where Daly told this to witness; does not recollect what brought Daly to the shop; there was some talk about the affair in the Keeper's Hall the same night, and witness spoke out plainly and said, Mrs. Smith was to blame, from what Daly had told witness; thinks Daly was punished for telling a lie in the matter; witness was asked about the affair in the Warden's office the following morning; does not know who reported Daly to the Warden; witness reported the matter to the Assistant Warden; did not consider it was right to punish the man if what he said was true; does not recollect who reported Daly in the book; does not recollect what punishment Daly received, nor if witness was present when he was punished; is not sure that witness did not sign the report against Daly. Has seen White, a convict, drunk; it was said he got the liquor from the Warden's house; never heard that he got drunk with stale beer; heard that White got bottles of liquor from the Warden's house, and hid them away in the stable, for his own use; it was a common subject of talk among the officers; does not know if any search was made for the liquor; did not consider that it was witness's duty to look after it; White's duty was to look after the horses; does not recollect if he attended to the Warden's hogs; thinks it was not right of the Warden to allow the Convicts to get liquor. These transactions happened three or four years ago, but cannot be positive as to the time."

James M'Carthy:—Preliminary examination:—

"Recollects of Convict White being drunk; has known Daly, a Convict, to smell of liquor; has known O'Connor to smell of liquor three or four different times; recollects another, a servant in Warden's kitchen, but forgets his name; does not know where they got the liquor, but they said they got it from the Warden's house. Daly told witness that he got Baron Grant's wine in the Warden's kitchen, and that there was plenty of it there; there was no other mode of their getting liquor but from the Warden's kitchen; the Warden knew of White and Daly being found in liquor, but witness never heard that he instituted any inquiry into how the liquor was obtained."

By Mr. Smith:—

"Recollects Convict White being drunk; he told witness that he got the liquor from Mrs. Smith in the Warden's house; does not recollect if he said what the liquor was; never heard that White got stale beer in the Warden's cook-house. Does not know if O'Connor was in the habit of going to the Warden's house; he was messenger for the Tailor's shop; O'Connor used to come on messages to witness's Shop, to get a button-hole knife made, or the like of that; could not say how often O'Connor may have been in witness's shop in a year; could not say he ever smelt liquor on O'Connor. White used to be the Stableman; he was so when he was drunk; does not know that the Stableman was in the habit of getting slops from the Warden's kitchen for the hogs; thinks that he used to do so sometimes. Recollects Daly being drunk; did not see him drunk; heard of it from a great many; he was punished for it; does not know how he got drunk; heard he got

it from the Warden's apartments. Daly never told witness where he got it; does not know whether the Warden made an inquiry into it; could not say whether he would have been punished without any inquiry."

Guard Wilson testifies that he "saw Convict Welch drunk last summer," but does not know how he got the liquor. Ex-Guard Fitzgerald recollects Convicts "White, Daly, and young George Kelly, being drunk," but "cannot tell where they got the drink." John H. Freeland, "recollects of seeing Coté, Welch, Gordon, and another Convict," under the influence of liquor. Keeper Swift, "recollects White and Graham being under the influence of liquor, but does not know how they got it." Convict Cameron has had beer several times from Mrs. Smith; very often; has had wine several times; has known other Convicts often to get liquor from Mrs. Smith in the kitchen;" he "has seen Travis get beer in the Warden's kitchen, and Christmas and Wilkes." Convict Henry Smith, "has had beer three or four times, by orders of Mrs. Smith, the Warden's Wife," "when witness was working in the Warden's private apartments;" "there were three or four Convicts; they were cleaning the house: they all got beer; the cleaning lasted four or five days; they had beer three times." Convict DeBlois, "got a glass of wine from Mrs. Smith," "on account of the trouble he had fixing the books."

The only witnesses called by the Warden are Keeper William Smith and Guard Crawford, whose testimony seems to establish that Welch got drunk by inhaling the fumes of the blue mortar.

We have given the testimony of several of the witnesses very fully, as there is some discrepancy in the details; it is to be remarked, that some time elapsed between the preliminary examination of many of the witnesses and their cross-examination by the Warden; and throughout the whole of the evidence, considering the length of time the events run over, we are not inclined to judge harshly in cases of mere inaccuracy.

We think it proved that a number of Convicts have received liquor while in the Penitentiary, and that in several instances the liquor came from the Warden's private apartments. It is proved that Convicts Graham, White, Daly, and Kelly, were drunk.

The Warden's defence is, that some of the Convicts in question got the liquor while working in his kitchen, and that others stole stale beer from his kitchen; the first we conceive to be no defence, and the latter is not proved. The evil seems to have sprung chiefly from the employment of Convicts by the Warden for his private purposes without the authority of Statute or Regulation; but as that subject is referred to in a later part of the charges, it is unnecessary to enter upon it now.

##### 5. THE REFORMATION OF CONVICTS IS UNKNOWN.

Rev. R. V. Rogers, (Chaplain,)—Preliminary examination:—

"Considers that as far as Reformatory results are concerned, the Institution has been a complete failure. The main reason of this, witness thinks, is the fact that the objects of such a prison have been totally misunderstood by the authorities; the Warden

and Inspectors appeared to view the prison merely as a place of security." \* \* \* "The fact is, that nothing can be worse than the present condition of the Penitentiary, as a moral school."

By Mr. Smith:—

"Witness speaks in private with the Convicts on religious and moral subjects as far as his ability admits; has made it a rule never to force his private ministrations on any Convict until he has been led to desire it, by the influence of the public services. Previous to the reduction of witness's salary he was in the habit of seeing every Protestant Convict, coming in and going out of the Penitentiary; this practice has ceased for as much as two years; witness thinks there is not a Protestant Convict in the Penitentiary for four, five, or six years, whom witness has not spoken to privately, except those who positively declined any intercourse with him; no list has been furnished to witness for a long time past by the Clerk or any one else, of Convicts coming in; not for more than a year; cannot say the exact date when witness ceased to get such lists; it is a long time ago. Some of the Convicts manifest great indifference about religious matters; witness uses his judgment as to the mode in which he shall treat each such case; has a room for speaking privately to the Convicts. Judges that the Warden and Inspectors view the Penitentiary merely as a place of detention, by the whole tenor of their proceedings; forms this opinion from his knowledge of the affairs of the Penitentiary; forms this opinion partly from the want of a chapel—of a proper school or schoolroom—of a proper library—and proper time to the Convicts for instruction; it was years before witness could get anything like a library; all his suggestions were treated with neglect; a sum of money (£30) were voted, last Session but one, by Parliament, for the purchase of books; witness thought his opinion of the indifference of the Warden and Inspectors to the moral condition of the Convicts, was strengthened by seeing handsome stone stables going up for the horses, while there was no chapel, and a handsome summer-house built at the very time witness was told there was no money to buy books. Was never questioned by the Warden, or any of the Inspectors, as to whether his office was effectually administered or not—certainly not officially questioned. Never saw the Warden, or any of the Inspectors, at chapel or school for years; it is years since the Warden has been at chapel. There was controversy between witness and the late Board of Inspectors, of which Mr. Kirkpatrick was President; several points in dispute between them were referred to the Governor in Council; thinks he received no letter from Mr. Secretary Harrison about his difficulties with the Inspectors; witness told the Board of Inspectors that he would not be bound by the second copy of the rules of the Prison which was given him; witness considered himself bound by the first copy of the rules which was given him on his appointment; the second and third set witness objected to, because they all but put aside the Chaplain's office; has done what he could to obey the original rules. Witness is shown the rules referred to, passed in 1836, on page 155 of the Minutes of the Inspectors, and says these are the rules by which witness has been guided. Witness never gave any Convict any promise that he would procure his pardon; cannot say if he ever corresponded with the friends of any Convicts as to the furtherance of his pardon; never wrote to procure the pardon of Heman Dodge; what witness wrote as to this Convict was submitted to the Warden; witness was in the habit of taking a short sketch of

the previous life of each Convict, but has no recollection of any rule obliging him to do so; found a copy of the rules, when he entered on his situation, among the papers of his predecessor; witness's predecessor kept a sketch of the lives of the Convicts; witness does not keep these sketches now, because the Convicts are not now sent to him for examination as they used to be, and because, by the reduction of his salary, witness has been compelled to devote the time this duty occupied to other avocations for his support; witness used to hear the complaints of Convicts as to the bad treatment they received in the Institution, and received a letter from the Warden forbidding him from doing so, and stating that witness had nothing to do with the discipline of the Prison; has written the Warden, asking if he might be informed when any of his (witness's) people were punished, that he might go and reason with them; the Warden refused witness's request; thinks he refused by letter; cannot say if the letter was written by order of the Board of Inspectors, but thinks it was; witness thought the Inspectors were authorized to purchase a library; he thought it would have been no greater abuse to buy a library than to build a costly summer-house; received a letter from the Inspectors, stating that they had no authority to purchase a library; the days witness generally comes to the Prison are Tuesdays, Thursdays, and Saturdays; Tuesday is the only one of these days the school is in operation; witness has come frequently on Friday, latterly, when the school is also in operation; has been more frequent in his attendance since his health has improved, within the last few weeks; witness is not aware that he has seen the Warden, or any Inspector, present at school, chapel, or lecture, since the first Board (Mr. Pringle's) resigned, except some five or six occasions when the Warden was present at chapel; several Convicts have told witness that the Warden had threatened them with punishment if they went to the Chaplain with complaints; has no recollection of two Convicts being flogged on account of a book lent to them by witness; witness brought in a book, entitled "Poor Man's preservation against Popery;" has no recollection of an uproar in the women's Prison about a book entitled "Romanism and Holy Scripture compared;" witness has been in the habit of giving his Protestant people books, to preserve them from the errors of Romanism; gave the book last named to the Protestant matron, but not to give to the Convicts; intended it for her personal use, not for the use of the Convicts. Brought a book into the Prison, entitled "No Peace with Rome;" has no recollection of the precise object for which it was introduced, or to whom it was given. Recollects bringing in a book, entitled "Modern Popery Unmasked." Has no doubt he has introduced "Archbishop Secker's Five Sermons upon Popery." There were books in the Institution before witness came; cannot say whether he brought it in or not, but has used "Anecdotes from Religious Tracts." Witness introduced a book entitled "A Short and Easy Method with the Deists." Witness thinks he did not give Louis St. Jean, a Roman Catholic, a religious work; being shown a French book, says he has no recollection of giving that book to St. Jean; thinks if he did give it, it must have been before there was a Roman Catholic Chaplain. Witness cannot preach a sermon or issue a Protestant work that would not hurt the feelings of a Roman Catholic, if he were a sincere one; witness does not mean that he would offend him, but would run counter to his belief; has no doubt that the works issued by witness get into the hands of Roman Catholics, just as Roman Catholic books get into the hands of his people, notwithstanding all witness's exertions to

prevent it; thinks it very likely that bickerings may ensue among the Convicts, in consequence of the distribution of these books, but has only heard of two or three such occurrences—those which the Warden has now brought to his recollection; this was the reason for witness's representing to the Board of Inspectors, more than once, that all controversial works should be withdrawn from the Prison; witness does not think the introduction of such books would prevent the moral reformation of the Convicts; does not think the introduction of such books, to the extent it has gone, has been injurious to the Convicts; witness received an order from the Board of Inspectors to withdraw all controversial books, which he obeyed to the letter; after they were withdrawn, witness found Roman Catholic controversial works in circulation; he applied to the Inspectors to order their withdrawal; they were not withdrawn; witness then went to the Inspectors, and told them that he would re-issue his Protestant works; did re-issue them, and notified the Board that he had done so. \* \* \* Witness keeps the Convicts (Protestants) supplied with books as far as he has them to give; the female Convicts have been a month without books; has often no books to give. The chastisement of the Convicts occupies part of the meal hour, and takes away so much from the time allowed for teaching; thinks there is no allowance made on this score after one o'clock; attributes the want of religious services in the Penitentiary to the fact, that by the arrangements of the Prison, the Chaplain only devotes part of his time to the duties of his office; applies this remark to all religious duties; the saying of grace at dinner might be included in the daily visit of the Chaplain; the Protestant Convicts are not guided by the spiritual advice of witness, especially of late; witness's influence has been much reduced among the Convicts; has been degraded in the eyes of his own people by a system of espionage which has been carried on upon his movements; this espionage has been carried on by the Warden through the Keepers and Guards; notwithstanding that witness pledged his word that he would write no more letters for Convicts; Keepers or Guards have gone round the Convicts to find if witness has broken his pledge, and written letters notwithstanding; Convicts have told witness that such inquiries had been made at them since he gave the pledge in question; and one man came with tears in his eyes, fearing that some evil was intended against witness; the man said Costen and Hooper had made inquiries of him within a few days of the time of conversation; witness attends to the religious duties of the soldiers the same as the civilians."

By the Commissioners:—

Witness was never at any time applied to by the Warden to see the sketch of the life of any Prisoner in the Penitentiary: witness was never asked by the Warden to show him the register of private conversations had by witness with Convicts. Witness kept his Journal for the use of the Inspectors; they were public documents—the blank books were purchased with the Penitentiary funds—and the Warden might have had access to them at any time. Convicts are prohibited from lending books to one another. It would be exceedingly difficult to prevent books passing from one Convict to another. Witness was instructed by the Inspectors through the Warden to purchase books for the use of the Convicts; did so to the amount of £30; the choice of the books was left to witness, with the restriction that there was to be no controversial works; the books when bought, were all sent to the Warden's Office; as far as witness knows, the restriction was

adhered to; detected one volume which contained matter that might have been objected to, named it to Warden, who said it was of no consequence. None of the books alluded to in his examination today, but one (the Anecdotes) were purchased with the public money, and the Anecdotes he is not certain of. They were purchased with money from private sources. Witness being shown an entry in the Minute Book of the Inspectors, page 174, says, that the rules of 1836 state that the Journals of the Chaplain shall be kept "for the information of the Inspectors."

By Mr. Smith.—

"Has no doubt that if a greater attention was and had been paid to the spiritual condition of the Convicts, there would be a greater moral effect than there now is; witness speaks of the time of his own incumbency; may have reported to the Board that a Convict had complained of having been unjustly punished; remembers now, that witness was once told by the Board that he had nothing to do with such a question."

For the defence the following witnesses were called:

Samuel Pollard,—By Mr. Smith:—

"Witness thinks the Chaplain does not pay sufficient attention to the Convicts to produce their reformation; his conduct towards the Convicts is not calculated to reform them."

James Hopkirk, Esq.,—By Mr. Smith:—

"The Inspectors were desirous that the Penitentiary should be a place of reform; but they do not consider it has been as much so as they could have wished; they have been unable to make it so. Witness has never seen anything on the part of the Warden to prevent the reform of the Convicts; the Warden has always carried out the orders of the Inspectors fully on all subjects."

Mr. Sheriff Corbett,—By Mr. Smith:—

"Witness, in many instances, looks upon the Penitentiary as a place of reformation; never gave the Chaplain reason to believe that he looks upon it only as a place of detention. Never saw anything in the conduct of the Warden tending to prevent the reform of Convicts."

Several witnesses were also called to prove that Mr. Rogers preached bitterly against the Roman Catholic Church, and that he introduced books of the same character. Without pronouncing any opinion on the truth of these allegations, we cannot see, were they established, how they can influence the question at issue—Have any Convicts been reformed? It was clearly the Warden's duty to use every proper means for the reform of the Convicts, and to prevent whatever had an opposite tendency.

Witnesses were also called to prove that Mr. Rogers was in error when he testified that the Meal and School hour was encroached on by the infliction of corporal punishment; it appears by the evidence, that since the rule ordering the Surgeon to be present at corporal punishment, an allowance has been made for the lost time. None of the witnesses have alleged that any Convicts have been reformed by the discipline of the Prison, and the Warden has not alleged that he knows of any such:

6. ARTICLES MADE BY CONVICT LABOUR AND PUBLIC STORES ARE ALLOWED TO GO OUT OF THE PRISON, WITHOUT A PERMIT FROM THE WARDEN OR CLERK, CONTRARY TO RULE.

Extract from the Rules and Regulations for the Government of the Penitentiary, 15th October 1845:

DUTIES OF THE GATE-KEEPER.

"They must allow no articles belonging to, or which have been manufactured, or repaired at the Prison, to be taken out of the yard, unless accompanied by an order signed by the Warden, or Clerk, authorizing their removal."

"A true Extract."

(Signed,) "F. BICKERTON,  
"Clerk."

Extract from the Minutes of the Board of Inspectors of the Provincial Penitentiary, 16th October, 1846:

"The Inspectors also direct, that, in future, strict attention be paid to the general order No. 2 to Gate-keepers, and that no article be allowed to pass the gate without a written order from the Warden or Clerk, which shall be deposited with the Gate-keeper, and by him returned daily to the Office to be there filed."

"Truly Extracted."

(Signed,) "F. BICKERTON,  
"Clerk."

Extract of a Minute of the Board of Inspectors of the Provincial Penitentiary, 29th October, 1847:

"The Board have however ascertained, that it has been a practice of long standing (indeed from the commencement of the Institution) for the Kitchen-keeper occasionally to purchase provisions from vessels and waggons for the use of the Keepers and Guards; and as they consider that such practice is highly inexpedient, as giving rise to imputations of improper use of the Prison Stores, they direct that for the future all traffic in Provisions, within the walls of the Prison, be strictly and positively prohibited."

"A true Extract."

(Signed,) "F. BICKERTON,  
"Clerk."

James Willson—Preliminary examination:—

After detailing the system of peculation which had gone on in the Penitentiary stores, &c., says: "It was against the rules of the Prison for these things to go out without the Warden's special order, but Frank instructed the Guards to let all articles for his use pass out without any order, and as he was their superior officer they were bound to obey. On being asked, why he did not report these irregularities to the Warden? witness says, the Guards knew it was of no use, for whoever had dared to do so would have lost his situation immediately; this feeling was justified by the removal of Richard Robinson and Clement Reid immediately after they crossed the path of Frank Smith. The messenger, Thomas Smith, has often taken bundles of articles home in

the Penitentiary waggon for Frank Smith, the Guards did not know what were in these bundles," &c.

By Mr. Smith :—

" If Warden gives a general order, witness does not think an officer should disobey it on the authority of an officer inferior to the Warden ; witness should always obey the Warden's order in preference to that of an inferior officer. Witness has known officers dismissed for reporting irregularities to the Warden ; Robinson and Reid were so dismissed. Robinson was dismissed on account of giving evidence against Mr. Frank, it was believed ; witness believes it by Mr. Frank's own words. Reid told witness that he had reported Mr. Frank to the Warden for throwing water on him and his gang from the fire engine, and witness believes that this was the real cause of Reid's dismissal ; Reid's dismissal was some time last summer (1847) ; witness has frequently passed out things through the gate for Frank Smith, without a pass, he took Mr. Frank's word that he had authority from the Warden for it ; the officers take the words of each other without question, and the Guards particularly took Mr. Frank's word, as their superior officer ; numbers of things made here or repaired here, or the property of the Penitentiary, went out for Mr. Frank Smith."

Edward Bannister—Preliminary examination :—

(After relating extensive frauds in provisions of the Penitentiary says :)—" There is a rule that no article the property of the Penitentiary shall pass the gate without an order from the Warden or Mr. Bickerton ; the Gate-keepers did not consider that provisions came within this rule ; Mr. Cooper, the Gate-keeper, had orders from Mr. Frank Smith to let all such things pass without an order, and Mr. Cooper instructed witness to that effect ; witness thinks it was not possible that the Warden was ignorant of these transactions ; there was no concealment in the matter." \* \* \* \*

" Articles, not provisions, have been passed through the gate on Mr. Frank Smith's pass ; passed brooms in this way for Mr. Frank and other officers : these passes were sent to the office with the rest, and accepted ; a large mat was once passed out for Mr. Frank, without an order." \* \* \* \*

" After Frank Smith's trial, an order was passed that no Provisions should go out, that no traffic within the yard should go on ; no one has broken this new rule but Frank Smith, that witness recollects."

By Mr. Smith :—

" Witness has allowed provisions, the property of the Penitentiary, to pass through the gate without a written order ; has allowed potatoes, pease, oats, turnips, bread and oatmeal to pass through for the officers on Mr. Frank Smith's verbal order ; witness received instructions to do so from Mr. Frank through Guard Cooper, and all the officers take the word of each other. Is in the habit of taking orders on the word of a Guard ; would not take the verbal order of any Keeper or Guard in opposition to a written order of the Warden ; would take a verbal order from Mr. Frank Smith or Mr. Costen, subsequent to the Warden's written order, although opposed to such written order, presuming that these officers had full authority from the Warden for altering the previous instructions." \* \* \* " Witness has received passes signed by Mr. Frank Smith ; delivered the passes once a week or once a fortnight into the office ; did not deliver all Mr. Frank's passes ; there

are some of them at the Lodge now. (Witness here handed in eleven passes, purporting to be signed by Mr. W. Smith.) There are a good many more such passes in Mr. Bickerton's office if the bundles remain as they were sent in ; the reason why witness kept the eleven passes now given in, was because he expected some inquiry would at some time be made about it." " Never received any order to prevent anything the property of the Warden from going out without a pass, that he recollects of." \* \* \* " The eleven passes by Mr. F. W. Smith given in by witness were acknowledged by the Warden as signed by the late Kitchen-keeper F. W. Smith, and were put in by him as part of his testimony. They were marked as exhibits A B C D E F G H I J K.)

John Cooper—Preliminary examination :—

" Previous to Frank Smith's trial, there was no pass necessary for such things (provisions) ; witness was given to understand by Frank Smith that the rule only applied to manufactured articles, or articles the property of the Prison." \* \* \* " After Frank Smith's trial, a rule was passed making an order necessary for everything. Frank has had bread, potatoes, and milk passed through without an order, notwithstanding the new rule."

By Mr. Smith :—

" It is witness's duty to see that nothing improper shall come in or go out of the Penitentiary. The rule is, that no article belonging to the Penitentiary, manufactured in, or repaired at, the Penitentiary, shall go out without a written pass from the Warden or Clerk." \* \* \* " Witness was told by Mr. Frank Smith that the rule only applied to articles manufactured at the Prison, the property of the Prison ; that what he sent up requiring a pass, he would send a pass for ; but that anything he sent without a pass, required none ; witness acted on this. Since this conversation with Frank Smith no article which the Gate-keepers knew to be the property of the Prison, has gone out without an order." \* \* \* " A rule was made after Frank Smith's trial that there should be no traffic in the yard."

Francis Bickerton, (Clerk,)—By Commissioners :—

" The Gate-keepers send the passes to the Office once a week ; they do it pretty regularly ; witness never compares the passes with the books ; does not look through the passes regularly ; may have done so occasionally when witness had some particular object in view ; would not have taken Frank Smith's pass for any article sent out of the Penitentiary ; has understood that Frank Smith's passes have been taken at the gate ; looked through all the old bundles of passes a week ago and found none of Frank Smith's ; never heard until then that articles had been permitted to go through on Frank Smith's pass ; may have been told so, but does not recollect of it."

By Mr. Smith :—

" A memorandum of the work done in each of the shops is handed first to the Warden to be examined, and then to the Clerk, prior to a pass being issued for the passage of the articles through the gates."

By Commissioners :—

" No register of the passes granted is kept, and the passes are not numbered ; cannot tell if Bills

have in all cases been furnished with articles from the Shops, before witness granted passes for them to go through the gate; the general rule is that Bills should go with the the articles, but cannot say it has always been adhered to."

By Mr. Smith:—

"The Keepers send bills to the office with the charge made for the work done, before a pass is made for the articles to go out."

For the defence, the Warden called:

James Hopkirk, Esq.—By Mr. Smith:—

"Witness never understood that any pass was required by the Warden when sending out his own private property; is certain there was no such order, and has peculiar reasons for knowing it, as he searched carefully to see if there was such a rule. Does not think the Warden is a man who would send out articles the property of the Penitentiary clandestinely, or would permit them to be sent out."

By Commissioners:—

Question.—You have stated that the Gate-keepers were not required to demand a pass for articles the property of the Warden going through the gate—how were the Gate-keepers to know what articles were or were not the property of the Warden?

Answer.—Cannot tell.

Mr. Sheriff Corbett:—"Recollects Guard Bannister being lately reported by the Warden for allowing bread to pass through the gate after the new rule passed subsequent to Frank Smith's trial; the reason why the matter was not taken up, was because the facts on which the Warden reported had been previously elicited before the Commissioners, and the Inspectors did not wish to interfere with their proceedings. Witness has always heard that the Warden has maintained, throughout, that he had a right to send his own private property through the gate without any pass, but that his right to do so was disputed by the last Board; does not think the Warden a man likely to pass the property of the Penitentiary through the gate, clandestinely."

It is proved that many articles, and large quantities of provisions, have been carried out of the Prison without any permit; that permits signed by Kitchen-keeper F. W. Smith were accepted at the gate and returned to the office, without censure; that articles the property of the Warden were passed out without any permit, and that it was sufficient for its free passage for any one to allege that such property was the property of the Warden; that no register of the permits issued was kept; that the permits were not regularly returned to the office, and were not afterwards examined to prevent fraud; that they were not compared with the books, to see that the proper charges were made; and that they have not been carefully preserved.

From these glaring irregularities, we are satisfied, much loss has been sustained by the Province; and they have been of so palpable a character that we must regard the Warden's conduct in this matter as highly culpable.

7. THE OFFICERS OF THE INSTITUTION HAVE NO CONFIDENCE IN THE UPRIGHTNESS OF THE WARDEN, AND ARE DETERRED FROM DOING ANY DUTY WHICH THEY CONCEIVE WILL BE UNACCEPTABLE TO HIM.

Mr. Utting says:—"No person in the Institution dared give unbiassed evidence against the Warden; it was felt that those who did so, were ever after marked men;" ex-Keeper Keely says, "it was quite understood among the Keepers that any one who opposed the Warden's will, would be got rid of on the first opportunity." Bannister, Cooper, Gleeson, Fitzgerald, Richardson, Kearns, and Swift, make similar declamations.

On the other hand, Pollard, Manuel, Sexton, Wm. Smith, Gibson, Hooper, Funston, and Head-keeper Costen, testify that they have full confidence in the Warden, that he never prevented them from doing their duty, and that they never understood that any one running counter to the wishes of the Warden would be dismissed.

The whole proceedings show that there have been, for a length of time, two parties in the Institution, one supposed to be friendly to the Warden and his interest, and the other opposed to him. As a natural consequence from this state of things, a feeling of insecurity appears to have been felt by the latter party, and they plead this in extenuation of their conduct in not having reported serious irregularities passing under their notice, and they point to the proceedings of the Warden towards officers who opposed his alleged interests, as proof that their fears were not groundless. These proceedings are fully gone into elsewhere, and it is unnecessary here to pronounce an opinion upon them. It is, however, much to be regretted, that such a feeling ever existed in a place, where perfect confidence and cordial co-operation among all concerned, are absolutely requisite for success.

8. FOR YEARS THE WARDEN AND THE DEPUTY WARDEN (FOR THE TIME BEING) WERE ON THE WORST POSSIBLE TERMS—NOT SPEAKING TO EACH OTHER.

A vast amount of evidence has been received on this point. Mr. Powers was Deputy Warden from the time the Institution was opened, up to his discharge in 1839; for two years after he left, there was no Deputy Warden. Mr. Utting was appointed Assistant Warden in 1841, and remained so up to 1846. It appears that almost throughout the periods when these persons were in office—nearly 10 years—the Warden was at continual strife with them; charges and recriminatory charges, made by one against the other, being frequently before the Board of Inspectors. Mr. Coverdale, the Architect, says "he was in the Penitentiary several years while Mr. Powers was there; there was invariably disagreements between him (Mr. Powers) and the Warden." \* \* \* "The cause of the quarrels between Mr. Powers and the Warden, witness feels confident from what he saw, was jealousy entertained by Mr. Smith of Mr. Powers; for two years previous to Mr. Powers' leaving, the Warden never spoke to him; witness was told so by Mr. Powers; they communicated by letter or by messenger; all the Keepers and Guards knew this to be the case, and witness has no doubt the Convicts did so." And again:—"The Warden and Mr. Utting were frequently on bad terms; Mr. Utting frequently complained of the Warden's harsh treatment towards

him; Mr. Utting was somewhat irritable in his temper." From all the evidence, we believe this is a correct feature of the position the Warden held towards his Deputies.

Mr. Smith does not appear to deny the facts of serious and continued differences having existed, but he tries to prove generally that Mr. Powers and Mr. Utting were bad Officers. It is unnecessary to pronounce any opinion as to whether the Warden or his Deputies were most to blame in these quarrels; in another part of the report full reference is made to them.

It is impossible to conceive a Penitentiary in a more unfortunate position than with the Warden and Deputy Warden, on terms so bad that they cannot even speak together. We can trace a large portion of the abuses which have accumulated in the Prison to these unhappy differences.

#### 9. THE PRESENT OFFICERS ARE DIVIDED INTO TWO PARTIES—THOSE IN FAVOUR OF THE WARDEN AND HIS FAMILY, AND THOSE AGAINST HIM.

On this head there can be no doubt, and several witnesses testify directly that such is the case.

Guard Wilson names "Manuel, William Smith, Matthews, Funston, Mr. and Mrs. Pollard, Martin, Hermiston, Watt, Tyner, Sexton, Hooper, Little, and Costen," as of the Warden's party.

Guard Martin says:—"He thinks the following persons were concerned in the conspiracy to get the Warden out of his situation:—Dr. Sampson, Bannister, Cooper, Wilson, Richardson, Swift, Baldwin, Gleeson, Keely, and M'Carthy; cannot say as to Mrs. Cox or Robinson or Fitzgerald; thinks from hearsay the two last were concerned in it; cannot say as to Kearns or Skinner, or Watt or Waldron; thinks Rev. Mr. Rogers has been as bad as any of them."

Mr. Hopkirk says:—"He is under the impression that there has been a conspiracy to eject Mr. Smith from the Wardenship of the Penitentiary; thinks that some of the discharged Officers, and Officers still in the Prison, were concerned in it; thinks M'Carthy was concerned in it; Keely also, and M'Garvey and Robinson; cannot say as to Mrs. Cox or Cooper; has suspicions of Richardson; thinks Wilson was concerned in it, and Bannister; cannot say Mr. Utting; thinks Gleeson was; does not know about Waldron, or Watt or Kearns; thinks Kearns is not friendly to the Warden; thinks Skinner would have a leaning against the Warden; has strong suspicions that Dr. Sampson was concerned in the proceedings against the Warden; knows that the Rev. Mr. Rogers has unfriendly feelings towards the Warden; cannot say as to Keeper Jones or Keeper Swift."

As to the period when this division of parties commenced.

Mr. Hopkirk says:—"Cannot say how long the conspiracy against the Warden has been in existence; at this distance of time it is impossible to recollect when his attention was first called to it; wont be positive, but thinks his attention was first called to a hostility on the part of Officers towards the Warden about the time of Frank Smith's trial; perceived an unfriendly feeling to the Warden, and

Mr. F. W. Smith and Mrs. Smith, previous to Frank Smith's trial, on the part of Dr. Sampson."

We are inclined to believe from all the testimony that this unfortunate division commenced earlier than Mr. Hopkirk dates it, and that it began to show itself after the passing of the new Act in 1846. Whatever the date may have been, however, such a feeling was disastrous to the success of the Penitentiary and will always be in such Institutions.

#### 10. SUNDRY TRANSACTIONS SHOWING THE TOTAL DISORDER PREVALENT IN THE INSTITUTION.

This count embraced several minor charges, on most of which evidence has been received.

The Charge that a male Convict was allowed to go into the women's apartments and took liberties with the female Convicts, rests on hearsay evidence, and the Warden is therefore completely exonerated from it.

Mr. Utting:—Proves that the Warden has sold provisions to the officers; but this does not appear to have been a practice; and the Warden is, therefore, exculpated upon the charge. The facts alleged in the following testimony by Mr. Utting, are not denied:—"On one occasion, recollects being informed by one of the Guards coming to his duty, that a ladder was placed against the stone wall, on the east side of the ground, outside; this was about six in the morning; witness went out immediately, and took the ladder from the wall; the ladder belonged to Government House; witness found a large walking-stick laying at the foot of the ladder; found on the inside of the wall, opposite the ladder, marks showing that persons had been over; on examining the yard, found, in the ash-heap, a large hole, fresh made, and a box laying near of the size of the hole; the box was empty. Witness reported the circumstance to the Warden, who said that he supposed it had been (black) Hart who had been over the wall on Saturday night; Hart was a Convict who had been recently discharged. Shortly afterwards Hart was re-committed. Witness told Warden he would try to find out if it was him who crossed the wall. Warden said he would only tell witness a pack of lies. Witness spoke to Hart, and showed him the stick picked up, and asked him if it was his? Hart said no; it was Davis's stick—another Convict discharged before him. Witness said, then you got your booty clear off? Hart said it was not him who went over the wall, but Davis, and that he and Saunder's stood outside. Witness asked what the box contained? and he said clothing; such as shirts, socks, and waistcoats. Hart was in the wash-house, and had the control of the clothing. \* \* \* Has no doubt such robberies have often occurred; there was no guard on the wall, nor in the yard through the night; the night-guards were all within doors. Witness frequently applied to Warden for the appointment of a night-patrol, but did not succeed."

The necessity of a night-guard in so large an establishment, is very obvious; but fortunately no great injury has arisen from the want of one, and the evil has been corrected for some time past.

It is fully established that there were frequent differences between Mrs. Coulter, Matron; and Mrs. Martin, Assistant Matron; but which was in the right, it is difficult to say.

Several irregularities are named under this count, in which Kitchen-keeper F. W. Smith is concerned, but they will come in more properly in the next charge. Several other points under this head having been brought before the Commissioners, were stated in the charges in justice to the Warden, but they are of no magnitude.

Charge II., according to our judgment, is therefore completely established. The disorder pervading the establishment has been very great and long continued; and we are of opinion that to the Warden's mismanagement or negligence, much of it must be attributed.

### CHARGE III.

CULPABLE CONDUCT IN REFERENCE TO HIS SON,  
KITCHEN-KEEPER FRANCIS W. SMITH.

1. Appointing the said Francis W. Smith, Kitchen-keeper; well knowing him to be an unfit person for so responsible a situation.

Henry Sadleir, Esq.—(a member of the Kirkpatrick Board of Inspectors)—Preliminary examination:—

"The character of Francis W. Smith was very bad at the time he was appointed Kitchen-keeper of the Penitentiary, in 1846; he was Deputy Sheriff previous to his appointment. When Mr. Utting was removed from the Deputy Wardenship, Mr. Sheriff Corbett canvassed witness to vote for Francis W. Smith as Utting's successor. Witness asked how Smith would take such a situation, when he had one so much better in the Deputy Sheriffship? Mr. Corbett then told witness that he had turned him (Smith) away from his office the day before; that he could get neither money nor papers from him; and that he (Smith) was 'a d—d rascal,' or some such opprobrious term; and that he was then on his way to Smith's house to try to get up some papers out of his hands."

For the defence, the Warden called Mr. Sheriff Corbett, who testified as follows:—

By Mr. Smith:—

"Witness was present at the meeting of the Inspectors when Frank Smith was appointed Kitchen-keeper; it was the first meeting of the present Board; witness never said to Major Sadleir that Frank Smith was 'a d—d rascal,' never used any such words; recollects Frank Smith telling witness that he was applying for the Deputy Wardenship of the Penitentiary, or some other situation in it, and that he was promised the votes of some of the Inspectors. Witness met Major Sadleir shortly after, and asked him about it; the Major knew nothing of it, witness thinks; witness told Major Sadleir that he would be very glad if Frank Smith got an appointment in the Penitentiary, as he saw too much loose company in connection with the business of the Sheriff's office, and he thought if he were under his father's eye, he would do better. Witness was never influenced in his decisions as an Inspector by Frank Smith."

By Commissioners:—

"Frank Smith ceased to be Deputy Sheriff of the Midland District, on account of irregular conduct; he had ceased to hold the situation previous to his

appointment in the Penitentiary; he became careless of his duties, and staid away from the office, giving as a reason that he was about to get a situation in the Penitentiary. Clute and Frank Smith were for some time in partnership in the Deputy Sheriffship; for a few months previous to his leaving the office, he was alone, and his situation was then worth about £200 a year; witness had no difficulty in getting the papers out of Frank Smith's hands; had difficulty in getting him to make returns of writs; had difficulty in getting Frank Smith to say what monies he had received on account of executions. Frank Smith as partner of Clute and Smith, was in witness's debt for money collected on executions, when he left the Sheriff's office; Mr. Noble and Mr. Heaslip were securities to witness for Frank Smith; never got a bond for payment of money from Frank Smith, out of his salary at the Penitentiary. Witness had no interest in an order which Frank Smith gave on his salary in the Penitentiary for £55, as he looks to Clute's sureties for it, who are good."

By Mr. Smith:—

"Frank Smith is in witness's debt, independent of loss by escapes; witness claims from Clute and Smith £800 for money, had and received; false returns, and escapes; the escapes were about £200."

It may be necessary to explain that Mr. F. W. Smith, at the time of his appointment was upwards of 30 years of age; and that the duties of the situation to which he was appointed are very responsible: it is the Kitchen-keeper's duty to examine and weigh all provisions, forage and stores coming into the establishment; to grant receipts for the same, and keep the books in which such transactions are entered; he also regulates the expenditure of such articles, and has the care of the Convict's bedding. About £4,000 of property passes through his hands every year, over which there is little or no check otherwise.

We are of opinion, that as a general principle, the appointment by any Warden of his son to so confidential a situation in the Prison, however high his character, or however well qualified for the office, would be objectionable; the nature of the office admits of so much abuse, that however upright might be his conduct, suspicion of irregularity on the Kitchen-keeper's part could hardly fail to arise; and we hold it as of the highest importance that the Warden should be looked up to, by all connected with the Prison with perfect confidence in the integrity and unbiassed character of any decision he might give on everything passing in the establishment.

But if such an appointment would have been reprehensible in one suitable for the situation, how much more censurable was it in the case of Mr. Warden Smith's son, who had just "ceased to be Deputy Sheriff of the Midland District on account of irregular conduct;" and who seems to have been aided in his application for the Keepership by the consideration that "if he were under his father's eye he would do better."

All the evils which could possibly arise from such an appointment have arisen out of this one: speculation, cruelty, favouritism, and every species of irregularity, all clouded from observation, if not openly encouraged, because the chief agent was the Warden's son.

The appointment of F. W. Smith, as Kitchen-keeper, was made under Clause VI. of Chap. 4, 9 Vict. "The Warden, Clerk, Surgeon, and Chaplain to be appointed by the Governor of the Province, and to hold their offices during pleasure, and the remainder of the officers to be appointed and removed by the Warden of the said Penitentiary, subject to the approval of the Board of Inspectors;" so that the Warden is directly responsible for it.

2. Permitting the said F. W. Smith, for nearly two years, to set every feeling of humanity and rule of good order at defiance.

In support of this charge, we referred the Warden to the evidence given before us in the case of the said F. W. Smith, as transmitted to him for his defence, and which will be found in a previous part of this Report. We charged it as proved:—

That the said F. W. Smith was in the habit of throwing stones, potatoes, &c., at Convicts.

That he offended the religious feelings of Convicts.

That he was in the habit of striking the Convicts on the elbow with a large key.

That he was in the habit of compelling Convicts to open their mouths, under the pretence of searching for tobacco, and then throwing salt, snow, &c., into their mouths.

That he was in the habit of aiding and abetting Convicts in throwing other Convicts into a water-butt.

That he was in the habit of thrusting pins into Convicts.

That he was in the habit of drenching Convicts with water from the fire-engine.

That he fired arrows from a bow at Convicts.

That he behaved indecorously towards the female inmates of the Penitentiary.

That he took Convicts outside the wall to fish.

That he remitted punishment clandestinely.

That he showed favoritism to particular Convicts in the discharge of the duties of his office.

The Warden has not succeeded in shaking the evidence under this count to the slightest extent. He called Convict M'Nair, alias M'Keener, to state that Guard Fitzgerald threw the water on him while he was in the box; that Guard Robinson rolled about the box while he was in it; and that Indian Abraham told him (M'Nair) his eye was hurt by a splinter from a basket. Guard Sexton also states that he saw Fitzgerald throw the water on the box when M'Nair was in it; and Mr. Sheriff Corbett says that he himself was sprinkled with water from the fire-engine on one occasion.

These statements in no way affect the issue. It is indubitable, that all the cruelties and improprieties charged under this count have been habitually and openly practised in the Prison. Whether the Warden did or did not know of these proceedings, we think serious culpability is attachable to him.

3. Countenancing the said F. W. Smith in his said disorderly proceedings.

This count is a pendant to the last, and raises the issue whether the Warden had personal knowledge of his son's improprieties.

Ex-Keeper M'Garvey, after stating that F. W. Smith had shot arrows and thrown stones at Convicts, and wetted them with water from the fire engine, says, "it cannot be possible that this was done without the knowledge of Mr. Costen or of the Warden;" and we think this will be the impression left on every one's mind who reads the whole of the evidence.

Ex-Keeper Gleeson says, in his preliminary examination—that he "has seen Convicts deliberately drenched by Francis W. Smith in presence of the Warden, without his taking any notice of it; this happened once or twice; Warden must have seen the transaction."

By Mr. Smith:—

"Witness has seen a good many Convicts drenched by Frank Smith with the fire-engine; has seen Coté and many others, but cannot name them; has seen Convicts in Mr. Little's and Mr. Reid's gangs drenched. The Warden was not present on all of the occasions; has seen him standing looking on from the stoop of the north wing while Convicts were wetted with the fire-engine on the east side of the yard; believes it was done in skylarking."

Ex-Guard Fitzgerald says, in his preliminary examination—he "recollects the Warden being present on one occasion when Frank Smith was throwing potatoes at the Convicts, and the Convicts at one another; the Warden called out to quit that nonsense, and the men all dispersed."

By Mr. Smith:—

"Has seen the Convicts throwing potatoes at one another; saw them doing so two or three times; witness saw them from the south wing; it was in the rotunda where the potatoes were thrown; Mr. Frank Smith was present; does not recollect of any other officer who was present."

By Commissioners:—

"The Warden was one day present when potatoes were being thrown by the Convicts, and he said "quit that nonsense." When witness said "any other Officer," he only spoke of the Guards and Keepers."

Guard Waldron, in his preliminary examination, says—he "has seen Frank Smith, and eight or ten Convicts throwing potatoes at one another. The Warden was present and checked it."

By Mr. Smith:—

"Witness has seen Convicts throwing potatoes at one another, when Mr. Frank Smith was standing past; does not recollect that Mr. Frank threw any potatoes; no other Officer was present. On another day the same thing was done, when the Warden was passing through, and he checked it; cannot say that Frank Smith was present on the day the Warden checked the Convicts; cannot say how many Convicts were present. It was a lot of the

chaps about the Kitchen. Witness was going for the keys on duty one of the times, and the other time he was passing through about some business or other."

Guard Wilson, in his preliminary examination, says—"Frank Smith had drenched a Convict Soldier with water from the fire-engine, and the man became angry and threw a brick at Frank and hit him. The Warden came up shortly after, and the Soldier complained to him of Frank's conduct; Frank told the Warden that the soldier had flung the brick first, but witness knows that this was not true. The Warden ordered Frank to take away the engine. The soldier was punished very frequently after that occurrence.

By Mr. Smith :—

"Witness saw a Soldier Convict wet with water from the fire-engine; does not recollect his name at present; he was so wet by Frank Smith and his gang. Does not know that it is the duty of the Kitchen-keeper to see that the fire-engines are in working order; has seen them out frequently; Frank Smith said he was trying them, but witness thought it was Frank's own tricks. Witness has not seen the engine tried since Frank Smith went away, because he was not in the yard to see them. Saw the soldier throw the brick at Frank Smith; Mr. Frank said he was hit on the hand; Witness believes he was hit, but cannot exactly say that he was; the Convicts were standing all round them; the Warden came up just after the brick was thrown, and he found the soldier standing all wet. Witness was in the blacksmith's shop at the time; part of the blacksmith's gang were assisting Frank Smith in the working of the engine; does not recollect how many men Frank Smith had aiding him; does not know if any particular men are appointed to work the fire-engine. Witness does not believe that the Warden saw the brick thrown. The soldier in question was frequently punished after this occurrence; does not know the faults for which he was punished; heard Mr. Frank say the day after the brick was thrown, "the d—d rascal, I'll have him punished;" and on the day that the soldier went out, Frank Smith said, "there goes the d—d rascal, I'd have had him punished to-day, if he had not got out." Witness cannot say how often this soldier was punished after the affair in question, but knows that he was punished three or four times, at any rate. From Mr. Frank Smith's words, witness thought the soldier was punished wrongfully, but he might have committed offences."

By Commissioners :—

"Witness saw the Soldier Convict go up to the Warden, dripping wet, and complain to the Warden of Frank Smith having wet him. The Warden spoke to Frank; Frank said, coming away from the Warden and in witness's hearing that the soldier flung the brick at him first; witness knows that the soldier was wetted before the brick was thrown. The circumstances occurred in the summer of 1847; is quite satisfied the drenching of the soldier was done intentionally; there were several other Convicts wetted at the same time, but not so much.

Wilson's statement is corroborated by Freeland, Kearns, and M'Carthy.

For the defence on this point the Warden called Keeper Little, who gave the following testimony :—  
"Witness recollects Ilett was wetted with water

from the fire-engine; it was about the beginning of July 1847; recollects a Convict named Coté being in the Penitentiary; thinks he went out about the 19th July, 1847, or thereabouts; thinks Ilett was not wetted intentionally, but through his own foolishness and that of Coté; Ilett was passing by and Coté drenched him through a lark; Coté held the conductor. Convict Christmas was helping to work the engine at the time; Christmas was one of Mr. Skinner's men, and worked at making fire-engines; the rest of the men working the engine were Mr. Frank Smith's Kitchen gang; there were but very few hands altogether. Witness was pointing the stone work of the new Carpenter's shop, opposite Mr. Herniston's stone shed at the time."

Head-Keeper Costen was likewise called for the defence.

By Mr. Smith :—

"Is Head-Keeper of the Penitentiary. Being shown a list of punishments inflicted on James Ilett, says he made it out from the books, and it is a correct extract of all the punishments inflicted on that Convict, and the names of the Reporting Officers, from 9th July to 2nd August 1847; (said return was handed in and marked Exhibit A.) By this list, Frank Smith appears to have reported Ilett but once, and then he got bread and water one meal. Does not know the date when Convict Ilett was wetted with water from the fire-engine; heard that he had been wetted with water from the fire-engine at the time it happened; to the best of witness's recollection it was in July 1847. Convict Coté left the Prison, according to the books, on 20th July, 1847. Witness discharged Coté according to the books. The fire-engines are tried every month to see if they are in proper order. Frank Smith took this duty on him when he was at the Prison; there is a particular body of Convicts appointed to work the fire-engines."

Punishments inflicted on James Ilett, with the names of the Officers by whom he was reported, from 9th July, 1847 :—

July, 9.	Punished :	reported by	John Swift.
" 15.	do.	do.	J. Matthews.
" 17.	do.	do.	W. Crawford.
" "	do.	with 12 others,	F. W. Smith.
" "	do.		W. Martin.
" 20.	do.		W. Martin.
" 26.	do.		do.
" 27.	do.		John Swift.
" 31.	do.		J. Sharp.
Aug. 2.	do.		W. Crawford.

(Signed,) "THOMAS COSTEN,  
"Head-Keeper."

By Commissioners :—

"In the list of punishments inflicted on Ilett, W. Martin is the Reporting Officer on three occasions; 1st, on 19th July, for going to Warden's office without leave, and swearing that he supposed his kit had gone to h—l, or some other place; when the Guard told him it was in the tower. 2nd, saying (when examining his kit,) to the Guard, "you will see a bloody row about my things before I go out;" and 3rd, for talking in the quarry. The punishments in question were made entirely on the veracity of Guard Martin; no inquiry was made as to the truth of the charge; this is always the practice. The Reporting Officer is sometimes ques-

tioned as to the facts of the affair. The affair in which Ilett was wetted occurred in July; it was before Côté went out. The reason why witness recollects the date of Ilett's affair so distinctly, is, because it occurred when Keeper Little was painting the west wing of the shops; it took some weeks to do this painting work; is not sure if it was before the 15th July, but is quite sure it was before the 20th. Little mentioned the affair to witness. The reason why witness selected the 9th of July to commence his return of Ilett's punishments was because he thought that was about the time the occurrence took place. The practice of trying the engine once a month commenced from the time Skinner finished the first large engine. There was no rule of the Institution that the fire-engines should be tried once a month; occasionally Mr. Skinner would want to have them tried after he had been repairing them, and at other times Mr. Frank Smith took them out; they were never taken out except when Mr. Skinner or Mr. Frank desired it; and they took them out whenever they thought proper; does not know that the fire-engines were ever out more than once in any one month. The Convicts appointed to work the fire-engines are taken from all the different gangs. They sleep in particular ranges in the wing; in the first range east and west of the south wing. Does not know that these were the men who worked the engines when Frank Smith took them out through the day."

We are of opinion, that personal knowledge of certain improper transactions by his son is brought home to the Warden, and we are fully convinced that he could not have been ignorant of many other improprieties; but, they were so frequent and so notorious in the Prison, that it is questionable whether ignorance ought not to be regarded as equally culpable with knowledge.

4. PERMITTING THE SAID FRANCIS W. SMITH TO CARRY ON A SYSTEM OF OPEN PECULATION.

In support of this count, we referred the Warden to the evidence taken by us in the case of F. W. Smith, and which will be found elsewhere.

We charged it as proved:

"That the said F. W. Smith had been in the habit of selling Penitentiary stores to the Officers of the Institution, and appropriating the proceeds to his own use.

"That the said F. W. Smith had been in the habit of appropriating the stores of the Penitentiary to his own use.

"That the said F. W. Smith had been in the habit of employing Convicts in making nets for his own use; the labour not being charged to him.

"That the said F. W. Smith had been in the habit of appropriating to his own use, various articles made by the Convicts, the property of the Institution."

For the defence the Warden called several witnesses:—

James Hopkirk, Esquire, says:—"There was no rule prior to Frank Smith's trial, (October 1847,) to prevent the sale of provisions in the Penitentiary, so far as witness knows."

Guard Tyner—By Mr. Smith:—

"Believes it was the custom of other Kitchen-keepers, besides Mr. F. W. Smith, to purchase provisions for the Officers when they gave them money for that purpose. Mr. Costen, and he thinks Mr. King, purchased potatoes for witness with money which he gave them for that purpose; it was a great accommodation for the Officers to get provisions in this way; witness lived at a distance, and it was a great convenience to him."

By Commissioners:—

"Witness has never seen Officers get provisions from the waggons in Frank Smith's time."

But such evidence cannot in any manner affect the clear and positive testimony to be found in the charges against Kitchen-keeper Smith. The only defence of which the case is susceptible, viz:—That Francis W. Smith was in some way the *bonâ fide* owner of the provisions, proved to have been sold to so great an extent, has also been attempted by the Warden; he calls Guard Martin and Convict Hall to prove that F. W. Smith purchased provisions in the Penitentiary; and we are left to infer from this, that these were the same provisions he sold to the Officers, or that what he purchased went to replace what were sold. We give the evidence in full.

William Martin—By Mr. Smith:—

"Has known Frank Smith to buy oats in the Penitentiary; he bought them from a waggon; it came in with potatoes for the Penitentiary. Has known Frank Smith to buy potatoes from waggons several times, in the Penitentiary; he put them down stairs in an empty bin. Saw Frank Smith purchase pease in the Penitentiary. Has known Frank Smith buy a bag of meal in the Penitentiary. Saw Frank purchase turnips in the Penitentiary; the turnips were put in the bin along with the potatoes."

By Commissioners:—

"Cannot say how often he has seen Frank Smith buy oats in the Penitentiary; has seen him do so some half a dozen times; does not recollect any of the persons from whom Frank bought these oats, they were strangers to witness. Saw him buy oats at the Kitchen door more than once; it was last year sometime, before Frank Smith's trial; cannot say if any one else was standing past. Witness was standing beside Mr. Frank each time when he purchased the oats. Cannot tell what witness was doing down there; he might have been doing many things; he might have been on messages. The waggons were standing at the outside Kitchen door; in every instance the oats came in on waggons bringing in potatoes; saw the bargains made between Mr. Smith and the waggons in every case; cannot tell what quantity was purchased on any of the occasions, perhaps from one and a half to two bushels each time; saw the money paid in each of these cases; the oats were sometimes put in a bag, and sometimes in a barrel, and then set down at the Kitchen door; and sometimes sent to the lodge with the teamster from whom the oats were bought. Never saw Frank Smith buy any oats except at the Kitchen door; saw him buy oats there five or six times. Witness cannot name any person who ever saw Frank Smith buy oats, but himself. Frank Smith used to ask witness to go down and look at the oats, which is the only reason witness can give for no other person

being aware of these transactions; cannot say what price was paid for the oats; the price varied. Has seen Frank Smith buy potatoes at the Kitchen door three or four times; he bought once or twice eight or ten bushels, and sometimes only a bushel or two; eight or ten bushels was the most witness ever saw him buy at a time; saw Frank making the bargain for the potatoes each time; cannot say the price, as it varied; all these purchases were made last year, before Frank Smith's trial. Does not know any of the persons with whom any of these transactions were concluded. Cannot tell what witness was doing down there when the purchases were made; used to go down and buy a bushel of potatoes from the waggons himself; it was a common thing for the Officers to get potatoes out of the waggons, with the consent of the Kitchen-keeper; cannot name any one Officer who so got potatoes from the waggons with the consent of Frank Smith except himself. The bargains witness heard concluded were made before hand, and the potatoes ordered to be sent in on a future day; was present when the bargains were made, and was present afterwards when the same man was delivering potatoes; but whether the potatoes delivered were to supply Frank Smith's private order, or for the Penitentiary, witness cannot tell. Never saw him pay any money for any quantity of potatoes, but has seen him pay for a bushel or so at a time. Does not know the name of the man. Witness saw Frank Smith get a bag of meal, once and only once; saw it delivered to him at the Kitchen door; there might have been a hundred weight of it; cannot tell who bought it; did not see Frank Smith bargain for it or pay for it; only saw it delivered; thinks Mr. Watt was present at the time, but is not sure. The man said, "there is a bag of meal for you," which witness understood applied to Frank Smith personally, but cannot say if it applied to him as Kitchen-keeper; that is all witness knows about it; this occurred last year, before Frank Smith's trial. Witness saw Frank Smith buy pease, once and once only; a bag containing one and a half to two bushels; he bought them at the Kitchen door; cannot say who from; saw him pay for the pease at the rate of half a dollar a bushel; they were put in a little bin near the Penitentiary bin, but not in the same bin with the Penitentiary pease; it was last year, previous to Frank Smith's trial; thinks Mr. Watt saw the transaction. Witness has seen Frank Smith buy a bushel or two of turnips once or twice, at the Kitchen door; cannot tell who he bought them from; saw him pay for them at the rate of one shilling and threepence per bushel, as near as he recollects, on both occasions; they were put down into the cellar; thinks Mr. Watt was present, but will not say positively. These transactions were also last year, before Frank Smith's trial, last fall. The turnips were put down in the cellar along with the potatoes; witness went down with the man who took them into the cellar; thinks Convict Hall carried them down.

By Mr. Smith:—

"The bargain for eight or ten bushels of potatoes was made either once or twice. The meal that comes from the Contractors arrives in large quantities; witness never saw a single bag of meal come from the Contractors for the Penitentiary; meal from the Contractors was always weighed before being put away; the bag for Frank Smith was not weighed.

By Commissioners:—

Witness has nothing to do with the receiving of provisions for the Penitentiary. Witness's station is

in the Lobby Hall; from his station in the hall, can see all the provisions coming into the Prison if he wishes; cannot see provisions weighing from his usual station. It is not his business to weigh provisions, and he never does so."

Isaac Hall—By Mr. Smith:—

"Is a Convict in the Penitentiary; works in the Kitchen; has seen Frank Smith buy potatoes; he put them down in the second bin in the cellar; witness carried them down. Has seen Frank Smith buy turnips, once or twice; they were put in the same bin as the potatoes; witness took them down. Has seen Frank Smith buy a bag of pease; witness put them in a meal bag for him."

By Commissioners:—

"Is a colored man. Was sentenced to three years imprisonment, for larceny; was twice in the Penitentiary before; was sentenced the first time for robbing the stage, and the other two times for larceny; was never apprehended on any other charge than the three he has named; is about 34 years of age; has been eight years in the Penitentiary next March. Has seen Frank Smith buy potatoes more than twenty times; some of the times it was before his trial last fall, and some of them after it; he purchased potatoes ten or twelve times before his trial. All witness knows about it is, that he heard Frank Smith bargaining with the teamsters but did not see him pay any money; there was never more than three bushels at a time and sometimes only half a bushel and one bushel; they were measured out of full waggon loads brought in for the Convicts. Witness did not carry down the potatoes for the Convicts; he only carried down those for Frank Smith; other Convicts carried down the potatoes for the public stock; cannot tell their names; Mr. Watt is the only Guard who was ever past at such transactions. Witness cannot tell anything particular about the bargain made for them; heard Mr. Frank talking with the teamster. Witness did not know what he came here for; does not know how the Warden had his questions for witness previously written down on paper; never spoke to a single soul on the subject of Frank Smith's having purchased provisions; Mr. Costen was often past when Frank Smith purchased potatoes. Witness has seen Mr. Frank Smith purchase potatoes eight or ten times since his trial last fall. Mr. Martin never spoke to witness about Frank Smith's purchases or witness's knowledge of them; never spoke to the Warden about it; has only spoken to him once or twice since he has been in the Prison. Witness does not know how many turnips Frank Smith purchased, not more than five bushels in all. The bag of pease contained two bushels."

Guard John Watt was also called, and testified as follows:—

"Has known Frank Smith purchase potatoes; has known him to buy pease; has not known him to buy any other articles."

As Watt's evidence was taken very fully on this point in Kitchen-keeper Smith's case, we refer to it for a proper valuation of his testimony; we are of opinion, that apart from the direct contradiction which is found between this witness's testimony before the Inspectors, and that given by him before us, that he breaks down entirely in his evidence as to the purchase of provisions by Smith.

Convict Hall's testimony we regard as worthless. On the point now at issue, if all he says were true, it amounts to nothing; but when called on a second occasion by the Warden, he gave evidence so utterly at variance with truth, as proved by Mrs. Chase, Mrs. Pollard, and other witnesses, that we must discard all he has said as valueless.

Guard Martin is, therefore, the only witness on which the defence rests. Martin's testimony amounts to this:—that he has known Kitchen-keeper Smith to get one and a half to two bushels of oats five or six times. That he heard Smith make bargains for potatoes three or four times, and saw the same man, with whom these bargains were made, delivering potatoes on a future day, but whether for Smith or for the Penitentiary, he cannot tell. That Smith once got a bag of meal, once a bag of pease, and a bushel or two of turnips, once or twice. If this were all true, it would in no manner account for the large quantity of provisions proved to have been sold by Smith. But we think the whole of Martin's testimony bears internal evidence that it is little to be relied on. Martin has been called five different times as a witness by the Warden, during the inquiry; and, throughout, his evidence has been given in so loose a manner, to say the least, that we think little dependence is to be placed upon it. We give some instances in which discrepancies occur in his statements:—

Convict DeBlois gave information in September, when before us, that a number of pairs of calf-skin slippers had been made fraudulently for some of the Officers. The parties named were examined separately, and their statements did not at all harmonize.

Guard Martin, swore as follows:—

"Recollects, about a month or six weeks ago, Keeper Gibson asked witness for some light leather to make into slippers; witness went to the book-binder, and got first half a skin of binder's leather, and afterwards a whole skin, and took them to Gibson; when Gibson asked for the leather, he said he was about to make a pair of slippers for Mr. Costen; Mr. Bickerton had ordered witness to get a pair of slippers made for him, and witness desired Gibson to make a pair of the same kind for Mr. Bickerton. When Mr. Bickerton's slippers were finished, witness took them to him, and they fitted him, and he kept them; he has them now; he never had a second pair made for him to witness's knowledge."

Mr. Bickerton, the Clerk, says:—"About a fortnight or three weeks ago, Guard Martin brought witness a pair of leather slippers to put on when his boots were being cleaned; they have remained there ever since, and witness has worn them daily in the way he has mentioned. Martin had previously bought a large pair of the same kind, which witness told him to take away. Witness never ordered a pair of slippers to be made; did not want a pair; and did not know of their being made. The evidence of William Martin as to witness having desired him to have a pair of slippers made for witness, having been read over to witness, he declared it to be totally untrue."

Kitchen-keeper Smith was charged with stealing flour, &c., from the Store-room, and Martin was called to disprove it; he swore that he "never knew Frank Smith to go to the Store-room without witness being present; witness is stationed in the North-wing Hall; the Keeper's Hall, as well as the Office Hall; witness cannot see how Frank Smith could have

gone into the Store-room without witness seeing him." And again: "witness is constantly in the North-wing Hall, the whole day from six in the morning to six at night, except two hours when he goes to his meals." But in his cross-examination it appears that a great part of his time is spent in other parts of the buildings; he says: "witness goes every morning to the shops from the office; sometimes goes messages from the office to the shops; sometimes relieves Keepers in the shops, but not often; sometimes relieves the Guards, but not often; witness's business is to clean the Hall, and the offices, to look after the clothes in the clothes-room, and do night-guard duty in his turn; when witness is on night duty in yard he is exempted from attendance half of the next day; is on this duty five times in two months; witness never at any time was a whole day in charge of a shop in the absence of a Keeper; has been placed several times for a whole day to relieve a Keeper who was absent; but in every case was himself relieved by other Guards occasionally through the day, when witness was wanted in the North-wing; has been, in the same way, several times stationed for half a day; has been very often stationed in the same way for a quarter of a day; witness could not see Frank Smith going into the Store-room when engaged in these duties."

The Warden was charged with feeding his cows, hogs, &c., from the public stores, &c., and he called Martin to prove that he had stores of his own. He swore *inter alia*, that he "believes the Warden has raised from thirty to forty bushels of potatoes in his garden, per year, on an average." In his cross-examination he says he "cannot tell how many years the Warden has been raising potatoes in the Penitentiary; witness said the Warden raised thirty or forty bushels per year, never measured the potatoes; knows that he has raised this quantity this year; cannot say that he did so of his own knowledge, any other year."

The Warden was charged with feeding stock with the offal of the Penitentiary Kitchen for his own benefit, and Martin was called to prove that he had seen the Penitentiary oxen, and cows, fed with the offal; he said: "witness has seen the oxen get the potatoe skins from the Penitentiary Kitchen." On his cross-examination, he says: "witness has not been in the habit of seeing the oxen fed every day; occasionally it was witness's duty to be present when the oxen were fed; these occasions occurred when witness attended in room of Thomas Smith in the absence of that officer; it is Thomas Smith's business to see the oxen fed as far as witness knows; has been sent to take Thomas Smith's place in overseeing the feeding of the oxen by Mr. Utting and by Mr. Costen; it has not occurred very often; cannot say how often; can say that he has so taken Thomas Smith's place twenty-five times and oftener; cannot say that he did so fifty times. Potato skins were not given to the oxen any time witness attended to their feeding."

Thomas Smith, Messenger, says:—"Witness has nothing to do with the feeding of the horses or oxen; the stablemen do it all; has heard from them the quantity of feed they give to the animals." And again:—"Witness has fed the oxen on Sundays only, and only within the last three months; never fed the oxen previous to the last three months; has seen the oxen fed by the Convicts occasionally."

We are therefore of opinion that the defence has failed entirely, and that the provisions sold by Kitchen-keeper Smith to his fellow-officers were

public property. If any doubt existed on the point, the fact that no attempt has been made to produce any of the parties who sold Smith the provisions, coupled with the strong improbability that these transactions could have existed unknown to all the other officers of the Institution, must settle the question.

And setting aside the question of whether Smith did or did not have provisions, his private property, within the Prison, it will be found on reference to the evidence on his own case, that clear and positive testimony exists that public property has been sold, and the proceeds appropriated by Smith to his own use, and that such sales were daily occurrences.

5. COUNTENANCING THE SAID F. W. SMITH IN HIS SAID PECULATIONS.

The evidence as to whether the Warden had personal knowledge of the peculations committed by his son, is as follows:—

Gate-keeper Edward Banister, in his preliminary examination, says:—He “thinks it was not possible that the Warden was ignorant of these transactions; there was no concealment in the matter.” When cross-examined by the Warden, he said:—“To the best of witness’s opinion, the Warden could not but have seen some of the Penitentiary provisions going out of the Prison; the Convicts carried the provisions openly to the Lodge, on their backs, day after day; there was no concealment; the articles which went out in the bread-cart, the Warden could not see.”

Guard Kearns, in his preliminary examination, says:—He “thinks the Warden could not have avoided seeing the transactions going on.” When cross-examined by the Warden, he said:—“Witness does not know if the Warden knew that Frank Smith sold the Penitentiary provisions; but he could not help seeing them passing to the Gate daily.”

Gate-keeper John Cooper, in his preliminary examination, says:—He “is quite confident that the Warden knew of these transactions in the Penitentiary stores; they (the stores) have often been carried out before his eyes.” In his cross-examination by the Warden, he says:—He “cannot say that the Warden knew that Frank Smith sold provisions belonging to the Penitentiary for his own benefit; but the Warden has met Convicts with provisions on their backs going to the Lodge, to be taken outside; the Warden must also have seen these transactions from the window, as the Warden has been looking through the window when they were going on; the provisions were carried out in bags; cannot say that the Warden knew the provisions to be Penitentiary property when he saw the articles going out.”

Rev. Mr. Rogers says:—He “saw provisions leaving the Prison often, and is of opinion that the Warden must have known that such transactions were constantly going on.”

And similar evidence is given by a number of other witnesses.

We believe every witness questioned on the subject, with the exception of Head Keeper Costen, admits being aware that Kitchen-keeper Smith sold provisions to the officers. It is proved that the traffic was carried on openly, under the Warden’s windows,

for over a year, and that it was a daily business; and Cooper proves that the Warden has seen provisions carried to the Gate by Convicts. We cannot suppose the Warden ignorant of what every one in the Prison knew but himself; and have no reasonable doubt that he had personal knowledge of his son’s proceedings.

6. SO CONDUCTING HIMSELF AS TO MAKE THE OTHER OFFICERS OF THE INSTITUTION AFRAID TO REPORT THE SAID FRANCIS W. SMITH’S IMPROPRIETIES.

The issue raised by this count is very similar to that under count 7, charge II. A number of officers swear that they were afraid to report Kitchen-keeper Smith’s improprieties, because he was the Warden’s son, and exercised, as such, great influence in the Prison. The evidence of Guard Kearns, when under examination by the Warden, brings out the feeling which seems to have been entertained by this portion of the officers:—“Witness would have been afraid to report any of Frank Smith’s improper proceedings, because he heard Mr. Frank threatening others; he told witness one afternoon on the road, that two or three officers had been dismissed, and more would be, of whom William Crawford was one, because he had not paid him (Frank Smith) for provisions he had from him; William Crawford has not been dismissed; Frank Smith had not the power in his own person to remove any officer, but believes that he could get it done. Believes that Frank Smith wielded a good deal of influence through his mother. Mrs. Smith told witness that the Warden and her had a hard feeling against witness for giving evidence against her son Frank; and witness thinks she had a good deal of influence with the Warden and Inspectors; witness thinks that Guard Robinson was dismissed through this influence.”

On the other hand, Rowe, Martin, Pollard, Manuel, Sexton, William Smith, Hooper, Funston, Costen, Nursey, Thomas Smith, and Somerville, swear they were never afraid of Frank Smith, and never saw anything in the Warden’s conduct which would have deterred them from reporting to him his son’s misconduct.

We are of opinion, that the reckless character of Kitchen-keeper Smith’s proceedings in the Prison, the total absence of restraint upon him, and the liberty he was allowed to take with the discipline and regulations, though by no means an apology for their not doing their duty, were all calculated to impress the minds of the Officers with that fear of Smith’s revenge, and the extent of his power which seems to have possessed them. Nothing was more likely to make a marked impression of this kind on their minds, than the latitude which was allowed Smith over all the other Officers as to his attendance to his duties; on this point even Mr. Costen says:—“He (Frank Smith) is very irregular; seldom present when the Roll is called; there never was any other Officer so irregular as Mr. Frank Smith; it would not have been right to allow any other Officer to remain in the Institution, who attended so irregularly; no Officer could so do his duty properly.”

There seems then, no doubt, that many of the Officers were afraid to report Kitchen-keeper Smith’s improprieties; that they had grounds to fear the consequences of making such complaints; and we think that the Warden by shutting his eyes to his son’s proceedings in a great measure produced the evil and is culpable for it.

The charge of culpable conduct, in reference to his son, F. W. Smith, is therefore sustained on all the counts.

#### CHARGE IV.

##### GROSS NEGLIGENCE OF HIS DUTIES AS WARDEN.

###### 1. In not visiting the whole Establishment daily.

The duty of the Warden in this particular is thus laid down in the original Penitentiary Act, 4 Will. IV. chap. 37, clause x. :—"It shall be the duty of the Warden, or his Deputy, to attend constantly at the Penitentiary, except when performing some other necessary duty connected with his office; to exercise a general supervision over the Government, Discipline, and Police of the said Penitentiary; to give the necessary directions to the Keepers, and to examine daily into the state of the Penitentiary, and the health, conduct, and safe keeping of the prisoners."

In the amended Act of 1847, 9th Victoria, chap. 4, clause ix. it is declared to be "the duty of the said Warden, or in his absence of the Head-keeper, to attend constantly at the Penitentiary, except when performing some other necessary duty of his office, and under the rules and regulations which may be made as aforesaid, to exercise a general supervision and control over the Government, Discipline, and Police of the said Penitentiary; to give the necessary directions to the Officers and others employed therein, and to examine daily into the state of the Penitentiary, and to the health, conduct, and safe keeping of the prisoners," &c.

In the "duties of the Warden," as laid down in the rules and regulations of the Prison, the following clause is found :—"He shall reside at the Dwelling provided for him at the Prison, and shall visit the several shops and wings of the Prison, at least once a day."

The evidence, as to the manner in which this daily visit was performed, is as follows :—

Mr. Coverdale, the Architect, says :—He "knows the Warden did not visit the whole Establishment daily; he believes the Warden did not visit some of the work-shops for months together."

Mr. Utting says :—"There were days together, sometimes a week, when witness never saw the Warden in the shops or yard. Witness was constantly visiting the shops and yard throughout the day, and must have seen the Warden if he were about; witness was also frequently in the office, and there have been days together when he saw him neither in the office or work-shops."

Ex-Keeper Gleeson says :—He has "often known three, five, ten, and twelve days to elapse, without the Warden's being in witness's shop, when the Warden was not sick: and he explains that there were such lapses in summer, though they generally occurred in winter."

Ex-Keeper Keely says :—"The Warden would visit his shop, sometimes once a day, sometimes once in three days, and again not once in a week."

Ex-Keeper M'Carthy says :—"The Warden used to walk through his shop once a day, sometimes twice a day, and sometimes not all; sometimes not for a week or two together."

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Guard Wilson says :—"The Warden in the summer time, went pretty regularly to one or two of the shops; most days he visited the Blacksmith's shop once or twice; in the winter time, he did not go so regularly; he only visited the shops in good days, during winter; the Carpenter's shop the Warden visited nearly every day in summer time, but not often in winter time; witness never saw the Warden at any time in the Stone-cutter's shop; never saw the Warden going into the Hospital on any occasion, except on one Sunday morning."

Ex-Guard Fitzgerald says :—"The Warden was not in the habit of inspecting the various parts of the Prison, regularly; in the winter he visited the shops seldomer than in the summer time; has known a week to elapse several times, during which witness never saw the Warden in the yard; witness particularly remarked the remissness of the Warden in this matter, and the officers frequently spoke of it to each other."

Guard Bannister says :—"He thinks the Warden did not visit the Prison regularly, because witness went round the establishment several times daily, and did not meet the Warden; the Warden might have gone round, when witness was at the gate, without his seeing him."

Keeper Richardson says :—"The Warden was not in the habit of visiting witness's shop regularly every day; in the winter time, he did not come so often as in summer, he is often sick in winter; he suffers from rheumatism; for the last three months the Warden visits the shops much more frequently than heretofore." And in his cross-examination he says, he sometimes leaves his shop on business.

Kearns, Swift, Waldron and Freeland, give similar testimony.

For the defence, Guard Tyner says :—"He has generally seen the Warden passing through the yard, from within the gratings at the West gate, most days when he is well." Guard Watt says "he was stationed in the Blacksmith's shop in 1844-5-6, and when so stationed saw the Warden there every day." Guard Martin says "he has seen the Warden go out into the yard, generally before breakfast." Keeper Pollard says "he has seen the Warden visit his shop almost every day, except when sick, and sometimes two or three times a day." Keeper Manuel says "he cannot swear he has seen the Warden visiting his gang every day; sometimes he would come once a day; sometimes twice, three or four times a day, and sometimes not at all; cannot say how often in a week the Warden went his rounds; thinks he has seen the Warden going round the yard four days out of six, when he was well." Guard Sexton says "he has generally seen the Warden going his rounds every day, except when he was sick." Keeper W. Smith says "he has seen the Warden visit the gangs every day, health and weather permitting; has seen him four or five times in a winter's day; witness can see three gangs from his workshop, and has seen him regularly visiting them all." Keeper Hooper says "he has seen the Warden frequently in witness's shop; cannot say that the Warden is there every day; sometimes he has seen him twice or three times a week." The testimony of Guard Rowe and Keeper Gibson is favorable to the Warden, but their knowledge only extends to the summer of 1848.

The testimony as to the regularity of the Warden's visits to the women's apartments is not clear. Mrs. Cox and Mrs. Coulter says he was not regu-

lar; Mrs. Pollard, Mrs. Martin and Mrs. Matthews (wife of the Keeper of that name, and formerly Assistant Matron) says he was.

In regard to the Warden's visits to the Hospital, there seems to be no doubt. Hospital-keeper Jones says that in the first ten months he was in the Penitentiary, (August 1847 to June 1848,) the Warden visited the Hospital very seldom, probably not over six times during the whole period. And in his cross-examination, Jones explains that he means six *business* visits; that the Warden has passed through the Hospital on an errand occasionally, but he thinks he was not in the Hospital thirty times in the ten months.

Rev. Mr. Rogers says:—"He goes to the Hospital every day he is in the Prison; has rarely met the Warden; probably not over five or six times in the whole six years." And in his cross-examination by Mr. Smith, Mr. Rogers explains that he does not draw the conclusion from this, that the Warden was never in the Hospital. Guard Nursey corroborates the statement of Jones, and says he thinks the Warden "may have" visited the Hospital once or twice a month, during the first ten months Mr. Jones had charge of the Hospital.

There is one witness, however, who gives testimony which were it correct, would remove all doubts as to the regularity of the Warden's visits; we mean Head-keeper Costen. This witness, in his preliminary examination, said:—"He, the Warden, walks through the shops daily; witness does not mean to say, that he has seen the Warden in every shop daily; but he has seen him about the yard, and presumes he visits the shops; witness has seen him in some of the shops." When cross-examined by the Warden, he said:—"The Warden usually goes his first rounds about seven o'clock, every morning; sees the Warden frequently going his rounds at other times, every day, except when sick." And when re-examined by the Commissioners he testifies as follows:—"Witness has seen the Warden going his rounds every morning at seven o'clock, ever since witness came to the Prison, summer and winter, with the exception of when the Warden has been sick. The Warden is not often sick; he was laid up for seven or eight weeks last winter; he has not been often laid up for three or four weeks at a time; he is occasionally a day or two sick. Sees the Warden at seven in the morning going through the yard, and visiting the different places of work; presumes the Warden goes into all the places of work; expects the Warden goes regularly every morning to the Kitchen; has seen him frequently there. Witness was a Guard when he first came to the Penitentiary in 1835, and continued so till 1837, when he was made Quarry-keeper; was removed from the Quarry to the Kitchen in 1841, and remained Kitchen-keeper till Nov. 1846. From 1835 to 1846 witness saw the Warden going his rounds every morning, when witness was not off duty, at seven o'clock; had no better opportunity of seeing the Warden going his rounds during this period than other Guards and Keepers. The Warden has not visited the establishment more frequently within the last three months than he did in previous years. The Warden generally repeats his visits to the establishment at nine o'clock; goes all round the same as in the morning; the Warden has always done so, summer and winter, since witness came to the Prison. The Warden frequently goes round the establishment during the day, besides the two stated visits witness has mentioned."

Mr. Costen was called seven times as a witness by Mr. Smith, and throughout, his testimony was given in a very reckless manner. To meet the charge against Kitchen-keeper Smith, of drenching the Convicts with water from the fire-engines, Mr. Costen swore the engines were tried every month to see if they were in proper order; but in his cross-examination, he admitted that "they were never taken out except when Mr. Skinner or Mr. Frank desired it, and they took them out whenever they thought proper." He swore "the Warden told witness that Wilson's idling his time on 31st March was one of his reasons for removing Wilson to the board fence;" but it appears that the Warden had been satisfied the day before he ordered Costen to remove Wilson, that he had not been idling on 31st March, and had repaid Wilson a deduction made from his pay on account of it. Costen swore that he "has seen the Warden present in the Inspector's avenue, or outside the Roman Catholic Chapel, while service was going on, both in the Protestant and Roman Catholic Chapels, every Sunday since witness came to the Prison, except when witness was absent or the Warden was sick;" but it afterwards appears that during many of these very years, he was locked up in the Protestant Chapel regularly during service, and could not have seen the Warden at all; and that until he was appointed Head-keeper in November, 1846, he was never stationed at the Roman Catholic Chapel on any one Sunday. Costen swore one day that he "has seen the Warden going round inspecting the beef before the men came in, very frequently; he may do it once a week; has seen him do it fifty times and oftener; he may say one hundred times in the thirteen years." He was recalled next day by the Warden, and testified that he "should think the Warden goes oftener than once in forty-seven and a half days to see the rations; as near as witness can guess, witness would say the Warden goes one hundred times in a year to see the rations in the Dining-hall, before the soup is poured into the platters." Costen when giving evidence in justification of Guard Wilson's removal to the outside fence, said one of the reasons for his removal was Wilson's "associating with discharged Convicts and taking them into his own house, and walking through the streets arm-in-arm with them, (which was proved in witness's presence.)" When cross-examined on the point, it appeared that Costen was in the lobby when the Inspectors were trying Wilson, that the door was shut, and Costen did not hear a word of what passed, but that he "understood that this was the charge made against Wilson, and that it was proved." When examined on the same point, Mr. Costen said:—"The rule prohibiting the recognition of Convicts was passed in 1845; does not know that any Officer of the Institution has employed discharged Convicts since this rule has been in operation; does not recollect ever having heard that any Officer had so employed discharged Convicts;" but when further interrogated, it is elicited from him that he did know that Officers had discharged Convicts in their employment, and that he had been told of two cases, (Crawford's and Baldwin's) only the night previous to his examination. When examined as to Convicts having been biassed in their testimony, he said:—"Witness does not know than any Convicts have been up before the Warden upon the subject of matters before, or to be brought before the Commission." But after going over many transactions which have been before us, and the knowledge obtained of them by himself from Convicts, it was elicited from him, that "Montgomery has been frequently before the Warden on these subjects; witness has conversed on the same subjects with Dwyer, Condon, and Booth, several times; and they have

been all up before the Warden several times." The Head-keeper calls the Roll and marks the names of absentees, from whose pay deductions are made. Mr. Costen says, he "has marked down in the time-book every occasion on which Frank Smith was absent, or behind time. Mr. Frank Smith was very often behind time for a quarter of an hour and half an hour." But he says elsewhere, "he (Frank Smith) is very irregular; seldom present when the Roll is called; there never was any other Officer so irregular as Mr. Frank Smith." And the deduction book shows that very few deductions have been made from Smith's pay, that months elapse in which no deduction is made, and that many other Officers have been more frequently reported than he. Mr. Costen also swore as follows:—"Has seen the Warden frequently attending Divine Service, during the last five years, and remain during the whole service; has seen him do so frequently during the last three years: cannot tell how many times he means by the word 'frequently;' cannot say how many times; would say he has seen the Warden present during the whole service twenty times in the last three years; witness was himself present on these occasions, and remained during the whole service. The Warden has not been present within the Chapel during the last year."

The Chaplain testifies, that "the Warden has not been present at Divine Service for several years;" and again, that he has only been in Chapel five or six times since 1840; and Mr. Smith does not pretend to say that he has been more frequently.

These are a few instances of Mr. Costen's loose testimony, and they are only a few out of many to be found throughout his evidence.

From all the evidence, we are satisfied that the Warden has not made that regular daily inspection of the Prison contemplated in the Statute. We think he has visited by 'fits and starts;' going more frequently to particular shops for which he had a partiality, but seldom visiting the whole establishment. In addition to the defence that he had made the necessary visits, the Warden attempted to show by Mr. Bickerton, that while the annual accounts were being made up, the Warden could not spare time to visit the shops; but it is clear that the Warden's visits amounted simply to walking through the yard and shops, and even Mr. Bickerton admits he could have spared time for that.

## 2. In not being present when the Convicts were at Meals.

This charge was supported by the testimony of several witnesses, and the Warden has not attempted to show that their statements are incorrect. There is, therefore, no doubt that the Warden has been seldom present while the Convicts were at meals, except when with visitors, or at corporal punishment. The defence, however, rests on several other grounds. The Warden alleges that there was no rule requiring him to be present at meals; that his time was fully occupied otherwise; that the Clerk was at dinner during the Prison dinner-hour, and the Warden had therefore to be in the office; that it would have been dangerous to shut up the Warden and Deputy Warden together, as a rebellion might have broken out; and finally, that he examined the rations immediately before the dinner hour, and saw the food after it was divided.

We do not think the plea of occupation otherwise a tenable one. The whole duties of the Warden, as they have been fulfilled, seem to have been far from

onerous. It is also obvious, that if there was special danger from rebellion when Mr. Smith and Mr. Costen were locked up together, the difficulty might have been surmounted by one stepping out as the other went in. It is likewise clear, that the Clerk's dinner-hour was not necessarily the same as that of the Convicts, and might have been changed.

The defence that the Warden examined the rations before the men came in, would be more satisfactory were it established, but it rests entirely on the credibility of Head-keeper Costen and Guard Watt. As we have shown under last Count, Mr. Costen first swore that he had seen the Warden examining the rations before the Convicts came in, one hundred times in thirteen years, and when recalled next day by the Warden, he said he thought he had seen him do so thirteen hundred times in the same space.

Guard Watt's testimony is as follows—By Mr. Smith:—

"Witness has seen the Warden in the Dining-hall before breakfast and before dinner; has seen the Warden go round the tables and examine the rations."

By Commissioners:—

"The Warden has visited the Dining-hall much oftener during the last three months than he did previously; two or three times for once formerly. Witness has seen the Warden come three or four times a week in the morning before the bell rang, to inspect the rations, previous to the present year; has seen him come three or four times a week before the men took their seats at dinner; the Warden has come almost every day since the Commissioners have been here."

By Mr. Smith:—

"Witness thinks that previous to the last three months, the Warden visited the Dining-hall every other day."

It is true that there has existed no rule requiring, in so many words, that the Warden shall be frequently present while the Convicts are at meals, but it certainly comes within the meaning of both statute and by-law; and one taking a proper interest in the success of the Institution, would hardly have absented himself on such a plea. Apart from the necessity of seeing that the officers did their duty, and that everything was conducted in an orderly manner, an energetic Warden would naturally take this opportunity of gaining the kindly feelings of the Convicts, by showing an interest in their good treatment, and a determination that every justice should be done them. The great abuses which have arisen in regard to the food, and the treatment of the Convicts in reference thereto, it is to be hoped would not have been allowed to exist had the Warden attended to this duty, and not left it entirely to his subordinates. We are of opinion that negligence in the matter is fully established.

## 3. In not being present when Corporal Punishment was inflicted upon the Convicts.

This charge was brought on the testimony of several witnesses; and their allegations the Warden has not attempted to gainsay. It is therefore established, that from the opening of the Prison up to October, 1847, the Warden was rarely or never present at corporal punishment. It appears, how-

ever, that the Deputy Warden has always been present at the infliction in the Dining-hall; and as there was no law or rule requiring his personal attendance, the Warden seems to have considered that he was not called upon to be present. It will be seen, however, in a future charge, that corporal punishment has been inflicted in the Prison to a frightful extent, and that Convicts were often subjected to the lash, who were in a condition calling for the closest examination by the authorities; and when it is borne in mind that no surgeon was present at the infliction of corporal punishment, we think it is obvious that the claims of common humanity demanded the frequent presence of the chief officers on such occasions. The testimony of Mr. Utting, who superintended the infliction of corporal punishment for five years, if any evidence were needed, shows how strong the necessity was. He says:—"Witness has often mentioned that he thought a medical man should be present, (when corporal punishment was inflicted,) as he (witness) was not capable of judging whether the men were in bodily condition to receive punishment."

We think there is much cause to regret that the Warden did not attend frequently on these occasions; but as the letter of the law has been kept by the presence of his Deputy, we cannot hold Mr. Smith guilty of gross neglect of duty in the matter.

#### 4. In not taking means earlier to free the Cells of the Convict Women from Bugs.

This charge extends over a period of several years. The evidence is as follows:—

Mrs. Coulter, (speaking of the time when she was Matron,) in her preliminary examination, says:—"The sleeping cells were frightfully overrun with bugs, especially in the spring of 1846; the women used to sweep them out with a broom. It was so very bad, that on one occasion witness asked the Warden to let the women sleep in the day-room, and she would stop all night with them, and be responsible for them; the Warden would not consent. The women suffered very much; their bodies were blistered with the bugs; and they often tore themselves with scratching. Witness confesses that on one occasion she disobeyed orders, and let the women sleep out of their cells. The torture the poor women endured was horrible; and witness could not resist their entreaties to let them out. Witness often complained to the Warden of the bugs; but he took no steps to remedy the evil. About a month before witness left the Institution, she brought the Warden to see how thick the bugs were; he said that nothing could be done but wash the cells out. Three days after, the women all refused to work, in consequence of what they suffered from the bugs; the Warden then sent in some lime, with which the cells were thoroughly washed; and the evil was not so great afterwards."

By Mr. Smith:—

"There were a great many bugs in the women's Prison; never saw more in her life; plaster was used to destroy them; soap was tried, but it did no good; lye was tried; everything was tried; bottles of bug-poison were got."

By Commissioners:—

"The remedies witness has spoken of, as applied to the bugs, were so applied after the outbreak among the women, in consequence of the bugs."

Mrs. Martin (Assistant Matron under Mrs. Coulter) says, when called by the Warden:—"The women's cells had a good many bugs; the Warden got poison, blue ointment, copperas-water, and other things to kill the bugs; there was no delay experienced in getting those remedies. Mrs. Cox was Matron at this time, and Mrs. Coulter. Some two or three of the women were suffering from the itch at this time; it was in Mrs. Coulter's time; they scratched themselves for it until the blood came. She thinks it was from the itch the women scratched themselves."

Mrs. Cox (who succeeded Mrs. Coulter as Matron) says, in her preliminary examination:—"The cells of the Convicts were overrun with bugs."

By Mr. Smith:—

"Great exertions were made by witness to free the cells from bugs. The cells were cleaned once a week, and sometimes twice; but not often twice."

Mrs. Pollard, (who succeeded Mrs. Cox as Matron, and was previously Assistant Matron under her for six months,) when called by the Warden, says:—"Plastering, whitewashing, tallowing, puttying, and soaping were all used to kill the bugs during Mrs. Cox's time; there are very few bugs in the cells now; the cells are now cleaned out regularly twice a week in summer, and once in winter. In Mrs. Cox's time only one day a week in summer and winter was allowed the women for this purpose; and then the Convicts might do it or not, as they saw fit. Convicts are now forced to do this duty. If Mrs. Cox had been as particular, there would have been no more bugs last summer than this summer. Never knew the Warden to refuse any remedy likely to destroy the bugs. The cells are made of wood—she thinks of pine-wood."

By Commissioners:—

"Bugs are increased by the heat of the weather; does not recollect that the summer of 1847 was a very warm one; was told that one thing which made them worse in 1847, was the large fires kept on at night in the Wards, the previous winter. The Convicts have all suffered from the bugs, and they do still, but not so much as before. If stone cells had been put up, the women would have been saved much suffering."

The cells of the female Convicts are built of pine; have been many-years in use, and are small apartments, with little ventilation. There seems no doubt that the cells have been overrun with vermin, and that the women suffered frightfully from them for years. It appears that in the spring of 1846, the evil became so unendurable, that an outbreak took place among the women. There is no proof that up to that time any remedies were applied; but since then, it appears, various remedies have been procured, which lessened the evil, though it did not remove it. The explanation of Mrs. Martin, that the women suffered from itch, seems to be incorrect. The following return of all the cases of this disease which occurred in the Prison during the years 1844-5 and 6, shows conclusively that no female Convict labored under it while Mrs. Martin was in the Penitentiary:—

"Return of the number of cases of Itch, as extracted from the Hospital Diary, Provincial Penitentiary, for three years, commencing October 1, 1843, and ending September 30, 1846.

NAMES.	DATE OF ADMISSION.	DISCHARGED.	
James Wiles.....	Dec. 5, 1843	Dec. 7, 1843	} From Oct. 1, 1843 to Sept. 30, 1844
Lucian Ainsley...	June 20, 1844	June 22, 1844	
Arthur Mowbray	July 16, 1845	July 17, 1845	} From Oct. 1, 1844 to Sept. 30, 1845
William Gibson.	Sept. 15, 1845	Sept. 17, 1845	
William Jackson.	July 14, 1846	July 15, 1846	} From Oct. 1, 1845 to Sept. 30, 1846
James Thompson	July 29, 1846	July 31, 1846	

"I certify that I carefully examined the Hospital Diary for the above period, and that the above, to the best of my belief, is a true extract.

(Signed) "WILLIAM JONES,  
Hospital Keeper.

"Provincial Penitentiary,  
Kingston, February 10, 1849." }

We are of opinion that it was the Warden's duty to see that so serious an evil was remedied. He appears to have made no representation to the Inspectors of the necessity of putting up new cells; and we think that he is justly chargeable with great neglect in the matter.

5. IN ENTRUSTING THE EXAMINATION OF CONVICTS, ABOUT TO BE DISCHARGED, TO ANOTHER OFFICER—TO ONE INCOMPETENT FOR THE DUTY.

The following questions are put to every male Convict (with the exception of soldiers) on the day previous to his discharge:—

QUESTIONS PUT TO CONVICTS ON THEIR DISCHARGE FROM THE PROVINCIAL PENITENTIARY.

- 1.—How long have you been confined in the Penitentiary?
- 2.—Have you been punished by whipping or otherwise during your confinement?
- 3.—Have you seen any punishment inflicted which you consider cruel, or so severe as to injure the health of a Convict, or to prevent him from attending to his daily work?
- 4.—If a Convict is disposed to attend to his work is there any difficulty in conforming to, and obeying all the Prison rules and regulations?
- 5.—What is the number of the cell you occupied, and in what part of the Prison is it situated?
- 6.—During the time you were in your cell, did you hear any conversation or know of any communication between the Convicts?
- 7.—Do you think the Convicts would be able to communicate with each other without you hearing them?
- 8.—What is your height and weight?
- 9.—Are the cells sufficiently large?
- 10.—Should the cells be made wider, would they contribute much to the comfort of the Convicts?

11.—Are the cells well lighted, ventilated, and warmed in cold weather, and are they as comfortable as need be?

12.—Have you been employed as a teacher of Convicts to read, if so, what proficiency have they made?

13.—Has any communication been carried on between Convicts during the time they are taught in their different classes?

14.—Is there any opportunity for communication between the Convicts, situated as they are under the surveillance of the Deputy Warden and Keepers, more than at any other time, or when they are at work?

15.—Has your food been wholesome and sufficient?

16.—Which in your opinion is the best method of enforcing the observance of the Prison discipline—punishment by Keepers as practised here, or confinement in a dark solitary cell with privation of food?

17.—Which of the two last mentioned modes of punishment do you think would be most likely to create sullenness and revengeful feelings on the part of the Convicts against the Keepers?

18.—In those cases where Convicts have been punished, have you observed that they have manifested any feelings of hatred or revenge afterwards?

19.—What was the condition of the Gaol in which you were confined before you came to the Penitentiary, in respect to intercourse and evil communication among the Prisoners?

20.—Do you think that the discipline of the Penitentiary with the punishment of hard labour therein, sufficient to deter Convicts from the further commission of crime, and calculated to produce a reformation?

21.—What do you consider the greatest hardship in the Penitentiary?

22.—Had you sufficient clothing and bedding while undergoing your sentence?

23.—Have any of the Convicts made any communication to you respecting an intention to effect their escape?

24.—Did you rise from bed or retire to your cell sooner than you wished?

25.—Do you consider the treatment of the Convicts to be hard or humane?

26.—Is proper care and attendance paid to the Convicts in cases of sickness?

27.—What do you consider to be the cause that led you to the commission of the offence for which you were sent to the Penitentiary?

28.—In what manner, in regard to your moral and religious duties, were you brought up by your parents?

29.—Were you ever brought up to any trade?

30.—Did you ever hear of anything that was going on outside the Prison, or have you ever heard the Guards and Keepers talk together upon such subjects ?

31.—How often have you, since your imprisonment in the Penitentiary, spoke to the Chaplain (or Priest) on matters concerning your spiritual welfare) ?

Additional questions put to Convicts who have been twice or oftener inmates of the Penitentiary.

1.—Have you used intoxicating liquors since your discharge from the Penitentiary, on the expiration of your former sentence ?

2.—Did the use of intoxicating liquors lead to the commission of the offence which led to your conviction ?

3.—Did you after your discharge from the Penitentiary, find any serious difficulty in procuring employment ?

4.—Did you commit the offence for which you have been sent here, or any other crime, because you could not find any lawful employment by which you could not gain your livelihood ?

5.—Before you left the Penitentiary, at the expiration of your former sentence, did you make any arrangements with any of the Convicts to meet you after you should be both discharged, for the purpose of committing crime of any sort ?

6.—Was any Convict who had been formerly at the Penitentiary connected with you at the commission of the offence for which you were last tried and convicted ?

" A true copy.

(Signed,) " F. BICKERTON, Clerk."

It appears that the Warden performed this duty himself at first ; but in December, 1846, handed it over to Head-keeper Costen, who has since attended to it. The mode in which the Warden performed this duty is thus explained :—

Thomas Costen—By Commissioners :—

" Question. In whose handwriting are the replies to questions from which you furnished your statement as to the answer given to the 15th question ?"

Answer. In Mr. Bickerton's handwriting.

Q. Are these the original memoranda taken when the Convicts were examined ?

A. No ; they are copies from sheets of paper handed to the Clerk by the Warden.

Q. Who took the original memoranda ?

A. The Warden.

Q. Are the answers signed by the Convicts ?

A. No.

Q. Was any one but the Warden present when the Convicts were examined ?

A. No.

The manner in which Mr. Costen has executed the duty he states as follows :—

Thomas Costen—By Commissioners :—

" When witness takes the examination of Convicts about to be discharged, he writes down their answers *verbatim*, in all cases ; he reads the answer to each query, generally ; does not read it all over to the Convicts at the close of the examination ; the Convicts are not asked to sign the examination."

By Mr. Smith :—

" Witness never puts words in the Convicts' mouths, when taking their answers to the regulation questions." \* \* \* \* " When witness examines Convicts on their discharge, he does not tell them to give their answers freely ; he gives no instructions either one way or other ; simply puts the questions."

As to the competency of Mr. Costen to fulfil the duty properly, the evidence of Mr. Rogers, the Chaplain, is directly in point.

Rev. R. V. Rogers—Preliminary examination :—

" From his knowledge of Mr. Costen, his station and mental endowments, witness would think him quite incompetent to do this duty properly."

By Mr. Smith :—

" Witness has formed an opinion of the mental capacity of Mr. Costen ; he has had a good ordinary education ; he is able to read writing ; he is capable of writing down what men tell him ; should think Mr. Costen very incompetent to examine Convicts going out, as to the effect of the discipline on their minds ; thinks it would require a man of great tact, and high moral feeling, to do this duty efficiently ; thinks it would require a man much superior to Mr. Costen."

The defence set up is, that there was no rule requiring the Warden to perform the duty. James Hopkirk, Esq., when called by the Warden, says :— " Knows of no rule requiring the Warden to take statements of discharged Convicts before they go out, but such has been the practice ; has heard the Warden say, he had directed Mr. Costen to perform this duty ; the reason the Warden gave for giving this duty into the hands of Mr. Costen, was, that he thought his fidelity in putting down the answers might be doubted ; witness is free to confess that he did not concur with this view of the Warden, as he thought the same objection might be urged against Mr. Costen ; he thought it immaterial which performed the duty, as in his opinion either might be perfectly trusted. Thinks Mr. Costen quite competent to perform this duty ; had he thought otherwise, he would have objected to Mr. Costen's performing it.

It is true there is no clause in the Act requiring the Warden to put questions to Convicts about to be discharged, nor any positive rule ; but it is a recognized practice of long standing, and the Inspectors on 31st December, 1847, ordered an additional question (the 31st) to be added to the list ; and it is a most desirable practice, calculated to be exceedingly beneficial, if properly carried out. It is manifestly not a duty to be executed in a loose manner, not to be discharged by asking a few questions with indifference, and writing down a few answers, given

mechanically. We conceive it to have the high purposes in view, of enabling the Chief Officer of the Institution to profit by the moment when all the better feelings of the culprit are stirred with the thought that his crime has been expiated, and that he is returning to his home; we can conceive no more interesting duty than to lead the prisoner at such a moment to unbosom himself freely, to advise him as to the difficulties before him, and to strengthen him in any good purposes he may have formed. And were there no higher object, it affords an opportunity to the Warden to learn any abuses which may exist in the Prison, and to find the effect of the discipline.

From first to last, the duty seems to have been done without any feeling of its intention or importance. As a statistical document it can be entitled to no reliance; no signature is attached to the answers, and it appears that they were not even read over to the parties; the cold yes or no, so profusely to be found, seems to be taken an irksome duty, gladly got over.

We are of opinion, that any Head-keeper, however well qualified as regards talent, is a very unfit person to perform this duty. He is the Officer who practically carries out the discipline of the Prison, and comes more than any other into personal contact with the Convicts; and his interest is so direct, in covering any irregularities which might be exposed by the Convicts, that the same confidence could not be placed in the impartiality of his return, as in that of another. As to Mr. Costen's competency, the whole of our intercourse with him, and the character of his evidence throughout, show him to be in every way unfit for the duty.

We are consequently of opinion, that the Warden is guilty of gross neglect of duty in this matter; and that by his neglect, a most desirable practice has been for a long period rendered useless.

6. IN NOT PUTTING THE SAME QUESTIONS TO FEMALE CONVICTS AND SOLDIERS, AS TO MALE CIVILIANS.

It is admitted that the questions given under last count have never been put to the female or military Convicts, although of the latter a large number are annually received. No defence is attempted as to the women, and as to the soldiers the following is the only evidence:—

Thomas Costen—By Mr. Smith:—

“Witness does not examine soldiers before they go out; some of the soldiers come for very short periods, some for five or seven days, and others for one, two, and three months; thinks their answers could have little influence in showing the working of the Prison discipline, from the shortness of their confinement.”

By Commissioners:—

“Soldiers are frequently committed to the Penitentiary for a year and over.”

Mrs. Coulter says, in her preliminary examination:—

“No questions were put to the women Convicts when their sentences had expired and they were about leaving the Prison.”

By Mr. Smith:—

“The Warden saw some of the female Convicts before they went out; heard him tell them to behave themselves or they would come back again.”

Mrs. Cox says, when examined by the Warden:—

“The Warden never spoke to any of the women when about to be discharged, further than saying ‘take care, or you’ll come back;’ cannot say how many women the Warden spoke to in this manner.”

We think the defence as to the Military Convicts not a good one, as there are many questions in the formula which could be answered as well upon three months knowledge as from three years; and as most of the soldiers are committed merely for trivial Military offences, their testimony on such points would be more valuable than others.

We can see no reason or apology for the omission in the case of either the Female or Military Convicts, and we consider it gross neglect of duty on the part of the Warden.

7. IN NOT TAKING AN ACTIVE PART IN THE WORK DAILY GOING ON IN THE ESTABLISHMENT.

William Coverdale, the master builder of the Institution, in his preliminary examination, says:—

“Warden apparently took no interest whatever in the progress of the work under the charge of witness; for two or three months together he has not spoken a word to him on what was going on. Witness was often greatly astonished at the total absence of interest on the part of the Warden, in the affairs of the Institution. Warden would often pass witness, for months together, with only a passing salutation. When the Warden wanted anything done for himself, such as his garden wall built, or jobs done about his dwelling, sleighs or carriages made or repaired, he took an interest in their progress, and spoke to witness about them.”

By Mr. Smith:—

“Witness has frequently thought that the Warden did not take such an interest in the work progressing as a person in his situation should do: he took some interest. The Warden has been two months without speaking to witness; there was pretty nearly the whole of one summer that they never exchanged words; speaks of the same year; the outside walls were then building; the same description of work was going on every day. It took about three years to build the walls; various other works, however, were progressing at the same time under witness's directions; he believes the west wing was building.”

Mr. Utting, in his preliminary examination, says:—

“The Warden took no interest in the work going on in the Penitentiary, excepting when getting work ordered by himself executed. Witness thinks the Warden took little interest in the progress of the buildings; the master builder often complained to witness that Warden took little interest in the works going on.”

By Mr. Smith:—

“Witness did not think the Warden paid much attention to the work which was going on; has heard

Officers complain that they did not see the Warden when they wanted to see him; names M'Garvey and Coverdale; Reid was idle for want of blasting powder; Richardson, if witness thinks right. Coverdale told witness that it was a loss of five pounds a day. Thinks the Warden would get the greatest praise if all things went well at the Penitentiary."

Ex-Keeper Gleeson, says:—"Warden appeared to take little interest in the progress of the business; he very seldom spoke to the head mechanics."

Ex-Keeper Keely says in his preliminary examination:—

"The Warden took very little interest in the work going on. \* \* \* He very rarely inquired as to the work in progress when he came to the shop."

By Mr. Smith:—

"When the Warden did go round witness's shop, he scarcely took time to see what was going on; he walked right through. When witness asked him any questions he could scarcely get an answer, and had sometimes to follow him about like a little boy to get his answer."

Guard William Waldron, says:—"When the Warden did visit the shop, he took little interest in the work proceeding; he would just saunter through the shop, asking a few questions once and again."

M'Carthy, Wilson, Fitzgerald, Freeland, Richardson, Kearns, and Swift, all bear similar testimony.

The duty of the Warden, as laid down in the original Penitentiary Act in 1834, was as follows:—"It shall be the duty of the said Warden or his Deputy, to use every proper means to furnish such Prisoners with employment the most beneficial to the public, and the best suited to their various capacities; and to superintend all the manufacturing and mechanical business that may be carried on within the Penitentiary; to receive the articles so manufactured, and to sell and dispose of the same for the benefit of the Province, when the labour of the Convicts is not let out by contract."

The parallel clause in the amended Act of 1846, is as follows:—"That it shall be the duty of the Warden, or in his absence of the Head-keeper, to attend constantly at the Penitentiary, except when performing some other necessary duty of his office, and under the rules and regulations which may be made aforesaid; to exercise a general supervision and control over the Government, Discipline, and Police of the said Penitentiary; to give the necessary directions to the Officers and others employed therein, and to examine daily into the state of the Penitentiary; and the health, conduct, and safe keeping of the Prisoners; to use every means to furnish such Prisoners with employment, the most beneficial to the public, and the best suited to their various capacities; and to superintend all the manufacturing and mechanical business that may be carried on within the Penitentiary; to receive the articles so manufactured, and to sell and dispose of the same for the benefit of the Province, when the labour of the Convicts is not let out by contract: Provided always, that the Warden shall be and is hereby authorized to act in all cases not provided for by law, or by such rules or regulations, during

the interim of the sitting of the Board of Inspectors, in such manner as he may deem to be most for the advantage of the Penitentiary: And provided also, that the said Warden shall be bound to report to the said Inspectors, at their next subsequent meeting, all matters wherein he has acted during the absence of the Board, and which specially come under the cognizance and directions of the Inspectors."

The evidence offered by the Warden is as follows:—

James Hopkirk, Esquire—By Mr. Smith:—

"The Warden is always ready, when asked to give an account to the Board, of what work is going on in the establishment; it appeared to witness that the Warden took a great interest in what was going on."

Mr. Sheriff Corbett—By Mr. Smith:

"As an Inspector, witness has always found the Warden to take an interest in what was going on in the Penitentiary; he was always ready to give the Inspectors any information they asked."

Mr. Bickerton—By Mr. Smith:—

"The Warden has usually asked the witness, immediately before the annual report to the Government, if witness's cash account has balanced; does not think that the Warden has asked if his general accounts balanced."

Discharged Convict Ramsden—By Mr. Smith:—

"Worked in Mr. Richardson's gang; has repeatedly heard the Warden make enquiries respecting the work which was going on there."

Head-Keeper Costen, in his preliminary examination, says:—

"The Warden takes no charge of the work going on; the Keepers are supposed to be competent to attend to this. The Warden gives his consent before any job is commenced, and he walks through the shops daily; witness does not mean to say that he has seen the Warden in every shop daily, but he has seen him about the yard, and presumes he visits the shops; witness has seen him in some of the shops."

By Mr. Smith:—

"Thinks the Warden takes an interest in the work going on in the Penitentiary. Does not think it is the Warden's duty to look after building operations; there is a person appointed for that purpose; Mr. Horsey does so at present."

James M'Carthy—By Mr. Smith:—

"The Warden very seldom asks any questions about the work; he would occasionally ask who such and such an article was for. There was a rule for some years (latterly) that all jobs done for private individuals should be entered in a pass-book by the Warden before the jobs were commenced; work was sometimes done for the Inspectors to-day and booked to-morrow; otherwise, the Warden knew of work done for private individuals (including the Officers) before it was commenced."

He also produced a number of witnesses to testify generally to his business conduct.

Keeper Hooper says, he "believes that Mr. Smith has done the best he could for the success of the Institution." Keeper Manuel says, "he has never seen anything on the part of the Ex-Warden, that would be injurious to the Institution, so far as witness can see; he does not remember anything on the part of the Ex-Warden that would be otherwise than conducive to the prosperity of the Penitentiary." Keeper Little says, he "believes that the Ex-Warden has always acted for the good of the Institution." Guard Watt "does not think the Warden ever did anything to prevent the successful working of the Institution." Keeper W. Smith "thinks that Mr. Smith has done everything in his power to promote the interest of the Penitentiary." Keeper Pollard "believes, so far as he knows, that Mr. Smith has done his duty by the Institution." Mr. Horsey "thinks Mr. Smith has done all he could for the success of the Institution." Keeper Ballantine says, "he has always been anxious for the welfare of the Institution." Keeper Hermiston "never saw Ex-Warden do anything which would be hurtful to the Institution." Guard Martin "never saw the Warden do anything that witness has thought prejudicial to the interest of the Institution." Keeper Matthews "thinks that the Ex-Warden has done all he could for the success of the Institution." Guard Sexton "has never seen or known him to do any thing which would mar the interest of the Institution." Mr. Bickerton "has never seen Mr. Smith do anything which would prevent the successful working of the Institution." Guard Thomas Smith "never knew him to do anything which would injure the Penitentiary or the business of it." Keepers Gibson and M'Mahon give similar testimony, but they were only appointed about the time the Commission met.

The defence offered by the Warden seems to be, that it was not his duty, but that of the Keepers, to look after the work going on; but that he did take an interest in it, and that the work-book which he kept enabled him to know all the work going on, without more personal inspection than he gave, or reference to the master mechanics.

It is true that the Keepers were entrusted with the duty of seeing all work practically done; but it was as plainly the duty of the Warden to see that the Keepers attended to the work, and executed it well. The work-book kept by the Warden only contained the orders to be executed for private individuals, which did not form a tithe of the work performed in the establishment; and though it told what work some men should be at, it could not show if they were at it; how long it took them, or if it was well done.

It is clear that there has been, on the part of the Warden, an absence of all that close and warm interest in the business department of the establishment which is absolutely necessary to success. Not one Keeper has been brought to say that the Warden consulted and advised with him about the work. We have nothing but vague generalities which do not meet the evidence of the other witnesses.

It thus appears that for a series of years while great works were proceeding, and thousands of pounds a year of the public money being spent, that their execution was left uncontrolled in the hands of inferior Officers, and that little or no interest was shown by the responsible agent of the Government;

no care to economise; no vigilance in pushing the work through expeditiously; perfect indifference as to how it was executed seems to have been manifested. We find Mr. Smith guilty in this matter of the grossest negligence; and in future charges the results of it, we think, will appear.

#### 8. IN NOT TAKING AN ACTIVE INTEREST IN THE MORAL CONDITION OF THE CONVICTS.

It was charged under this count that the Warden took "no interest in the moral state of the Prisoners; he never spoke to them in private, or reasoned with them as to their offences or unruly conduct." That proper attention was not paid to the common education of the Convicts, and the religious services of the Prison were quite inadequate.

The defence apparently rested upon by the Warden, is, that the Chaplain, and not he, was the proper person to look after the moral and religious interests of the Convicts; that before there was any Chaplain, he (the Warden) read prayers to the Convicts; but that since there has been a Chaplain, he has left such matters entirely in his hands.

No attempt is made by the Warden to show that he inculcated moral duties and principles on the minds of the Convicts; that he reasoned or advised with them, or in any shape exhibited the least interest in their reform: his rule seems to have been that of the rod, not of moral suasion. The inefficient character of the School, if such it can be called, is a reproach to the Institution. During part of the meal hour, on three days of the week, the Convicts are allowed to teach each other, and books are furnished them for the purpose. The evidence as to the interest taken in the School by the Warden, is as follows:—

Thomas Costen—By Warden:—

"Has seen the Warden in the School since Mr. Pringle's time;\* cannot say how often in the Chapel or School since Mr. Pringle's time, but very frequently."

By Commissioners:—

"Witness cannot say how often the Warden has been present at school-time in the last five years; has seen him frequently come in and walk round the room; dares to say he was fifty times; he never looked into the studies of the scholars, or the progress they were making; he merely walked round the School; it was not his duty to do so."

It also appears that there are no morning or evening prayers said in the Prison—no grace at meals—no Sabbath-school,—nothing, except one service on Sunday, and a Lecture on Thursday, "to mark the Institution," in the words of the Chaplain, "as a community of Christians."

It is certainly not the duty of the Warden to perform such services himself, but it is his duty to see that they are done. Every department of the Prison is under his charge; and surely, in such an Institution, nothing can be more important than this. It is true that difficulties did stand in the way, from the variance in the views of Protestants and Roman Catholics; but these ought to have been overcome. It is much to be regretted that strenuous exertions

\* Mr. Pringle resigned in 1840.

to make the religious means more effective, were not put forth by the Warden; and we think him chargeable with serious neglect of his duty in not doing so.

#### 9. IN NOT BEING PRESENT AT DIVINE SERVICE.

Rev. R. V. Rogers, in his preliminary examination, says:—"The Warden has not been present at Divine Service for several years. Witness does not think he ever saw the Warden present at the Thursday Lecture."

By Mr. Smith:—

"Witness is not aware that he has seen the Warden, or any Inspector, present at School, Chapel, or Lecture, since the first Board (Mr. Pringle's) resigned, (1840,) except some five or six occasions, when the Warden was present at Chapel."

No attempt is made by the Warden to prove that he ever attended in the Chapel while the service was proceeding, except through Mr. Costen and Guard Martin.

Mr. Costen—By Mr. Smith:—

"Witness has seen the Warden in the Chapel since Mr. Pringle ceased to be an Inspector; has seen the Warden in the School since Mr. Pringle's time; cannot say how often in the Chapel or School since Mr. Pringle's time, but very frequently."

By Commissioners:—

"Has seen the Warden frequently attending Divine Service during the last five years, and remain during the whole service; has seen him do so frequently during the last three years; cannot tell how many times he means by the word 'frequently;' cannot say how many times; would say he has seen the Warden present during the whole service twenty times in the last three years; witness was himself present on these occasions, and remained during the whole service. The Warden has not been present, within the Chapel, during the last year."

William Martin—By Mr. Smith:—

"Has seen the Warden inside the Protestant Chapel when service was going on, several times."

By Commissioners:—

"Witness has seen the Warden in the Protestant Chapel during service within the last three years; has seen him once or twice; has seen him several times in the last three years; cannot say that he has seen him five times; he did not remain all the time of service; he might have remained fifteen or twenty minutes."

If Mr. Costen's evidence had been true, there are twelve or fourteen Keepers who have been present at Chapel nearly every Sunday, and could have sustained what he says. Mr. Rogers' testimony is undoubtedly accurate.

But the main defence of the Warden is, that there was no rule requiring his presence at Chapel; and that the requirements of the Act, as to a general surveillance, he fulfilled, by going to the Chapel door on Sundays during service, and there inspecting the prisoners through the peep-holes, or small slits built in the wall, to enable the Keeper to look into the room without being seen. That this was

the general practice of the Warden, he has fully proved; but all agree that he merely glanced through the spy-holes for a minute or two, and went off again.

Mr. Hopkirk is called to prove that "he is not aware of any rule enjoining on the Warden to be present during the performance of Divine Service," and such is the case; but the question might be raised whether the defence was not more censurable than the offence charged. The propriety, nay, the necessity, that the head of such an Institution should give all the countenance in his power to the celebration of Divine Worship, is too obvious to require remark. His presence was desirable to give solemnity to the services—to see that Officers and Convicts conducted themselves properly—to hear the appeals of the Chaplain to his hearers—and to enable him to suggest such subjects as his knowledge of the prisoners might well qualify him to do, for the consideration of the Chaplain. It was especially desirable that the Warden should be always present, to teach regularity as to church attendance to a class of persons apt to neglect such duties, and to regard them as unmanly. Nor would a Warden, who felt his responsibility, have failed to benefit by the influence over the feelings of his prisoners, which his joining with them in the only act wherein they could meet as equals could hardly fail to give him.

Although, therefore, there is no rule requiring the Warden's attendance at public worship, we think it comes clearly within the general scope of his duties: and we hold him guilty of great dereliction of duty.

This is the last count in Charge IV., and we find that gross neglect of his duty as Warden has been fully established against Mr. Smith.

#### CHARGE V.

##### CULPABLE MISMANAGEMENT OF THE BUSINESS AFFAIRS OF THE PENITENTIARY.

1. In forbidding, by his bearing toward his inferior Officers, that cordial co-operation necessary to the successful working of such an Institution.

The evidence on this point is exceedingly contradictory, and partakes very much of the bias naturally to be expected from the state of the Institution. One party says the Warden was cross and petulant; the other that he was everything that could be desired. Instances of what the witnesses considered feeling by the Warden towards particular Officers have certainly been proved; but on the whole we think the Warden's manner and temper have been better than is to be found in the majority of men, and we entirely exonerate him upon this count.

2. IN THE LOOSE MANNER OF GRANTING RECEIPTS FOR GOODS PURCHASED AND DELIVERED FOR THE USE OF THE PENITENTIARY.

The evidence on this point is as follows:—

Mr. Coverdale says:—"There was no Officer whose duty it was to receive purchased articles coming in; sometimes one person would do so, and sometimes another. In the article of stone, the Keepers used to make a monthly return of the quantity received, and the Contractor was paid accordingly; the Contractors gave in no account; in case an understanding had existed between the

Keeper and Contractor, there was no way of detecting it. In timber, requisitions used to be made by witness or by the Keepers, and the same system followed as with stone." \* \* \* "Witness thinks there was great looseness on the part of the Warden, in taking certificates of the receipt of goods; he never, to witness's knowledge, inquired into their correctness. Recollects of one instance in which witness measured a raft of hewed timber, purchased from Mr. John M'Pherson, worth about £500; witness measured each log, but only gave the sum total to Warden, who paid the bill on that memorandum. Witness expected the Warden would have asked for the figures and checked them; the Warden's general system was similar to this instance. Witness used to make up the stone Contractor's bill for them, from the certificates of the Keepers; the Warden paid on these accounts, made up by witness, without examining into their correctness, and the certificates of the Keepers were generally destroyed. Stone was received in this way five years and amounted to many thousands of pounds, but the Warden made no examination into the correctness of the charges. Convicts were sometimes employed by the Keepers to measure stone when it came in. There used to be five to six Stone-cutter and Mason Keepers. Some of them were incompetent to work the measurement, and they used to measure the outside dimensions of each stone, and send them to Keeper Wm. Smith to calculate for them. Smith resigned, and Mark Hermiston succeeded him; he refused to calculate the stone for the other Keepers, and they had to do it for themselves. A lawsuit lately arose in consequence of their improper measurement; the Contractors sued the Institution and obtained a verdict."

Ex-Keeper Gleeson says:—"When loads of stone or timber came into the Penitentiary, they were received by the several Keepers of the departments using the material, measured by them, and the quantity was written down on slips of paper, or on boards. These memoranda were collected at the end of the month, by Mr. Coverdale, in the stone department, and the sum total handed in by him to the office, on which report the bills were paid. When Mr. Coverdale left, witness did this duty in the stone department. Mr. Horsey (Mr. Coverdale's successor) never did this duty. Some of the memoranda given in by the Keepers were correct, and some of them incorrect. Witness discovered a great error in the calculations of the Keepers which had been going on for many months; in calculating the contents of a stone they added the length with the breadth instead of multiplying them together; one Contractor lost £200 by this system to the best of witness's belief. Many of the Keepers were quite unfit to check the quantities of materials received, and witness has no doubt many errors were committed against the Institution. In case collusion had existed between the Contractor and any of the Keepers, the Institution might have been robbed to a great extent."

Mr. Utting says:—"The Kitchen Keepers received all provisions and forage coming into the establishment."

Ex-Keeper M'Carthy says:—"Had charge of the materials and tools in the Blacksmith's shop; he made requisitions on the Warden for what was wanted in his department, and the messenger was sent into town by the Warden to get the articles."

Ex-Keeper M'Garvey says:—"He had charge of the materials and tools in the Shoemaker's department."

Gate-keeper Bannister says:—"Usually receives the hay and straw, and Cooper receives the oats; when on the ground, witness always receives the hay and straw, and has no doubt he receives nine loads out of ten which come in; the teamsters weigh the forage in Kingston, and bring out a ticket of the weight; witness gives the ticket to the Kitchen-keeper, who gives the teamster a receipt for the Contractor, and enters the transaction in his book; the teamsters might easily have taken off part of their load between the Town and the Penitentiary."

By Mr. Smith:—

"Never appeared to witness that the hay coming into the Penitentiary had been taken off the load, has seen straw in that state, the time that witness speaks of is about two years ago; he then weighed six bundles and calculated the load according to the weight of the six bundles, he gave the number of the bundles upon the load to the Kitchen-keeper who calculated the weight of the load accordingly; does not know whether or not by this process the teamster would get paid for more straw than he brought. During the last two years witness believes the straw has been received with a market ticket." \* \* \* "Witness explains that in the course of the last two years he has seen loads of straw which appeared to have been broken; he means to say that in purchasing by the ticket, the Farmer may have thrown off some of his load after it was weighed; he may have done so however before it was weighed; the straw witness believes was received according to the ticket."

Gate-keeper Cooper says:—"He receives the oats, sees them measured, and put away in the bins, and gets a receipt for the contractor."

Thomas Hendry (a Provision Contractor), says:—"Thinks he was wronged by the Warden in the settlement for the article of molasses, &c." \* \* \* "Witness was the more disposed to doubt the correctness of the Penitentiary receipt-book, as, at the annual settlement, the Warden only gave him credit for 160 lbs. of tea delivered under the contract, and on witness objecting to this, and insisting that he delivered 264 lbs. of tea, the Warden gave way (although there was no certificate of the receipt of the larger quantity in the Provision-keeper's book,) and said he supposed it must be so." And again:—"Had much trouble in getting proper receipts from Frank Smith, for the articles he delivered to the Penitentiary; the pass-book would often remain for a fortnight at a time in the Penitentiary, and his messenger would be often told by Frank Smith that he had no time to give them a receipt; all witness's endeavours to get regular receipts for what he delivered were fruitless, and no reliance whatever can be placed on the general correctness of the provision pass-books."

Discharged Convict Côté says:—"The Convicts usually weighed the meat, but in the presence of the Kitchen-keeper or his assistant. At the 'heel of the hunt' however, the matter was left in the hands of the Convicts, for they usually weighed the article, and gave the quantity to the Kitchen-keeper to enter in the book; the Convicts marked down the quantity received with chalk on a pillar, and it was taken from there and put in the book. Dyss, the Cook, very often weighed the meat. The bread was re-

ceived in the same way from the Baker, and the molasses, potatoes, Indian-meal, and other articles." And again:—"Witness was often sent to measure potatoes landing from the boats, or coming in in waggons; the measurement was left entirely to him; he used to take short measurement from the men who delivered the potatoes, and they gave witness tobacco for doing so."

This witness's testimony is directly contradicted by Guard Watt, who says:—"The meat is invariably weighed by Mr. Frank Smith, or Mr. Costen, or witness, except on two days in each month, when witness is on guard duty. Never knew nor heard of a Convict having anything more to do with the weighing, than to lay it on the scales."

The only witness called for the defence, is Mr. Horsey, the present Master-builder, who gives the following testimony:—

Edward Horsey—By Mr. Smith:—

"Witness is in the habit of collecting the accounts of stone from the different sheds delivered by the Contractors; has done so for the last year and a half; Gleeson was at the Penitentiary as a Keeper after witness began to take the account for the stone." \* \* \* "Prepared the accounts for stone furnished by the Contractors before the accounts were paid by the Clerk; witness collected these accounts from the respective Keepers; witness examined the measurements before he delivered the accounts to the Clerk; witness got the detailed accounts from the sheds." \* \* \* "Was present at the trial of Conlan against the Warden; heard the charge given by the Judge to the Jury; thinks the Judge said that the Warden was doing his duty in bringing the case into Court, and that the Jury must either disbelieve one respectable man on one side, or four or five respectable men on the other side; the verdict was given against the Penitentiary. Thinks he remembers that the Judge said something to the effect, that if the Warden had reason to suspect a fraud, he was quite right in resisting the payment of Conlan's claim. Some of the stone furnished by Conlan was rendered by addition, when it should have been cross multiplication; this would be owing to the ignorance of some of the Keepers; Conlan might have sustained a loss by the addition rather than the cross multiplication; witness rather thinks he did so; there would be some instances in which Conlan would have gained by this process."

By Commissioners:—

"Gleeson was the Keeper who collected the accounts from the different shops, and handed them to witness in the way that William Smith does now; this was previously to the last year and half, during which witness has received them. Gleeson continued to collect these accounts and to hand them to witness, until he left the Penitentiary. The different Keepers used to give the details to Gleeson by witness's order, and witness would receive them. The same practice exists now with William Smith. Gleeson was not required to give in his own account in detail, as witness had confidence in him. There was no one to check the Keepers who received the wood and stone; witness has been in the general habit of supervising the proceedings of the Keepers, but he could not always do so, as he had many other things to attend to."

Mr. Bickerton says:—"The correct receipt of all goods was entrusted to the Keeper of the department for which the several articles were brought in."

It thus appears that some twenty persons have been granting receipts for goods, without any check whatever on their proceedings; and that many of these persons were incapable of doing the duty properly. It will be seen in a later charge, that the tradesmen's bills, to a large extent, were paid without the production even of certificates of receipts by the Keepers; but had this been insisted on, how wide a door was opened to fraud by so loose a system of receipting goods. Many thousands of pounds of the public money have been expended in this way."

We find here scandalous mismanagement.

3. In the waste of Materials and Tools through the want of care.

The evidence on which this charge was founded, is as follows:—

Mr. Coverdale (preliminary examination):—"There was great carelessness in the management of the property of the Institution. Witness was in the Ordnance and Engineering department; and in both of these, great care was taken to keep an accurate monthly account of everything, such as tools, lumber, rope, &c.; but in the Penitentiary there was only an annual inventory taken, and much loss was sustained. The expense of stone-cutters' tools was immense. Has seen the best description of lumber lying about the yard, going to waste, through carelessness. Convicts would go to the pile, throw it down to pick out a plank to suit them, and leave the rest lying about."

Mr. Utting (preliminary examination):—"There was much waste in the article of lumber; Convicts helped themselves from the pile as they wanted it, and much good wood was destroyed from carts running over it. There was a great loss of tools, such as planes, chisels, crowbars, gimlets, and other implements. They were stolen, and sold to teamsters for tobacco."

By Mr. Smith:—

"There would be a saving if a Store-keeper was appointed at the Penitentiary. There would have been a saving in forage, provisions, and everything." \* \* \* "Has seen great havoc and waste in the lumber business; teams driving over the lumber, and destroying it; when the teams have done so, witness has frequently ordered Convicts to remove this lumber; has seen the plank and lumber lying about the yard for a long time, and has ordered it to be removed. There is an order against witness interfering in this department; but witness has done so when he has seen the lumber lying about. Witness says that it is in the rules that he should see everything in a clear state and in a proper order in the yard. No particular officer had charge of the lumber; each Convict would help himself from the pile, and would scatter the lumber about. Has no idea what quantity of plank has been thus destroyed; cannot say whether there was twenty planks or a hundred—there were a great many. There was continually a great loss of tools from the Penitentiary; does not know what became of all of them."

Ex-Keeper Gleeson (preliminary examination):—"The materials were very carelessly looked after;

there was no account kept of them or of the tools; the different Keepers might have looked after them if they chose; and they might not; never knew any Keeper called to account for not doing so." And again:—"There was great loss constantly sustained in the tools; they were stolen. Convicts have often been punished for stealing. There was also great loss in clothing."

Ex-Keeper M'Garvey (preliminary examination):—"There was a good deal of stealing constantly going on in the Prison. Tools were frequently missing."

Ex-Guard Fitzgerald (preliminary examination):—"Thinks there was much waste in the establishment in materials and tools. There was very little care taken of the stores."

Guard Wilson (preliminary examination):—"The stores and materials about the establishment are not well looked after. There is much loss among the tools and implements."

By Mr. Smith:—

"There have been a great many tools missing through the yard; has heard Keepers say so; does not know exactly how they go; has heard the Keepers blaming the Convicts for it. There have been all descriptions of tools missing. Mr. Richardson has said that he has lost carpenters' tools. The Keepers look well after their tools and the materials placed in their charge, so far as witness has an opportunity of judging."

Guard Kearns (preliminary examination):—"Thinks there has been great waste in tools, stone, lumber, and other materials. There is great carelessness in looking after these things. This has been especially the case since Mr. Coverdale left. Mr. Coverdale took much interest in seeing that everything was put to its proper use, and was taken care of: he did his best to keep things right."

By Mr. Smith:—

"Has seen no tools wasted, but has heard complaints of tools being broken and destroyed. Has seen the frame of an ice-house, which had been recently erected, and was not entirely finished, taken down, and an ice-house was used in some other place, the lumber of which frame was broken in the taking down, and unfit for further use. It was taken down by Convicts; they could not do so without breaking it; witness superintended the Convicts so employed. Cannot say that the officers are careless in looking after the materials placed in their charge. Was not in the habit of watching all Mr. Coverdale's movements while he was employed here, but saw him frequently at his work; sees Mr. Horsey about the yard in the same way; thinks Mr. Coverdale was as careful about the materials as Mr. Horsey; there might be a waste of tools and materials while Mr. Coverdale was there."

Keeper Pollard, says:—"Has had nearly two tons of lead on hand at a time; it lays open in the shop; the shop door is not locked; it is possible that persons may have gone into the shop, and cut off lead in small quantities, without witness knowing it; has had as many as fifteen men working under him in the shop; the Convicts only cut off lead with witness's consent, when witness is present; lead has often been cut off in witness's absence; witness has been frequently absent from his shop since he came to the

Prison, working in other parts of the establishment, perhaps two days in a week."

Keeper Richardson, says:—"Witness takes the best care he can of the materials entrusted to his charge; there must be waste, from the nature of the men employed; tools are broken, and missing sometimes; witness locks up all the tools, and gives them out as they are wanted; believes that Convicts sometimes break their tools wilfully."

To meet the charge, the Warden brings a number of Keepers to testify that there was no waste in their shops. For instance, Keeper Hooper says:—"There has been no waste of tools or materials in witness's shop since witness has been at the Penitentiary. There were no more articles purchased for witness's shop than were necessary."

Keeper Kermiston also says:—"Never had more tools than witness wanted for his gang. There is very little waste of tools or materials in witness's gang, only what is unavoidable."

And Mr. Horsey, William Smith, Manuel, Little, Gibson, Ballentine, Grass, M'Mahon, and Mathews, testify to the same effect—almost in the same words.

A second defence is, that it is true great mismanagement occurred as to the stone-cutters' and carpenters' tools; but that, in the former case, it arose from the tools being improperly tempered by Ex-Keeper M'Carthy, and in the latter, from theft by one of the Carpenter-keepers.

On the former point, Keeper Manuel's testimony will show the character of the defence. He says:—"There were no more tools purchased for witness's gang than were required. There was great waste in sharpening the tools in the Blacksmith's shop. Witness's tools are those of stone-cutters—some of them. Mr. M'Carthy was the Blacksmith's Keeper at that time. It was of no use to talk to M'Carthy; he would sit down and let the Convicts do as they pleased. Witness considers that the waste of tools arose from M'Carthy's neglect. Witness and other Keepers have often quarrelled with M'Carthy on the subject of his neglect, and they have threatened to report M'Carthy to the Warden; but it was all of no use. Witness has often complained to Mr. Coverdale, the Architect; and Mr. Coverdale used often to complain of M'Carthy also."

As far as the Warden is concerned, it matters little how the waste arose: the charge is, that waste existed unenquired into; and if Keeper M'Carthy was so unfit for his situation, why was he kept fifteen years in it? If for fifteen years he has been wasting the property of the Institution, how is it that the matter never reached the Warden's ears until now? And as to the Carpenters' tools having been stolen, the allegation rests entirely on Convict evidence; and after all, amounts to nothing more than suspicion. The Keeper in question has also been many years in the Prison, and has borne throughout an unimpeached character. The transactions now averred against him, run over a period of at least two or three years. How is it that they only came up now? We find no ground for any insinuation against the integrity of the Carpenter-keeper.

It is enough to know, that no stock account is kept of tools or materials in any of the shops—that there is no check whatever on the expenditure of such articles—and that the Convicts get tools when they demand them, and help themselves to what mate-

rials they need—to be convinced that great waste of property takes place.

We are satisfied that there has been shameful carelessness in this matter, and that much loss has been sustained in consequence.

We have at some trouble extracted from the weekly labor returns of the Blacksmith's shop, a statement of the cost of Stone-cutters' and Quarrymen's tools since the opening of the Institution, and we find it exhibits the following result :—

Statement showing the annual cost of such new Stone-cutters' tools as were made in the Penitentiary, and the cost of sharpening them; also, the same of Quarrymen's tools :—

	STONE-CUTTER'S TOOLS.		QUARRYMEN'S TOOLS.		TOTAL.
	New.	Sharpened.	New.	Sharpened.	
1838	£ 40 8 11	154 5 8	81 11 7	259 19 4	536 5 6
1839	56 14 0	180 10 5	79 8 0	176 18 11	493 11 4
1840	48 12 6	164 2 7	72 18 10	205 4 2	490 18 1
1841	51 8 10	68 17 9	201 5 6	272 7 6	593 19 7
1842	69 8 7	103 16 10	200 2 4	288 16 5	662 4 2
1843	149 9 7	149 15 4	243 3 4	303 11 3	845 19 6
1844	334 19 5	337 8 4	239 11 7	368 10 4	1280 9 8
1845	385 16 0	391 9 1	141 18 10	300 11 5	1219 15 4
1846	428 4 5	430 14 7	101 0 3	251 6 5	1211 5 8
1847	256 12 1	511 8 3	167 19 10	366 4 7	1502 4 9
£	1821 14 4	2492 8 10	1529 0 1	2793 10 4	8636 18 7

This statement speaks for itself. The fact, that sharpening tools cost £877 12s. 10d. in the year 1847, must alone remove every doubt as to the culpable mismanagement of this department.

The following statement of the cost of Carts and Hand-barrows for the same period, shows the extraordinary consumption of these articles which has taken place :—

	BLACKSMITH'S RETURN.		CARPENTER'S RETURN.		TOTAL.
	Carts	Barrows.	Carts and Barrows.		
1837	£ 2 10 0	1 18 0	4 0 1		8 8 1
1838	29 2 11	35 7 0	39 18 11		104 9 10
1839	25 6 3	23 9 10	29 1 9		77 17 10
1840	49 4 1	38 3 2	56 15 10		144 3 1
1841	49 7 0	24 11 6	98 7 11		167 6 5
1842	74 14 6	83 12 6	96 11 0		254 18 0
1843	82 2 6	60 13 9	205 17 9		348 14 0
1844	92 6 2	91 15 6	202 1 8		386 3 4
1845	98 15 7	91 17 0	244 12 2		435 4 9
1846	66 1 0	50 7 0	227 7 7		345 15 7
1847	97 2 9	89 16 9	138 13 3		325 12 9
£	666 12 9	591 12 0	1338 7 11		2596 12 8

4. IN ALLOWING THE OFFICERS OF THE PENITENTIARY TO FIX FOR EACH OTHER THE PRICES OF ARTICLES MADE FOR THE SAID OFFICERS BY CONVICT LABOR.

The question whether the Officers should have work done for themselves in the Penitentiary, has been at various periods before the Board of Inspectors. The following orders on the subject have been made from time to time :—

Extracts from the Minutes of the Board of Inspectors of the Provincial Penitentiary.

5th December, 1836.

“ That there shall be no retailing of the manufactures of the Prison for account thereof either within its walls or at Kingston, and that work shall be done

at the shops for persons connected with the Prison only in special cases, and that when work out of the common line is offered the Warden, he shall consult thereupon with the President or any two of the Inspectors before it is accepted.

“ That as soon as possible a proper amount of Convict labor to be hereafter determined on, shall be let out by Contract on the plan pursued at Auburn, for the establishment of the manufacture of combs.”

19th December, 1836.

“ That it is the opinion of the Inspectors that the Resolution of the 5th instant, in reference to the sale and manufacture of articles in the Penitentiary, does not extend to the Officers and persons immediately connected with the Institution.”

11th January, 1837.

“ The Board direct that for the future no work whatever shall be done at the Penitentiary for the Warden and Inspectors, either by wholesale or retail, under any pretence whatever.

12th May, 1837.

“ With reference to the order of the 11th January last, relating to work done in the Penitentiary for the Officers and others, the Board direct that its provisions be extended, and that in future no work be done for any Officer or individual connected with the Prison.”

16th October, 1846.

“ The Board of Inspectors finding that great irregularity has been occasioned in the Provincial Penitentiary by permitting Officers belonging to the Institution to purchase articles made by the Convicts, and materials and stores procured for the use of the establishment, at the valuation of each other, do now order and direct, that henceforth no work of any description be made directly or indirectly for any Officer of the Institution; nor shall any materials, stores, or other articles the property of the Penitentiary be sold to any Officer belonging thereto, otherwise than by a public sale by auction to be held at such times and places as the Inspectors may from time to time direct, on a report of the Warden of the amount of goods on hand and for sale. The Inspectors also direct, that in future strict attention be paid to the General Order No. 2, to Gate-keepers, and that no article be allowed to pass the Gate without a written order from the Warden or Clerk, which shall be deposited with the Gate-keeper, and by him returned daily to the office to be there filed.”

29th December, 1846.

“ A petition from the Keepers and Guards was laid before the Board, praying for permission to have such articles as they may require made and mended by Convict labor. The Board taking into consideration the allegation set forth in the petition, now direct that work may be done for any person connected with the Institution, provided the articles made or repaired be submitted to the examination of the Warden, in order that it may be ascertained that the charge made therefor is correct; and that no such articles be allowed to be sent out of the Penitentiary unless accompanied by a pass for the same from the office.”

“ The foregoing are true extracts.

(Signed) “ F. BICKERTON, Clerk.”

The foregoing orders were furnished to us by the Clerk, as the only rules which have been passed by the Inspectors on the subject of work done in the Prison for the Officers, and it appears by these rules, that all such work executed between the 12th May 1837, and 29th December 1846, was in direct opposition to the instructions of the Inspectors.

We find that a large amount of retail work has been done for the Officers, as well while such transactions were forbidden, as when allowed by the Inspectors, and that the prices were fixed by the Officers for each other. And it is proved that notwithstanding the rule passed by the late Board, only a few weeks after their appointment, the Keepers still continued to fix the prices for each other; and the Warden has not pretended to show that he exercised the control over it which he was bound to have done by the new rule.

We think much censure is attachable to the Warden in this matter; a practice more liable to abuse could not have been devised, and the Minute of the Kirpatrick Board of 16th October, 1846, shows how injurious they found it in practice. It is very clear that by a combination among two or more Officers the Institution might have been defrauded to a great extent.

We conceive the practice of doing retail work in a Penitentiary for private individuals, inconsistent with the purposes of such an Institution, and calculated to interfere seriously with the discipline; but to do such work for the Officers of the Prison, and allow them to fix the prices for each other is altogether indefensible.

5. IN ALLOWING THE PENITENTIARY LOT TO LAY UNPRODUCTIVE SINCE THE COMMENCEMENT OF THE INSTITUTION.

The capacity of the Lot on which the Penitentiary is built, is well described in the able report of the Building Commissioners to Government, of 23d November, 1833. They say:—

“After examining, with great care, all the grounds in and near the Town of Kingston, it was found that no situation combining the advantages of perfect salubrity, ready access to the water, and abundant quarries of fine limestone, could be obtained nearer the town than Lot No. 20 in the 1st Concession of the Township of Kingston, which is about a mile west of the town. The west half of this Lot, belonging to the heirs of the late Philip Pember, which contains one hundred acres of land, reaching from Hatter's Bay, on Lake Ontario, to the rear of the 1st Concession, was accordingly purchased for the sum of £1000. The space between the Lake and the highway is about fifteen acres in extent, of which nine or ten acres will be enclosed by the walls of the Penitentiary; and on the west side, is a fine harbour, where vessels may approach within a few feet of the shore. Nothing indeed can surpass the convenience and beauty of this site, on which is found a quarry of the best limestone, amply sufficient for the construction of the buildings and walls of the proposed Establishment. Twenty or twenty-five acres of the front of this Lot would, perhaps, furnish all the room that is required for the buildings connected with the Penitentiary; and the Legislature might therefore (if they should see fit) direct the residue to be sold. The Commissioners are, however, of opinion, that the land is worth the purchase-money, and should be retained for public uses, especially as it appears

to abound with quarries of the finest limestone, which it will doubtless be found profitable to open, when Convicts are sentenced to hard labor at the Penitentiary. Probably it may become advisable to let a part of the Lot on the rear, as soon as a system of Prison discipline has been organized for the Establishment; but certainly it would not be desirable that any portion of it should be sold before the nature and value of the quarries had been fully and closely inquired into and understood.”

We find that this valuable land has been in a great measure unproductive for nearly sixteen years. It is true that stone has been taken from it to a considerable extent, and some firewood and scaffold-poles; but altogether to an amount quite inadequate as a return from so valuable a property.

We are of opinion, however, that this was one of those matters upon which the Warden might naturally have looked to the Inspectors to take action; and although various suggestions have been made for the employment of the spare land which might have been profitably carried out, still these are untried experiments, and the results might have been far from satisfactory. We, therefore, acquit the Warden of blame on this score.

6. IN PURCHASING LEATHER AT PRIVATE SALE, INSTEAD OF BY CONTRACT.

It appears by the Books that the following sums have been paid for Leather:—

30th September, 1835, was.....	£40	5	3
“ “ 1836, .....	91	4	11
“ “ 1837, .....	99	4	6
“ “ 1838, .....	241	18	8
“ “ 1839, .....	241	14	2
“ “ 1840, .....	191	12	11
“ “ 1841, .....	176	12	5
“ “ 1842, .....	243	10	0
“ “ 1843, .....	338	14	5
“ “ 1844, .....	284	9	10
“ “ 1845, .....	427	15	2
“ “ 1846, .....	520	5	5
“ “ 1847, .....	458	17	11
	£3356	5	7

Of which sum £2874 11s. 6d. was paid to one individual, Mr. William Ford, jun.

It appears that all these extensive transactions have been concluded by private bargain, while other articles, to a less amount, have been regularly contracted for. While admitting the high respectability of the house with whom so large a portion of these purchases has been transacted; we are of opinion that it would have been much more satisfactory had tenders been taken for the supply of the articles, by which, in all probability, a saving would have been effected.

7. IN DEFACING A LARGE QUANTITY OF STONE, WHICH HAD BEEN PREPARED AT GREAT COST.

The evidence on this point was as follows:—

Ex-Keeper Gleeson (preliminary examination):—  
 “There was a transaction by which the Penitentiary lost several hundreds of pounds. In the winter of 1846-7, seven gangs of masons were to work at fine stone-cutting; each gang produced from two to four thousand feet of this article. When the spring came,

this fine cut-stone was taken, defaced, and made into 'coursers'—an inferior style of work. The effect of this was, that the building was charged with double work: the winter's labor, of about one shilling per foot, was thrown away. Witness is quite sure no such transaction would have occurred in Mr. Coverdale's time. When the men wished to take witness's stone to be used in this way, witness objected, and threatened to complain to the Warden on the subject: he complained to Mr. Horsey in this way, and he put a stop to it. The Warden could not avoid knowing of this transaction."

Ex-Guard Fitzgerald (preliminary examination):—"Recollects a large quantity of fine cut-stone being prepared through the winter, which in the spring was made into coursers, thus throwing away the first work done on the stone."

Keeper Swift (preliminary examination):—"Had charge of a gang of stone-cutters in the winter of 1846-7, and prepared a large quantity of axed-ashlaer work; it was worth 1s. per foot to do this work; and when the building season came, witness had 1229 feet of it on hand; other Keepers had a large additional quantity of this work on hand. In the spring, under Mr. Horsey's instructions, Keepers Little and Matthews defaced a large quantity of this stone, and made it into 'common coursers,' thereby throwing away the previous work. Common coursers are worth 3d. per foot to work."

By Mr. Smith:—

"Witness prepared a quantity of axed-ashlaer in the winter of 1846-7; believes that the return witness made of the article amounted to 1229 feet; made the return to the Commissioners in his evidence formerly given; has made no other return by measurement, but made his returns to the office of the day's work of the Convicts; kept a memorandum of the measurement of the axed-ashlaer by the running feet, without regard to the breadth of the stone; did not keep a separate account of each man's work; does not know how much axed-ashlaer was cut in the other sheds. The whole of the axed-ashlaer cut in witness's shed was defaced; does not know the cause of the stone being defaced. The 1229 feet that witness refers to, was defaced by Little's and Matthews' gangs. The whole of this ashlaer was fit to be used as such before it was defaced, according to Mr. Horsey's examination; does not know whether Little or Matthews defaced any stone which had been in their sheds; cannot say if the alterations was made by Mr. Horsey's directions; does not know that any ashlaer work was put into the boundary wall in Mr. Coverdale's time. All the wall was built in Mr. Coverdale's time"

By Commissioners:—

"Other gangs, besides those of witness's, have prepared axe-ashlaer stone; has no idea whether the stone which was defaced was so done by Mr. Horsey's directions, or by the Keepers' own acts."

Mr. Horsey—Preliminary examination:—

"In the winter of 1846 there was some fine axe-stone work done in the Penitentiary, part of which was defaced in the spring of 1847; it was axe-ashlaer "work turned into rough coursers; does not know how much was so used."

To meet this evidence the Warden re-called Mr. Horsey who testified as follows:—"Witness gave

orders to some of the Keepers to cut certain axe-ashlaer stone into coursers; so ordered Keepers Little and Mathews, Gleeson first informed witness that axe-ashlaer stone was being so cut up; witness reproved Little and Mathews who were doing so; but when witness looked at the quality of the stone as regarded its workmanship, then he told them that they might use a few, warning them to be cautious in the use of this stone, not to take any except such as were unfit for best work; witness told these Keepers to show the stone to himself before they used it into coursers; does not know the quantity so altered, it might be about 130 feet; thinks the stone in question had been cut into axe-ashlaer principally at Swift's shed; some of this stone was in wind and broken at the edge, and this was the reason of this stone being so used into coursers; this stone was not fit to go into a wall as ashlaer stone. Soon after this witness found that Keeper Swift was not fit to be over a gang of Stone-cutters, and witness therefore had him removed into the Quarry. There has been thousands of feet of ashlaer stone used in the boundary wall, and at the stables, and even in the dung pit; this was done in Mr. Coverdale's time; witness considers that this was a great waste of material, and he would not have put such stone in such situations; does not consider the Warden is the proper person to judge about masonry without consulting the architect."

He also called other witnesses.

Guard Kearns—By Mr. Smith:—

"Has seen stone broken up for other work which had been previously dressed; this stone was dressed by Swift's gang, and broken up by Little and Matthew's gang; does not know by whose orders this was done. Witness is not a Stone-cutter; does not know when he sees a stone dressed whether it is fit for use or not; supposes that it would be better if a stone were badly cut, and unfit for the purpose intended, to apply such stone to some other purpose with further alterations."

By Commissioners:—

"The stone dressed by Swift's gang had lain for two or three months before it was broken up by Little and Matthew's gangs; never heard that it was lying about because it was spoilt, or unfit for the purpose for which it was intended."

By Mr. Smith:—

"The stone cut by Swift's gang was done in the winter; it was used in building the chimney of the East Wing of the shops; there may be some of them in the walls of the building; does not know the thickness of the stone in question; thinks it was in the autumn that Little and Matthews gangs were at work in defacing this stone."

Keeper Wm. Smith—By Mr. Smith:—

"Witness has never defaced axe-ashlaer stone and used it for coursers, unless it was unfit for use by becoming damaged. Witness once took axe-ashlaer stone and used it for coursers by order of Mr. Coverdale; there was a deficiency of coursers at the time; it was used in the boundary wall."

Keeper Manuel—By Mr. Smith:—

"Witness does not know of any axe-ashlaer being altered into coursers in Mr. Horsey's time; witness

has used thousands of feet of axe-ashlaer work in the boundary wall ; it was by Mr. Coverdale's orders that this stone was used ; witness has altered a good few of axe-ashlaer work and cut stone in the building of the towers ; sometimes there was a difficulty in getting stone, and then witness was directed to use up the stone in question ; was directed to do this by Mr. Coverdale."

Keeper Little—By Mr. Smith :—

"There was some axe-ashlaer altered that was of a bad quality, it was not fit to put in a good building ; this axe-ashlaer came from witness's shed, some of it,—it was cut by new-comers who were not fit to cut a good stone ; there might be not quite 100 feet from witness's shed ; there might be axe-ashlaer from other sheds, but witness does not know ; witness only altered the 100 feet referred to which had been cut by inferior hands ; Mr. Horsey told witness that he might take this stone as it was not good for anything else ; there was also some axe-ashlaer and cornice stones from Swift's shed, they were a few pieces ; they were all of inferior workmanship, and Mr. Horsey therefore directed witness to use them ; some of them had the arris broken off ; none of the stone which witness altered was fit to be used for better work than that to which it was applied ; some of the axe-ashlaer was used in the boundary wall by Mr. Coverdale's directions ; this was too thin for better purposes ; there was about 150 running feet used by witness ; some of the stone turned out by Swift's gang was of inferior workmanship ; Swift has not since had charge of the Stone-cutter's gang ; Swift never had charge of a Stone-cutter's gang since witness came to the yard, except for a short time ; that ashlaer would have been useless, and might have been lying yet in the yard, had it not been altered ; as it was not fit to go in among good cut stone."

Keeper Ballentine—By Mr. Smith :—

"Witness has altered ashlaers into coursers when stone was scarce, rather than the work should be stopped ; witness has taken the ashlaer stone ; there has not been much so taken, had orders to do this from Mr. Coverdale."

Keeper Matthews—By Mr. Smith :—

"There were some axe-ashlaers altered in 1847 ; there might be 100 feet more or less altered by witness's gang ; part of these ashlaers came from witness's shed, and part from Mr. Manuel's ; none come to witness's gang from Swift's shed. This was in the spring of the year, and there was no stone to go on with, witness therefore took the stone on his own responsibility to prevent his men from being idle ; the stone which witness took was the refuse of other stone ; it was not fit to be used as ashlaer, except it was marked over again ; the stone had been ironed over so many times that the corners of some of it was broken, and others were in wind."

We think the Warden has not bettered his case by the evidence adduced ; as far as he is concerned it matters not whether the waste occurred in Mr. Coverdale's or in Mr. Horsey's time. Nor can we see that it in any shape affects the charge whether the cause of so much labour being thrown away was the bad quality of the work, or an urgent demand for the inferior article, or want of care in preserving it from injury ; in any of these cases great loss to the public is admitted, which by a little forethought and attention, might have been avoided.

We think it clear that shameful waste and mismanagement are brought to light in this matter, and we are satisfied that with anything like a reasonable surveillance of the business proceedings of the Institution the Warden could not have been ignorant of it.

8. IN PROCURING A LARGE ESTABLISHMENT OF CARRIAGES, HORSES, HARNESS, &c., AND MAINTAINING IT AT A GREAT EXPENSE OUT OF THE PENITENTIARY FUNDS, COLORABLY FOR THE CONVENIENCE OF THE INSPECTORS, (ATTENDING MEETINGS OF THE BOARD,) BUT, IN REALITY, FOR THE USE OF HIMSELF AND FAMILY.

A carriage was built in the Penitentiary, avowedly for the use of the Inspectors in 1837 ; the exact cost of it cannot be ascertained, but it was valued in the inventory at £20.

A second carriage was built in 1843, to take the place of the last, which cost £74 17s. 9d.

These carriages have been often repaired ; and harness, robes &c., procured for them altogether, at a cost of several hundred pounds.

It appears that the Warden, on 20th August, 1835, hired from himself a bay horse and cart at the rate of 2s. 6d. per day, and that he paid himself for the same. It is shown however that this transaction was authorized by the Board of Inspectors. In January, 1840, (there being at the time three work horses in the Penitentiary) the Warden asserts that he made a bargain with himself for the use of this bay horse (which forms the subject of a future charge) for the light work of the Penitentiary, and that in accordance therewith the bay horse did such work without hire, further than being fed at the public expense ; he remained so employed up to March 1847, when he was sold for the Warden's benefit.

In December 1842 (the bay horse and three work horses being at the time in the establishment) a pair of brown carriage horses were purchased for £50. The purpose for which they were intended is explained by Thomas Kirkpatrick, Esq., then President of the Board of Inspectors. He says :—"Thinks witness was informed of the purchase of the brown carriage horses by Mr. Smith, after he had purchased them from a person residing near Belleville ; has no recollection of ever suggesting to Mr. Smith to purchase the said horses ; such matters did not come within the province of the Inspectors ; no objection was made by the Board as to the building of the carriage or the purchase of the carriage horses."

And again :—"It was understood when the brown horses were bought that they were needed for the general business of the Institution."

Major Sadler, also an Inspector at the time, says, when examined by Mr. Smith :—"The carriage brown horses were bought while witness was an Inspector ; thinks the horses previously used in the carriage were lame at the time the pair of brown horses were bought ; they were not bought for carriage use ; they were bought to do the general work of the Penitentiary, upon the recommendation of the Warden, who said it was necessary they should be got for the work of the Institution. Has often seen Mrs. Smith, the Warden's wife, riding in the Inspectors' carriage ; has known the wife of an Inspector to ride in the Penitentiary carriage with Mrs.

Smith; Mrs. Sadlier has done so; thinks the Inspectors never found fault with the Warden for using the Penitentiary carriage and horses for his family purposes; Mrs. Smith used often to go into town when the carriage was going for the Inspectors, and she used it at other times as well."

In March 1846, one of these horses was sold for £3 17s. 7d., and another bought in his place for £20. The new purchase was mated with the remaining one of the original pair, and they are both in the establishment now.

It appears from the evidence that for a short period after their purchase the original pair did occasionally work in the Quarry; the exact period is not shown, but we gather that it was for about one year; when one of the horses becoming lame, they were both removed from the Quarry and have been employed ever since (over five years) exclusively in drawing the Inspectors' carriage or the Messenger's cart.

For building the carriages, or purchasing horses for carriage work there is no authority of the Board of Inspectors, further than the negative sanction, which may be drawn from the fact, that members of the Board were driven with them to their meetings at the Penitentiary.

The exact sum which the keeping of these horses has cost the country, it is impossible to ascertain; but as will be seen in a future charge the cost of keeping 4 horses, 10 oxen and 2 cows, in 1846, was £608 16s. 9d.; and of 4 horses, 12 oxen and 2 cows, in 1847, £562 2s. 3d. or nearly £40 per annum for each animal. This would give £80 yearly for the pair of horses, or £400 for the five years. A coachman has been paid in the same period £300, and his whole work has been driving the carriage and going errands to town; and a share of the expense incurred for a Convict as stableman must also be added. Altogether, we are within the mark when we say that the stable establishment, kept up on the plea of bringing the Inspectors to the Penitentiary, must have cost the country over £1000.

It is undoubted, that a cart and one horse were all that was necessary for the out-door work of the Institution.

The plea that a carriage and horses were required to bring the Inspectors to the Board Meetings is at once refuted by the small number of such meetings; this will be seen by the following table, showing the number of meetings of the Board of Inspectors which there have been since the Prison was opened:—

	1834	1835	1836	1837	1838	1839	1840	1841	1842	1843	1844	1845	1846	1847	1848
January .....	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
February .....	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
March .....	2	3	3	3	1	1	1	1	1	1	1	1	1	1	1
April .....	2	3	1	1	2	2	1	1	1	1	1	1	1	1	1
May .....	4	1	2	1	1	1	1	1	1	1	1	1	1	1	1
June .....	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
July .....	1	1	3	2	3	1	1	1	1	1	1	1	1	1	1
August .....	2	1	3	3	2	1	2	1	1	1	1	1	1	1	1
September .....	1	1	3	2	3	1	2	1	1	1	1	1	1	1	1
October .....	1	2	2	1	2	2	1	1	1	1	1	1	1	1	1
November .....	1	2	2	1	1	1	1	1	1	1	1	1	1	1	1
December .....	1	3	3	3	2	3	1	1	1	1	1	1	3	2	1
Total .....	2	13	21	25	13	17	14	10	9	8	12	11	13	24	28

220 Board Meetings in 14 Years.

And if further evidence were necessary, the statement of Messrs. Kirkpatrick and Sadlier abundantly furnish it.

Mr. Kirkpatrick says:—"The number of meetings of the Board of Inspectors during witness's incumbency, averaged about twelve per annum; never considered that there was any necessity for keeping a pair of carriage-horses for the use of the Inspectors."

Major Sadlier—By Commissioners:—

Q. "Do you conceive it was necessary to keep a carriage and pair of horses for the purpose of bringing four or five Inspectors, twelve or fifteen times a year, to the Penitentiary?"

A. "Thinks it would have been very hard for an Inspector who lived far off, and had no vehicle of his own, if he had not been driven to the Penitentiary."

Q. "How many Inspectors have ever been connected with the Penitentiary, who lived far off, and kept no vehicle?"

A. "In Mr. Cartwright's Board, Mr. Pringle, Mr. Nickalls, and Mr. Gray: in Mr. Kirkpatrick's Board, Mr. Manahan: in Mr. Corbett's Board, Mr. Yarker and Mr. Macfarlane. Witness thinks it would have been better not to have kept a carriage and pair of horses for the use of the Inspectors; and so strong is that opinion now, from experience, that had witness moved to have them done away and not succeeded, he would have resigned."

Another plea is, that the horses were needed for the messenger to go errands to town; but this is evidently untenable, from the evidence of Thomas Smith, the messenger. He says:—

"The brown carriage-horses have never done any other work than drawing the carriage and the messenger's cart since the brown horse was lamed in the stable. Witness's usual number of trips to town per day, was two—sometimes four. One horse could have done the messenger's work. One horse would not have been able to go twice daily to town, and three or four times occasionally. From the Penitentiary to town is about a mile and a half."

Besides, the evidence adduced by the Warden shows, that from 1840 to 1846 his bay horse was used by Smith for the messenger's purposes, and was on account of such work fed at the public expense. For three years, therefore, at any rate, the messenger was independent of the brown carriage horses.

The allegation that the Warden used the Penitentiary carriage and horses for the private purposes of himself and family, seems to be completely sustained by many witnesses. The coachman, Thomas Smith, after much equivocation, at last admits the fact.

Thomas Smith—By Warden:—

"Witness never knew the ex-Warden to go in the Penitentiary carriage, except on Penitentiary business, unless on a Sunday when he went to church. Mr. Smith very seldom went to church. Witness has taken Mrs. Smith to town in the Penitentiary carriage, but he has taken the carriage to town on duty at the same time. Mrs. Smith has frequently taken the advantage of the carriage going into town for the Inspectors."

By Commissioners:—

"Mrs. Smith was not in the habit of going to town in the Penitentiary carriage during the summer

of 1847, or previous summers; she never went unless witness had some business to transact in the town. Witness's business did not require the carriage or two horses to be used."

By Mr. Smith:—

"Has taken Mrs. Smith to town, when going for the Inspectors, in the carriage."

By Commissioners:—

Q. "Did you ever drive the Warden or his family in any other direction than into town?"

A. "Yes; has often driven out the Warden and his family when there was no business to be transacted; and has driven them to town in the carriage and horses when the carriage and horses were not otherwise required, as the cart would have answered. Witness drove out the Warden and his family in the carriage whenever they desired to go; and if witness had any business to transact at the same time, he did it."

Q. "Have you not driven out the Warden's family on many occasions, at all times of the day?"

A. "Yes."

It also appears that the manner in which the carriage and horses were used, came under the notice of the Board.

Mr. Thomas Kirkpatrick says:—"Thinks the Inspectors found fault with the Warden for using the carriage and horses of the Penitentiary improperly; and if he is not mistaken, there is a memorandum as to it on the Minutes. The Inspectors often remarked upon the improper manner in which the carriage and horses were used by the Warden; witness means, in employing them on occasions not connected with the business of the Penitentiary. Has no recollection of the date of the Minute referred to; thinks it was in 1843 or 1844; it was a General Minute, but intended to point specially at the employment of the under officers, and the carriage and horses of the establishment, by the superior officers."

On this point, the Warden called Mr. Bickerton, who testified that he "recollects of no Minute by the Inspectors forbidding the Warden to use the Penitentiary carriage and horses."

Mr. Hopkirk also testifies, as follows:—"The Inspectors were always aware that the Warden used the Penitentiary Inspectors' carriage, and made no objection to it. They were perfectly aware that he occasionally used it for other than public purposes."

From all that has come before us, we are of opinion that the great expenditure of public money, on such a plea, was quite inexcusable.

9. IN ALLOWING CONTRACTORS TO DEVIATE FROM THEIR CONTRACTS, TO THE INJURY OF THE INSTITUTION.

Under this count, four separate transactions are referred to.

The first case in reference to the delivery of a quantity of iron by Messrs. Watkins and Co.

The following is the evidence upon it:—

James M'Carthy—Preliminary examination of 6th July, 1848:—

"On one occasion made a requisition for a large quantity of  $2\frac{3}{4} \times \frac{1}{2}$  inch English iron. Messrs Watkins and Co. were at the time under Contract to supply the Penitentiary with this article at a certain price; when the Warden furnished a memorandum of the quantity wanted to Watkins & Co., it was found they could not supply the order. Mr. Muckleston of Watkins' house, came to the Penitentiary along with Mr. Horsey, and spoke to witness on the subject; he said they were unable to supply the  $2\frac{3}{4} \times \frac{1}{2}$  inch iron wanted, but that they had English iron of a large size, and some Swedish iron which they would furnish at the same price overhead, as the article ordered would have been; that is to say, that they would not charge for the extra weight of the English bars, or the extra value of the Swedish. Mr. Horsey and witness agreed to this, and the iron was delivered and used. Some time after, the Warden asked witness if he had heard the bargain made by Mr. Horsey and Mr. Muckleston? Witness said he had, and explained what passed; the Warden said he was glad of it. Shortly after witness was told by Mr. Muckleston that he received payment of the full weight of the English bars, and of the extra price of the Swedish, notwithstanding his agreement to the contrary."

Recalled 5th September, 1848:—

"Having had his evidence of 6th July, relating to the transaction of iron with John Watkins & Co., read over to him, on page 100; he says his former statement is strictly correct. He received the iron alluded to, and certified the quantity received, at the full weight delivered; and Mr. Muckleston told him he was paid the full price of the Swedish iron, and the full weight of the English iron of a larger size than was wanted."

By Mr. Smith:—

"Recollects Watkins & Co. furnishing iron to the Penitentiary of a larger size than was ordered; thinks the size ordered was  $2\frac{3}{4} \times \frac{1}{2}$ ; forgets the size exactly which was furnished, but it was larger. Witness weighed the iron, and returned the weight delivered which agreed with the invoice; witness weighed 2 pieces of each size of iron to see what the difference would be, but Mr. Horsey said he had a table showing the difference, and witness went no farther in the matter. To the best of witness's belief the transaction occurred in 1847. Crown iron and Banks' iron has been delivered to the Penitentiary by Watkins & Co. Cannot recollect if Watkins & Co. have delivered Crown or Bank's iron in place of English iron which had been ordered. Mr. Muckleston, of Watkins & Co.'s house, came to the Blacksmith's shop and spoke about not having the  $2\frac{3}{4} \times \frac{1}{2}$  in English iron, and Mr. Horsey was with him; Mr. Muckleston said he would make up the  $2\frac{3}{4} \times \frac{1}{2}$  in English with Swedes iron, and a larger size of English iron, and only charge the value of the  $2\frac{3}{4} \times \frac{1}{2}$  inch; Mr. Muckleston said he would make an allowance on the weight of the larger iron, on account of the difference of weight between that ordered and that furnished; he said he would charge the Swedes iron as English iron; Swedes iron was furnished in place of English iron. Mr. Muckleston told witness afterwards that he was paid the full price of the Swedish iron, and that no deduction was made on account of the extra weight of the English iron, or words to that effect; Mr. Muckleston did not state

that he was paid under this arrangement; but witness understood that he had been allowed what he stated about the iron in his accounts. Mr. Muckleston told this to witness after the order was completed; does not recollect exactly the date, thinks it was in 1847. Witness certified the bills for the weight of iron received, on the understanding that the deduction would be made at the office; presumed so from hearing Mr. Horsey's conversation with Mr. Muckleston, and from the Warden having afterwards asked witness if he had heard that conversation and the terms of it. Witness made no enquiry at the Clerk if Mr. Muckleston had been settled with as he stated; had nothing to do with the Clerk's business. Witness is asked, if knowing that a fraud had been committed on the Institution he had allowed it to pass without notice? and says, he conceived the Warden and Mr. Horsey were as well in possession of it as he was, and that he had no one but the Warden to expose it to, and Mr. Muckleston being a great friend of the Warden's he did not wish to stir in it. Witness is asked if he ever informed the Warden that no allowance was made in the invoices for the difference in weight between the large and smaller iron already mentioned? and says he did not; because he had informed the Warden in answer to his enquiries of the bargain, before all the iron under it was delivered.

Q. "Did you ever tell the Warden that Watkins & Co. had failed to complete the bargain made in presence of Mr. Horsey?"

A. "Witness did not, because he thought the Warden knew of it as well as himself."

By Commissioners:—

"Is not sure, but thinks the Swedes iron was the same thickness, but a little wider than the English iron ordered from Watkins & Co."

Samuel Muckleston—preliminary examination:—

"Is a partner in the house of John Watkins & Co.; the firm has had large transactions in iron and hardware with the Penitentiary; recollects that a large quantity of English iron  $2\frac{3}{4} \times \frac{3}{8}$  inch was ordered for the Penitentiary, last year or the year previous, when the firm had not iron sufficient of that description on hand. English iron of a larger size, and Swedish iron of the right size, were furnished to supply the order; the regular contract price of  $2\frac{3}{4} \times \frac{3}{8}$  in English iron, only was charged. The evidence of James M'Carthy on page 100 from line 31 to line 35 (as to witness having stated that he got full price for the substituted articles) having been read over to witness, he declares it to be untrue. There was very little of  $2\frac{3}{4} \times \frac{3}{8}$  inch iron short, not more than 2 tons out of 20."

By Mr. Smith:—

"Watkins & Co. (of which house witness is a partner) furnished iron for the Penitentiary in 1847; always supplied the sizes of iron required for the Institution, but in one instance. In the instance witness refers to, a larger size of iron was supplied than was required; it was done with the sanction of Mr. Horsey. To the best of his knowledge, five or six cwt. was deducted on account of the larger size being furnished. The firm furnished some Swedes and some Crown iron in lieu of the English iron ordered: both were charged as English iron. About 2 tons of Swedes iron was so furnished: about 5 tons of Crown iron was so furnished. The Crown iron

was  $1\frac{1}{2} \times \frac{3}{8}$  inch; the Swedes iron was  $3 \times \frac{1}{2}$  inch—the exact size ordered. The price of English iron under the contract, was 15s. 9d.; the price of Crown iron under the contract, was 19s. 6d.; the price of Swedes iron under the contract, was 21s. All three kinds were charged overhead at the price of English iron. Thinks the firm lost £25 by the transaction.

"Witness's firm supplied a quantity of Canada Plate to the Penitentiary in fall of 1847. Made application in June or July, 1847, to know what quantity would be wanted under the contract during the year; was told by Mr. Horsey what quantity would be required for covering the buildings going on; means the new work-shops. Furnished the quantity named by Mr. Horsey. Witness considered the firm's contract was to furnish nothing but what was needed for the use of the Penitentiary.

"The interest given at the Kingston Savings' Banks is 3 per cent. Mr. Watkins has money belonging to a Convict in the Penitentiary; he took it at the Warden's request; the amount is £41 odd; he pays 6 per cent. for it. Cannot tell whether the bills of parcels for the large size of English iron was sent to the Penitentiary with the gross weight charged, or with the deduction made as agreed between witness and Mr. Horsey.

"Never told M'Carthy that Watkins & Co. had recovered full payment of the extra weight of the English iron, and the extra value of the Swedes iron, notwithstanding the agreement to the contrary. Never told M'Carthy that the full weight of iron furnished by witness in 1847, was allowed to him, without any deduction on account of size; has no recollection of conversing with M'Carthy on the subject, though witness frequently conversed with him when at the Penitentiary on business; would not say that M'Carthy had sworn falsely, if he had so sworn before the Commissioners; he may have been mistaken; and it is so long ago, and they had so many conversations, that it is difficult to pronounce precisely.

"Thinks witness had some conversation with M'Carthy since he left the Penitentiary; he came to witness's store on business; he said he had some idea of going to New York to see his brother, and get out of the way of the Commissioners; thinks he said he knew nothing against the Warden; M'Carthy as much as said he knew nothing against the Warden; cannot recollect the words distinctly."

Edward Horsey (preliminary examination):—  
"Recollects of giving different large orders for English iron to John Watkins & Co., which they were unable to supply of the size of iron wanted; they furnished Banks' iron and Swedes iron of the proper size, and English of a longer size in lieu of it; but they agreed that they should only be paid for the price that the same lineal quantity of the proper size of English iron would have amounted to."

By Mr. Smith:—

"Recollects making out requisitions last year for iron for the buildings; Watkins, the ironmonger, in Kingston, supplied these orders; they were generally furnished of the size required by the requisitions; some of the iron was furnished of a larger size than was required. Witness's directions to M'Carthy, the Blacksmith Keeper, were to weigh the iron according to the order required. Witness told M'Carthy that some of the iron delivered was larger than the

order required, but that Mr. Muckleston, of the firm of Watkins & Co., had agreed to give the overplus weight to the Institution, in consequence of not having sufficient iron of the kind required; it was English iron that was ordered; it was Banks' iron that was delivered to make up the quantity required; but witness believes that it was English priced iron that was charged. Witness considers that the Institution was benefited by this transaction to the amount of £20 or £30."

We are of opinion that it is clearly proved by the evidence of M'Carthy, and admitted by the other witnesses, that the firm of Watkins & Co. being unable to supply a particular description of iron specified in their contract with the Penitentiary, entered into an agreement with the Warden to supply in its place iron of a larger size, with the understanding that they were only to be paid for the weight which a similar number of bars of iron of the contract size would have amounted to. The evidence of M'Carthy is most direct—that the weight which he certified to in the Bills of Parcels under which Watkins & Co. were paid, was the actual weight furnished, without any deduction. And we can state from a personal inspection of the Bills of Parcels at the time referred to in the evidence, (July, 1847,) that they are all regularly vouched by M'Carthy, without any remark on them which could lead to the impression that any deduction was made for such excess of weight. The only evidence to rebut this strong array of facts, is the declaration of Mr. Muckleston—that, "to the best of his knowledge, 5 or 6 cwt. was deducted on account of the larger size being furnished." The Clerk and Architect, who seem both cognizant of the transaction, and who could easily have proved the deduction, had it been made, are not examined in the Warden's behalf on the subject.

With regard to that part of the charge which refers to the substitution of Banks' and Swedes iron for English iron, the declaration of Mr. Muckleston is explicit, that a certain quantity of both qualities were furnished and charged at the prices of English iron. That portion of the charge is therefore not established; but enough has been proved to show that the whole transaction is of a most equivocal character. It is to be regretted that none of the requisitions for the iron by Keeper M'Carthy, for that particular period, have been preserved, as, had they been produced, we should have been enabled to come to a determinate opinion on the whole of the facts.

The second transaction, under this count, is in regard to a quantity of stove-pipes ordered by Mr. Patrick Quinn. Several witnesses gave evidence on this matter, but it is fairly explained in Mr. Quinn's testimony.

Patrick Quinn—preliminary examination:—

"Is a Tavern-keeper near the Penitentiary; made a bargain last fall with the Warden of the Penitentiary for a thousand ends of stove-pipe, at the rate of 8d. per end; made a positive bargain; they were to be finished in less than three weeks; offered to pay them in advance, but the Warden said it would answer to pay them when delivered. The Warden refused to implement his bargain on the ground that he had no sheet-iron; witness told him, he (the Warden) had received three loads of sheet-iron that very day; the Warden said that was for roofing the houses; witness reminded him that he could do no

roofing work for some months, and the Warden said he knew that, but the iron must be kept for it. Witness got about a hundred ends of the Contract executed, but could get no more; considered it very dishonorable conduct on the part of the Warden; the Warden never denied that he had broken his Contract." \* \* \* \* \* "Iron had risen very rapidly at the time of the Contract; the stove-pipe was worth 1s. per end, shortly after the Contract was made."

The whole of the evidence corroborates Mr. Quinn's statement.

The defence of the Warden is, that he applied to Watkins & Co. who held the iron Contract to supply plate iron to fill Quinn's order, but that they refused to supply it, on the ground that their Contract only bound them to supply articles "needed for the use of the Penitentiary," and did not oblige them to furnish materials for the execution of work ordered by third parties from the Penitentiary. It appears from the evidence that the Warden assented to this view of Contract taken by Messrs. Watkins & Co., and declined to supply Quinn's order.

We find that Watkins & Co. by the terms of their Contract, were bound to "furnish and deliver at the said Penitentiary, such quantities of the articles hereafter mentioned as shall be specified in any order or orders from the said party in the second part." We are of opinion that this covered the transaction proposed by Quinn; and the previous practice had been to supply such orders under the Contract.

The third and fourth points at issue under this count, were in allowing Samuel Breden, the Ration Contractor for 1845-6, and Hendry and Blacklock, the Contractors for 1846-7, to supply white bread in lieu of potatoes; but the Warden has shown that the Inspectors were cognizant of these arrangements.

10. IN PAYING LARGE SUMS TO CONTRACTORS FOR QUARRYING STONE TAKEN FROM THE PENITENTIARY LOT, WHICH WORK SHOULD HAVE BEEN DONE BY CONVICT LABOR.

It appears by the books that, since the year 1841, £6,656 16s. 4d. has been paid to Contractors for quarrying stone; all of the stone having been taken from the Penitentiary Lot, with the exception of £1,128 14s. 11d.

The evidence, on which the charge was founded, is as follows:—

William Coverdale—(preliminary examination):

"All the stone used for four or five years back has been quarried by contract. From £100 to £200 per month has been latterly paid for this work. This stone was all got from the Penitentiary Lot. Witness thinks it might have been got out by Convict labor. A high fence might have been put up round the quarry. The quarry was outside the Prison walls. Witness has often spoken to Mr. Utting and Mr. Bickerton on this subject, who agreed with him upon it. Witness spoke to Warden as to it; he objected to taking men out of the Penitentiary. Witness thought men in for long terms should not have been so employed; but soldiers and others, who had only a short time to remain in, might have been safely so employed. From fifteen to twenty men would have been required. Witness is of opinion

that £800 to £900 a year might have been saved on this item."

James Gleeson (preliminary examination):—

"Conlan received about £150 a month for the two years witness was in the Penitentiary; and he several years enjoyed contracts before witness went to the Penitentiary. Conlan received all this money for quarrying and drawing. Witness knows no reason why Convicts were not employed to do this work; there were plenty of hands to spare; the work done inside would not have been a bit the less. The quarry could have easily been enclosed, and the work carried on, without any danger of the Convicts escaping."

James M'Carthy (preliminary examination):—

"Knows that a great saving might have been made by doing the quarry work by Convict labor instead of by free contract. There was no reason why this should not have been done; there were plenty of men to spare."

By Mr. Smith:—

Q. Do you know what would have been the expense of putting a wooden fence round the stone-quarry on the Penitentiary Lot?

A. Cannot tell without calculation.

Q. Do you know what the expense of teaming would be in bringing in the stones?

A. No.

Q. Do you know the number of extra Keepers and Guards which would have been required, had the Penitentiary quarry been worked with Convict labor?

A. No.

Q. How, then, do you know a saving would have been effected by working the quarry with Convicts instead of by contract?

A. Because when there was a wooden wall round the Penitentiary, witness had nearly as many men as he ever had; and latterly, to the same number of men, there have been Mr. Skinner, and a Guard, and witness—all officers in the Blacksmith's shop—and he cannot see why some of them might not have been spared outside. There were four or five Stone-cutters and Mason-keepers, with a Guard to each occasionally; and witness thinks some of them might have been spared. Guard Martin, who is stationed about the Warden's apartments, might also have been spared.

Q. How do you know Guard Martin was stationed about the Warden's apartments?

A. Understood so.

Q. What branch had Mr. Skinner when in the Prison?

A. Best part of his time he made fire-engines and locks.

Q. Could Mr. Skinner see the Convict Blacksmiths from his part of the shop?

A. He could when he stood at the elbow of the shop.

Q. Could he attend to the men in both parts of the shop at once?

A. He could see what they were doing, and tell the work they were about.

Q. Could you stand at the south end of your shop, and see what was doing at the north end?

A. Yes.

Q. How long was the Guard you speak of in your shop?

A. Does not know.

Q. Do you know why he was put there?

A. Supposes he was put there to watch the men. Presumes the Warden and Inspectors knew what they put him there for.

Q. Was there not a complaint made, just before he was put there, of the irregularity in your shop?

A. There were some reports about some complaints, but witness does not know what they were: it was impossible to keep thieves and robbers in such order, that no complaints would arise.

Q. Are not the Mason gangs much extended when at work?

A. Does not know.

Q. Did you ever see a gang of Masons at work?

A. Yes.

Q. Were they not very much extended when the new wings were building?

A. Does not know.

Q. Do you think a Keeper could watch all his gang when building on the new Shops?

A. If the Guard could keep the gang in the Keeper's absence, the Keeper might keep it without the Guard.

Q. Were not all the Convicts that were not sick kept constantly employed?

A. Cannot tell much of any but his own shop. There used to be Convicts running about the yard constantly; and there were a great many idlers in the Kitchen gang.

Q. How often did you go to the Kitchen?

A. Passed there constantly, several times a week; used to see the Convicts playing with Frank Smith, running after pigeons, firing arrows, and setting traps.

Q. How many idle men did you see on an average about the yard?

A. Sometimes more and sometimes less; could not fix an average.

Q. What was the largest number of Convicts you have seen going idle at one time?

A. Did not count them; has seen a good many; could not say how many.

Q. What was the smallest number you ever saw ?

A. There never was a time of the day but you could see one, two or three, unless when they were locked up.

Q. Do you know if these Convicts were going messages ?

A. Cannot tell.

Q. How many Convicts do you think could have been spared to go to the quarry ?

A. Arrangements could have been made by the Warden to spare men that were not wanted urgently inside.

Q. What gang could they have been taken from ?

A. They might have been selected from a great many parts of the yard—from the stables, ice-cutters, Kitchen-men, and other places.

Q. Do the ice-cutters work in summer ?

A. Can't the quarrymen work in winter ?

Q. If these men were taken from the yard would not their work have stopped ?

A. Thinks not, if taken from different parts of the yard.

Q. Who would do their labour, if they were taken away ?

A. Men could have been spared all round ; witness had often men put upon him that he could not employ ; sometimes 6 men at a time, and all the other shops had such men. These men would be kept at some work or other, but they were more in the way than of use.

Q. How many men had you in your gang when some of them were in your way ?

A. Cannot exactly tell ; speaks particularly of the winter.

Q. Does this return (the return of 23d February, 1839, is shown witness) tell the number of men then employed in your gang ?

A. Before witness can say the exact number of men employed at that date, he must see the labor list of the same date.

Q. Does this return show all the work done that week ?

A. Cannot say ; may have done private work besides.

Keely, Fitzgerald and Swift give similar testimony ; and the principal stone Contractor's evidence is very pointed on the subject.

Patrick Conlan—preliminary examination :—

"Is a quarryman ; resides in Kingston ; has had three contracts with the Penitentiary to quarry stone." \* \* \* \* \* "Witness kept no charge of the stone as it left the quarry ; he trusted entirely to the honesty of the Keepers who measured it when the stone was delivered ; witness had from

12 to 30 men employed during his contracts, including carters ; from 15 to 20 was the usual number. If they had not cheated witness in the measurement, he would have made a good job out of his contracts ; as it is, he saved himself. Witness's bills run from £80 to £200 per month, the monthly bills he thinks would average from £130 to £150 per month. Had the Warden offered witness a contract, in which Convict labor was given him free, for quarrying, witness finding teams, drivers and tools, he would have furnished all the stone wanted for the Penitentiary at from 1d. to 1½d. per foot, overhead ;" (his contract price was, first year, 2½d. ; second, 2¾d. ; and third year, 1d., for flagging ; 7 to 8 inches, 2d ; 9 to 10 inches, 2½d ; 11 to 12 inches, 2¾d ; and 13 to 14 inches, 3¼d. per foot ;) "he would do so now, and if he got a pretty long contract, he would put up a fence round the quarry to prevent the Convicts escaping, without extra charge. Witness always gave two sureties for the fulfilment of his contracts, with the Penitentiary. The Penitentiary lot contains any necessary quantity of stone for the purposes of the Institution, to the height of 14 inches thick."

To meet this the Warden brings the following testimony :—

Edward Horsey—By Mr. Smith :—

"The distance from one end of the quarry on the Penitentiary lot to the other end was about half a mile ; the expense of putting up a fence round this quarry would be about 7s. 6d. a foot, running feet ; this includes watch boxes and all that is necessary for the purpose. It would have required all the Penitentiary teams to bring in the stone from the quarry. If this quarry were worked by the Convicts, the work in the yard would consequently have stopped by taking away these teams. Witness once thought there would be a saving to the Institution by the Convicts being employed in working the quarry, but now thinks that this question can only be properly answered by its practical working, as it is impossible to estimate the advantages and disadvantages otherwise. When witness began to figure this question, he doubted that it would be a saving. There is no doubt that the Convicts would endeavor to escape in going backwards and forwards to the quarry ; it would require several extra Guards to watch the Convicts ; a Guard should go with every Convict teamster employed in conveying the stone to the Penitentiary."

Mr. Bickerton—By Mr. Smith :—

"The contracts for quarrying stone on the Penitentiary lot were always laid before the Inspectors before the contracts were entered into ; the Inspectors never directed the Warden to employ the Convicts on the Penitentiary lot to quarry stone, as far as witness knows."

Thomas Kirkpatrick, Esq.—By Mr. Smith :—

"Recollects of a discussion which occurred at the Board on the propriety of employing Convicts to quarry stone on the Penitentiary lot ; thinks the proposal for so employing Convicts was abandoned on the representation of the Warden that it was unsafe to send the men outside to the quarry. If a quarry could have been found on the south side of Union Street, witness thinks the scheme would have been carried into effect ; but not finding a quarry there, it was abandoned."

James Hopkirk, Esq.—By Mr. Smith :—

“Thinks it would have been unsafe to send the Convicts outside the wall to quarry on the Penitentiary lot; there would have been great risk of escapes.”

Mr. Sheriff Corbett—By Mr. Smith :—

“Thinks it would not have been safe to have sent Convicts into the bush to quarry stone.”

Major Sadleir—By Mr. Smith :—

“All tenders for contracts for quarrying stone were generally laid before the Board previous to being decided. To the best of witness’s recollection Convicts have been employed outside the walls; Convicts cut poles in the bush on the Penitentiary lot. All stone quarried from the Penitentiary lot was furnished by contract; thinks there would be danger in sending out Convicts to work at the quarry, as the present law does not allow them to be chained as they are in other countries.”

It is remarkable, that not one practical man in the Institution has been brought by the Warden to testify that it would have been unsafe to send the Convicts outside; and, indeed, it would be impossible for them to do so, as it is in evidence that Convicts have been often sent out, in parties, to work, without any harm arising from it.

We are satisfied, that stone sufficient for all Penitentiary purposes might have been found on the Prison lot; that Convicts sufficient to work the quarry might have been spared, without detriment to the operations going on within the walls; that by properly selecting the men, and using due precaution, the quarrying might have been done by Convict labor with perfect safety; that had this been done, a great saving would have been effected; and that had the Convict labor been hired out to the quarryman, as suggested in Conlan’s evidence, about £3,000 would have been saved to the country.

11. IN PAYING SIXPENCE PER FOOT FOR STONE TO CERTAIN QUARRYMEN, WHILE A CONTRACTOR WAS UNDER BOND TO SUPPLY THE SAME ARTICLE FOR THREEPENCE PER FOOT.

The facts in this case do not seem to be disputed.

James Gleeson—(preliminary examination):—

“In 1846, Conlan had a contract to deliver stone to the Penitentiary at 2½d. per foot, all round. A person named Dissett, delivered the same article, but not on contract, at 3d. per foot, all round. This arrangement was made in Mr. Coverdale’s time. A few weeks after Mr. Coverdale left, (Conlan and Dissett still continuing to deliver the same article,) the price was raised to Dissett to 6d. per foot for the thick kinds, and 3d. for the thin. Conlan continued to receive the same price as before, 2½d. per foot, all round. Witness knows that Conlan was under contract to supply all the stone required, and had given security to fulfil it. Witness knows no reason why he was not compelled to fulfil his contract. Conlan’s stone was taken from the Penitentiary lot; Dissett’s stone was quarried on other ground. There was stone enough on the Penitentiary lot to supply all demands. There was another person, Patrick M’Grogan, who delivered stone about the same time, at 6d. per foot, all round; to the extent of about £200; this was during Conlan’s contract; also, a man named Jimsey, at the same period, and at the same rate; also, a man named Angus M’Leod,

son-in-law of Mr. Costen, at the same period, and at the same rate.”

Patrick Conlan—(preliminary examination):—  
“There were other persons who supplied stone to the Penitentiary during the existence of witness’s contracts; does not know what prices they got; feels confident he could have supplied all the additional quantity of stone furnished by these persons above what he himself sent in, if he had been required to do so.”

The terms of Patrick Conlan’s second contract, are thus stated :—

Patrick Conlan—(preliminary examination):—

“Witness’s second contract ran from 4th May, 1846, to 4th May, 1847; and the stone was to be taken from the Penitentiary lot. Under this contract witness received 10s. 5d. per toise for “coursers,” and 2½d. per foot for cutting stone, all overhead. Witness was bound to supply the Institution with such quantities and sizes as they might require under this contract.”

By a return made out by the Warden, it appears that during the existence of this contract of Conlan’s, there was purchased from other quarrymen 16,305½ feet of cutting-stone at 3d., and 7,318½ feet at 6d. per foot, making a loss to the Government, on the former description, of ¼d. per foot on 16,305½ feet, or ..... £16 19 8  
And a loss on the latter of 3¼d. per foot  
on 7,318½, or..... 99 2 1

Total loss by the transaction for 1846-7, £116 1 9

Conlan’s third contract is thus stated :—

Patrick Conlan—(preliminary examination):—

“Witness’s third contract commenced on 12th June, 1847, and was to last for a year, but was discontinued under a clause of the contract, (by a month’s notice from the Warden,) on the 3d March, 1848. Under this contract, the stone was to be taken from the Penitentiary lot, to be of such quantities and sizes as required, and not less than three trucks or sleighs to be kept going. The rates under this contract, were 9s. 5d. for “coursers,” not exceeding 8 inches in thickness; 1d. per foot for flagging; stone for cutting, from 7 to 8 inches in thickness, to be 2d. per foot; 9 to 10 inches, 2½d. per foot; 11 to 12 inches, 2¾d. per foot; and 13 to 14 inches, 3½d. per foot. Under this contract, if the kind of stone wanted could not be had on the Penitentiary lot conveniently, the contractor was bound to procure the necessary quantity elsewhere, at the same rates: in case of his neglect to do so, the Warden to have the right to procure what was wanted elsewhere, and charge to witness the difference between contract price and what the Warden might be compelled to pay. All three contracts were obtained by witness under sealed tender. Witness declares that he has fairly fulfilled the spirit and meaning of his contract.”

From the accounts paid Conlan during this contract, the average price of cutting-stone under it appears to have been about 2½d. per foot.

The Warden’s return of stone purchased from other parties during the existence of this contract with Conlan, shows that 1,697½ feet were purchased at 3d., making a loss to the Government of £1 15 4  
And 6,113 feet, at 6d., making a loss of 57 15 7½

Total loss for 1847-8..... £59 10 11½

The defence is as follows :—

Edward Horsey—By Mr. Smith :—

“Conlan could not furnish the thick-bed stone so fast as it was required. When application was made to Conlan for this stone, Conlan replied that it was not to be found in the Penitentiary quarry; and witness subsequently ascertained that such was the case. In consequence of this, it was necessary to procure the 14 inch stone elsewhere. The works would have stopped had it not been procured elsewhere. Thinks 6d. a foot a very reasonable price for the delivering of this stone; it would have fetched 7½d. in the town, at this time, at Government works. Does not think it would have been fair to have charged Conlan the extra price for this stone, as the contract, witness expects, bound Conlan to the Penitentiary lot.”

Francis Bickerton—By Mr. Smith :—

“Several letters were written to Conlan complaining that he did not deliver the stone of the sizes required; great complaints were made of Conlan's delivery of the stone; Coverdale used to make complaints about Conlan.”

By Commissioners :—

“Recollects of Conlan's contract for stone in 1846; the price he got was 2½d. per foot all round; he was bound to furnish any quantity wanted at 2½d. per foot overhead. While Conlan's contract existed, the same stone, he was bound to furnish at 2½d. per foot, was bought from Dissett and others at 6d.; Conlan had good securities.” \* \* \* \*

“Witness is asked to show some of the letters written to Conlan, complaining of his non-delivery of the stone needed for the Penitentiary, and refers to the Warden's letter of 23rd July, 1846. The Warden in that letter complains that “the Master-builder of this establishment has reported to me that notwithstanding your promise to him, many days ago, to furnish stone of the sizes required and of which there is abundance in the Penitentiary lots, you have neglected to deliver the same to the great damage of the building operations now being carried on here; and as this is contrary to the terms of your agreement, I have to advise you that the same will be purchased elsewhere on your account, and the loss sustained will be charged to you agreeable to the stipulation of your contract.” The loss sustained by buying stone from Dissett and others at 6d., which Conlan was bound to furnish for 2½d., was not charged to Conlan.”

By Mr. Smith :—

“It was by the Master-builder's recommendation that the thick beds of stone were purchased from other parties besides Conlan the contractor; Dissett and the others furnished the thick stone from their own quarries.”

It will be seen that the defence takes two grounds. One witness says the stone purchased past Conlan was not to be found on the Penitentiary lot, and no blame was attachable to Conlan for not supplying it. The other witness shows, by the Warden's own letter, that there was plenty of the stone required in the Penitentiary quarry, and that Conlan's account was to be charged with the loss sustained by the purchases from others which he had rendered necessary by his negligence.

We find that under the contract of 1846-7 Conlan was bound to quarry on such part or parts of the Penitentiary lot in the Township aforesaid, according to the directions they (Conlan and his sureties) may from time to time receive from the Master-builder of the said Penitentiary, such quantity and sizes of stone as may be required for the use of the said Penitentiary.” Conlan's contract of 1847-8 is in the words of his evidence.

We find that Conlan gave two good sureties for the fulfilment of both his contracts, and that any penalty under them might have been enforced.

We find that there was abundance of the stone required (14 inch) on the Penitentiary lot; large quantities having been since procured from it; and that Conlan should have either procured the article wanted or have sustained the loss. The Institution has therefore suffered, unnecessarily, a loss of £175 12s. 8½d.

12. IN BUILDING UP A COSTLY ROPEWORK, WITHOUT PROPER FORETHOUGHT AS TO THE SITE OF ITS ERECTION; IN PULLING IT DOWN BEFORE THERE WAS A NECESSITY FOR DOING SO; AND IN ALLOWING THE MACHINERY, BUILDINGS, AND STOCK TO GO TO WASTE.

Mr. Coverdale—preliminary examination :—

“Recollects there was a Ropework established while Mr. Powers was in the Penitentiary; it was considered a very complete work and cost much money; it was in operation three or four years; part of the time it was let out by contract. The witness believes it was done away because it interfered with the clearing of the yard; it was done away after Mr. Powers left; there was no absolute necessity, as far as the works were concerned, for its being done away; it might have remained a year or two longer. Witness believes part of the Ropework was sold, and a part afterwards used for the stone-cutters; the machinery was not disposed of, but lay about the yard, and witness doubts if one half of it could be now got together. Witness believes it cost from £500 to £800. Witness was ordered by the Warden to take down the building where the horse-power was kept, when it was resolved to discontinue the Ropework. Witness found in the Ropery a large quantity of spun-yarn, about £200 value, as he thinks; witness represented to the Warden that this material should be made into ropes before the buildings were taken down, as the spun-yarn was of no value to the Institution: Warden said, “never mind, take it down.” Witness still felt reluctance to take it down, knowing that the spun-yarn would go to waste, and represented this to the Warden a second time; the Warden said again, “never mind, take it down.” Witness mentioned this to Mr. Utting, and he said he would speak to the Warden, and get him to delay taking the buildings down. Same day Warden came to witness, and desired him to get the rope-yarn worked up before the building was taken down. The horse-power stood in the way of the Garden being made.”

James M'Carthy—preliminary examination :—

“Recollects the Ropework; it was enormously costly; it was in operation a few years; a Mr. Angus managed it at first; he was a Ropemaker by trade; after he went, the work was let out with Convict labor, by contract; at the end of the contract, the Institution carried it on for a while, but there was

no regular manager; sometimes the Tailor-keeper, or the Shoemaker, or one of the Guards would superintend it; there was an enormous loss by it; the buildings and horse-power went to wreck when the work was stopped, and witness thinks what now remains of the whole property would not bring over a few dollars."

By Mr. Smith :—

Q. Do you know the cost of the Ropework ?

A. It was an enormous expense, but forgets the exact cost.

Q. Was any part of the buildings of the Ropework sold ?

A. Does not know.

Q. Did Mr. Utting buy any part of them ?

A. Does not know.

Q. Was any part of the buildings destroyed ?

A. Does not know.

Q. Do you know what has become of the machinery of the horse-power ?

A. It knocked about everywhere; some of it is lying about the yard now.

Q. Do you know what is in the little shed near the north-east tower.

A. No.

Q. Did you ever hear that the machinery of the horse-power was there ?

A. No; part of the Ropework machinery was in the west wing.

Q. How long were the Convicts employed in making ropes ?

A. Cannot tell; some years.

Q. Were they good at it ?

A. Does not know.

Q. What is the value of the Ropework sheds now left ?

A. Does not know that any are left.

Q. What would you suppose to be the value of the machinery left ?

A. Does not know exactly how much is left.

Q. Was it necessary to have another Blacksmith-keeper to take your place, when you were absent from your shop ?

A. There was not.

Q. If the Convict Ropemakers knew their trade, was it necessary to have a Ropemaker as their Keeper ?

A. Does not know.

Q. Do you know what loss was sustained by the Penitentiary from the Ropework ?

A. Heard several times, but forgets how much.

Q. Who did you hear it from ?

A. It was pretty much through the officers at the time, that an enormous loss had been sustained by it.

Q. From which of the officers did you hear it ?

A. Forgets particularly; they all had it.

By Commissioners :—

"Should not think a gang of Convicts could be kept at Ropework and do good work, without a Ropemaker, as a Keeper, to oversee their work and keep them at it."

Edward Bannister—preliminary examination :—

"After the Ropework was taken down, some of the machinery was taken to the lodge, and the rest lay about the yard. A great deal of it has gone to wreck; the principal wheel is lying in the yard, covered up."

By Mr. Smith :—

"Recollects the Ropework being pulled down; the small wheels were taken to the lodge, also the scales and beam, and some hooks; they were placed in a barrel at the lodge. The large wheel was broken up; the principal wheel, it was laying for some time in the west wing; there is another large wheel lying covered up near the north-east tower. The rope first went to the west lodge; it was then removed to the north lodge; it may have gone to the loft where the Hospital now is, before it went to the west lodge."

John Swift—preliminary examination :—

"When the Ropework was broken up, the machinery was very carelessly looked after; it lay about the yard for long. The wood work is all broken up, and some of the castings are lying about the yard now."

By Mr. Smith :—

"A part of the machinery employed in the Ropework was deposited in the west wing; other parts are laying in the shed near the north-east tower. Believes that the greater part of the wood work was broken up; the horse-power was pulled down; does not know whether any part of the wood work was sold to Mr. Utting."

Mr. Utting gives similar evidence.

The Ropework account, as taken from the Penitentiary Book, stands as follows, viz. :—

	£	s.	d.	£	s.	d.
1839						
Sept. 30	Paid in Cash during past year ....	174	2	0		
	Carpenter's work done for Ropery.	46	19	11		
	Blacksmith's work.....	17	3	6		
	Labor of Convicts, 177 days, at 2s. 6d. ....	22	2	6		
	Keeper's wages, 5 months.....	38	10	10		
	Guard's wages, one for 5 months.	23	18	1		
		322	16	10		
	Less receipts on account of Ropery.	16	1	6	306	15 4
1840						
Sept. 30	One year's interest on £306 15 4				18	8 1
	Cash disbursed in past year.....	624	19	2		
	Carpenter's work.....	274	7	3		
	Blacksmith's work.....	82	1	11		
	Convict labor, 3280 days, at 2s. 6d.	410	0	0		
	Keeper's wages, 1 year .....	82	10	0		
	Guard's wages, 1 year .....	67	7	6		
		1541	5	10		
	Receipts for past year.....	828	18	3	712	7 7
1841						
Sept. 30	One year's interest on £1037 11s.				62	5 1
	Cash disbursed.....	680	19	3		
	Carpenter work .....	180	19	5		
	Blacksmith work.....	238	4	9		
	Convict labor, 3866 days, at 2s. 6d.	483	5	0		
	Keeper's wages .....	53	19	2		
	Guard's wages.....	58	9	5		
		1695	17	0		
	Receipts for past year.....	888	18	5	806	18 7
1842						
Sept. 30	One year's interest on £1906 14 8				114	8 1
	Cash disbursed.....	15	2	5		
	Carpenter work .....	10	17	4		
	Blacksmith work.....	13	18	0		
	Convict labor, 3311 days, at 2s. 6d.	413	17	6		
	Guard, 8½ months .....	41	6	0		
		495	1	3		
	Receipts for past year.....	389	4	7	105	16 8
1843						
Sept. 30	One year's interest on £2126 19 5				127	12 4
	Cash disbursed .....	220	12	7		
	Carpenter work .....	0	19	8		
	Convict labor, 2028 days, at 2s. 6d.	253	10	0		
	Guard's wages .....	32	11	0		
		507	13	3		
	Receipts in past year .....	198	19	9	308	18 6
1844						
Sept. 30	One year's interest on £2563 5 3				153	15 11
	Cash disbursed in past year.....	36	9	5		
	Carpenter's work .....	16	1	2		
	Blacksmith's work .....	7	1	9		
	Convict labor, 827 days, at 2s. 6d.	103	7	6		
	Guard's wages.....	19	12	0		
		182	19	1		
	Receipts in past year .....	119	15	8	63	3 5
1845						
Sept. 30	One year's interest on £2780 4 7				166	16 3
	Receipts in past year .....	154	2	10	2947	0 10
	Cash disbursed.....	6	1	0	148	1 10
1846						
Sept. 30	One year's interest on £2798 19s.				167	18 9
	Receipts in past year.....	107	13	9	2966	17 9
	Cash disbursed .....	1	16	6		
	Blacksmith work.....	17	5	6	90	8 3
	Guard's wages.....	7	7	0		
1847						
Sept. 30	One year's interest on £2875 9 6				172	10 7
	Receipts in past year.....				3048	0 1
					106	10 8
1848						
Sept. 30	One year's interest on £2941 9 5				176	9 9
	Total Loss by the Ropework.....				£3117	19 2

The following is the evidence for the defence :—

Francis Bickerton.—By Mr. Smith :—

“ There was a large quantity of rope on hand when the Ropework was pulled down; there was some difficulty in making sale of it. There was a quantity sent to Kingston for sale by Commission; some of it was sold by auction; there was a good deal sold altogether. When rope was used for scaffolding, or for other purposes in the Penitentiary, it was expected that the Keeper who used said rope would give an account of the quantity taken to the Clerk's office, to be charged to the building account. When witness makes up his annual accounts of the profits of the different shops, he does not add interest to the previous year's stock. No interest is charged by the Government on money advanced for the support of the Penitentiary.” \* \* \* \* \*

“ The general impression among the Officers, was, that the Hospital was at first intended to be in the upper flight of the north wing.”

Thomas Kirkpatrick, Esq.—By Mr. Smith :—

“ Thinks the Garden on the east side of the yard was laid out with the sanction of the Inspectors, but not formally with their authority. Witness thinks the Ropework was abandoned before the Garden was commenced. The Inspectors would certainly not have allowed the Rope-walk to be pulled down to make way for the Garden. Thinks it very likely part of the Rope-walk was pulled down while witness was an Inspector. After the Rope-making was abandoned, part of the shed was used as a shop for the carpenters. It was understood when the Rope-walk was pulled down, that a new one would be afterwards erected.”

Thomas Costen—By Mr. Smith :—

“ When the Rope-walk was built, does not know where the Hospital was intended to be built; does not recollect what the large room in the north wing was intended for; first knew the Hospital was to occupy its present site before the excavation was commenced four or five years ago.”

Major Sadleir—By Mr. Smith :—

“ The Inspectors sanctioned the laying out of both Gardens within the Penitentiary walls, in accordance with the plan of Sir Richard Bonnycastle. It was stated to the Board, that it was necessary to pull down the Ropework in order to make the Garden; and as the Ropework did not pay, this was agreed to.”

Edward Horsey—By Mr. Smith :—

“ Witness began to prepare for the building of the Hospital as soon as he was employed at the Penitentiary. The space between the east side of the Hospital and the boundary wall, was required for the depositing of materials. Witness was obliged to excavate on the spot upon which the Ropework had formerly stood.”

The defence appears to be, that it was necessary to pull down the Ropework to make way for a Garden, ordered to be prepared by the Inspectors; but this is expressly contradicted by the President of the Board, Mr. Kirkpatrick. It is also averred, that it was pulled down to make way for the Hospital, now building, the site of which was changed a few years

ago. The evidence is far from direct on this point ; but were it so, this would form no apology for pulling it down so long before the Hospital was commenced. And even had it been necessary to remove the Ropework, this would form no defence for the mismanagement of it while in operation, and the reckless manner in which it has been allowed to go to ruin."

We find the grossest carelessness and incapacity exhibited throughout, in regard to the Ropework.

13. IN SUNDRY UNBUSINESS-LIKE TRANSACTIONS.

This count divides itself into several points, on which issue has been joined. The first of these, is the allegation, that many articles have been purchased for the use of the Penitentiary, which should have been made. The evidence is as follows :—

Mr. Coverdale says :—" Has often thought that articles were purchased for the use of the Institution which might have been made in it. He names spades, shovels, axes, chisels of several kinds, in particular, rough-socket chisels. If any of the officers wanted an axe, spade, &c., they got them made in the Penitentiary, because they paid less for them than they could buy the same article for outside ; at the same moment, the Institution purchased such of these articles as they used, instead of making them."

Blacksmith-keeper Grass—By Mr. Smith :—

" Does not think that all the tools required in the different shops could be made in the Blacksmith's shop to any advantage ; such tools can be purchased much cheaper at the hardware stores. There would be a difference of 50 per cent. against the Penitentiary in making them at the Institution. Witness speaks of a great many tools. Witness has made chisels and plane-irons ; but they could have been purchased much cheaper elsewhere, by not having the proper tools for such manufacture. Has made pick-axes and hammers in the Blacksmith's shop ; these could be made cheaper than they could be bought. Never spades or shovels ; they could not be made as cheap as bought ones."

By Commissioners :—

" It is for the want of proper machinery that such tools, as witness has spoken of, are not made in the Penitentiary."

James M'Carthy—By Mr. Smith :—

Q. Did you know the price paid by the Penitentiary for spades or axes ?

A. No.

Q. Did you ever charge less for axes and spades done in the Penitentiary than they could be purchased for in Kingston ?

A. Never had a good axe-maker in his gang ; and, therefore, could not charge as much for them as for an imported article.

Q. Did you ever make a spade in the Penitentiary ?

A. There were a few made.

Q. Was the price charged less than the town price ?

A. Does not know ; charged what he thought was right ; had nothing else to go by.

The second allegation is, that the number of men under one Keeper was ill regulated, there often being too many Convicts in a gang.

Mr. Coverdale says :—" Thinks there was great loss by some Keepers having too many men under them, particularly as to the Stone-masons. Some Keepers would have from thirty to fifty men in their gangs, who were scattered at a distance, and wasted more than the value of their work. One great evil was, that there were too many men employed in building."

The evidence for the defence is as follows :—

Keeper Richardson—By Mr. Smith :—

" Has generally had more men than he can look after ; has twenty-one men in his gang now ; has had more than that ; has had twenty-three or twenty-four. Does not know how many men a Keeper should have by law ; was never told how many he should have."

Keeper Manuel—By Mr. Smith :—

" Witness has not more men in his gang than he can take charge of. Witness's men are very careful in the use of mortar and stone, because they are well watched ; they would not be so otherwise."

Keeper Little—By Mr. Smith :—

" Witness's gang is not larger at present than he can manage."

Keeper Ballantine—By Mr. Smith :—

" Witness's gang is sometimes larger than witness can manage it ; is so at this time."

Keeper Matthews—By Mr. Smith :—

" Witness has not more men in his gang at present than he can manage."

Keeper William Smith—By Commissioners :—

" Has had sixty men under his charge in one gang ; has forty-two at present ; has had as few as nineteen in his gang. Witness can attend to thirty men conveniently, if his shop is well adapted for the purpose."

All of this establishes the correctness of Mr. Coverdale's view of the matter.

The third issue raised under this count, is embodied in the evidence of Mr. Coverdale. He says :—" Witness's impression is, that the present buildings might have been built for 30 per cent. less by contract." And to meet this, Mr. Horsey testifies that " the ordinary run of stone-cutting work done in the Penitentiary, is better than the ordinary run of work outside. Here the stones are cut with sharp edges, which lay close in the wall ; but outside they are not so particular. Would say the difference in the cost of the work is 25 per cent."

The fourth issue raised, is, that there was great loss by the use and mismanagement of oxen for the purposes of the Institution.

Mr. Coverdale says :—“ The oxen used in the yard were not economically managed ; recollects of one ox, ordered to be fattened for sale, remaining nine months unsold, through negligence.”

Keeper Swift—preliminary examination :—

“ Thinks there has been great mismanagement in the stable ; the oxen have been for weeks together in the stable unfit to use from the state of their feet. In the Penitentiary yard, witness thinks one horse will do the work of three yoke of oxen in carting. Two horses would be worth all the oxen in the yard.”

By Mr. Smith :—

“ Witness thinks a lame horse would be as unfit for use as a lame ox. When buildings are going on the road is usually very rough ; both horses and oxen require frequently to be shod at the Penitentiary, on account of the roughness of the road ; the oxen in particular. One good horse will draw in as much stone from the quarry in a day as three yoke of oxen, if the loads are properly managed ; thinks that two horses would do as much work, as all the oxen now in the yard ; witness believes there are four yoke of oxen and one old one. Two horses would be able to do more work than eleven oxen, employed as these oxen now are in the yard ; one half their time the oxen are idle. Witness means that they might do so by bringing stone from the quarry. Witness has seen the oxen idle ; one ox, witness is confident, has been idle for twelve months.”

By Commissioners ;—

“ Witness would not have employed oxen at all on the hard ground about the Penitentiary ; would not think them so profitable as horses.”

The evidence for the defence is as follows :—

Mr. Horsey—By Mr. Smith :—

“ Witness does not think the oxen are idle one half of their time, certainly not, just the reverse ; witness would prefer the work of six oxen to that of one horse in the work at the Penitentiary ; thinks the oxen would be more profitable. Cannot give an opinion whether horses or oxen would be more profitable in drawing heavy loads at the Penitentiary.”

Mr. Bickerton—By Mr. Smith .—

“ The Warden has been directed by the Inspectors from time to time, to purchase oxen for the use of the Penitentiary.”

It is clear from the evidence that one horse can do the work of several oxen ; it is shown elsewhere that the cost of keeping the Penitentiary horses and oxen has been enormous, nearly £40 a head having been some years charged to the Government for their food alone ; and there is every reason to believe that an ox has cost as much, if not more, to feed in the Penitentiary than a horse ; it is also apparent that the usual advantages to be obtained by feeding up oxen and selling them has not been realized.

We think, therefore, that under all the circumstances, horses would have been much cheaper than oxen ; and did the evidence leave any doubt on our minds, the enormous annual cost of shoeing the oxen would entirely remove it. The following table is made up from the Blacksmith's return :—

YEAR.	NO. OF ANIMALS.	Ox-SHOES.
1837.....	6 Oxen.....	£4 5 11
1838.....	4 “ .....	18 9 11
1839.....	8 “ .....	26 18 0
1840.....	8 “ .....	59 11 4
1841.....	8 “ .....	62 15 0
1842.....	8 “ .....	81 15 4
1843.....	10 “ .....	68 3 6
1844.....	7 “ .....	74 5 2
1845.....	13 “ .....	88 8 3
1846.....	10 “ .....	100 15 11
1847.....	12 “ .....	120 6 5
	Total.....	£705 14 9

It will be seen that the shoeing of 12 oxen in 1847 cost £120 6s. 5d., a sum which ought alone to have more than maintained horses (according to the evidence) equal to the work of the 12 oxen.

We cannot doubt that there has been mismanagement and heavy loss in this department, and that the Warden is highly culpable. We cannot find that his attention was even given to the matter, and it is certain that he never brought it under the consideration of the Board of Inspectors, further than getting their consent to buy oxen when he applied for it.

The fifth issue is, that the Convict labor was very loosely conducted ; and on this point there is a good deal of evidence.

Ex-Keeper M'Garvey, in his preliminary examination, says :—“ Had charge of the materials and tools in the Shoemaker's department ; articles were bought in small quantities ; about a fortnight's supply of leather.” \* \* \* \* \* “ The work has been frequently stopped from want of materials and tools.” Men were often sent into his gang who were not wanted, and could not be profitably employed ; they were all charged on the establishment at the same rate as the best workmen, and prevented the department from showing a profit ; witness took pride at first in making his shop pay, but found it impossible from the practice, and lost heart.” And again : “ There was great loss in binding shoes ; the women used to do it, but this was stopped in consequence of so much washing being done ; the binding work was then done in the Tailor's shop, but the Tailor-keeper charged so much for it, that witness had to stop sending it there : there was no regular mode of doing this work afterwards.”

William Coverdale, in his preliminary examination, says :—“ A Convict, Barron, was employed making clocks for two years, and his labor produced scarcely anything ; he was sentenced for two years, and was so employed most of the time ; expensive tools were made for his use, and when he left they went to waste ”

Keeper Skinner, in his preliminary examination, says :—“ In witness's opinion, Pollard was quite unfit for his situation, and has been the cause of much loss to the Penitentiary. He got castings made, at one time, at the Kingston Foundry, which should have been done with Convict labor, to the amount of £19 10s. There was also much loss by a large quantity of plate copper, destroyed by mismanagement in the working. A Bookbinder's screw, made by Pollard, cost three times the amount it should have been made for, and was useless when done. In various other ways Pollard has caused much loss to the Institution, by want of knowledge of his business.” \* \* \* \* \* “ Pollard

came to the Institution as a Guard, but was a few weeks afterwards made Keeper of the Plumbers. In witness's opinion, Pollard was quite unfit for his situation, and has been the cause of much loss to the Penitentiary. Witness has twice reported the great waste of materials by Pollard, to the Warden, but no improvement was made."

Ex-Keeper M'Carthy says:—"Knows that a large sum was lost to the Penitentiary by the experiments of a man named Pollard, husband of the Head-Matron, who came into the Institution as a Guard, and was set to experiment on brass work and plumber work. Witness thinks he knew very little about such work." \* \* \* \* \* "There was great loss to the establishment in trying to make fire-engines; a man was brought into the Penitentiary to superintend the white-smith work; he has been there about two years; he has been principally engaged making fire-engines; he has about £120 a year; he had from ten to twelve of witness's men constantly working for him; he turned out one large fire-engine, and two or three small ones; he told witness the large Engine was charged to the Institution at £300.

By Mr. Smith:—

"Witness understood Mr. Pollard tried experiments in his shop; believes they were something like perpetual motion; cannot say if these experiments were for himself (Pollard). Does not know if any charge was made for the work; thinks there was loss sustained by the Penitentiary through the said experiments; there was loss of time and materials. Does not know what brass and plumbers' work was done by Pollard; does not know the quantity of brass or lead Pollard received into his shop, nor what quantity he used." \* \* \* \* \*

Q. Were not the Penitentiary fire-engines well made?

A. There was time and material enough lost upon them to be well made, but witness thinks they were not well made.

Q. Are you a judge of fire-engines?

A. Has seen a great many of them; would know a good one from a bad one; has repaired one many times, and could make the biggest part of one.

Q. Did you make any part of the large engine that Skinner built?

A. Does not recollect; lent Skinner some of his men to work on it.

Q. How do you know there was loss sustained in making fire-engines?

A. Because he saw articles made for it which would not answer, and had to be made over again; the builder never made an engine before; it was not Skinner's fault; he did the best he could.

Q. Did Skinner tell you he never made an engine before?

A. He did.

Q. Was not Skinner very clever as a Machinist?

A. He bragged a great deal about it. His work would never pay to be made here; imported articles could be bought cheaper than they were made.

Q. How many men had Skinner?

A. About 11 men; sometimes less and sometimes more.

Q. Were you always on the best of terms with Mr. Skinner?

A. There never was any quarrel between them; they were always pretty good friends.

Mr. Utting—By Mr. Smith:—

The labour department was loosely conducted in many ways; the Convicts were allowed to go round the yard, and a number was employed about the Warden's apartments. Keepers complained to witness that they did not know where the Convicts were. Keepers Keely, Richardson, and M'Carthy, have so complained; there may or may not have been more. The Silversmith's Convicts were at work in an outer building, used as the Warden's summer kitchen. Does not know what work the Silversmith did; the Convicts whom witness saw going through the yard, would tell witness they were going to the Warden."

Keeper Pollard—By Mr. Smith:—

"Witness has now on hand, in his shop, a book-binder's screw; cannot tell what the cost of it will be, as it is unfinished; there is not power enough in the lathe in witness's shop, to finish the screw; there is a lathe made by Mr. Skinner of sufficient power, but it is not adapted for such works."

It is quite obvious that the labour department has been very loosely conducted, and that, that strict watch over it, so necessary to success, has been altogether wanting.

We have thus gone through all the counts of Charge V., and we think that culpable mismanagement of the business affairs of the Penitentiary has been fully established. It is difficult to conceive a large establishment more inefficiently conducted; there seems to have been no desire for success—no aim in its management—no care whether it paid or not. Under energetic management, we cannot but think the business results of the Institution might have been very different; and it is clear, that even with common prudence, thousands of pounds of the public money might have been saved.

## CHARGE VI.

GROSS NEGLIGENCE AND INCAPACITY, IN REGARD TO THE BOOKS AND ACCOUNTS OF THE PENITENTIARY.

1. In not keeping a proper set of Books.

The Books kept in the Penitentiary are—

- A Day Book.
- A Ledger.
- A Petty Ledger.
- A Sales' Book.
- A Petty Cash Book.
- A Shop Account Book.
- A Time Deduction Book.
- A Registry Book.
- A Minute Book.
- A Sentence Book, and
- A Letter Book.

The Warden was charged with not keeping a Daily Cash Book, and he meets this by Mr. Bickerton's evidence that he enters all Cash transactions daily in the Day-Book, and posts them from thence into the Ledger. This is true; but the Ledger is only posted once a month, and without considerable trouble it cannot be seen how the Cash account stands during any current month.

It was also charged that no money received by the Institution except the warrants from Government were paid into the Bank; that no Bank Book has been kept; and that disbursements have not been paid by check as they ought to have been. The Warden meets this by saying that no inconvenience was felt from not having a Bank Book, as the balance of the account was compared from time to time; that it would be very troublesome giving checks on all occasions; and that rarely over £100 was on hand at one time. It is, in our opinion, quite manifest that all the Cash transactions of such an Institution should pass through the Bank, and that in practice this will be found more convenient, more accurate, and safer than the present system.

It was further charged that no Bill Book has been kept, the only such record being a memorandum of a portion of the notes issued, at the end of a Sales' Book.

It was also charged that the Keepers of the several Mechanical departments keep no regular books containing the work done under their superintendence, but simply such Memorandum Books as they think fit, and which do not appear to be preserved. It appears that, up to 1842, there was no check whatever on the work done in the shops, but that in April, 1842, the Warden commenced keeping a Work Book in which he entered all Job work to be done for private individuals, and that each Keeper had a small Order Book into which such articles as belong to his department are entered, before he commences the work. But these books simply refer to the order for the work, not to the cost of labor and material, or amount to be charged; they merely say "Mr. A, a book-case to be made." "Mr. B, a set of Garden tools to repair;" and so on. No books of record, whatever, exist showing the amount of labor or the cost of material put upon any work done in the Penitentiary.

Another charge under this count was, that the work done in the Penitentiary, in the several shops, is returned nominally once a week, on sheets of paper, but that weeks of arrear often occur; that these returns are often incomplete; are filled with errors; and are rarely or never checked. The Warden called Mr. Bickerton on this point who testified as follows:—

By Mr. Smith:—

"The returns are ordered to be made weekly; witness sometimes checks the calculations and additions in these returns before entering them in the Office Books; does not usually do so; when witness finds errors in these returns he gets them explained or corrected by the Keepers. These returns are made on sheets of paper with printed headings and ruled columns." \* \* \* \* \* "Witness receives an account of the work done in the Penitentiary regularly."

By Commissioners:—

"Witness was not always in the habit of checking the weekly bills returned from the shops; has been generally in the habit of checking the additions of the bills; does not know that he has been in the habit of making tick-marks on the returns so checked; witness is asked to produce the first parcel of Weekly Returns he puts his hand on in the Office, and brings the Carpenter's returns for 1844; on examination it appears that there is not a tick-mark on any one return in the bundle; and on trying the additions of the two first returns that came to hand, the first was found correct, and the second £4 wrong in the addition; the parcel of bills produced is a very good sample of the returns; Richardson, the Carpenter-keeper, makes his returns more carefully than many of the other Keepers"

From a thorough examination of the Return Bills in question, we know that this charge is fully borne out.

A further charge under this count was in the following words: "That the work done for private individuals is returned to the Office on scraps of paper, nominally once a month, but in fact as the account of the party may be wanted; and that the correctness of the said accounts rests with the Keepers of the several departments. Of the competency of some of this class of Officers, to keep proper books, doubts have been suggested by an examination of their requisitions and returns, as for instance, the following:—

"Wantad for tha youse of tha Carpenters shop ona paire of cumpiss ona duzan of tannant saw files ona duzan of half round files fiv whip saws ona quira of san papar.

(Signed) "JAMES M'MAHAN."

The evidence on it is as follows:—

Mr. Bickerton—By Mr. Smith:—

"Gets returns of work done for the Officers of the Institution once a month; these returns are made up to the 25th of each month, because it is expected that the Officers would be paid monthly, and the amount of the respective accounts of the Officers can thus be deducted from the amounts due to them; Richardson makes a return of the work done for both of the Carpenter's shops."

By Commissioners:—

"Work done for the Officers is returned from the shops monthly; work done for other private individuals is returned when the parties are about to pay their accounts; when the parties don't apply for their accounts the Keepers are very irregular in their returns of such work. Thinks that there could not be much work done for private individuals, and not charged, as the Warden's Order Book is a check upon it; thinks there have not been many articles made in the shops which were not previously entered in the Warden's Order Book. When bills of work done come to the Office from the shops, witness does not compare them with the Warden's Order Book at the time to see if they correspond; when any private account is being closed, witness compares the charges in the books against the party with the Warden's Order Book; witness has gone over the items in the Warden's Order Book and compared

them with the books to see that each job ordered has been charged up to April, 1847, but not since that date. The Warden commenced keeping an Order Book in April, 1842, and has kept it regularly ever since; there was no system previous to that. Will not swear so, but believes that every item in the Warden's Order Book has been charged to the parties previous to April, 1847."

James M'Carthy—By Mr. Smith :—

"The returns of private work were not sent regularly to the office, sometimes once in two or three months."

The last item under this Count, is that one or more of the Kitchen receipt books are missing; and that no proper expenditure book is kept, showing the daily consumption of stores. These allegations are undisputed. If a proper expenditure book had been kept, many of the evils which are now the subject of enquiry could not have arisen, and the correctness of the Kitchen-keeper would have been better secured.

We are satisfied that the Books are not well adapted to show the daily transactions of the Establishment, or to prevent fraud; and that heavy losses through fraud or carelessness, may be readily incurred, with scarcely the possibility of detection.

## 2. IN THE NUMEROUS ERRORS TO BE FOUND IN THE BOOKS.

The errors are so numerous, that it is only possible to give a few instances to shew their character; the Books are professedly kept by double entry.

On April 15th, 1848, Hendry and Blacklock are credited with interest, £28 8s. 6d., but no account is debited with the amount.

On September 30th, 1847, the Provincial Government is debited with £14,235 9s. 7d., but the sundry accounts credited in the same transaction, are only £14,215 9s. 9d.—Error £20.

On 14th October, 1846, James Fraser is credited for sundries, £6 8s. 1d., of which 3s. 3d. is debited to Hospital account, and the balance of £6 4s. 10d., is not charged to any account.

On 30th September, 1847, "Prison Buildings" have a balance at the debit of the account of £1,560 3s. 9d., but there is an error in the addition of the debit side of the Ledger of £1,000, which made the balance of the account £2,560 3s. 9d.

On 30th September, 1844, in the "Provision" account, there is an error in addition on debit side of £1000 1s. 0d., it being stated as £2,707 18s. 3d., and should be £1,707 17s. 3d. In the same account there is an error in the addition of the credit side of £100, it being stated as £2,707 18s. 3d., and should be £2,807 18s. 3d. The balance of the account is carried to next year as £1,120 2s. 9d., but should be £20 1s. 9d.

On 23d January, 1845, in the same account as the last, it has been omitted to debit £978 14s. 4d., paid to Simpson and Breden; and the balance of account carried down on 30th September, is £122 16s. 11d., but should be £1 10s. 3d. This error in the balance of the account £121 6s. 8d., runs through the transactions of 1846, 1847, and 1848, and is not corrected to this day.

In David Seahy's account, a forced balance is made of £275 on the credit side, to meet £300 on the debit side of the Ledger. Three hundred pounds was actually paid, but one sum of £25 is not debited to any account.

In the cash balance, an error of a few pounds, varying slightly in one or two years, has run through the Books since they were opened.

On the 15th April, 1847, "Stable account" is debited with £412 1s. 2d., which should have been £432 6s. 2d.—Error £20 5s. 0d.

Mr. Bickerton says :—"There are numerous errors running through the Books of the Penitentiary." In his cross-examination, he says, "witness keeps the office books in which he yesterday stated there were numerous errors."

The defence rests entirely on the following evidence :—

Mr. Hopkirk—By Mr. Smith :—

"Presumes it is not the duty of the Warden to keep the Clerk's books, understands the Clerk gives a Bond to Government for the due performance of his duty; should think the Clerk responsible for his own acts."

Such defence is perfectly untenable; for setting aside the direct duty laid upon him in regard to the Books and Accounts by Statute, the errors are so numerous and so palpable, that the most casual inspection of the Books must have revealed them; and it is very clear that the Warden could not have sworn monthly to the correctness of the cash account, without some inquiry into the data upon which he swore.

We conceive the manner in which the books have been kept for so many years, to be highly discreditable.

## 3. IN NEVER HAVING BALANCED THE BOOKS SINCE THE COMMENCEMENT OF THE INSTITUTION.

Francis Bickerton—By Commissioners :—

"The Books have never been balanced since the Institution was opened."

By Mr. Smith :—

"Witness has balanced his cash account every year except 1848, and it has always come out right."

It is true that a statement of cash received, and of cash paid out, is annually made up, and vouchers to a corresponding amount sent to Government; but there is no balance of the books—no security that all the receipts are included in this balance—and in such a condition are the Books, that we have found it impossible to balance them without re-writing them.

## 4. IN NEVER HAVING HAD HIS ACCOUNTS AUDITED BY THE INSPECTORS.

The original Penitentiary Act, Clause II., says, "The Inspectors of the said Penitentiary shall have power, and it shall be their duty from time to time, to examine and inquire into all matters connected with the Government, Discipline, and Police of the

said Penitentiary; the punishment and employment of the Prisoners therein confined; the financial concerns and contracts for work, and the purchases and sales of the articles provided for such Penitentiary, or sold on account thereof; and that they may from time to time require reports from the Warden or other officers of the Penitentiary, in relation to any or all of the said matters." And Clause XVIII. says:—"It shall be the duty of the said Warden, to keep a regular and correct account of all monies received by him from any source whatever, by virtue of his office, including all monies taken from Convicts, or received as the proceeds of property taken from them, and of all sums paid by him, and the persons to whom, and the purposes for which the same were paid: and to make out and deliver to the Inspectors, or one of them, monthly, on oath, a return of all monies received by him on account of the Penitentiary during the preceding month, specifying from whom received and to whom paid, and on what account, and stating also the balance in his hands at the time of rendering such account."

The evidence is as follows:—

Mr. Kirkpatrick—By Mr. Smith:—

"The Warden's monthly statement of cash transactions were always laid before the Board of Inspectors; they were thrown on the table and looked at, but not investigated; the Inspectors have asked explanations of items in these accounts, from the Warden. Thinks that the Inspectors had nothing to do with the auditing of the Warden's accounts."

Mr. Hopkirk—By Mr. Smith:—

"The monthly accounts of cash were regularly submitted to the Board at their meetings; the accounts were generally read, and any thing particularly noticeable was inquired into, and explanations afforded. The Inspectors did not examine the Warden's yearly accounts, witness thinks; is not aware that the law requires them to do so."

Mr. Sheriff Corbett—By Mr. Smith:—

"The Monthly Cash Accounts of the Warden were regularly laid before the Board; they were sworn to by the Warden and Clerk."

By Commissioners:—

Q. What monthly cash accounts are those you have spoken of?

A. A list of monies received during the past month, and a list of monies paid out during the past month; nothing else.

Q. Did the Inspectors discuss the items of these lists, or examine if the cash account balanced?

A. The lists were generally looked at by one Inspector, and handed round from one to the other till all the Board had seen them; no other examination of the items was made."

Major Sadler—By Mr. Smith:—

"The monthly accounts of the Warden were regularly laid before the Board; these statements were abstracts of the sums received and paid away during each month, and were sworn to by the Clerk and Warden; the cash on hand was always stated. There was a regular habit of laying before the Board

lists of sums due the Institution, but how often witness does not know. Witness presumes there is no law requiring the Inspectors to audit the Warden's annual accounts; had there been such, witness would have made it a duty to do it."

It is true that simple lists of cash received and paid away, have been laid monthly before the Board, but no statement of the affairs of the Institution. The propriety of the several payments—the debts due by the Penitentiary, and the mercantile transactions of the Institution, have never been examined from the first to the present hour. The system may have met the letter of the law, but certainly not the spirit of it. Whether the Warden or Inspectors were most to blame, it is unnecessary to inquire.

There is one rule of the Board, however, which seems never to have been kept, and for the neglect of which the Warden is undoubtedly blameable. It is as follows:—

"Extract from Minutes of Board of Inspectors of the Provincial Penitentiary, 16th February, 1841.

"The Warden is directed to lay before the Board, from time to time, quarterly statements of the debts and assets of the Institution, commencing on the first day of April next."

"A true extract.

(Signed,) "F. BICKERTON,  
"Clerk."

5. IN PAYING ACCOUNTS NOT PROPERLY CERTIFIED.

The Warden was charged under this Count with paying accounts to a large amount, without any proper voucher to show that the articles paid for were received, and he was referred to the records of the Institution in proof of this. Only one witness was called on the point.

Francis Bickerton—By Mr. Smith:—

"It is the Clerk's duty to satisfy himself of the accuracy of Bills of Parcels before he enters them into the books of the Penitentiary; witness has always satisfied himself that the several articles have been received before he has given credit for them to the different accounts; if the Bills of Parcels are not correct, it is witness's duty to inform the Warden of the inaccuracy; witness files away the Bills of Parcels. Mr. Coverdale handed witness statements of stone, and sometimes of the timber, before witness made out the accounts for settlement. Mr. Richardson has also handed statements of timber; never put in a Quarryman's bill higher prices than were in the Contract; it was not customary to lay the timber and stone bills before the Warden, previously to their payment; in case of a final settlement, witness has brought accounts to the Warden to see that they were correct; the payments before referred to were monies paid on account. When timber was brought to the Penitentiary, a bill of lading was usually brought to witness, or to some one, before the vessel was unloaded; the actual measurement only was entered in the Penitentiary Books; the actual measurement scarcely ever agreed with the bills of lading handed in."

By Commissioners:—

"Witness may, in some cases, have paid accounts from the Bills of Parcels, without any check that

the articles were actually delivered at the Institution." \* \* \* \* \* "Witness has examined the calculations, extensions and additions, of every bill credited to every party from whom goods have been bought, since the opening of the Institution. Witness uses a tick in marking off the bills he examines; does not know if there are months in which not a single bill now bears a tick-mark." Witness was here desired to bring the Bills of Parcels of any month he might first take up in the years 1844-5 or 6, and he produced the bills of July 1846, and says, after examination, a large number of the said bills have no certificate of receipt attached to them, and no tick-mark appears on a great many of them, but that he checked the calculations all off, before crediting the parties. Witness has never given credit to parties without having an original Bill of Parcels for the articles furnished; a bill of parcels has occasionally been lost, and in such case a new bill of particulars has invariably been got, from which the credit was given. Witness is told to turn to his journal for June 1845, and show his voucher for a payment of £2 14s. 5½d. made in that month to J. & R. Hutton, and produces an account without any certificate of receipt. Witness is asked to show the voucher for £228 3s. 3d. paid Thomas Overend in the same month, and shows an account without any certificate of the article having been received in the Penitentiary. Witness is asked to refer to 17 other payments in the same month, amounting in all to £393 11s. 1½d. and to say if he has any certificate that any portion of the articles in any of these bills was received in the Penitentiary, and says he has not. There are three bills in the same month regularly certified.

The above is a fair sample of the manner in which the whole transactions of the Institution have been conducted, as far as regards goods purchased. For the last twelve months a change has been made in the system, and regular vouchers are now taken: certificates of the quantity of every article received are now regularly taken, and no bill is paid without it; this has been invariably the case for one year. Never discovered anything incorrect in the bills rendered; does not recollect of having to refer in any particular case to the Warden about them." \* \* \* "Witness is referred to his direct examination of 5th December last, in which he said that a bill of lading usually came with every boat load of timber, and that regular measurements were made of each cargo, and the owner paid not by his bill of lading, but by the actual measurement; and he is asked to produce some of those bills of lading and measurements to which he refers; witness answers that he preserved no bills of lading. Witness is asked to produce some of the measurements of cargoes of timber to which he referred, and after searching his office he returned and said he cannot find any such documents, and they must have all been destroyed as of no value, but he never paid any bills without having them."

By Mr. Smith:—

"Witness got vouchers of delivery from some one of the Officers before paying the bill of Thomas Overend for £228 3s. 3d."

We are satisfied that many thousands of pounds of the public money have been paid away by the Warden, for which no voucher can be shown that the articles paid for were ever received in the Penitentiary. Such a fact requires no comment.

6. IN OVERPAYING SAMUEL BREDEN, A CONTRACTOR, THE SUM OF £194 19s. 2d.

Samuel Breden had the Ration Contract from 12th Sept. 1845, to 11th Sept. 1846, and transferred it to his brother John Breden and Robert Allen. They failed to deliver a sufficient quantity of potatoes, and by agreement with the Warden supplied white bread in lieu of them. Out of this transaction the present charge arises.—

On examining the settlement of Breden's account it appeared to us that it required explanation, and the following correspondence ensued:—

No. 1.

Copy—Letter Secretary to Warden.

"Penitentiary Commission Rooms,  
"KINGSTON, 28th July, 1848.

"SIR,

"I am instructed by the Commissioners of the Penitentiary, to call your attention to the Ration Contract of Samuel Breden with the Penitentiary, from 12th September, 1845, to 11th September, 1846.

"It appears that under that contract, white bread was substituted for Potatoes during part of the time; and the Commissioners desire to learn from you what weight of bread was agreed upon, between you and the contractor, for each ration of potatoes, and whether your final settlement of the account was in accordance with that agreement.

"I have the honour to be,

"Sir,

"Your most obedient Servant,

(Signed,) "GEORGE BROWN,  
Secretary.

"HENRY SMITH, Esq.,  
"Warden,  
"Provincial Penitentiary."

No. 2.

Copy—Letter Warden to Secretary.

"Provincial Penitentiary,  
"31st July, 1848.

"SIR,

"I beg to acknowledge the receipt of your letter of the 28th instant, and to inform you in answer thereto, that in consequence of the potatoes having been reported by the Surgeon to be in a state of disease, and therefore unwholesome for the purpose of food, I was directed by the Board of Inspectors to require from Mr. Samuel Breden, during the remaining part of his contract, a sufficient quantity of white bread in lieu thereof, for which he was paid at the settlement of his account, according to the quantity furnished, and was charged with the potatoes deficient of the supply required by his contract.

"It does not appear that the Inspectors have made any minute of this transaction; but I find a further departure from Mr. Breden's contract, on the 19th February, 1846, when, by the advice of the Surgeon, the rations for the female Convicts

were directed to be altogether altered, and which was carried into operation on the 24th of that month. On this latter subject a minute was entered by the Board in the Minute Book.

"I have the honour to be,  
" Sir,  
" Your most obedient Servant,  
(Signed,) " H. SMITH,  
" Warden.

" GEORGE BROWN, Esq.,  
" Secretary."

No. 3.

Copy—Letter Secretary to Warden.

" Provincial Penitentiary Commission Room,  
" KINGSTON, 17th August, 1848.

" SIR,

" I was duly in receipt of your letter of 31st ultimo, in reply to mine of 28th, asking information on the subject of Samuel Breden's Ration Contract; and I am instructed by the Commissioners to apply to you for a more direct answer to their question.

" The Commissioners desire to be informed, explicitly, whether the Board of Inspectors ordered the exchange of bread for potatoes, you say they did, on the report of the Surgeon, or on your representation to them; if the quantity of bread to be substituted for the potatoes was determined by the Inspectors; if you made a specific bargain with the contractor as to the quantity of bread to be substituted, what was the weight of bread for each ration of potatoes: and if the bargain was carried into effect at settlement.

" You will also be good enough to furnish me with a copy of the Surgeon's Report to which you allude, for the use of the Commissioners.

" The Commissioners regret much to learn that no minute of so important a transaction has been preserved by the Inspectors; and if within your recollection, I will thank you to let me know the names of the Inspectors who were present on the occasion referred to.

" I have the honour to be,  
" &c., &c.,  
(Signed,) " GEORGE BROWN,  
" Secretary.

" H. SMITH, Esq.,  
" Warden."

No. 4.

Copy—Letter Warden to Secretary.

" Provincial Penitentiary,  
" 21st August, 1848.

" SIR,

" In reply to your letter of the 17th instant, I beg to state for the information of the Commissioners, that the Board of Inspectors ordered the change of bread for potatoes, during the time of Mr. Breden's Contract; and so far as I can recollect—there being no entry on their Minutes on the subject—on a

report I made to them in consequence of the Surgeon having verbally stated to me that the potatoes were not only unwholesome, but that from the disease with which they were affected, they possessed poisonous qualities.

" The amount of bread I was directed to get in lieu of the potatoes, was to be a sufficient quantity, but no specific weight was stated, either by the Inspectors or myself; and Mr. Breden was settled with according to the bread he actually supplied, but at the same time was charged for the deficiency of potatoes furnished.

" The only two Inspectors that I recollect as having been present at the Board referred to, were Messrs. Kirkpatrick and Sadlier, by one of whom it was mentioned, at the time, that Mr. Breden had informed him that if it was attempted to compel him to furnish sound potatoes, which at that time was impossible to be done, he would rather pay the penalty of £500 and give up the contract.

" I have the honour to be,  
" Sir, &c. &c.,  
(Signed,) " H. SMITH,  
" Warden.

" GEORGE BROWN, Esq.,  
" Secretary."

It will be seen that the Warden still evades the question, " what weight of bread was agreed upon between you and the contractor, for each ration of potatoes;" he speaks only of the Inspectors. The following evidence will however show what that bargain was:

John Breden:—" Witness saw the Warden on the subject of the potatoes, and an agreement was entered into between them, that white bread should be substituted for potatoes; does not recollect who first made the proposal for substitution; the agreement was that witness should furnish three-fourths of a lb. of white bread in lieu of each ration of one twenty-second part of a bushel of potatoes."

Robert Allen:—" An agreement was in consequence entered into by the Warden and Mr. Breden, that white bread should be supplied instead of the potatoes; the agreement was, that a certain weight of bread should be given for each ration of potatoes; witness thinks the agreed quantity was three-fourths of a lb. of white bread for each potatoe ration."

Samuel Breden:—" Thinks the arrangement was that witness should give one lb. of bread in room of each ration of potatoes; there was a distinct bargain made as to the quantity."

Thomas Kirkpatrick, Esq.—by Mr. Smith:—

" Recollects that Samuel Breden had a Provision Contract with the Penitentiary; has no distinct recollection of any particular conversation with either of the Bredens as to substituting bread for potatoes; there was some proposal of that kind; and witness thinks he may have spoken to John Breden about it; believes the substitution of bread for potatoes was sanctioned by the members of the Board, but cannot say officially by the Board; thinks Mr. Breden told witness that if he were compelled to furnish potatoes, he would rather pay the penalty of his bond than attempt to fulfil his contract. Mr. Breden

suffered great loss by having potatoes to supply, his contract becoming bad. Witness thinks there was a specified quantity of bread agreed upon to be furnished by Breden, in lieu of each ration of potatoes."

Major Sadlier—By Mr. Smith:—

"Recollects the last contract Samuel Breden had while witness was an Inspector; had a conversation with John Breden at the time, on the difficulty of furnishing potatoes under the contract; Breden said it was impossible to get potatoes, but whether he mentioned any sum which he would rather lose than go on with the contract, witness does not recollect; mentioned what Breden had stated at next meeting of the Board; Breden was authorized by the Board to substitute white bread for potatoes under this contract; the quantity of white bread to be furnished in lieu of the potatoes was fixed by the Board."

It is clear that the agreement was, that Breden should furnish three-fourths of a lb. of white bread for every ration of one twenty-second part of a bushel of potatoes. In the Warden's settlement with him, however, he gave Breden credit for the full quantity of white bread he delivered at the market value, and charged him with the value of the potatoes he failed to deliver, at the contract price; and three-fourths of a lb. of white bread, being more valuable than 1-22 of a bushel of potatoes at the contract price, the Institution was wronged to the extent of the difference in value. The amount lost is thus ascertained:—

"The total number of potatoe rations to be supplied during the year, under Breden's contract, was.....	174,805	=	7945 bushels.
(Of which he supplied in potatoes.....)	69,454	=	3157
Leaving a short supply of.....	105,351	=	4788
He supplied 47,820 lbs. of white bread at three-fourths of a lb. to each ration.....	63,760	=	2898
Total rations short delivered.....	41,591	=	1890

41,591 rations of potatoes, are equal to 31,193 lbs. of white bread, at the stipulated rate, which at one penny half-penny per lb. amounts to £194 19s. 2d. This sum should therefore have been deducted from Breden at settlement."

This charge is therefore completely established.

7. IN OVERPAYING HENDRY AND BLACKLOCK, CONTRACTORS, THE SUM OF £193 1s. 9d. WHICH CANNOT NOW BE RECOVERED FROM THEM.

The following extract from the Minutes of the Commission, of an interview with the Warden on 19th July, transmitted to the Warden on 27th July, will show the ground work of this charge.

\* \* \* \* \* "Mr. Smith thereupon stated that he" \* \* \* \* \* "entered into an arrangement with that firm to receive from them bread instead of potatoes, and finally settled with them at the rate of four-fifths of a lb. of white bread, in lieu of each ration of one twenty-second part of a bushel of potatoes. "It was then suggested to the Warden" \* \* \* \* \* "that this arrangement had not been carried out, for the contractors fell short in their delivery of potatoes, 102,710 rations (of one twenty-second part of a bushel each,) which, at four-fifths of a lb. of bread to each ration, required 82,188 lbs. of bread to supply the place of

the deficient potatoes; and that as only 56,499 lbs. of white bread were received in all, the supply fell short even of the agreed compromised quantity 25,689 lbs., reducing the rations of the Convicts so much." "The Warden replied that he was aware of all this, and that white bread had been received from Mr. Williamson to make up this deficiency of 25,689 lbs., and the amount deducted from Hendry and Blacklock's bill."

"Mr. Smith was, however, shown by the Provision Receipt-book, kept by the Kitchen-keeper, that this was not the case, for that only 56,499 lbs. of white bread had been delivered altogether by Hendry and Blacklock, and Williamson. He was likewise shown that even in his own way of settling, the proper deductions had not been made from Hendry and Blacklock; for even had they delivered the whole of this quantity of 56,499 lbs., the deficit still remaining was 25,689 lbs. of white bread, which at 1½d. per lb. left £160 12s. 3d. to be deducted from their bill, while £145 17s. 0d. only was deducted. Mr. Smith was further shown, that a much more serious error than even this had been made in the settlement of this bread account; for that while 56,689 lbs. of white bread only had been received altogether, about one-half of which was by Hendry and Blacklock, and the other by Williamson. Hendry and Blacklock were paid for the whole quantity, and Williamson was paid £178 6s. 6d. for his share, thereby injuring the Penitentiary to the extent of £178 6s. 6d."

£160 12s. 3d. less £145 17s. 0d. left £14 15s. 0d. short deducted, which added to £178 6s. 6d. twice paid, makes the whole loss on the transaction £193 1s. 9d.

"Extract from the Minutes of the Commission, of an interview had by the Commissioners with the Warden on 20th July, transmitted to him for his correction with that of the 19th on 27th July:—

"This morning the Warden met the Commissioners at the Penitentiary, and admitted that the sum of £178 6s. 6d. in question, had been paid twice; that it had been paid to Mr. Williamson with the intention of deducting it afterwards from Hendry and Blacklock's account, but that this had not been done.

"Mr. Smith was interrogated as to the probability of recovering the sums (£178 6s. 6d. and £14 15s. 3d.) overpaid to Hendry and Blacklock, when he replied that this firm had recently failed, and their affairs were in the hands of an assignee, but that a dividend might be expected from their estate."

This charge is therefore completely established.

8. IN RECOMMENDING AN INCREASE OF SALARY TO MR. BICKERTON, CLERK OF THE PENITENTIARY, ON THE GROUND OF THE EFFICIENCY WITH WHICH THE DUTIES OF HIS SITUATION ARE PERFORMED; WHILE HE KNEW, OR OUGHT TO HAVE KNOWN, THAT THE CLERK'S DUTIES ARE MOST INEFFICIENTLY DISCHARGED.

The fact is undisputed that the Warden has on more than one occasion, and as late as 8th July, 1848, used his influence to get Mr. Bickerton's salary restored to £175; but it is only material inasmuch as it shows either that the Warden knew nothing of the condition of the office, or that he was not in a position to resist the solicitations of his Clerk.

Charge VI. is therefore completely established.

A general defence to this charge is, that the Clerk, and not the Warden, is responsible for the irregularities in the office; but it is quite obvious that such a defence will not bear investigation for a moment. The Clerk has been by statute, as well as in practice, the mere executor of the Warden's will; the Warden is the responsible agent of Government for the whole conduct of the Penitentiary, and in no department is his responsibility more direct than in that of the books and accounts.

### CHARGE VII.

#### STARVING THE CONVICTS IN THE PENITENTIARY.

1. That the Rations as fixed by the Prison Regulations are sufficient when fully supplied to the Convicts.

The establishment of this proposition was necessary to justify the conclusion drawn from the evidence given under succeeding counts. It is uncontradicted that the Prison ration, when of good quality, is amply sufficient.

2. THAT THE REGULATION RATIONS WERE NOT FULLY SUPPLIED.

Some evidence in proof of this allegation was received, and it is uncontradicted; the fact is fully established by the Prison Receipt-books, and by all the evidence under the several counts of this charge.

3. THAT THE FOOD SERVED TO THE CONVICTS WAS NOT SUFFICIENT TO SUSTAIN HARD WORKING MEN.
4. THAT THE CONVICTS HAVE BEEN HABITUALLY SO EXHAUSTED BY WANT OF FOOD, AS TO BE UNABLE TO WORK.

These two issues were raised to ascertain the extent to which the Convicts (if at all) had suffered from want of food, but the evidence has been so commingled that we find it more convenient to class them together.

An immense amount of evidence has been received on this point.

William Coverdale, in his preliminary examination, says:—"Has frequently seen Convicts sitting down during work hours; and on asking the Keepers, was informed that they were too weak to work, from want of food. Has seen Convicts bring out their beef, and show it to the Keepers, when they thought they had got too little. Witness has seen pieces of meat thus shown, certainly not over two ounces in weight."

Ex-Keeper Gleeson, in his preliminary examination, says:—"Has often known the most able and willing workmen totally unable to work from exhaustion, through want of food. He has on many occasions sent them to sit under the shed, taking pity on their condition. Has often known the Convicts to take salt from the table, and tie it up in their handkerchiefs; on being questioned as to why they did so, has been told that it was to eat during the day to make them thirsty, and thereby enable them to drink water to fill up their 'guts.'"

Ex-Keeper Keely, in his preliminary examination, says:—"Has often known Convicts complain of exhaustion from want of food; has known men really unable to work from starvation, and has on many occasions relieved them from duty in consequence, especially since the failure of the potatoe crop. Has seen Convicts with cold mush in their hands; and on being asked by witness where they got it, has been told that they took it from the hog-pen. Feels sure they told the truth, as they could not have got it anywhere else."

Ex-Keeper M'Carthy, in his preliminary examination, says:—"Thinks the able-bodied, hard-working men did not receive enough of food; has known a man to eat both his dinner and supper together on Sunday." \* \* \* \* \* "Has often known the Convicts complain that they suffered from starvation; is convinced they spoke truly; their appearance showed what they said was true; they were often too weak to work; hundreds of times witness has relieved them from hard work; witness could not have had the conscience to make them do hard work; he means men under punishment as well as men not under punishment (i. e., on full diet). Has known a Convict, named Bernard, go twenty times to the hog-pen, and bring in offal, such as potatoes, from the hogs, and divide it among the Convicts in witness's shop. Has known other Convicts do the same thing frequently. Some men were afraid to do it; not afraid of witness, for he would not stop them. Has known Convict Doudevant to be turned out of his office, as Keeper of the Warden's hogs, &c., because he did not prevent them from stealing out of the hog-pen."

By Mr. Smith:—

Q. Did you ever allow your men to eat potatoes during work hours?

A. Yes; and was very glad they got them to eat.

Q. Was it not very irregular to allow Convicts to eat when at work?

A. Yes; but they were often unable to work from hunger.

Q. Did you report them?

A. Sometimes.

Q. Who was the Guard in your shop when the Convicts had the potatoes?

A. Has had different Guards; but which of them, or whether any of them saw the Convicts have potatoes, he does not know.

Q. How many Convicts have you seen eating potatoes in your shop?

A. Has seen four or five at a time eating potatoes brought from the hog-pen.

Q. Who used to bring the potatoes from the hog-pen?

A. Convicts Bernard and Doudevant.

Q. How often did Bernard go to the hog-pen?

A. Nearly daily when the hogs were fattening.

Q. Do you know where the potatoes came from?

A. Always understood they came from the Prison Kitchen.

Q. Was it customary to take anything from the Dining Hall that the Convicts could eat?

A. Yes.

Q. What?

A. Potatoes and mush.

Q. Was not the mush gathered up every morning when the Convicts came down from their cells?

A. Yes; and pailfuls of it were sent to the cows and hogs.

Q. Did you ever see mush served out to the Convicts at breakfast?

A. Has seen some mush so served; but not all that there was over.

Q. Have you seen any mush taken to the cows and hogs in the last two years?

A. Yes, often; and to the fowls.

Q. Has there been any mush left over since the Convicts have had oatmeal porridge?

A. There has been oatmeal sometimes given to the Convicts during witness's time; but when he spoke of mush, he made no difference between oatmeal and Indian meal.

Q. Did you ever give Convicts leave to go to the hog-pen?

A. Never prevented them.

Q. Were the men who were so hungry under punishment?

A. Some were, and others were not.

Q. Did you ever report to any one that your men were suffering from hunger?

A. Yes; a good many times.

Q. To whom?

A. To the Warden, as one; and to Keepers and Guards. We put the biggest part of the blame to Frank Smith, for going round our shops, reporting our men, and putting them on bread and water?

Q. Were the men talking when Frank Smith put them on bread and water?

A. Does not think they were.

Mr. Utting, in his preliminary examination, says:—"The food was decidedly insufficient; and the prisoners were continually unable to perform their work in consequence. Witness often reported this to the Warden, who took no notice of it."

By Mr. Smith:—

"It was a daily occurrence of the Convicts to complain of the insufficiency of their rations. Once reported to the Warden that as many as twenty Convicts rose from the table at one time; does not

recollect that more than that number rose for this purpose; there may have been more. Witness examined the plates of some of these twenty Convicts; cannot say that he examined all. The quantity of meat was very small, and on some occasions there were bad potatoes. The Convicts have complained to their Keepers that they were unable to work in consequence of the deficiency of food; the Keepers have reported this to witness, and witness has reported to the Warden. These complaints have frequently occurred. The Keepers who complained, were William Smith and Keely, and witness thinks Richardson. There may have been others, but witness does not recollect. Cannot tell how the work was carried on while the Convicts were thus weakened by food; has already stated that there was a great waste of labor; does not know how the buildings were put up; does not know anything about the buildings; the buildings were put up, perhaps, by those who were favorites, and got the larger ration. The work would have got on better, if the men had had full bellies. There may, or may not, have been among those who complained of want of food, Convicts who had been on bread and water punishment; but there were those also who had good characters, and were well behaved men. Has known Convicts take their rations out of the Dining Hall, to give to others who had not sufficient to eat. Is not sure whether Convicts under punishment have received food in this way. Some of the Convicts who took out their provisions, had, to witness's knowledge, larger allowance than others; does not know whether the others who took out their rations, had or had not larger rations. Witness swears distinctly that the Convicts were not sufficiently fed; had they been in a state of starvation, they could not have worked."

Guard Watt says, in his preliminary examination:—"Has frequently heard Convicts complain of being so weak from hunger that they could not work; witness believes they spoke the truth; these were men on full rations, as well as on the sick list." \* \* \* \* \* "Has known Convicts to take salt away from the table; does not know for what purpose." \* \* \* \* \* "Has known Convict Conkright steal meat from the hog pen; has seen Doudevoir eat out of the bucket on its way to the hog pen."

By Mr. Smith:—

"If a Convict has not enough provisions he shows his plate to one of the officers in the dining-hall; never knew a Convict punished for complaining, if he really had a short ration. A Convict always gets more if his complaint is well founded; has known Convicts hide part of their rations for the purpose of getting more food."

By Commissioners:—

"There are some men here who would, under any circumstances, be in a state of starvation, as they would eat a four pound loaf, and still be hungry."

The statements of these six witnesses are fully corroborated by M. B. White, (formerly a Guard—resigned,) M'Garvey, Robinson, Wilson, Fitzgerald, Freeland, Richardson, Kearns, Swift, Waldron, and Skinner.

Convicts Brennan, Doudevoir, Armstrong, Chugnon, and Dyas, also state that the food was quite insufficient.

For the defence we have many witnesses, and a great variety of testimony.

Guard Sexton says:—"The Convicts occasionally complain of not having enough, and frequently without reason; he may have seen a dozen Convicts complain of want of food at one meal, but thinks he never saw twenty; having been re-called next day, he explains that when so many as twelve Convicts complained, it was at the time potatoes were getting bad."

Keeper Wm. Smith says:—"He is only in the Dining-hall on Sundays, and does not inspect the Convict's rations, but they appeared to him to be enough for any ordinary man; he says none of his gang ever complained of being starved, or stopped work on account of not getting enough to eat."

Keeper Hooper says:—"He considers the Convicts get more food than they can eat, and that he has heard Convicts say so; he has never known nor heard of any Convict being unable to work from want of food; he has never known nor heard of any Convict complaining of shortness of rations; will admit that they have sometimes complained of the meat not being so good as it should be—it is impossible to keep the meat during the summer time; has seen Convicts rising from their seats showing their bread; does not know whether they did so as complaining of the quantity, does not know for what purpose they did so; they may have risen for the purpose of complaining, but the Convicts have never complained to witness. One Convict may have thought his bread in smaller quantity than that of the Convict next to him, and may have stood up with his bread in his hand, by way of showing the inequality of it."

Keeper Matthews says:—"That none of his men were ever too weak to work; they have complained that the rations were short, but he never had reason to think their complaints well founded. He says he has seen Convicts 'rising from their seats at table, and complaining that they had not enough to eat; has seen some of the Convicts ordered down without redress, and in other cases the Keeper has gone to see if the complaint was well founded; does not know of any general complaint among the Convicts, at any time, of not getting enough to eat; has known individual complaints; has seen three or four Convicts rising at one time; cannot say if he has seen ten or twelve."

Keeper Ballentine:—"Thinks the Convicts generally got enough to eat," when the rations "are in good order;" he has "never known Convicts unfit for work, from not having food enough;" he "has heard a general complaint among the Convicts that they did not get sufficient food, but this has only been in the Summer time when the meat was bad."

Keeper Pollard:—"Has always thought the Convicts got too much food;" none of his men "have at any time been so weak from want of food, as to be unable to work; none of them have ever complained of hunger to witness's recollection." He has "known Convicts complain of insufficient rations, both meat, bread, and potatoes, and when he has thought the complaint well founded, he has always got it redressed;" but "has never seen or heard of a general complaint." He "has seen some officers ordering Convicts to sit down, when they have risen at the table to complain of their rations, without inquiring into the justice of the complaint."

Keeper Little says none of his men "have been obliged to stop work on account of not getting enough to eat, excepting those who were down for punishment; witness considers the Convicts get pretty fair rations." He says under cross-examination, "Convicts, who were not under punishment, have complained to witness that they had not enough food, but witness has never heard them complain that they were unable to do a good day's work, for want of more food."

Keeper Manuel says:—"The rations are sufficient for some, but not for others; witness has never seen less than would satisfy him;" he "does not think the Convicts here are in a state of starvation;" he "never saw a Convict so weak, from want of food, as to be unable to work; witness could not swear that any person has been putting up the Convicts to complain of insufficiency of food, but witness has reason to believe that such is the case, from having seen these officers so intimate with Convicts." He also says, "Convicts in witness's gang have complained of not having enough to eat; there are always some of them complaining; there are men who would eat three times as much as the ordinary rations."

Head Keeper Costen, in his preliminary examination, says:—"The Convicts did not often complain of not having enough." \* \* \* \* \* "There were some complaints from a few individuals among the Convicts when the exchange (of bread for potatoes) was first made, but not much; the Convicts are now perfectly satisfied; there never was any great clamour on the subject." \* \* \* \* \* "Convicts may have sometimes complained of their rations being too small, but not often; does not think he ever knew more than six Convicts complain, at one meal, of not having enough." \* \* \* \* \* "Never knew Convicts to complain that they were so weak from hunger that they were unable to work; witness once received a report from Keeper Reid that some of his men were in this condition, but never heard of it in any other instance; Reid's case was some years ago; four or five years ago; thinks the Convicts never suffered from hunger; thinks they always had enough. Has heard that Convicts stole meat from the hog-pen; never inquired into it."

By Mr. Smith:—

"Never saw any Convict sitting down from exhaustion, never received a report of a Convict stealing meat from the kennel, that he recollects of; heard something about it. There is no dog-kennel in the yard, nor has there been; the dogs get some of the bones from the Convicts' tables."

Guard Funstau says:—"He cannot tell if the Convicts get a fair allowance or not;" and he says there are a good many complaints on which the Kitchen-keeper decides.

Guard Rowe:—"Thinks the Convicts generally get enough to eat; some would eat more if they could get it; some do not eat what they do get." This witness has only been in the Penitentiary during 1848.

Keeper Gibson also gives evidence, but his knowledge only extends during the sitting of the Commission.

James Hopkirk, Esq.—By Mr. Smith :—

“ Believes the Convicts had, at all times, enough of food. The rations were very wholesome as far as witness ever saw. Does not believe that starvation ever existed among the Convicts, since witness has been an Inspector. Thinks the Convicts have never had the appearance of being under fed since witness has been an Inspector; thinks if it had been so, the men would not have been able to do their work; thinks he would have heard had Convicts been unable to do their work. Has very frequently heard the opinion of strangers as to the feeding and appearance of the Convicts, has very often taken visitors to see the Prison; never heard any one who did not express the highest satisfaction with the appearance of the Convicts, and of the Prison generally.”

By Commissioners :—

Q. Do you know the daily quantity of food given to the Convicts by the prison dietary?

A. No.

Q. Do you know that the Convicts got the full prison diet, at all times?

A. Was not present at every meal, but has no reason to doubt it.

Q. If you had been present at every meal, could you have told if they got the full prison allowance?

A. Not unless he had weighed each man's allowance.

Q. Do you know that the Convicts got in the aggregate the full weight of food daily allowed them by law?

A. Was never personally present when the meat was weighed out.

Q. Do you know that the regulation quantity of food was daily received from the contractors?

A. Does not, not having been present when the provisions were received.

Q. Did you ever examine the Daily Provision Receipt-book, and compare the receipts by it with the number of Convicts to be fed?

A. Never did particularly.

Q. How could you then give evidence that the Convicts had at all times enough of food?

A. From the general appearance, and from being repeatedly present at meal time, when scraps and remainders were left over.

Q. Do you know the amount of work done by each man in the establishment?—is there any book in the Prison to show each man's share of work done?

A. Does not know the amount of work done by each, nor if there is such a book kept.

Q. Do you know the amount of work done in the aggregate by the whole prisoners?

A. Does not.

Q. Do you know what amount per day has been produced to the State on an average by the daily labor of each Convict?

A. Cannot say.

Q. How then could you testify, that if the men had been starved you would have known so by their not doing their work?

A. Because the Keepers would have reported that the Convicts were not able to do their work, and witness has been in the constant habit of seeing the Convicts working without any appearance of starvation.

Q. Had such complaints existed, would the Keepers have reported them to the Warden, or to the Inspectors.

A. Cannot say to which they would have reported them in the first instance, as no such case ever occurred to witness's knowledge.

Q. Did you ever know an instance in which a Guard or Keeper reported any matter direct to the Inspectors, and not through the Warden?

A. Is not aware any Officer ever did, but they have often spoken personally with witness and his brother Inspectors, and witness has frequently spoken to Officers on the subject of food.

Q. With which Officer have you spoken on the subject of the food, previous to the sitting of the Commission?

A. To Costen and Watt, and several of the other Keepers, but does not remember their names; has also repeatedly gone between the tables and talked to the Convicts about their food in presence of the Officers, and on many of which occasions Mr. Corbett was present; other Inspectors have also been sometimes present. These occurrences have been both before and since the sitting of the Commission, but more often before than since.”

Mr. Sheriff Corbett—By Mr. Smith :—

“ Witness has heard Convicts say that some days they had sufficient food, but other days they had not enough; frequently examined the rations during meal hours; never saw any tainted meat served out to the Convicts, nor bad bread; has seen bad potatoes this fall, but the Inspectors ordered them to be returned; they said it was the second day the potatoes had been bad; thought by their appearance that the Convicts got enough of food. If the Convicts had not received enough of food, they could not have done the work they executed while witness was an Inspector. Visited the Dining Hall in 1847. It never appeared to witness that the Convicts had not enough of food. Has taken strangers into the Dining Hall during meal hours. Has no recollection of any remark from a stranger, that the Convicts had not enough to eat.”

By Commissioners :—

Q. Do you know what has been the average daily product of each Convict's labor since you became an Inspector?

A. No.

Q. Do you know what the whole of the Convicts have produced per day, or per annum, since you have been an Inspector?

A. No.

Q. Do you know the quantity of work done by any one Convict in the Penitentiary, for any given time?

A. No.

Q. How then did you testify, that "if the Convicts had not received enough food, they could not have done the work they executed?"

A. By the general appearance of the work, and the manner in which the Convicts worked.

Q. Do you know the regulation quantity of food which each Convict should receive daily?

A. Does not remember; has seen the table.

Q. During the two years you were Inspector, how often were you in the Dining Hall at meal time?

A. Should think he had been there twenty times in the two years.

Q. Were you ever present at breakfast?

A. Thinks not.

Q. How many Convicts have spoken to you as to the inequality of their rations?

A. Three or four.

Q. When was it?

A. At different periods during the two years?

Q. Who were the Convicts?

A. Cannot say.

Q. Were these statements made to you as an Inspector, with the view of inquiry being instituted?

A. The statements were made in reply to witness's inquiries as an Inspector.

Q. Did you understand that the food varied on different days?

A. No; understood the men could eat more one day than another.

Q. Did these men, or any of them, complain that they received more food one day than they did on another?

A. Yes; one or two said they got better food on the days the Inspectors came than on other days; but witness knew this not to be true, as he has come unexpectedly, and saw no difference.

Q. Did any of these Convicts ever state to you, that at times they had not sufficient food?

A. Yes.

Q. Did you ever mention these representations to the Warden?

A. Yes; and the Warden said they got their full rations; and what was left over by Convicts who got more than they could eat, was passed round to those who got less than they could eat.

Q. Did the Warden say the Convicts got their full rations according to the tariff?

A. Yes; except those who were under punishment.

Q. Did you take any further action as an Inspector?

A. No.

Thomas Kirkpatrick, Esq., says:—"He always presumed the Convicts had enough of food while he was an Inspector; and their appearance indicated that they got sufficient food."

Major Sadleir says:—"He always thought the Convicts were well fed while he was an Inspector; that their appearance indicated they were so; and that he never heard any complaints to the contrary. He adds, however, that an Inspector would be about the last person to hear of such complaints."

Guard Martin says:—"He has never known a Convict exhausted from want of food; and he thinks the Convicts get sufficient. He adds, that he has only been occasionally in the Dining Hall for the last three years."

Convicts Parker, Ramsden, and M'Nair also testify that the Convicts got sufficient food.

James Sampson, Esq., Surgeon of the Penitentiary  
—By Mr. Smith:—

"It is a part of witness's duty to examine the Convicts' rations occasionally. Has very seldom found the rations in a bad or deficient state; has frequently tasted the soup, and has found it very good whenever he has done so; does not know that he ever had a case of sickness arising from the want of food. If witness had ever heard a complaint of a Convict, of starvation or want of food, should have thought it his duty to report the matter. Has had complaints from Convicts who have been under punishment of bread and water, with which punishment witness has not thought proper to interfere. Witness, on reflection, remembers several instances in which there were general complaints of the badness of bread; it was sour and not sufficiently baked. Witness called the attention of the Warden to the matter, and has reason to believe that the Warden looked into it at once."

By Commissioners:—

"Considers that the rule requiring the Surgeon to examine the rations occasionally, did not render it his duty to do so frequently; but rather that he was to do so when called upon by the Warden or Inspectors, for the purpose of giving a professional opinion upon the sufficiency and nutritive nature of the diet. With this construction of the above rule, witness very seldom examined the rations. Does not recollect having examined the rations at all during the summers of 1846 and 1847. If witness has done so, it must have been very rarely indeed. When witness has been in the Dining Hall, he has sometimes seen the meat upon each plate prior to the soup being poured upon it. Cannot say at what

season he has so seen the meat. Does not recollect to have seen the meat but when he has seen it before the soup was poured on it; has heard some one complaining of it."

The Warden also produced a letter from Major General Armstrong, certifying that the Military Convicts were well fed, as far as he knew; and that no complaints had ever reached his ears. (See Appendix.)

The Warden also relies on the following incidental circumstances which have come out from several witnesses, and are undoubtedly correct:—

To meet the complaints of want of food, which are proved to have been numerous, he shows that many groundless complaints were made, and that tricks were played off to get more food.

He shows that Convicts frequently gave part of their food to other Convicts, and argues that they would not have done so if short supplied; but it is shown as well, that some men required much smaller rations than others, and it is evident, that men engaged in sedentary employments do not require the same as hard-working out-door labourers.

The Warden proves that Convicts frequently carried part of their food away from the table secretly; but there is strong evidence to show that this was done by confederation, to supply their comrades, when under bread and water punishment, for a return of the obligation at another time.

The Warden relies much also, upon the answers of discharged Convicts, to the question if they had food enough. But it has already been shown how little reliance can be placed on this portion of the records.

We have thus gone over all the evidence, and it will be seen that there is a wide variance on the point among the witnesses.

It is obvious, however, that the explicit testimony of seventeen credible witnesses to what they have seen, cannot be overturned by any number of witnesses, proving that they have not seen the same circumstance.

It is established moreover, beyond a doubt, that a great many complaints as to the insufficiency of the food, have existed. That some of these complaints were inquired into, and some not; and that some of them were redressed, and some not.

It is quite clear that at particular periods, the food must have been very deficient; the irregular delivery of the bread and meat by the contractors—the mode of cooking—the bad condition the food was frequently in—and the actual short delivery of bread and potatoes—all which are shown under other counts—can leave no doubt of the fact.

A good deal of evidence has also been received as to deficiency in the food supplied to the women, and the witnesses are much at variance on the point. We are inclined to think that when the food was good, the women had sufficient.

5. THAT THE DESCRIPTION OF MEAT RECEIVED FROM THE CONTRACTORS WAS NOT EQUAL TO THAT FIXED BY CONTRACT.

6. THAT THE MEAT OFTEN COMES FROM THE CONTRACTORS, AND IS RECEIVED IN BAD CONDITION.

The terms of the Contract are in these words:—  
"The Beef to be of a good, wholesome, and marketable quality."

Samuel Breden, Contractor—preliminary examination:—

"The meat delivered under the contract, was not whole sides; generally speaking, the meat was delivered in the evening or afternoon, after the day's business was over in the market. They usually sent what remained over the day's sales."

John Breden, Contractor, and Butcher by trade—preliminary examination:—

"The meat delivered under the contract was third-rate quality; it used to be delivered in the afternoon, and what remained from the day's sales was sent to the Penitentiary; whole sides were never supplied: witness did not supply the sirloin, or the short rib in the rations; none of the good roast pieces; usually sent four or five shanks to each day's rations. Meat was three or four times sent back to witness, as not good enough, not fat enough; but never knew it sent back for being tainted."

Gate-keeper Bannister—preliminary examination:—

"Has a good opportunity of seeing the rations come in; the meat is often bad; poor, skinny meat: as often bad as good; has seen four or five shanks to one ration; the meat sent in, is the refuse of the day's sales at the Butcher's stall."

By Mr. Smith:—

"Has seen bad meat rejected and sent away; the contractor's boy told witness that they would not have it, meaning the authorities at the Penitentiary. Has seen five shanks delivered with the beef at one time; they may have gone back again unknown to witness. Does not know how many pounds of beef are required for 470 Convicts; does not know, but should think that five shanks are too many for one beast. Witness expects that the Butchers always expose the best side of the meat at their stalls."

William Coverdale—preliminary examination:—

"Has frequently seen meat coming into the yard in a cart, in a very bad state; has seen it look quite black and disagreeable, and smell strongly; has seen six shanks come in for one ration, evidently the refuse of the market; this has been invariably the case for the last few years."

Guard Kearns—preliminary examination:—

"Has often seen the meat come in from the Butcher; has seen it so bad that he could not stand over it; the meat was generally poor and skinny looking; has seen four or five shanks to one ration."  
\* \* \* \* \* "Generally speaking, in summer-time, the meat is not fit to be used."

By Mr. Smith :—

Does not know how many shanks should go to a day's supply of Convict-meat ; has often seen four or five shanks going in to the Penitentiary at once. Does not know what a day's supply is ; did not see the meat going in daily ; supposes that upon an average, witness saw the meat going in once a week ; but not so during last year, as witness has been latterly on the fence. Does not recollect ever to have seen the meat sent back ; it may have been. Watt and F. W. Smith, used to receive the meat ; it smelt badly sometimes in the summer time ; it was the case very generally, during the summer. Was stationed in the dining hall, when witness saw the meat thus bad. Witness watched both the dining hall and the adjoining scullery ; was not always present when the meat came ; often has seen the meat kept, when witness could not stand over it, on account of the bad smell."

Ex-guard Fitzgerald—preliminary examination :—

"Was in the habit of seeing the meat come in from the Butcher ; has frequently seen it stinking when it came in ; has seen a number of shanks served to one ration ; often five or six shanks to one ration, and on one occasion, ten or eleven ; witness has reported to Mr. Costen that the meat was unfit for use, and Mr. Costen has received it notwithstanding."

Gate-keeper Cooper—preliminary examination :—

"Sees the meat come in from the Butcher regularly ; has often known it to smell badly when it came in. The meat usually, is not of good quality ; it appears to be the refuse of the stall ; it is never entire, but with one or two exceptions, it has always been in pieces."

By Mr. Smith :—

"Sees the meat coming into the Penitentiary every day, when the witness is on duty ; it comes in small pieces ; there have been a few joints lately ; it comes in all sizes ; has seen the meat rejected ; that is, has been told by the butcher-boy, that it was rejected."

Ex-Assistant Warden Utting—preliminary examination :—

"Witness is a good judge of meat ; the meat sent in was generally of very inferior quality, and not equal to contract. Witness has seen thirteen shanks come in to one ration, in place of 3½ shanks, which he calculated should be the proper ration ; witness, by referring to his Diary, finds this was about 15th July, 1846 ; witness has frequently complained of this to the Warden, who said it should not be so, but is not aware that he took steps to correct it."  
\* \* \* \* \* "Bad provisions were frequently accepted from the Contractors, and given to the Convicts."

By Mr. Smith :—

"The meat is required to be of good quality, according to the Penitentiary Contract ; has a great number of times, seen inferior meat sent in ; witness has sent it back frequently, when he has so seen it, and has reported the circumstance to the Warden. Witness thinks he has seen thirteen shanks of beef delivered at the Penitentiary, on one day ; cannot

say that thirteen shanks were frequently delivered, but there has frequently been more than the proper proportion. Witness has ordered them to be returned on several occasions, and has reported to the Warden ; sometimes the Warden has made witness no answer, sometimes may have said 'very well ; cannot say the Warden has ever said 'it should not be so ;' the Warden may have said so. Does not recollect having told any one that the Warden said 'it should not be so.' There has been, sometimes, bad meat cooked for the Convicts ; witness has reported it ; part of the meat that was bad has been sent back ; and sometimes the whole of it has been sent back ; sometimes a portion of the meat has been cooked, before witness was aware of it."

Ex-keeper Gleeson—preliminary examination :—

"Has often seen the meat come in from the Butcher ; it was frequently very inferior ; poor, miserable, carrion-like stuff ; has often seen too much bone to a ration ; has seen six shanks to one ration."

The testimony of these witnesses is corroborated by Keely, M'Garvey, Robinson, M'Carthy, and Convict Dyas, the Head-cook.

The evidence, for the defence, is as follows :—

Guard Watt—preliminary examination :—

"Has seen meat come in from the butcher in bad condition ; in such cases, it has been invariably sent back to the butcher ; never knew an instance of it, or any part, being retained when in bad condition. During the last two years, part of the meat sent in one ration, has been so sent back thirty times. If the butcher did not bring back other meat immediately, a supply in its place was procured from town. Meat has been so purchased three or four times from other butchers than the Contractors." \* \* \* \* \*  
"The meat delivered to the Penitentiary is generally what remains after the sales of the stall are over. Sometimes the meat comes in quarters entire ; would say that the meat comes in whole quarters three or four times a week. Three shanks is the proper quantity to one ration ; four or five shanks have been frequently received for one ration ; has seen seven, eight, or nine shanks to one ration."

By Mr. Smith :—

"The usual rule is one shank of beef to one hundred pounds weight of meat ; this was the rule at the Penitentiary ; and that is the way witness always took the meat. Witness has seen more than the usual quantity of shanks brought in ; in these cases, the thick end was cut off, and the thin was thrown in for the soup, but was not charged by the Contractor ; the thin end was given in—it was not weighed."

Head Keeper Costen—(preliminary examination) :—

"Never knew the meat to be received when bad ; has often returned meat to the butcher, and Frank Smith has done so, also, for being bad. If the butcher did not replace that rejected in time, meat was purchased in lieu of it from other butchers. Witness has known this done, perhaps, a dozen times. The meat is sometimes delivered in quarters, entire ; but it is usually cut up into pieces, and the fair proportion of each animal is given. The prime pieces are sometimes sent, but not every day ; it is generally of good marketable quality. The proper number of shanks is three shanks to each 100 lbs. Witness usually

received six shanks to each ration; never knew more than six shanks received to one ration."

By Mr. Smith :—

"Has no recollection of Guard Fitzgerald reporting the meat bad which came in from the butcher. Has never received ten or eleven shanks in one ration of meat."

Thomas Kirkpatrick, Esq.—By Mr. Smith :—

"Has seen meat delivered by the butcher not so good as it ought to have been. Saw meat on one occasion sent back to the butcher, as unfit for use."

Major Sadlier—By Mr. Smith :—

"Has seen Convicts at dinner frequently, and has seen the meat cutting up for them. Conceives that the meat was according to contract. Has seen very poor meat returned to the Contractors."

We think it established beyond a doubt, that the meat generally has been of very poor quality—that habitually there has been an unfair proportion of bone—that it has frequently been in bad condition—and that, as a whole, the meat has not been equal to contract. And when it is considered that the meat was kept in the Prison, at all seasons of the year, for two days before being served to the Convicts, it must be obvious, that for many months in the year it could not have been wholesome.

7. THAT THE BREAD OFTEN COMES FROM THE CONTRACTORS, AND IS RECEIVED OF BAD QUALITY.

The words of the contract are :—"The Bread shall be the best wheaten Flour, unbotted."

Ex-Keeper Keely—(preliminary examination) says :—"Has seen the bread piled up after it came in from the baker, within the day it arrived, sour, mouldy, and even with maggots in it."

Ex-Keeper M'Carthy—(preliminary examination) says :—"Has seen the bread come in from the baker, sour and mouldy."

By Mr. Smith :—

"Has seen the bread in a heap, just after being received from the baker, many times."

Guard Wilson—preliminary examination :—

"Has seen the bread come in from the baker frequently. The white bread has been generally very good, but the brown bread has been often very bad; it was sour and mouldy, and you might sometimes take it in your hand and squeeze water out of it."

By Mr. Smith :—

"Witness is sometimes stationed at the Lodge-gate; has not been so lately until to-day; was there in July, witness thinks; has seen the bread coming through the gate; sometimes looked at the bread in the cart as it went through; has sometimes seen bad bread; could not see all the bread by opening the door of the cart; has seen bread sent back several times on account of its being bad. Has examined a ration of bread in the Dining-hall, and has squeezed

water out of it. Does not know how it could have been baked; witness thinks it was not baked well enough; did not show the bread to any of the officers; all of them in the Dining-hall could see it for themselves; has seen a Convict showing that same bread to Mr. F. W. Smith; this was either at the breakfast or the dinner hour. Mr. Costen was generally there; does not recollect whether he was there at that time; he may have been there. Witness has seen the bread several times that he could squeeze water out of it; witness has seen Convicts complaining of bad bread several times, and has once seen a Convict complain of wet bread. Witness has frequently seen bad bread used, and has sometimes seen it sent back. Witness considers that the bread was raw-like, quite heavy; it would have been good had it been properly raised and baked—good according to its quality."

Thomas Fitzgerald—preliminary examination :—

"Has often seen the bread come in from the baker. The white bread was pretty good, but the brown was frequently sour and ill baked; but he never saw it mouldy."

Ex-Keeper Gleeson—preliminary examination :—

"The bread was frequently very bad; it often turned blue-mouldy before it was served out."

Gate-keeper Cooper—preliminary examination :—

"Witness's attention has not been much called to the quality of the bread; but he has seen it sour."

By Mr. Smith :—

"Sees the bread coming in every day, when witness is on duty; does not at all times open the waggon; does not at all times inspect the bread as it comes through the gate; cannot see very many loaves when he opens the door of the waggon; has known bread to be rejected; cannot say how often."

Gate-keeper Bannister—preliminary examination :—

"Lately the brown bread has been pretty passable, but it used to be often very indifferent; never saw it mouldy, though it might have been so."

By Mr. Smith :—

"Has seen the bread passing through the gate; used to stop the waggon to see if there was anything improper passing through; did not inspect the quality of the bread particularly, but could judge that it was sometimes better than at other times; it comes in a covered cart, with a door at the hind part. Has sometimes seen the bread returned; it has been so frequently; cannot say dozens of times."

The evidence, for the defence, is as follows :—

Guard Watt—preliminary examination :—

"Has seen the bread come in from the baker sour, not very often; it was invariably sent back when sour; cannot say how often the bread has been so sent back. When the supply fell short, in consequence of these refusals, white bread was purchased in town, to make up the deficit; has known white bread so purchased 5 or 6 times; cannot name any particular date when white bread was so purchased."

By Mr. Smith :—

“Has never seen the bread come in, in such a state, that water could be squeezed out of it; does not think it could bake in such a state; sees the bread every day.” \* \* \* \* \* “Has never known the white bread sour; the brown bread has been sour once or twice; the brown bread has been frequently returned to the contractor, and white bread has been purchased in lieu of it. Has never served bad bread knowingly, except the brown bread once or twice when witness could not get the other bread.”

Mr. Costen—preliminary examination :—

“Has seen brown bread come in from the baker, sour and not well raised; it was invariably sent back in such case; when the brown bread was thus sent back, white bread was procured from town in lieu of it; this has occurred frequently; very likely a dozen times or more.”

By Mr. Smith :—

“Has never seen the bread so bad that you could squeeze water out of it; does not believe it could be baked in such a state.”

Mr. Bickerton—By Mr. Smith :—

“Witness has known white bread to be furnished frequently in the room of rejected brown bread; also when there has been a deficiency of brown bread; witness charges these purchases to the contractors.”

It is proved that the bread has often come from the baker of bad quality; it is also shown that on some few occasions it has been sent back; but there is every reason to believe that it has been many times retained when in bad condition; and this will appear still more clearly under Count 12.

8. THAT THE MEAT HAS BEEN FREQUENTLY REJECTED BY ONE OFFICER OF THE PENITENTIARY, AS UNFIT FOR USE, AND HAS BEEN AFTERWARDS RECEIVED BY ANOTHER OFFICER.

Keeper Swift—preliminary examination :—

“Has seen meat come into the Penitentiary which was very bad, and which was sent back; in a few minutes the very same meat has been brought back to the Prison, and accepted.”

By Mr. Smith :—

“Has not seen the meat rejected and sent back again in 1847, but has seen this occur while witness has been stationed on the outside; cannot say that it was the same meat that came back, but it was the same man and the same waggon, and from the short time the man was away, witness does not see how the meat could be changed.”

Gate-keeper Cooper—preliminary examination :—

“Has known the butcher's meat to be sent back, as witness was told by the butcher, in consequence of Guard Watt having decided that it was unfit for use. Has known Frank Smith meet the butcher's cart on its way into town with the condemned meat, and tell the butcher's boy to take it back to the Penitentiary; butcher has brought it back accordingly, and the meat was accepted; has seen this

frequently, and has also known the butcher's messenger, when the Guard refused to receive his meat, wait until Frank Smith came in, when it was taken from him.”

By Mr. Smith :—

“Witness has been told of meat having been rejected by one Officer, and afterwards received by another Officer; explains by stating that the butcher boy told witness that Guard Watt had rejected the meat; the boy afterwards returned with the same meat, by the order of Kitchen-keeper F. W. Smith, and he then left the Penitentiary with his waggon empty. Witness saw the meat on that occasion, both going out and coming in; it was bad meat.”

Guard Watt—preliminary examination :—

“Never knew or heard of the meat when rejected by witness being brought back again and accepted. Has known 3 or 4 instances in which, when witness has rejected the meat, the butcher has waited until Mr. Frank came, and Mr. Smith then accepted part of the meat which witness had rejected. As to meat being sent back, and stopped on the way to town, and accepted by the Kitchen-keeper, witness further says, that he has known the butcher bring meat in at breakfast time, when Frank Smith was in town at breakfast, and during a term when a rule existed that no meat should be accepted without having been inspected by the Kitchen-keeper; the butcher, instead of waiting for Mr. Smith's arrival, would drive it to Mr. Smith's house, and have it inspected there, and bring it back; has known this 3 or 4 times. The rule referred to was in force in March, April and May of this year. Has known the meat to come in from the butcher in the morning, about 8 o'clock, 20 or 30 times in the last two years.” \* \* \* \* \*

“In the instance alluded to of the butcher's boy going to Mr. Frank's house, witness would not have accepted part of that which was taken by Mr. Smith; may have told the boy the meat was bad, but has no recollection of it; would not have received the meat, had it been of excellent quality, without Mr. Frank's having inspected it.”

Head-keeper Costen—preliminary examination :—

“Never knew of any order forbidding Kitchen-guard to receive meat from the butcher; witness recollects of meat coming in from the butcher, and seeing the waggon stand at the Kitchen door for some time, he asked Watt, why it stood there? Watt said he could not receive the meat until Mr. Frank came; this happened twice; he gave some reason for it; some fault he found with the meat; this could only have been the cause. Witness has heard Watt say, that he had rejected meat sent in by the butcher; that the lad took it out of the Prison to Mr. Frank's house, and brought it back again by his orders; Watt had rejected the meat for some cause.” \* \* \* \* \* “The meat usually came in the afternoon; never saw the meat come in before 11 o'clock; during the five years witness was Kitchen-keeper, the meat never came in before that hour, and had it come in before that hour during Mr. Frank Smith's time, witness must have known it.”

Convict Denis Chagnon—preliminary examination :—

“Twice saw the meat rejected by Guard Watt for something, and it was afterwards accepted by Frank Smith; it smelt so bad on these two occasions, that a hog would not have eaten it.”

It is clear that meat has been on several occasions rejected as unfit for use by the officer acting for the Kitchen-keeper, and that the Kitchen-keeper has afterwards accepted the same meat.

9. THAT THE CONTRACTORS DO NOT DELIVER, DAILY, THE QUANTITY OF FRESH FOOD NECESSARY; BUT VARY MUCH IN THE QUANTITY OF THEIR DAILY DELIVERIES.

In butcher meat, there has been much variation in the daily weight delivered. Under the Ration Contract of the period from 1st December, 1846, to 30th November, 1847, the quantity of meat actually delivered, was 102,113 lbs. to supply 173,286 rations.

In the month of December, the full number of rations to be supplied, was 15,307; and to meet these, at the average weight per ration given throughout the year, 9,020 lbs. of meat were required; but the actual delivery was 9,834 lbs., or 814 lbs. more than the average share of that month.

In October following, on the other hand, the number of rations was 14,470, to supply which 8,526 lbs. of meat were required; but only 7,731 were actually supplied, or 795 lbs. short of the proper proportion for that month.

In January, 468 lbs. were delivered over.

In March, 583 lbs. over.

In August, 282 lbs. short.

And all these irregularities are, of course, balanced by corresponding irregularities in the other months of the year.

The exact quantity of meat delivered any one day by the Contractor, appears to have been almost invariably the quantity boiled next day, and served to the Convicts as the meat ration of the third day; so that the daily portion of food had by the Convicts must have been very unequal from day to day. For example, take the months of July and August, 1847,—a period when the hot weather required more regularity in the quantity than any other season of the year,—the average number of Convicts in these months was about 475, and the daily weight of meat, on the average of the year, to be delivered by the Contractor, was 283 lbs. The following return of the daily quantities actually delivered, will show how great the irregularity was:—

WEEK ENDING SATURDAY

	3rd July	10th July	17th July	24th July	31st July	7th Aug.	14th Aug.	21st Aug.	28th Aug.
Sunday .....		476	228						308
Monday .....	240	322						251	
Tuesday .....	324	330	235	330	316	399	330	355	320
Wednesday .....			330	302	354	313	406		374
Thursday .....	442	344	244	357	336	562	677	276	380
Friday .....	240		344		278	238	373	257	303
Saturday .....	342	541	616	645	658	420	251	361	713
	1588	2013	1997	1634	1942	1926	2037	1560	2398

This return is taken from the Kitchen Receipt-book; and it will be seen from it, that no attempt has been made to supply the quantity needed by the Institution, but that, while precisely the same quantity was needed each week, there has been a variation of 838 lbs., comparing one week with another.

And the same system has existed in the delivery of bread. In December, 1846, the average quantity deliverable was 17,491 lbs., while 20,990 lbs. were actually supplied; being an over-supply on the average of the year, of 3,499 lbs.

In August, 1847, the average delivery should have been 17,042 lbs., while in fact it was 15,269 lbs.; a short-coming of 1,773 lbs.

And similar irregularities occur throughout the year.

And similar irregularities have occurred in the daily delivery of the bread. In the week ending 11th August, the brown bread delivered was 3,499 lbs., while the week following it was 3,909 lbs. The week ending 1st August, the delivery was 3,834 lbs., while that of the 15th was 3,137 lbs. Properly supplied, the deliveries of these weeks should have been all alike—about 3,800 lbs. Two days frequently occur during which no fresh bread is delivered, and sometimes three.

The only witness called on this point, is

Mr. Costen—By Mr. Smith:—

“Provisions received from the Contractors were always entered on the same day they were received, by witness, in the Provision Book.” \* \* \* \* \*  
 “When new bread was received, it used to be kept till cool before it was weighed; in such cases, the entry in the Provision Receipt-book was made when the bread was weighed; sometimes it was weighed the same day, and at others the following morning. A batch of bread, about two days’ supply, used to be delivered at one time.”

By Commissioners:—

“Bread was delivered at the Penitentiary Lodge late one Saturday night, and it was received on Sabbath morning; it is the only instance in which provisions were ever delivered on Sabbath day, to witness’s knowledge. The provisions were correctly and regularly entered in the Receipt-book on the day they were received. When the bread came in too fresh to be weighed at the moment, it was usually weighed and entered the same evening; but sometimes, if the bread was not wanted, it lay over till the next morning. Never in any case weighed and entered bread on Sunday. Witness produces the Kitchen Receipt-book, and is asked if provisions were entered in the said book as received on Sabbath, 4th July, 1847, and on Sabbath, 11th July, 1847, and on Sabbath, 22d August, 1847? and says, Yes—such entries are in the Receipt-book.”

This Count is, therefore, completely established.

10. THAT THE MODE OF COOKING AND DIVIDING THE DAILY FOOD IS INJURIOUS TO THE CONVICTS, VIZ., IN MAKING THE DAILY FOOD VARY MUCH IN QUANTITY; AND IN KEEPING THE BREAD AND MEAT OVER, UNTIL THEY BECOME UNFIT FOR USE.

The practice as to the meat has been to receive it in the afternoon; to cook it next day, and serve it to the Convicts on the third day.

Mr. Costen is called to prove that this could not have been helped; he says:—“There was not sufficient time to cook the meat the same day it came in; there would not be time to weigh out each man’s

ration; during the day it lays over after being cooked; the meat was cut up the day it was boiled, for breakfast next morning, and for dinner it was cut up the next morning." "It takes about three or three and a half hours to cook the meat."

Mr. Hopkirk also testifies:—"Thinks it would be impossible to weigh out the daily rations of food, for each man, in proper time."

But it is clear that there was nothing to prevent the meat from being received early in the morning, in time to boil in that day's soup, by which one day, at any rate, would have been saved.

It is also contended that the meat was put in pickle during the hot weather, but this does not appear to have been a regular practice.

On the point as to whether the quantity of meat delivered one day was the exact quantity boiled the next, and the exact quantity served out on the third day, there is some variance in the testimony.

John Watt says:—"When the butcher has delivered an overplus, this overplus is kept till next day; when short, the necessary quantity is taken from the cooked meat of the next ration; hot meat has been taken to make up a deficient ration of the previous day, two or three times; cannot say how often it has been done so; has put meat in a net three or four times, apart from the other rations, to make up what was short the previous day; when a larger quantity is short, the meat is not put in a net, and the quantity taken from it is guessed at."

\* \* \* The regulating of the quantity of meat cut up, is left entirely to Chagnon; the cook takes it down to the cellar, and Chagnon helps himself; Chagnon regulates the quantity he takes entirely by his eye; witness tells him there are so many pounds short or over, and he makes it right by his eye."

Watt here explains how the deficiency of meat has been made up, on some occasions, but the result of it all is that the regulation of the matter "is left entirely to Chagnon." And immediately after he destroys the defence by the admission, that "some days the Convicts get larger rations than others, in consequence of the butcher having sent in meat one day short, and the next over."

The Convict to whom the duty is left, Denis Chagnon, explains the matter differently from Mr. Watt. He says:—"Witness is never informed of the weight of the meat, when it is delivered to him." "Each morning's boiling consists of the whole quantity of meat sent in by the butcher the previous day." "The quantity of meat served to each Convict varies very much, one day with another; this arises from the butcher delivering some days a less quantity of meat than on other days; there will be sometimes forty pounds of difference in the daily delivery of meat, for the same number of Convicts. The inequality of the rations also arises from there being a much larger quantity of bone in one day's rations than in another. Five or six times, when a ration of meat has been delivered short by the butcher, an additional supply of meat has been got to make up the deficiency."

Mr. Costen gives several explanations as to the mode of regulating the amount of meat delivered to the Convicts, when he was Kitchen-keeper; but he

says "he does not know what is the course now pursued by the Kitchen-keeper—meaning Kitchen-keeper Smith—in whose time the irregularity in the delivery of the meat chiefly occurs."

There is also a good deal of evidence as to variation in the meat rations, comparing one day with another. Chagnon, the Convict, who cuts up the meat, and distributes it, says the quantity served to each Convict "varies very much, as well on account of the irregular deliveries of the butcher, as from there being a much larger quantity of bone in one day's ration than in another." Guard Fitzgerald says, "frequently the bits of meat were very small—about an ounce." Gleeson says, "the quantity of meat served out to the Convicts was often very small; witness feels confident he could have eaten twelve of the rations at one meal, without abusing himself." Dyas, the cook, says, "the meat rations, until lately, consisted more of bone than anything else." A number of other witnesses testify to the same purport, while others again declare they never saw so small a meat ration as one ounce served out; and they never perceived any great difference, one day with another.

The Kitchen-Receipt-book shows, beyond any explanation, that the meat was delivered by the butcher in quantities varying very much, one day with another; and we think it is true, that the quantity delivered by the butcher was the precise quantity boiled next day, and distributed the third. Instances in which the short delivery of the butcher has been rectified, have undoubtedly occurred; but we think it clear, that they only form the exception to the rule shown by the Receipt-book.

We are also of opinion, that the system of retaining the meat so long on hand during summer was a very bad one. It must be obvious, that such meat as that in question, after being exposed in the shambles for at least one day, and kept 48 hours in the prison, could not be in a very wholesome condition when it reached the Convicts.

The same remark applies to the irregular delivery of bread, which has also been very marked, and must have often prevented it, even when originally good, from reaching the Convicts in proper condition.

#### 11. THAT THE MEAT IS OFTEN SERVED TO THE CONVICTS IN BAD CONDITION.

Mr. Utting says, he "has frequently known the meat, when distributed to the Convicts in the Dining-hall, to stink." Convict Eliza Quinn says, "the meat was often stinking." Guard Robinson says, it was "frequently stinking." James M'Carthy says, "he has frequently seen it absolutely stinking." Mrs. Coulter says, the meat "has often come in stinking." Guard Wilson has often seen it "stinking." Thomas Fitzgerald has known the soup and meat "unfit to be eaten, frequently." Ballentine, Kearns, Swift, Cooper, and Freeland, and Convicts Chagnon, Dyas, DeBlois, Armstrong, and Dudevoir, all bear similar testimony.

Keeper Manuel has seen the meat have a bad smell, but not unfit to eat. Keeper Pollard has seen it bad, not very bad. Keeper Matthews has heard Convicts complain that it had a bad smell. Guard Sexton "has occasionally known one ration to smell a little—not to say bad—not to stink." Mrs. Chase "never saw stinking meat served but once." Guard Watt admits "the meat has often been stinking

when served out to the Convicts; the whole of a ration has been tainted, but not all stinking."

For the defence, we have heard Head-keeper Costen, who swears as follows:—"Has never known meat to be served to Convicts which was tainted; the meat could not have been tainted without witness knowing it. If a man came before the Commissioners, and swore that he had known the meat served to the Convicts, on several occasions during the last two years, to stink, witness would be prepared to swear that that man had perjured himself."

We have also Guard Martin, who declares "he could not say that he has ever seen or smelt stinking meat upon the table." And lastly, we have discharged Convict Ramsden, who states, he "has known the meat sometimes a little tainted in the summer time, but not past eating." He "never heard Convicts complain, in the summer time, that the meat was over bad; on the contrary, some of them preferred the meat a little tainted."

There is no doubt that the meat has been served to the Convicts, habitually during the summer time, in uneatable condition. The evidence of Mr. Costen on this point is indefensible; as Kitchen-keeper, and afterwards as Head-keeper, he has had personal knowledge of the food served to the Convicts daily during the last seven or eight years, and he could not have been ignorant of the state the meat was so often in.

12. THAT THE BREAD IS OFTEN SERVED TO THE CONVICTS IN BAD CONDITION.

Terence M'Garvey says:—"The bread was often very bad—sour, miserable-looking stuff;" and he has seen "maggots in it." James M'Carthy has "seen it mouldy, and with maggots in it." Mrs. Cox says, "the bread was often very bad; has seen it sour, pastey, mouldy, and has even seen maggots in it." Mrs. Coulter says it was "often very bad, sour, and blue-mouldy." J. H. Freeland says, "it was sour, mouldy, and quite sickening;" and that he has seen weevils and worms in it. Keeper Swift says, he has "seen it sour, mouldy, and with maggots in it; has seen it have dung in it." And numerous other witnesses give similar testimony.

Guard Watt says:—"Has seen the brown bread served out to the Convicts sour, but not often; knows that seven or eight batches of sour brown bread were served out to the Convicts within the last two years. Witness has seen the brown bread served out mouldy; has seen it so frequently; witness has seen the flour-worm in the bread frequently; witness has seen dung in the brown bread on several occasions—rats' dung—not so frequently as the worms."

By Mr. Smith:—

"Has never served bad bread knowingly, except the brown bread once or twice, when witness could not get other bread."

Guard Wilson says:—"The brown bread has been often very bad; it was sour and mouldy; and you might sometimes take it in your hand and squeeze water out of it."

For the defence, Keeper Manuel says, it was never so bad that he could not have eaten it. Guard Martin says, "the bread was never bad in his recollection." Keeper Matthews has smelt it sour.

Guard Sexton never saw wet bread served to the Convicts, but has heard Convicts complain that there was "dirt in it." Guard Rowe has not seen it wet, but "rather soft" sometimes. Discharged Convict Ramsden declares it was "generally sound and wholesome," and never was sour or ill-baked; and Convict Parker says it has always been good till now.

Mr. Costen says, in his preliminary examination. —"Never saw the bread served to the Convicts in bad condition; has seen it sour sometimes, not often—not a dozen times. Has seen it mouldy once or twice, not often. Never saw it with the flour-worm in it; has seen tobacco in the bread; never saw dung in it."

By Mr. Smith:—

"Bread has never been served to the Convicts that was found to be bad before being out up; the brown bread has been sour sometimes, not often; has often eaten white bread equally sour."

Dr. Sampson—By Mr. Smith:—

"Witness, on reflection, remembers several instances in which there were general complaints of the badness of bread; it was sour, and not sufficiently baked; witness called the attention of the Warden to the matter, and has reason to believe that the Warden looked into it at once."

The charge is, therefore, completely established. We are satisfied the bread has been habitually of the most inferior quality, and very frequently sour and mouldy. During the season, when no potatoes were supplied, the poor quality of the brown bread, which formed so large a portion of their daily food, must have caused suffering to many of the Convicts.

13. THAT IN THE SUMMER OF 1846, THE FOOD SERVED TO THE CONVICTS WAS GREATLY DEFICIENT.

As has been previously stated, Samuel Breden had the Provision Contract from 12th September, 1845, to 11th September, 1846. The whole number of potatoe rations required to be delivered by the Contractors during the year, was 174,805, which, at one twenty-second of a bushel to each ration, gives 7,945 bushels as the quantity of potatoes deliverable during the Contractor's term.

The whole quantity of potatoes actually delivered during the year, was 3,157 bushels, leaving a deficiency of 4,788 bushels.

The Warden agreed to receive three-fourths of a pound of white bread for each ration of potatoes, which, we are of opinion, was a most inadequate substitute for 3 lbs. of potatoes.

The whole number of potatoe rations, was 174,805	
3,157 bushels of potatoes were supplied; or	
in rations.....	69,454
<hr/>	
Leaving to be supplied with white	
bread, rations.....	105,351
<hr/>	
105,351 rations, of three-fourths of a pound,	
required of white bread.....lbs.	79,013
But by the Kitchen Book it appears there	
were only delivered.....	47,820
<hr/>	
Leaving a deficiency on the compro-	
mised rations, of.....	31,193

The substitution of white bread for potatoes seems to have come into operation on 29th January, 1846, and to have remained so to the end of the contract; so that the whole of this deficiency in the food fell during the 226 days of this period.

The number of potatoe rations deficient during the 226 days, was 107,013, which, at 1-22 of a bushel, or 3 lbs. weight per ration, make a short coming, in potatoes, of.....lbs. 321,039  
To supply this, the Convicts got of bread,  
but ..... 47,820

Leaving a deficiency in the food, in  
226 days, of .....lbs. 273,219

The average number of Convicts in the prison during the 226 days in question, was a fraction less than 474; so that each Convict got but 101 lbs. of white bread, in lieu of 678 lbs. of potatoes; or 2½ lbs. of food less per day than they were entitled to by the regulations of the prison.

But further, during this period, when so great a deficiency in the food of the Convicts occurred through the want of potatoes, there was also a great deficiency in the regular supply of brown bread, as compared with the quantity consumed during that portion of the year when potatoes were furnished.

From the 12th September, 1845, to 28th January, 1846, (when there was a sufficiency of potatoes,) the total number of brown bread rations to be supplied, was 67,792; and to meet these, 80,667 lbs. of brown bread were actually served to the Convicts.

From the 29th January to 11th September, 1846, 107,013 rations of brown bread had to be supplied.

By applying the plain rule—If 67,792 rations required 80,667 lbs., how much will 107,013 rations require?—we have 127,337 lbs. of brown bread as the quantity which should have been supplied during this latter period.

It appears, however, from the Provision Book, that only 118,939 lbs. of brown bread were actually supplied during this period—being 8,399 lbs. less during the 226 days of deficiency in the potatoes, than the Convicts got in the previous months with full rations of potatoes.

The Warden brings no evidence to explain these facts; and, indeed, they are not susceptible of any explanation. Major Sadlier and Mr. Costen state, however, that they noticed no difference between the food in 1846 and any other year. And discharged Convict Ramsden swears, that "the food during the whole of the year 1846, was in similar quantity and quality to that of any other period that witness was at the Penitentiary." On the other hand, many of the witnesses allude to the numerous complaints "when there were no potatoes."

But evidence on this point is quite unnecessary. The food actually received and distributed during the period in question, is ascertained precisely; and so large a deficiency in the daily ration could not have occurred without deep complaint and much suffering on the part of the Convicts.

14. THAT DURING THE PERIOD FROM MARCH 23, TO AUGUST 26, 1847, THE FOOD OF THE CONVICTS WAS GREATLY DEFICIENT.

Hendry and Blacklock held the Provision Contract from 1st December, 1846, to 30th November, 1847. The whole number of potatoe rations deliverable during the year, was 173,286, which, at 1-22 of a bushel to each ration, made 7,877 bushels.

The total quantity of potatoes delivered during the year, was 3,208, leaving a deficiency in the supply of 4,669 bushels.

The Warden agreed to receive four-fifths of a pound of white bread from the Contractors, in lieu of each ration of potatoes, which, we think, was not an adequate substitution.

The whole number of potatoe rations, was 173,286  
3,208 bushels, delivered, were equal to  
rations ..... 70,576

Leaving to be supplied with white bread  
rations ..... 102,710  
102,710 rations, of four-fifths of a pound  
each, required of white bread.....lbs. 82,188  
But by the Provision Book it appears that  
there was only supplied.....lbs. 56,499

Leaving a deficiency on the compromised  
ration of .....lbs. 25,689

The substitution of white bread for potatoes commenced after 23rd March, 1847, and lasted until the 26th August following, when part potatoes and part white bread began to be supplied.

The total number of potatoe rations to be supplied in the 156 days, from 24th March to 26th August, inclusive, was 73,666, which, at 3 lbs. per ration, was .....lbs. 220,998  
To supply this, the Convicts got in white  
bread, but.....lbs. 52,291

Leaving a deficiency in the food of (in 156  
days) .....lbs. 168,707

So that each Convict had but 111 lbs. of white bread in lieu of 468 lbs. of potatoes, or over 2½ lbs. of food less per day than he was entitled to receive by the prison regulations.

There was also a great deficiency in the regular brown bread rations supplied during this same period, as compared with the consumption of the previous months, when there was a sufficient supply of potatoes.

From the 1st December, 1846, to 23rd March, 1847, the regular supply of potatoes was furnished to the Convicts. During this period, 54,385 was the number of rations of brown bread to be supplied; and to meet these, 69,209 lbs. of brown bread was supplied.

The potatoes ceased to be supplied on and after the 24th March, 1847, and up to the 26th August, none were delivered. During this space, the number of ordinary rations of brown bread to be supplied by the contractors, was 73,666.

Now, by putting the question—If to meet 54,385 rations, it required (when there was a full supply of potatoes) 69,209 lbs. of brown bread, how much

brown bread did it require to meet 73,666 rations? We have 93,745 lbs. of brown bread as the equivalent quantity to be supplied during 156 days, when there was no potatoes.

The Provision Book shows, however, that only 79,224 lbs. of brown bread were actually supplied during the period in question—so that the Convicts received 14,521 lbs. less brown bread, during the 156 days when they had no potatoes, than they had served to them during the previous months, with full supply of potatoes.

These facts are undisputed; and it is obvious that during this period also, there must have been severe suffering from hunger, the more especially as it covers the Summer months, when the meat is, according to the evidence, so often unpalatable.

15. THAT DURING THE PERIOD FROM 27TH AUGUST TO 4TH OCTOBER, 1847, THE FOOD SERVED TO THE CONVICTS WAS GENERALLY DEFICIENT.

From the 27th August to the 4th October, 1847, a period of 39 days, a very great deficiency occurred in the supply of food. The total number of potatoe rations deliverable, within that space, was 18,591 Of which were furnished in potatoes, 278½ bushels, equal to.....rations 6,127 And in white bread, 3,904 lbs., equal to, at ¼ of a lb. to each ration .....rations 4,880

	11,007
Leaving rations unsupplied .....	7,584
The total quantity of potatoes deliverable during the 39 days in question, was..lbs.	55,773
Of which were delivered in potatoes.....lbs.	18,381
And in white bread.....	3,904
	22,285
Leaving a deficiency of food.....lbs.	33,480

Each Convict had consequently but 47 lbs. of food instead of 117, to which he was entitled.

Here also, then, the charge of starvation is fully proved.

16. THAT CONVICTS WERE OFTEN PUNISHED, WHO COMPLAINED, WITH JUSTICE, OF THE SMALL QUANTITY AND POOR QUALITY OF THEIR FOOD.

The nature of this charge will be best explained by the evidence of one or two of the witnesses:—

Guard Kearns says:—"Has known Convicts complain of the shortness and poorness of their rations at the dinner table, very often; they were frequently punished for it, by the Kitchen-keeper. They were entered in the Punishment Book for getting off their seats, or speaking to their Keepers during meal times. The complaints did not come from particular men; they were quite general when the potatoes were bad."

Thomas Fitzgerald says:—"Has frequently known Convicts complain of the bad quality and short quantity of their rations, and be punished for so complaining; Mr. Frank reported against the Convicts for so complaining, and they would be read out for punishment next morning, for speaking during meals, or standing up during meals, or some such offence."

Guard Watt:—"Has known men frequently to be punished for complaining of the smallness of their rations."

Mr. Costen says:—"Convicts have been entered in the Punishment Book, as punished for leaving their seats without the consent of the officer in charge, when they did so to complain of their rations."

And many other witnesses give the same testimony.

It is beyond a doubt that there have been constantly a great many complaints by the Convicts, of the short quantity and bad quality of the food. It is also a fact, that many Convicts have been punished, under one shape or another, when the real offence they committed was endeavouring to get more or better food. And it seems unlikely that so many would have exposed themselves to punishment, without some just ground of complaint. But the evidence, strong as it is on the other points, is not so clear as to the justice of the complaints from which punishment followed, and we cannot, therefore, say that "Convicts were often punished, who complained, with justice," of their food.

This is the last count of Charge VII., and we think the allegation of starvation, during a considerable space of time, fully established.

In every feature of this charge, as in many of the others, the utter negligence of the Warden forcibly appears; it is hard to imagine that he could have been in ignorance of so many glaring irregularities. It is very obvious, that what with deficient potatoes—short rations of bread—bad meat, made worse by over-keeping—and poor bread, become worse by keeping—the Convicts must have been often insufficiently fed, and that the hard-working out-door men, must have suffered severely.

It is a noticeable circumstance, that in 1846, the first year the potatoes failed, the quantity of white bread agreed to be taken in exchange for each ration of 3 lbs. of potatoes, was ¾ of a pound, and that only ½ a lb. was received by the Convicts; the year following, (1847) the agreement was for ¼ of a lb., and about ⅓ only was actually received; but the year following that, (1848) the quantity agreed for was 1 lb., which has been regularly supplied, and has been found little enough.

CHARGE VIII.

PURSuing A SYSTEM OF PUNISHMENT, IN THE MANAGEMENT OF THE DISCIPLINE—CRUEL, INDISCRIMINATE, AND INEFFECTIVE.

1. In neglecting, for many years, to keep a proper Record of the Punishment inflicted.

The only original records of the punishment inflicted in the Penitentiary, from June, 1835, to August, 1843, are some bundles of loose slips of paper containing the reports of the Keepers. These are very defective as records of the discipline; and for long spaces, even these are missing. There is a Punishment Ledger during this period, professing to show the number of punishments inflicted; but the offence is not given. From March to December, 1844, there are no records of punishment.

2. IN THE CHARACTER OF THE SEVERAL MODES OF PUNISHMENT.

From June, 1835, to April, 1842, the punishments adopted, were flogging with the cat-o-nine-tails, and flogging with the raw-hide. These were the only punishments for offences of all grades.

From April, 1842, to October, 1846, the punishments were—flogging with the cats—flogging with the raw-hide—irons—solitary confinement—and bread and water, instead of the regular rations.

From October, 1846, to February, 1847, the cats and raw-hide were suspended by the Government.

From February, 1847, up to now, the punishments have been—the cats—shutting up in a box—irons—solitary confinement in dark cells—solitary confinement in the Convict's own cell—and bread and water.

From 1835 to 1847, neither the Warden nor the Surgeon were present at the infliction of corporal punishment; but in October, 1847, the following rule was passed:—

“Extracts from the Rules and Regulations for the government of the Penitentiary, October, 1847:—

“PUNISHMENT OF CONVICTS.

“The Warden and Surgeon shall attend at every infliction of corporal punishment; and the Surgeon shall certify in writing, that he has examined the health of the Convict ordered for punishment, and that it is such as to enable him to bear the infliction without detriment thereto; and without such certificate, the punishment shall not take place.”

“A true extract.

(Signed) “F. BICKERTON,  
“Clerk.”

THE CATS.

James Gleeson—preliminary examination:—

“Convicts flogged with the cats, were tied up to the triangles. Formerly, men were often flogged with the cats when neither Warden nor Surgeon were present. By a late rule, the Warden, or Deputy Warden, is always present, and the Surgeon always. Has often seen the blood flow from the wounds inflicted with the cats; it is worse when the blood does not flow.” \* \* \* \* \* “Four dozen was the largest number inflicted with the cats.”

John H. Freeland—preliminary examination:—

“The cat lacerates the back and breasts; the blood flows, and the skin becomes black.”

James Kearns—preliminary examination:—

“The cats were laid on the bare back; it made the whole back raw; brought blood at almost every stroke.” \* \* \* \* \* “Has known men frequently get water to prevent them from fainting during punishment.”

Edward Utting—preliminary examination:—

“Has known Convicts faint frequently when being flogged with the cats; the Surgeon was not present;

it was an order that the Deputy Warden should be present at all punishments; the Warden was very seldom present on such occasions. Witness has often mentioned that he thought a Medical man should be present, as he (witness) was not capable of judging whether the men were in bodily condition to receive punishment.”

THE RAW-HIDE.

Maurice Phelan—preliminary examination:—

“They (the Convicts) were flogged (with the raw-hide) on the back, with all but their shirts off; the quantity of lashes varied from six to twenty-four; it was a very severe punishment.” \* \* \* \* \* “The instrument was a regular Jockey-whip of twisted raw-hide, about the thickness of one's thumb at the top, and tapering to a point; it was about three feet long. Flogging by raw-hide has been done away for about a year.”

Edward Utting—preliminary examination:—

“The raw-hide does not fetch blood, but leaves large wales on the back; the skin becomes discoloured.”

John H. Freeland—preliminary examination:—

“The raw-hide frequently cuts the skin; it made blisters and caused the back to be sore.”

Eustach Coté—preliminary examination:—

“Was often flogged with the raw-hide: more than twenty times. His offences were generally laughing, talking, and looking round. The raw-hide would sometimes break the skin; but it would always make welts, and become much discoloured.”

James Kearns—preliminary examination:—

“The raw-hide was laid on the back, with no covering but the shirt; it would frequently bring blood on the breasts; the ordinary effect was to leave a welt at every stroke, which became swelled and discoloured.”

THE BOX.

Maurice Phelan—preliminary examination:—

“Was once in the Box, for quarrelling at the water side, nine hours. The box is a very severe punishment; was like to faint; when he got out was completely benumbed; witness is a very strong man, and thinks it must have been very hard for weak persons.” \* \* \* \* \* “Witness thinks the box a much worse punishment than the raw-hide.”

James Brennan—preliminary examination:—

“The effect of the box is very injurious; it makes one liable to cramps in the tendons of the leg and the foot; never had cramps before he was put in the box, but has them now often, on getting up in the morning; is sure that it is the effect of the box-confinement.”

Thomas D. M'Cormick—preliminary examination:—

“The box is a very severe punishment; witness would rather be flogged with the raw-hide; was only

once in the box ; could scarcely move when he got out."

**ROUTINE OF PUNISHMENT.**

**James M'Carthy—preliminary examination :—**

" Recently the habit is for Keepers to write their charges against Convicts in the Punishment Book, and the Warden writes opposite to it the punishment to be inflicted ; but formerly all reports were made on pieces of loose paper. These reports were in most cases attended to, and culprits punished. In some cases, however, the Warden forgave them, after inquiry, and not frequently without any inquiry into the charges against them ; this latter practice weakened the authority of the Keepers with the Convicts."

**Maurice Phelan—preliminary examination :—**

" Each morning the entries on the Punishment Book are read over by Francis W. Smith ; the offenders, who are to be placed on bread and water, are brought forward to the front rank ; after breakfast, those to go into the boxes are marched to them ; those to be flogged with the cats are so at dinner time, before all the other prisoners, when the Surgeon and Warden are present ; those flogged with the raw-hide (but that punishment is now done away) used to be punished at once, after breakfast."

The whole of the punishments employed have been approved by Government and the Inspectors ; and no charge can therefore be founded upon their character against the Warden. The foregoing statements were merely given in the charges to enable the Warden to offer any explanations he desired, as the nature of the punishment must be taken into account in considering the extent to which they have been carried.

**3. IN FLOGGING THE SAME CONVICTS FOR DAYS CONSECUTIVELY**

This is completely established. Men have frequently been flogged with the raw-hide three, four, and even five times in one week. In the year 1846, the Warden reported, in his annual return to the Imperial Government, that during the year,

1	Convict had received corporal punishment	20	times.
1	"	21	"
3	"	22	"
2	"	23	"
2	"	30	"
1	"	32	"
2	"	34	"
1	"	48	"
1	"	60	"

It is very clear that such repeated corporal punishment must have entirely done away with any good effect which might have been expected from it, either on the culprit or on those who witnessed the inflictions.

**4. IN FLOGGING CONVICTS WHOSE BACKS WERE UNHEALED FROM PREVIOUS PUNISHMENT.**

**M. B. White—preliminary examination :—**

" Has seen men brought up for punishment, whose backs were severely lacerated ; positively black, from

previous punishment, and flogging by cats was administered, notwithstanding."

**Ex-Assistant Warden Utting—preliminary examination, says :—**

" Has often been implored by Convicts not to flog them, when their backs were much bruised from former punishment ; witness has allowed them to stand over for Warden's orders. Witness never succeeded in getting the punishment remitted but once ; this was in the case of a Convict named Williams, who was punished, by culpable mistake, for another man of the same name ; one of them was a black man, the other white ; the punishment was 6 blows of the cats. Witness also got a Convict forgiven by Warden for a personal charge affecting himself (witness). Witness was latterly forbidden to defer punishment for Warden's review."

**Keeper Swift—preliminary examination :—**

" Has frequently seen men brought up for punishment by flogging, whose backs were unhealed from previous punishment."

**By Warden :—**

" Has never seen Convicts brought again for punishment whose backs have been already unhealed."

**Martin Keely—preliminary examination :—**

" Has known Convicts brought up for flogging whose backs were yet unhealed from previous flogging."

**Terence M'Garvey—preliminary examination :—**

" Has known Convicts come up for punishment whose backs were unhealed from former punishment ; their backs were much discoloured and sore."

And Kearns, M'Carthy, Brennan, Fitzgerald, Freeland and Coté, give similar evidence.

On the other hand, Mr. Costen, and Keepers W. Smith, Hooper, Manuel, Little, Pollard, Ballentine and Hermiston, all swear distinctly that they never knew an instance of a Convict being flogged whose back was yet raw from previous punishment. Discharged Convict Ramsden swears so also. Keeper Matthews says, he does not remember any instance. Keepers Gibson, Grass and M'Mahon, also swear that they never saw such a thing ; and it was impossible that they could, as there have not been six corporal punishments since they came to the Prison.

There is here distinct contradiction in the testimony ; but the evidence of the Surgeon shows clearly that men must have been flogged while their backs were yet sore.

**Dr. Sampson—By Mr. Smith :—**

" Has occasionally seen the backs of Convicts after punishment by the cats ; 36 lashes, given in the way in which this punishment is given here, would require three or four days to heal, so that a man might again wear his clothes. Does not mean to say that there would not be a scab over it for sometime afterwards. Does not know how many applications of the lotion are applied after the punishment of the cats ; the Convicts very seldom go on the sick list after this punishment ; the Hospital-keeper applies a lotion to their backs as they may require it."

By Commissioners :—

"Witness is shown the table prepared from the Punishment Register, of the case of Convict Donovan, by which it appears that Donovan received floggings on the 26th, 27th, 28th, 29th, 30th, and 31st May, 1845; also on 2nd June, the 7th, the 9th, and 10th; 7 times with the cats, the remainder with the raw-hide. Witness does not think that a man's back could be healed between the time of each of these floggings, supposing such floggings to have been inflicted according to the table presented."

If it requires three or four days to heal the wound inflicted by 36 lashes of the cats, and a scab still remains after that, it must have often happened that men were flogged again before the old wound was cured. We therefore think the charge established.

5. IN THE DISPROPORTION BETWEEN THE OFFENCES OF CONVICTS, AND THE PUNISHMENTS AWARDED TO THEM; AND THE VARIABLENESS IN THE AMOUNT OF PUNISHMENT AFFIXED AT DIFFERENT TIMES TO THE SAME OFFENCES.

The following extracts are made from the Punishment Book of the Penitentiary, to show the remarkable variance which has existed on this head :—

- Aug. 2, 1843. Laughing and talking—6 lashes cats.
- 3. Idle and inattentive to directions—6 do. do.
- 7. Laughing at teamsters—6 raw-hide.
- Talking in wash-house—6 do.
- Concealing himself in shed; throwing stones at privy when a Convict was in it—6 cats.

- 10. Cursing a Convict—6 cats.
- Receiving provisions without permission—6 raw-hide.
- 15. Threatening to knock Convict's brains out—24 cats.
- 16. Talking to Keepers on matters not relating to their work—each, 6 cats.
- Finding fault with rations when desired by Guard to sit down—12 cats.

- March 28, 1844. Talking and laughing—6 raw-hide, and bread and water.
- Having tobacco—12 cats.
- Wilfully breaking a barrow—each, 6 cats.
- Having tobacco—12 cats.
- Talking at dinner—6 raw-hide, and bread and water.

Dec. 9. Talking—9 raw-hide.

Jan. 8, 1845. Talking; not going direct to a place—6 or 12 raw-hide.

9. Having in his possession song-books, novels, tobacco, snuff, candles, lucifers, &c.—24 cats.

March 5. Talking at work—each, 9 raw-hide.

Impertinence to Guard, and telling a lie—9 do.

Staring about, and inattentive at breakfast table—bread and water.

June. Raw-hide and cats for every sort of offence.

September. Do. do. do. do.

Oct. 4. Leaving work for the purpose of talking—6 cats.

Cursing another Convict—6 do.

Jan. 12, 1846. Giving a blank leaf to another Convict, taken from a new Bible—9 cats.

Having the above blank leaf concealed—9 cats.

Stealing a knife from Warden's house—6 cats.

Talking occurs very frequently—6 to 9 raw-hide.

March. Raw-hide or cats, for all sort of offences.

May 20. Fighting—12 cats.

Very rarely a case of bread and water alone.

June 3, 1846. Letting window-sash fall, and breaking the glass—bread and water.

4. Having file and bones in his cell—6 cats.

Talking to teamsters—6 do.

9. Cursing and swearing—6 do.

Oct. 13. Talking at work—6 raw-hide.

Continually talking at dinner (5 Convicts)—9 raw-hide.

Talking at dinner—24 hours cell.

Filthy state of cell—6 raw-hide and bread and water, and 48 hours dark cell.

Giving Convict tobacco—24 hours dark cell.

Laughing, and staring round at breakfast—bread and water, one meal.

14. Leaving his gang, impertinent—36 hours dark cell, and bread and water.

Leaving work and going to privy, when other Convict there—36 hours dark cell, and bread and water.

Talking at breakfast—6 raw-hide.

Continually laughing at breakfast, throwing handkerchief at Convict—bread and water two meals.

Continually grumbling when at work, refusing to carry mortar—shaking his head at keeper in a threatening manner—bread and water, and 24 hours in his own cell.

Talking to Convict behind him at breakfast—6 raw-hide, and bread and water.

Talking and laughing—24 hours dark cell, and bread and water.

26. Talking continually, when at work—bread and water.

Making a great noise in cell—imitating the bark of a dog—bread and water.

Jan. 8, 1847. Obstinate refusing to work—(irons, &c.)—48 hours dark cell, and bread and water.

Insolence to Keeper, and using threats—48 hours dark cell, and bread and water.

Making great noise—threats—keeping prison in an uproar, irons—48 hours dark cell, and bread and water.

Abusing Keeper—24 hours dark cell, and bread and water.

Having 8 plugs of tobacco, and refusing to state where he got it—48 hours dark cell, and bread and water.

Striking and kicking a Convict—48 hours in his own cell, and bread and water.

Feb. 1. Very impertinent when ordered to go to his punishment meal—throwing his hat on the table in a disorderly way—one meal bread and water.

Telling Convict "he'd fix him"—one meal bread and water.

Disobedient, and saying it was a d—d shame to work in the cold—three meals bread and water.

10. Making a copper ferrel contrary to Keeper's orders—6 cats, and bread and water.

Telling lies to get a new pair of shoes, and refusing to take them off, until he saw Warden—box.

Shouting in his cell—box.

Idling, disobeying orders, sulking, and swearing—box.

Quarrelling with Convict—box.

Saucy to Keeper—box.

Still refusing to work—insolent to Guard—cursing the Keeper—(ironed)—36 cats, and bread and water.

Feb. 10. Stealing a Convict's ration of bread—box.

Cursing and swearing, refusing to work—(irons)—box, and bread and water.

- Feb. 10, 1847. Saying he would make some one suffer for putting him in the box—24 hours dark cell, and bread and water.  
Receiving tobacco from Contractor's teamster—box, and bread and water.  
Eating ration before breakfast—bell rang, and then complaining he had not enough—box, and bread and water.
- March 3. Laughing and talking at breakfast—table—box, and bread and water.
6. Having knife and tobacco on his person—box, and bread and water.
8. Talking in cells—bread and water.  
Making a noise in cells—do. do.  
Singing in cell—do. do.  
Talking to Convict—do. do.  
Remaining in cell for long time after it was unlocked—box, and bread and water.  
Having tobacco on their persons—do. do.  
Refusing to open mouth when challenged about tobacco by F. W. Smith—box, and bread and water.  
Talking at dinner—bread and water.  
Continually leaving work, and talking to Convict—box, and bread and water.  
Continually finding fault with rations, and impertinent to F. W. Smith—box, and bread and water.
26. Chewing tobacco—having tobacco—each—box, and bread and water.  
Having two pairs drawers on, and tobacco—box, and bread and water.
29. Laughing and making signs to each other—bread and water.  
Laughing staring about at breakfast—bread and water.  
Refusing to open mouth when challenged by F. W. Smith—box, and bread and water.
30. Finding fault, at every meal, with his rations; speaking disrespectfully, and saying he never got a quarter of a pound of bread—box, and bread and water.  
Stating that he had received no meat; the meat found under his vest—box, and bread and water.
- May 25. Saying he would not stop at Penitentiary; and when he got to Montreal he "would kill the judge and M'Mann for sure"—box, and bread and water.  
Suspected of making away with his slippers, and saying impertinently, "the day would come when the dogs would bark at him"—box, and bread and water.
26. Idling; leaving work without leave, saucy to Keeper—24 cats, and bread and water.  
Continually staring about him, and leaving his seat without liberty—box, and bread and water.  
Taking Convict's spectacles off nose—putting them on—staring about and laughing—box, and bread and water.  
Laughing, and making signs to other Convicts—bread and water.
- June 7. Eating breakfast before bell rang, and then finding fault with ration—box, and bread and water.  
Idling time; leaving work—do. do.  
Talking, laughing, and plaguing others—do. do.  
Talking, laughing, and staring about—do. do.  
Having supper of bread and molasses in cell, when under punishment—box, and bread and water.  
Idling at work—bread and water.
- July 6. Having 3 pocket handkerchiefs on person—24 hours in his own cell, and bread and water.

June 27, 1847. Repeated disobedience—box, and bread and water.

Stealing bread at breakfast; giving it away—box, and bread and water.

1848. During this year the Dark Cell Punishments are, for making noise in cell—striking Convict—calling Costen a d—d rascal—didn't care for bread and water—disobedience—bestly language—insolence, &c.

The bread and water punishments are for talking—laughing—staring about—chewing tobacco—making noise in cell—impertinence—disobedience—wilfully destroying property—making signs—exposing person in bestly manner—cursing and swearing—making tooth-picks—tobacco concealed in sock—stealing a comb, &c. &c.

The defence rests entirely on the evidence of the Head-keeper.

Thomas Costen—By Mr. Smith:—

"Thinks that four or five different parties have awarded punishment since the opening of the Institution. There must be a great variation in the punishment awarded to any one offence. If a Convict persists in disobeying the rules, it is necessary to increase his punishment; there are often mitigating circumstances in one offence which do not appear in a similar offence. The Convicts have behaved better at some times than at others. The number of Convicts has very much increased since soldiers have been received in the Penitentiary; the punishments have not increased very much in consequence of the soldiers coming."

By Commissioners:—

"The five different parties who have awarded punishment in the Penitentiary, were—the Inspectors, the late Warden, the present Warden (M'Donnell), the Keepers, and Mr. Utting. The Inspectors have only awarded punishment in two or three instances. The punishment awarded by Mr. Warden M'Donnell, have all been since the charges were preferred against Mr. Smith, and subsequent to the time to which this inquiry relates. The only other parties who have awarded punishment, viz., Mr. Warden Smith, Mr. Utting, and the Keepers, never exercised the power at the same moment; they held severally the exclusive power of punishment at different periods, since the opening of the Prison.

As regards the main point of this defence, the number of persons ordering the punishment, it does not in any way apply to the extracts we have given, as they extend no further back than 1843, and since then the Warden has personally ordered all the punishments, with the one or two exceptions named by Mr. Costen.

As to the plea that Convicts persisting in disobedience must be more severely punished than others, we cannot find that the Punishment Records bear out the explanation. On looking through the punishments awarded to the several grades of offences and offenders, we can perceive no regulating principle whatever, in the amount inflicted.

#### 6. IN THE VERY GREAT EXTENT OF THE PUNISHMENT INFLICTED ON THE INMATES OF THE PENITENTIARY.

The following tables were compiled from the Punishment Ledger, from June 1835 to August 1843, and after the latter date from the Daily Journal of Punishment:—

PUNISHMENTS INFLICTED IN THE PENITENTIARY.

	1835.			1836.			1837.			1838.			1839.		
	Raw-hide.	Cats.	Total.												
January.....				6		6	7	3	10	11	3	14	11	1	12
February.....				18	5	23	8	8	16	18	6	24	14		14
March.....				11		11	15	4	19	29	2	31	15	4	19
April.....				6		6	5	2	7	21	2	23	16	1	17
May.....				14	6	20	16	4	20	17	6	23	23	6	29
June.....	1		1	12	4	16	16	1	17	24	5	29	8	1	9
July.....	4		4	4	4	8	34	9	43	20	1	21	16	1	17
August.....	1		1	11	2	13	26		26	13	2	15	7	4	11
September.....	18		18	17		17	20		20	13	3	16	14	1	15
October.....	27	2	29	1	5	6	32		32	7	1	8	17		17
November.....	10		10	12		12	25	2	27	12		12	10	1	11
December.....	15		15	8	2	10	21	13	34	6		6	27		27
	76	2	78	120	28	148	217	46	263	191	31	222	178	20	198

	1840.			1841.			1842.			1843.			1844.					
	Raw-hide.	Cats.	Total.	Raw-hide.	Cats.	Total.	Bread and Water.	Raw-hide.	Cats.	Total.	Bread and Water.	Raw-hide.	Cats.	Total.	Bread and Water.	Raw-hide.	Cats.	Total.
January.....	6	4	10	35	7	42		8	8	16	9	4	13	98	50	13	161	
February.....	13		13	11	2	13	4	6	5	15	18	8	26	47	17	10	74	
March.....	18	5	23	16	2	18	9	10	11	30	1	23	9	33				
April.....	7	4	11	16	1	17	12	13	11	36	2	26	8	36				
May.....	17	1	18	5	1	6	9	9	3	21	49	34	27	110				
June.....	35	2	37	5	1	6	1	6	14	17	16	7	40					
July.....	26	1	27	7		7	15	17	3	35	35	26	12	73				
August.....	14	1	15	14	1	15	14	10	9	33	33	13	8	54				
September.....	15	1	16	6	3	9	18	2	3	23	22	17	5	44	No Records.	No Records.	No Records.	
October.....	15	1	16	14	6	20	18	5	2	25	39	25	4	68	No Records.	No Records.	No Records.	
November.....	21	1	22	3	5	8	43	8	6	57	61	36	19	116	No Records.	No Records.	No Records.	
December.....	16	1	17	7	4	11	41	1	2	44	45	28	6	79	108	86	7	201
	203	22	225	139	33	172	184	68	69	341	382	261	127	770				

	1845.					1846.					1847.					1848.								
	Bread and Water.	Raw-hide.	Cats.	Own Cell.	Dark Cell.	Total.	Bread and Water.	Raw-hide.	Cats.	Own Cell.	Dark Cell.	Total.	Bread and Water.	Box.	Cats.	Own Cell.	Dark Cell.	Total.	Bread and Water.	Box.	Cats.	Own Cell.	Dark Cell.	Total.
January.....	21	120	9			150	21	159	13			193	422						23	5	6			609
February.....	25	78	3			106	39	203	12			254	414	53	3	2	9	491	508	41		10	2	561
March.....	33	119	2			154	14	274	17			305	430	84	1	3	518	469	5		44	4		522
April.....	16	127	6			149	11	220	11	3	15	260	387	79	2	5	1	474	414	2	1	20	17	454
May.....	16	207	13			236	18	194	12	2	2	226	507	72	12	14	12	617	420	3		30	28	481
June.....	12	213	5			230	34	159	8	8	3	212	428	78	5	7	5	523	421	5	2	11	27	466
July.....	19	150	4			173	32	302	13	2	3	352	595	143	9	3	4	754	474			3	15	492
August.....	33	169	8			210	18	225	11		1	255	467	78	12	3	5	565	540	4	3	12	15	574
September.....	22	127	3			152	15	185	3	1		204	314	64	1	3	3	385	418	1	0	11	20	480
October.....		142	8			150	106	111	1	10	29	257	330	70	5	6	2	413	338	1	0	17	8	364
November.....	6	131	3			140	426			35	41	502	372	27	5	7		411	362	1	1	12	9	384
December.....	22	228	2			252	368			21	16	425	438	11	3	11	5	468	342			3	12	357
	225	1811	66			2102	1132	2032	101	79	111	3445	5104	759	58	73	69	6063	5277	85	12	179	161	5714

Rev. R. V. Rogers, in his preliminary examination, says:—"Witness's most decided opinion is, that the very severe system of punishment practised in the Institution has been most hurtful to the Convicts, and to the general objects of the prison. Has seen no marked benefits from the use of the box. The fact is, that nothing can be worse than the present condition of the Penitentiary, as a moral school. Witness, on several occasions, has remonstrated with the Warden as to the harshness of the discipline, but without any effect. The Warden treated his remonstrances with indifference, if not contempt. He would say, sneeringly, 'the Convicts humbugged witness.'"

By Mr. Smith:—

"Could not say whether the punishment at any other prison, or the Auburn system, are less severe than they are at this Penitentiary. They have been very severe here; does not know what they are now; could not say whether the punishment of the box

has tended to increase or decrease the number of offences of the Convicts; has no doubt that if greater attention was, and had been, paid to the spiritual condition of the Convicts, there would be a greater moral effect than there now is. Witness speaks of the time of his own incumbency. May have reported to the Board that a Convict has complained of having been unjustly punished; remembers now that witness was once told by the Board that he had nothing to do with such a question."

John Swift, in his preliminary examination, says:—"Newly-arrived Convicts have a great horror of being flogged; but it goes off by degrees. Witness thinks flogging has a bad effect on the prisoners; it hardens them."

By Mr. Smith:—

"Has no reason to believe that newly-arrived Convicts have any great dread of corporal punish-

ment; thinks that frequent flogging makes Convicts worse."

The Warden's defence to the charge involved in the preceding tables, appears to be, that numerous punishments therein recorded were all necessary, and not cruel, under the circumstances; and he calls a number of witnesses to sustain this position.

Convict Parker says, the Convicts generally think "the punishments moderate." Keeper Manuel says, "the Warden did not punish the Convicts severely enough, even at the time the punishments were most severe." He admits, however, that he would not "inflict punishment on the Convicts publicly; thinks it raises a revengeful feeling in their minds; thinks that the sympathy it excites for the culprit, obliterates all recollection of the crime." Guard Watt "thinks the Convicts are not punished cruelly at the Penitentiary." Keeper William Smith is of the same opinion, and Keeper Hooper. Mrs. Martin says, the women flogged "were very good afterwards;" and she has heard one of them (Miron) say, "God bless the Warden, he has made me a good girl by flogging me." Keeper Little cannot say, that any Convict in his gang "has been much punished," or "has been the worse for punishment." Keeper Matthews, does not consider the punishments "at any time have been cruel." Guard Sexton "does not think the punishment is sufficient for the offences; never saw any cruelty." Discharged Convict Ramsden "does not think the punishments in the Penitentiary were cruel; they were not more severe than the Convicts deserved for their offences." Guard Thomas Smith, "does not think the Convicts are severely punished here;" and Mr. Costen "never knew anything cruel or oppressive in the Warden's conduct towards the Convicts."

The Warden also produced the following testimony:—

Dr. Sampson—by Mr. Smith:—

"Does not think the late Warden would be guilty of wanton cruelty towards the Convicts. Witness has seldom looked at the nature of the offence which the Convict has committed when sentenced to the cats; when he has so looked he has not thought the punishment greater than the alleged offence." \* \* \* \* \* "Witness has always considered that it was necessary to inflict the cats, in certain cases, at the Penitentiary; with respect to the particular punishments which have been inflicted at the Penitentiary, witness has had no opportunity of forming any judgment upon them, prior to the regulation which required witness's certificate to punishment. Witness has frequently witnessed corporal punishment in the army; has seen a man get 500 lashes at one time."

By Commissioners:—

"Witness never saw any soldier flogged two or three times a week, or nine or ten times a month while he was in the army; witness left the army in 1817. Witness was in the army during the time of hard flogging; so small a flogging as 12 cats would hardly require any dressing; witness would think a large flogging of 500 lashes would be more severe than repeated floggings of 12, 24, and 36 cats."

Thomas Kirkpatrick, Esq.—By Mr. Smith:—

"The Punishment Reports were regularly laid before the Board of Inspectors at their stated meetings; the number of punishments was often made the

subject of remark by the Inspectors, but they conceived that they were often too light, and that had they been more, the number of infractions of the rules would have been diminished. The remarks of witness apply to the less aggravated descriptions of offences and the lighter punishments. Witness is not aware of anything cruel and oppressive in the treatment of the Convicts by the Warden."

By Commissioners:—

"The Punishment Reports, witness has spoken of, were slips of paper containing the reports on each offence by the Keeper to the Warden. The Inspectors had no certificate that these slips contained all the punishments inflicted, and no statement of the aggregate amount of punishment accompanied the slips. Cannot say how many instances of punishment there may have been in the last ten months witness was in office; would say the cats were not used over three or four times in that space; would say that punishment by the raw-hide was inflicted 1000 times in the ten months in question. If the number of punishments by cats in that space was 101, and the raw-hides 2032, the numbers are larger than he thought."

By Mr. Smith:—

"The cats, witness supposed, were used upon the most hardened offenders only."

James Hopkirk, Esq.—By Mr. Smith:—

"From what witness knows of the Warden, thinks he would not ill use any Convict. The Punishment Book has been regularly laid before the Inspectors every Board-day while Mr. Smith was Warden. It never appeared to witness that the punishments were too severe; on several occasions the Board, or Inspector for the week, wished more severe punishments inflicted, than the Warden desired to impose. An agreement was made among the Inspectors, sometime in 1847, that one of their number should examine the punishments weekly, for the purpose of sanctioning corporal punishment, or incarceration in the box; neither of these punishments were inflicted without the previous consent of the Inspectors for the week, nor more than 36 lashes of the cats without the consent of the Board. All the kinds of punishments now in force in the Penitentiary have been sanctioned by the Government; cannot say whether gagging was so sanctioned. The Inspectors had reason to believe that the box punishment had the effect of reducing the number of offences."

Sheriff Corbett—By Mr. Smith:—

"Thinks the Warden would not ill-treat the Convicts in any way whatever. The punishment book was regularly laid before the Board at every meeting; never thought the punishments too severe; differed with his brother Inspectors as to the number of lashes. The punishments inflicted by the Warden were not too severe. Has heard the Warden say the box punishment had had the effect of reducing the number of offences; examined the Punishment Book and found this was the fact, and recommended the Government to continue the box."

By Commissioners:—

Q. Did your evidence on the subject of punishment refer exclusively to the last two years?

A. Yes.

Q. When you spoke of the severity of punishment did you refer to the number of punishments, the amount inflicted for certain crimes, or to the greatest amount of punishment inflicted on any one Convict?

A. Spoke solely as to the general number of punishments inflicted in the Prison.

Q. How many box-punishments were there inflicted in 1847?

A. Cannot say.

Q. Can you tell how many box-punishments were inflicted in any one month while you were an Inspector?

A. No.

Q. Can you of bread and water punishments, or cats, or dark cell, or irons, or gags?

A. No.

Q. Did you ever count the number of punishments inflicted within any given space?

A. No.

Q. When was it you examined the books to see the effect of the box punishment?

A. At the end of three months after it was introduced.

Q. Did you find that the offences during these three months were less numerous than the three months preceding?

A. Yes; offences of a higher crime, for which it was necessary to use the box, were less numerous.

Q. What was the box substituted for?

A. For the cats.

Q. Were the number of cat punishments much less during these three months than during the preceding three months?

A. Thinks there were no cats used during the preceding three months.

Q. How then did you institute a comparison between the first three months of the box, and the three months preceding?

A. From a general inspection of the crimes reported in the Books, but without any close examination into the statistics.

Q. Were you not guided by the Warden's representations on the subject, when you advised the Government that the box punishment had reduced the number of offences in the Institution?

A. Yes; it was the Warden's opinion, and he understood the matter better than witness did.

Q. When was the box punishment first introduced?

A. In February, 1847.

Q. If the gross number of punishments in 1846 were 3,445, and in 1847, 6,063; would you say the effect of the box punishment had been to diminish offences in the Prison?

A. Would not say so.

Major Sadlier—By Mr. Smith:—

“The punishment slips were laid before the Board at each meeting of the Inspectors. Did not think the punishments cruel or severe, but the very reverse. Witness stated to the Board his opinion that the numerical greatness of the punishments arose from the slight character of the several inflictions.

“Has never known anything cruel or oppressive in the Warden's conduct towards the Convicts, but the reverse; thinks he was not strict and severe enough.”

The Warden also produced a letter from Major General Sir Richard Armstrong to the effect, that no complaint of cruelty or oppression had ever reached him from any of the Military who have been confined in the Penitentiary, and that they would have complained had there been occasion. (See Appendix.)

We have thus given the evidence at great length; though we are of opinion that no amount of testimony could meet the case developed in the punishment tables. The simple facts, that the number of punishments rose from seven hundred and seventy in 1843, to two thousand one hundred and two in 1845, and from three thousand four hundred and forty-five in 1846, to six thousand and sixty-three in the year following; the same number of men being subject to discipline in the two latter years. That in the year 1845 and 1846, the number of corporal punishments alone, averaged between four and five punishments in each year, for every man, woman, and child in the Prison; and that in the same years there was an average of seven corporal punishments inflicted daily—shows beyond cavil, that the system pursued has been one of the most frightful oppression.

The rapidity with which the punishments increase, from year to year; is particularly noticeable, the increase in the number of Convicts bearing no proportion to it. It is very clear, that the moment excessive punishment commenced, the hardening effect it had on the culprits produced a growing necessity for punishment, and where it would have stopped, had the Government not interfered and restrained it, it is impossible to say.

As many as twenty, thirty, and even forty men, have been flogged in one morning, the majority of them for offences of the most trifling character; and the truth of the complaint resting solely on the word of a Guard or Keeper, subject at best to all the frailties of other men. The exasperation which such a system could only produce, must have bid defiance to all hope of reform. To see crowds of full grown men, day after day, and year after year, stripped and lashed in the presence of four or five hundred persons, because they whispered to their neighbour, or lifted their eyes to the face of a passer-by, or laughed at some passing occurrence, must have obliterated from the minds of the unhappy men all perception of moral guilt, and thoroughly brutalized all their feelings.

The argument, that such an amount of punishment was necessary to maintain the discipline, is quite untenable. In the first place, good discipline has not been maintained; and in the second, the history of Penal Establishments throughout the world, show clearly that Institutions distinguished for excess of

punishment, are at the same time notorious for bad discipline. We are satisfied that the prisoners in the Kingston Penitentiary are quite as good a class of men to work upon as those of any prison in the Northern States. And while other similar Institutions have been made profitable to the public, and the discipline maintained with comparatively little punishment, this, with excessive punishment, has succeeded in no respect.

We are not satisfied, that corporal punishment can safely be prohibited in a Penitentiary; but we are decidedly of opinion, that its exercise should be rare and marked, and only called out by the most serious offences. Little good can be obtained by degrading a man in his own estimation or in that of others. Convicts have the same feelings as other men. Cases will undoubtedly arise, when it is necessary to make a severe example, but frequent repetition will completely destroy the effect.

We think the frightful amount of punishment which has been inflicted in the Penitentiary, and the indiscriminate manner of its application, admits of no apology.

7. IN FLOGGING WOMEN.

The following Corporal Punishments are recorded in the Book, as having been inflicted on women.

Feb. 4, 1841.	Mary Glennon	—18 lashes rawhide.
March 23.	do.	6 do. do.
June 26, 1845.	Sarah Geddes	—6 do. do.
September 11.	Louise Miron	—6 do. do.
Jan. 7, 1841.	Sarah O'Connor	—(14 years of age)—
		6 do. do.
Feb. 4.	do.	8 do. do.
March 1.	do.	6 do. do.
5.	do.	6 do. do.
23.	do.	6 do. do.
Oct. 30, 1840.	Eliza Robinson	—6 do. do.
March 1, 1841.	Mary Ryan	—6 do. do.
June 21, 1842.	do.	6 do. do.
Jan. 6, 1841.	Elizabeth Breen	—(aged 12 years)—
		8 do. do.
7.	do.	5 do. do.
March 1.	do.	6 do. do.
5.	do.	6 do. do.
24.	do.	6 do. do.
April 22, 1842.	do.	6 do. do.

There is some variance in the testimony as to whether the women's stays were removed before flogging; but in no case has any other garment been removed. The lash seems to have been laid on the back of the neck over a cotton handkerchief.

We are of opinion that the practice of flogging women is utterly indefensible.

8. IN THE CASE OF ALEXIS LAFLEUR.

This boy was committed to the Penitentiary on 24th July, 1842, aged 11.

Was pardoned on 26th July, 1845;

And, was recommitted for four years on 9th May, 1846, aged 15.

The punishments inflicted on this Convict, appear by the entries on the Punishment Book, to have been as follows.—

July 27, 1842.	6 raw-hide.
Aug. 13.	3 do.

Sept. 26, 1842.	Bread and water.
Oct. 8.	do.
Nov. 4.	do.
5.	do.
14.	do.
24.	6 raw-hide.
Dec. 1.	6 do.
Jan. 6, 1843.	12 do.
March 2.	Bread and water.
11.	6 Raw-hide.
31.	12 do.
May 20.	4 do.
July 3.	Bread and water.
Aug. 16.	6 raw-hide.
Nov. 2, 1843.	Bread and water—(slip says 6 cats also.)
13.	3 raw-hide and bread and water.
18.	6 cats and bread and water.
Jan. 8, 1844.	6 raw-hide and bread and water.
March 12.	Bread and water.
15.	12 raw-hides and bread and water.
22.	Bread and water.
April 15.	do. (slip says 12 raw-hide, also.)
May 24.	12 raw-hide, and bread and water—Spilling shoe oil.
30.	12 do. do. do. (slip says 18 cats.)
June 16.	6 cats and bread and water—Talking and saucy.
July 5.	6 do. do. do. Striking Convict.
13.	12 raw-hide and bread and water.
27.	12 do. do. do. Disobedience.
29.	12 do. do. do. Talking.
30.	6 do. do. do. Telling a lie.
July 5.	12 raw-hide and bread and water.
Aug. 21.	12 cats and do. do. Putting hand in Keeper's pocket.
22.	6 raw-hide and do. do. Talking.
Sept. 3.	6 do. do. do. Talking.
Oct. 8.	6 do. do. do. Disobedience.
15.	12 do. do. do. Insolence.
Nov. 21.	6 do. do. do. Talking.
25.	12 do. do. do. Very disobedient.
27.	9 do. do. do. Dilatory at work.
Dec. 7.	9 do. do. do. Talking.
18.	9 do. do. do. Talking & laughing.
24.	12 do. do. do. Talking French.
24.	12 do. do. do. Noise in cell.
26.	12 do. do. do.
Jan. 6, 1845.	9 do. do.
Feb. 21.	9 do. do.
March 12.	9 do. do. Talking & laughing.
April 7.	9 do. do. do. Leaving work.
12.	6 do. do. do.
May 20.	6 do. do. do. Calling to Convict in Church.
June 21.	6 do. do. do. Talking. Pardoned.
June 9, 1846.	9 raw-hide, and bread and water.
16.	12 do. do. do.
22.	6 do. do. do. —
	Sitting at wrong table.
Aug. 8.	6 cats do. do.
Sept. 3.	24 cats, 48 hours dark cell, and bread and water—Trying to escape.
10.	12 rawhide, and bread and water—Singing.
Oct. 9.	36 hours dark cell—Disrespectful to Mr. Utting.
13.	36. do. do. Talking.
Oct. 15.	24 do. do. do.

Oct. 4, 1846. 24 hours dark cell—Quarreling.  
 Nov. 2. 48 do. do. Singing.  
 4. 24 do. do. Talking.  
 5. Bread and water.  
 9. 48 hours dark cell.  
 12. Bread and water.  
 16. do. do.  
 March 17. do. do.  
 Nov. 18. 24 hours cell—Shouting.  
 Dec. 1. Bread and water.  
 4. do. do.—Talking and laughing.  
 7. do. do.  
 8. do. do.—Insolent to Guard.  
 12. do. do.  
 28. do. do.  
 Jan. 4, 1847. do. do.—Talking at Chapel.  
 11. do. do.  
 11. do. do.  
 13. do. do.  
 14. 48 hours dark cell—Idle and insubordinate.  
 15. Bread and water.  
 22. do. do.—Talking.  
 26. do. do.  
 29. do. do.—Talking.  
 Feb. 1. do. do.  
 5. do. do.—Talking.  
 8. Box—Shouting.  
 10. Bread and water.  
 18. do. do.  
 19. Box—Talking and Idling.  
 20. Bread and water.  
 March 8. do. do.  
 April 10. do. do.—Talking.  
 14. do. do.  
 16. do. do.  
 23. Box—Fighting.  
 28. Bread and water.  
 May 17. do. do.  
 20. do. do.  
 21. 18 cats, and bread and water—Insolent and insubordinate.  
 24. Bread and water—Talking and staring.  
 25. do. do.  
 31. Box, and bread and water—Talking and disobedient.  
 26. do. do. do.  
 June 12. do. do. do.—Talking.  
 15. do. do. do.  
 17. do. do. do.  
 18. Box, do. do.—Saucy and disobedient.  
 24. do. do. do.—Refusing to work.  
 28. Bread and water.  
 29. do. do. Talking.  
 July 2. do. do.  
 3. Box, bread and water—Idling and talking.  
 5. do. do. do. Whistling.  
 15. do. do. do.  
 16. do. do. do. Talking.  
 17. do. do. do.  
 19. do. do. do.  
 20. do. do. do. and whistling.  
 21. Box, and bread and water.  
 28. do. do. do. Taking bread and meat.  
 July 29. Bread and water. Talking.  
 Aug. 2. do. do.  
 4. do. do.  
 9. do. do.  
 10. do. do.  
 11. do. do.  
 12. do. do.  
 13. do. do.  
 14. do. do.  
 16. do. do. Leaving work.

Aug. 17, 1846. 24 cats, and bread and water—Stealing a watch.  
 18. do. do. Talking.  
 19. Box do. do. do.  
 20. do. do. do.  
 21. do. do. do.  
 25. do. do. do.  
 27. do. do. do. do.  
 Sept. 14. 48 hours dark cell—Striking Convict.  
 15. Bread and water.  
 27. Box. Telling a lie.  
 Oct. 7. Bread and water.  
 23. do. do.  
 Nov. 2. do. do. Talking.  
 3. do. do.  
 4. Box do. do. Leaving work.  
 9. do. do. do. Quarreling.  
 29. do. do.  
 Dec. 7. do. do.  
 20. 30 cats, and bread and water—Gunpowder in cell.  
 24. do. do.  
 Jan. 1. 1848. do. do.  
 Jan. 3. Bread and water.  
 5. do. do.  
 10. do. do.  
 12. do. do.  
 29. Box and bread and water—Cursing and swearing.  
 Feb. 10. Bread and water.  
 18. do. do.  
 19. do. do.  
 March 3. do. do.  
 7. do. do.  
 25. do. do.  
 10. do. do.  
 11. do. do.  
 April 3. do. do.  
 11. do. do.  
 29. Box and bread and water—Swearing.  
 May 1. Bread and water.  
 17. do. do.  
 24. do. do.  
 25. do. do.  
 26. do. do.  
 27. do. do.  
 Jun. 3. do. do.  
 June 13. Box and Bread and water—Insolence.  
 12. Bread and water—Quarreling.  
 26. 24 cats, and bread and water—Fighting.  
 July 1. Bread and water.  
 3. do. do.  
 10. do. do.  
 11. do. do.  
 14. do. do. Talking.  
 15. 24 hours dark cell—Insolence.  
 17. Bread and water.  
 15. do. do. Stealing a comb.  
 Aug. 1. do. do. Having a comb.  
 3. do. do. Talking in cell.  
 17. 24 cats, and 48 hours dark cell—Having a crowbar and knife in his cell, and outrageous conduct.

The Warden brings evidence to show, that Lafleur is a wild character, and there can be no doubt that his conduct has been that of a troublesome bad boy, and that it may have been necessary to punish him severely; but the offences for which he has been punished have been generally, talking, laughing, and idling, and do not betoken depravity so much as heedlessness; and it is very clear that if he was not naturally bad, such a frightful amount of punishment must assuredly have made him so. His punishment commences within three days after his

arrival, showing that no mild treatment was used towards the child, before the last resort was employed; and during his first committal, he is flogged 38 times with the raw-hide, and 6 times with the cats.

It is horrifying to think of a child of 11 to 14 years of age, being lacerated with the lash before 500 grown men; to say nothing of the cruelty, the effect of such a scene, so often repeated, must have been to the last degree brutalizing.

9. IN THE CASE OF CONVICT HENRY COOPER.

The following is a return of the punishments inflicted on this Convict :—

- July 26, 1843. 6 raw-hide, and bread and water.
- Aug. 11. Bread and water—Laughing.
- 12. 6 raw-hide—Pushing a Convict.
- 15. 24 cats—Threatening a Convict.
- Sep. 21. 6 raw-hide, and bread and water—Talking.
- Nov. 9. Bread and water—Laughing.
- 11. do. do.
- Dec. 16. 12 raw-hide, and bread and water.
- Jan. 13, 1844. Bread and water—Talking and laughing.
- Feb. 24. 6 raw-hide, and bread and water, do. do.
- March 20. 12 do. do. do. do. do.
- April 29. 24 cats, do. do. Quarrelling, &c.
- Aug. 11. 12 raw-hide, and bread and water—Talking and staring.
- 15. 12 cats, and bread and water.
- 21. 6 raw-hide, do. do. Talking.
- 28. 12 do. do. do. do.
- Sep. 3. 6 cats, do. do. do.
- and laughing.
- 4. 6 raw-hide, and bread and water.
- 5. 12 do. do. do. Talking and passionate.
- 10. 6 raw-hide, and bread and water—Not cutting hair properly.
- 14. 6 raw-hide, bread and water—Laughing.
- 26. 6 do. do. do. do. and staring.
- Dec. 18. 9 raw-hide, and bread and water—Giving away ration.
- 18. 9 raw-hide, bread and water—Insolence.
- 30. do. do.
- May 8, 1845. 9 raw-hide, and bread and water—Talking.
- 22. Bread and water—Talking.
- April 12. 6 raw-hide, and bread and water.
- May 23. 6 do. do. do. Giving away ration.
- June 16. 9 raw-hide, and bread and water—Giving a book and saucy.
- July 3. 6 raw-hide, and bread and water—Sauciness.
- Aug. 19. 9 raw-hide, and bread and water—Dancing.
- 22. Bread and water—Leaving his book in the rain.
- 23. 6 raw-hide, and bread and water.
- 26. 9 do. do. do. Sauciness.
- 27. 6 cats—Sauciness.
- 30. 9 raw-hide, and bread and water.
- 30. 9 do. do. do.
- Sep. 1. 6 raw-hide, and bread and water—Talking.
- 9. 24 cats, and bread and water—Very insubordinate.
- Oct. 1. 6 raw-hide, and bread and water—Talking and laughing.

- Oct. 22. 9 raw-hide, bread and water—Talking and laughing.
- Nov. 6. 12 do. do. do.—Throwing a letter.
- 10. 6 do. do. do.—Talking.
- 20. 12 do. do. do.—Giving false report of the measurement of stone.

The Warden calls Guard Cooper, who says Convict Cooper was a troublesome man. Keeper Matthews says he was passionate; and Mr. Costen says he was "rather a bad character." His offences, however, appear to have been generally of a light character, and his punishments, on the other hand, exceedingly heavy. We think there is evidence here of the careless manner in which punishment has been inflicted.

10. IN THE CASE OF CONVICT PETER CHARBONEAU.

This Convict was committed on 4th May, 1845, for 7 years; aged 10.

Punishments inflicted on P. Charboneau :—

- June 27, 1845. 6 raw-hide, and bread and water—Making noise.
- Sept. 9. 6 do. do. do.—Laughing in Chapel.
- Oct. 16. 6 do. do. do.—Laughing, talking, and staring.
- Nov. 25. 6 do. do. do.—Talking.
- Dec. 9. 9 do. do. do.—Talking and laughing in Chapel.
- 18. 6 do. do. do.—Talking and laughing.
- Jan. 1, 1846. 4 raw-hide, and bread and water—Talking and staring.
- 1. 4 do. do. do. Talking and staring.
- 3. Bread and water—Laughing, making faces.
- 3. 6 raw-hide, bread and water—Laughing, and playing tricks.
- 22. 4 do. do. do.—Talking.
- 26. 6 do. do. do.—Laughing, and making signs.
- Feb. 10. 6 do. do. do.—Laughing and talking.
- 12. 6 cats, and bread and water—Talking.
- 16. 6 raw-hide, bread and water—Laughing and talking.
- 16. 6 do. do. do.—Laughing and winking.
- 17. 6 do. do. do.—Staring.
- 24. 6 do. do. do.—Laughing and talking.
- 26. Bread and water—Staring.
- March 3. 6 raw-hide, and bread and water—Leaving his class.
- 3. 6 do. do. do.—Turning round at table.
- 6. 4 do. do. do.—Laughing and staring.
- 9. 6 do. do. do.—Making noise in cell.
- 9. 9 do. do. do.—Talking.
- 11. 6 do. do. do.—Receiving ration.
- 11. 6 do. do. do.—do. do.
- 20. 9 do. do. do.—Talking and laughing in Chapel.
- 23. 6 do. do. do.—do. do. do.
- 25. 9 do. do. do.—do. do. do.
- 30. 6 do. do. do.—Losing his book.
- April 6. 6 do. do. do.—Tobacco and lies.
- 6. 6 do. do. do.—Lies.
- 16. 6 do. do. do.—Talking at table.
- 23. 6 do. do. do.—Laughing and staring.
- 23. 6 do. do. do.—Cell filthy.
- 29. 9 do. do. do.—Stealing gimlet.
- May 11. 9 do. do. do.—Talking.
- 12. Bread and water—Staring.
- 13. 6 raw-hide, bread and water—Winking.
- 14. Bread and water—Laughing and staring.
- 15. 6 raw-hide, and bread and water—do. do.

May 16, 1846. 9 raw-hide, and bread and water—  
Throwing water.

18. 9 do. do. do.—Whistling.

June 2. 6 do. do. do.—Talking.

2. 9 do. do. do.—Stealing  
bread.

2. Bread and water—Staring and laughing.

11. 12 raw-hide, and bread and water—Push-  
ing Convict.

15. 9 do. do. do.

July 7. 6 do. do. do.—Stealing  
book.

7. Bread and water—Laughing and staring.

7. 9 raw-hide, and bread and water—Leav-  
ing hall.

11. 6 do. do. do.—Staring.

11. 9 do. do. do.—Staring  
and laughing.

13. 6 do. do. do.—Talking.

13. 9 do. do. do.—Leaving  
Dining-hall against orders.

17. 6 do. do. do.—Talking  
and laughing.

20. 6 do. do. do.—Talking  
and laughing.

20. 9 do. do. do.—Calling on  
and laughing.

22. 6 do. do. do.—Tricks at  
table.

24. 9 do. do. do.—Leaving  
work.

25. Bread and water.

27. 12 raw-hide, and bread and water—Whist-  
ling.

27. 9 do. do. do.—Not recor-  
ded.

Aug. 4. 9 do. do. do.—Disobe-  
dience.

19. 9 do. do. do.—Talking  
and staring.

20. 6 do. do. do.—Laughing  
and talking.

Sept. 3. 6 do. do. do.—Laughing  
and talking.

7. 9 do. do. do.—Talking  
continually.

19. 9 do. do. do.— do. and  
laughing.

19. 12 do. do. do.—Stealing  
grease.

In October, he gets bread and water on 1st, 6th, and 15th; 6 raw-hides on 12th; and 24 hours in his cell on 12th and 13th; also, bread and water 22nd, 23rd, and 26th.

In November, he gets bread and water on 2nd, 4th, 7th, 9th, 10th, 13th, 18th, and 19th.

In December, he gets bread and water on 3rd, 8th, 9th, 12th, 18th, 22nd, and 28th; and 24 hours dark cell on 9th.

In January, 1847, he gets bread and water on 11th, 12th, 13th, 15th, 15th, 22nd, 29th and 29th.

In February, he gets bread and water 1st, 10th, 10th, 11th, 12th, 16th, 22nd, 23rd, and 27th; and he is put in the box on 12th, 22nd, and 23rd.

In March, he got bread and water on 2nd, 4th, 6th, 8th, 11th, 16th, 18th, 20th, 24th, and 27th; and he is put in box on 4th and 18th.

In April, he got bread and water on 5th, 7th, 8th, 9th, 15th, 21st, 23rd, and 28th; and was put in box on 28th.

In May, he got bread and water on 3rd, 4th, 5th, 13th, 14th, 15th, 16th, 19th, 20th, 21st, 24th, 25th, and 26th; and was put in box on 5th, 16th, and 26th.

In June, he got bread and water on 1st, 2nd, 3rd, 4th, 5th, 7th, 14th, and 18th; and box on 7th.

In July, he got bread and water 1st, 5th, 7th, 8th, 9th, 12th, 17th, 20th, 23rd, 26th, 27th, 28th, and 29th; and he was put in the box on 1st and 20th.

In August, he got bread and water on 3rd, 4th, 6th, 13th, 16th, 18th, 19th, 20th, 24th, 25th, 26th, 27th, and 30th; and was put 48 hours in dark cell on 4th, and in box on 30th.

In September, he got bread and water on 2nd, 6th, 7th, 8th, 9th, 10th, 11th, 17th, 18th, 20th, 21st, 22nd, 23rd, and 30th; and so on up to the present moment.

Edward Utting—preliminary examination :—

“ A small boy, named Charboneau, was frequently flogged with the cow-hide. He was a mere child. He should have had a kind word, rather than punishment.”

By Mr. Smith :—

“ Charboneau’s conduct was childish. He was continually playing tricks, as children would do.”

Thomas Fitzgerald—preliminary examination :—

“ Recollects the boy Charboneau; he was a very small boy; he was very frequently flogged with the cow-hide. Witness thinks he could have made more of him by advising him than by whipping.”

The defence is as follows :—

Francis Little—By Mr. Smith :—

“ Charboneau is in witness’s gang; his general conduct is very bad; has had more difficulty with him than with five other Convicts. He is in good health.”

Thomas Costen—By Mr. Smith :—

“ Peter Charboneau is a very bad, troublesome little boy; idle and talkative. Thinks reasoning would do no good with him; has spoken to him frequently without effect; cannot tell his sentence. As far as witness knows, he was never punished without a cause. There is frequently more trouble with young Convicts than with grown men.”

The table shows that Charboneau’s offences were of the most trifling description—such as were to be expected from a child of 10 or 11; and that for these, he was stripped to the shirt, and publicly lashed 57 times in eight and a half months.

We can only regard this as a case of barbarity, disgraceful to humanity.

11. IN THE CASE OF THE CONVICT ANTOINE BEAUCHE.

This Convict was committed on 7th Nov. 1845, for three years,—aged eight.

The following punishments were inflicted on him :

Nov. 14, 1845.	3	raw-hide, and bread and water—Talking.
Dec. 9.	3	do. do.—Talking and idling.
15.	4	do. do.—Shouting in cell.
16.	4	do. do.—Playing tricks.
19.	4	do. do.—Shouting in cell.
20.	4	do. do.—Talking, &c.
26.	4	do. do.—Talking and laughing.
Jan. 1, 1846.	4	do. do.—Talking and laughing.
5.	4	do. do.—Destroying book.
29.	4	do. do.—Spilling vinegar.
29.	4	do. do.—Leaving Kitchen.
30.	6	do. do.—Stealing bread.
Feb. 6.	6	do. do.—Concealing brass for toothpicks.
6.	6	do. do.—Whistling.
17.	6	do. do.—Talking, &c.
21.	4	do. do.—Laughing.
24.	6	do. do.—Talking.
25.	6	do. do.—Making lime dirty.
March 6.	4	do. do.—Staring.
9.	9	do. do.—Having tobacco.
9.	6	do. do.—Talking.
10.	9	do. do.—Stealing bread.
11.	9	do. do.—Talking.
16.	6	do. do.—Talking, &c.
30.	9	do. do.—Talking.
April 13.	9	do. do.—Indecency.
29.	9	do. do.—Tobacco.
May 11.	9	do. do.—Noise in cell.
14.	6	do. do.—Tobacco in mouth.
14.	6	do. do.—Leaving work.
18.	6	do. do.—Talking.
25.	6	do. do.—Tobacco.
26.	9	do. do.—Destroying book.
June 1.	6	do. do.—Talking.
8.	9	do. do.—Stealing in Church.
22.	6	do. do.—Noise in cell.
July 17.	6	do. do.—Laughing.
20.	9	do. do.—Noise in cell.
20.	6	do. do.—Losing handker's
21.	6	do. do.—Noise in cell.
24.	6	do. do.—Laughing.
27.	9	do. do. do.
Aug. 3.	9	do. do.—Tobacco in mouth.
19.	9	do. do.—Staring.
20.	6	do. do. do.
21.	9	do. do.—Talking, &c.
24.	6	do. do. do.
29.	9	do. do.—Idling &c.
Sep. 7.	9	do. do. do. &c.
19.	9	do. do.—Talking and laughing.
21.	6	do. do.—Noise in cell.
25.	6	do. do.—Remitted.
Oct. 5.	6	do. do.—Talking and idle.
6.	6	do. do.—Noise in cell.
13.	24	hours dark cell—Disorderly in Chapel.
14.	24	do. do.—Giving Convicts tobacco.

Here the raw-hiding suddenly ceases, and Beauché is punished afterwards with bread and water, and occasionally with the box.

For the defence we have the following evidence :—

Keeper Jones—By Mr. Smith :—

“ Recollects Antoine Beauché ; he was in the Tailor's shop ; his health was generally good.”

Keeper Hooper—By Mr. Smith :—

“ Antoine Beauché was in witness's gang ; he has recently gone out ; he left the Prison in good health.”

Head-keeper Costen—By Mr. Smith :—

“ Recollects Antoine Beauché, the tailor boy ; he was continually breaking the rules of the Prison while here ; never saw him punished to his knowledge, without his offence being entered in the book ; the punishment book is referred to in all cases of punishment. Beauché was here three years ; he went out a short time ago. Cannot say if he was punished with the cats ; in all the raw-hide punishments he received in witness's presence, the lash was laid on lightly on account of his youth ; has been stationed in the dining-hall during punishment, ever since Antoine Beauché has been in the Prison ; his health was always very good ; he left the Prison ; in excellent health ; it was absolutely necessary to punish him to keep him in proper order.”

The table shows that this child received the lash within a week of his arrival, and that he had no fewer than 47 corporal punishments in nine months, and all for offences of the most childish character.

We regard this as another case of revolting inhumanity.

12. IN THE CASE OF CONVICT JOHN M'GRATH.

The noticeable point of this case was in M'Grath's having been punished for feigning insanity. The Warden is acquitted of all censure in the matter.

13. IN THE CASE OF CONVICT LOUIS BEAUCHE'.

This Convict was committed on 7th Nov., 1845, for 3 years—aged 12.

The following punishments were inflicted on him.

Nov. 10, 1845.	4	raw-hide, and bread and water.
17.	6	do. do.—Tobacco in mouth.
Dec. 19.	4	do. do.—Talking.
26.	4	do. do.—Laughing when called up for punishment.
27.	4	do. do.—Talking.
29.	6	do. do.—Leaving his seat.
Jan. 1, 1846.	4	do. do.—Talking.
10.	4	do. do. do.
12.	4	do. do.—For two offences.
22.	4	do. do.—Talking.
26.	6	do. do.—Laughing and—talking.
29.	4	do. do. do.
31.	6	do. do. do.
Feb. 9.	6	do. do. do.
10.	6	do. do. do.
March 4.	6	do. do.—Turning round at table.
9.	9	do. do.—Noise in cell.
11.	6	do. do.—Talking and laughing.
30.	6	do. do.—Losing book.
April 22.	6	do. do.—Losing bucket in well.
25.	9	do. do.—Continual talking.
May 5.	6	do. do.—Laughing, &c.
12.	Bread and water	—Winking at Convicts.
13.	9	do. do.—Laughing.
15.	9	do. do. do.
21.	6	do. do.—Laughing at his brother.
June 15.	9	do. do.—Playing.
22.	6	do. do.—Noise in cell.
30.	6	do. do.—Talking.
July 7.	6	do. do.—Stealing a book.

July 20, 1846.	6	Raw-hide, and bread and water.
		—Noise in cell.
23.	6	do. do.—Leaving seat.
27.	12	do. do.—Staring.
28.	9	do. do.—Laughing &c.
Aug. 3.	9	do. do.—Playing.
5.	6	do. do.—Talking.
19.	6	do. do.—Annoying men at work.
29.	9	do. do.—Talking & laughing.
31.		Bread and water—Laughing.
Sept. 1.		do. do.
25.		12 raw-hide, bread and water—Laughing.
Oct. 5.	9	do. do.—Talking.
6.		Bread and water.
10.		do. do.

Corporal punishment here suddenly ceases to be inflicted, and bread and water is the usual punishment afterwards.

In October, he got bread and water on 5th, 6th, 10th, 12th, 22nd, 23rd, and 27th; and 24 hours in cell on 13th and 14th.

In November, he got bread and water on 4th, 14th, 17th, 18th, 18th and 23rd.

In December, he got bread and water on 2nd, 4th, 8th, 12th, 16th, 22nd, 28th, 28th, and 28th.

In January, 1847, he got bread and water on 2nd, 4th, 7th, 11th, 12th, 14th, 14th, 15th, 18th, 20th, 21st, 24th, 26th, 29th, 29th, and 24 hours in cell on the 14th.

In February, he got bread and water on 2nd, 3rd, 4th, 5th, 10th, 11th, 13th, 22nd, and box on 19th.

In March, he got bread and water on 4th, 11th, 15th, 16th, 22nd, 23rd, 26th and 31st.

In April, he got bread and water on 3rd, 6th, 7th, 12th, 13th, 15th, 22nd, 23rd, 29th and 30th; and he was put in the box on 13th and 28th.

In May, he got bread and water 1st, 2nd, 3rd, 8th, 11th, 13th, 18th, 19th, 20th, 21st, 22nd, 23rd, 24th, 25th, 25th, 26th, 29th, and was 24 hours in dark cell on 27th.

In June, he got bread and water 2nd, 5th, 7th, 9th, 10th, 14th, 15th, 16th, 18th, 19th, 21st, 22nd, 23rd, 24th, 25th and 26th; was put in the box on 7th, 21st and 22nd; and 24 hours dark cell on 10th.

In July, he got bread and water 7th, 8th, 9th, 12th, 13th, 20th, 21st, 23rd, 24th, 28th, 29th and 30th.

In August, he got bread and water 2nd, 7th, 9th, 10th, 11th, 12th, 13th, 14th, 16th, 17th, 18th, 19th, 20th, 25th, 26th, 28th, and 31st, and was put in box, on 30th.

And so his punishment goes on up to the present day.

The evidence on this case is as follows :—

Keeper Jones—By Mr. Smith :—

“Recollects Louis Beauché; does not think he was often on the sick list, would consider him a healthy boy.”

Keeper Little—By Mr. Smith :—

“Louis Beauché was in witness's gang; his general conduct was very bad.”

Mr. Costen—By Mr. Smith :—

“Convict Louis Beauché was a very bad character; it was necessary to punish him frequently to keep him in subjection. Cannot say if he was ever punished with the cats; he was always very healthy; he left the prison lately with his brother; he was in good health when discharged.”

This boy was flogged within three days of his arrival, and got 39 punishments with the lash in the first eleven months of his imprisonment. There have been three brothers of this name in the Prison. One of them became insane in the Penitentiary, and is now an inmate of the Beauport Lunatic Asylum. In the character of the offences committed by all three of the brothers, a weakness of intellect may perhaps be detected.

In looking into such cases as this, one cannot but feel that the merciful intervention of the late Government was a most fortunate event.

14. IN GOADING, BY EXCESSIVE PUNISHMENT, CONVICT JAMES BROWN INTO A STATE OF INSANITY, OR IN AGGRAVATING THE MALADY UNDER WHICH HE LABOURED.

The following return of the punishments inflicted on this Convict, is extracted from the Punishment Book :—

Feb. 4, 1841.	24	cats.
April 14.	12	do.
May 14.	48	do.
June 15.	24	do.
August 7.	24	do.
Nov. 4.	48	do.

Feb. 16, 1842.	12	raw-hides.
21.	6	do.
March 9.		Bread and water.
23.		24 raw-hides.
Sept. 15.		Bread and water.
22.		12 raw-hides.
30.		Bread and water.
Nov. 1.		do. do.
29.		36 cats.

Jan. 28. 1843.		Bread and water.
April 17.		6 raw-hides.
May 24.		36 cats, and bread and water and irons.
August 10.		6 cats—Leaving work—concealing himself.
Nov. 10.		Bread and water.
Dec. 11.		6 raw-hides—Striking Convict.

Jan. 4, 1844.		48 hours dark cell, and bread and water
		—irons.—Disobedience and insolence.
5.		48 cats, and bread and water—Violence, and running away from Guard.
9.		24 cats, and bread and water, and 48 hours dark cell.—Insubordination.
Feb. 17.		do. do.
19.		36 cats, and 48 hours dark cell—Violence.
March 15.		12 raw-hides, and bread and water.
28.		do. do.
April 17.		36 cats, do. do.
		—Threatening, and throwing stones.
July 16.		36 cats, bread and water, and irons—Striking Convicts.

Oct. 23. 1844. 60 cats, bread and water—and irons  
—Trying to escape.  
Dec. 7. 48 do. do. do.  
and irons—Outrageous during a mutiny  
in quarry.  
Jan. 13. 9 raw-hide, do. do.  
16. 9 do. do. do.  
23. 24 do. do. do.  
—Outrageous in quarry.  
April 18. 24 cats, and bread and water, and irons.—  
Drawing a knife on Guard.  
June 6. 12 cats, and bread and water—Talking,  
cursing, and swearing.  
July 18. 36 do. do. do.—Talking,  
cursing, and swearing.  
Sep. 11. 24 do. do. do.—Refusing  
to work in irons.  
Oct. 8. 24 do. do. do.—48 hours  
dark cell—Cursing and swearing.  
Feb. 17, 1846. 12. Cats, and bread and water.—  
Talking indecently.  
24. 12 do. do. do.—Quarrelling  
and fighting.  
March 25. 12 do. do. do.  
April 27. 9 raw-hide, and bread and water.  
May 13. 24 cats, and bread and water, and 48 hours  
dark cell—Cursing and swearing.  
22. 12 do. do. do.  
June 9. 36 do.—48 hours dark cell, and irons—  
Threatening life of the Guard.  
16. 12 cats, and 48 hours dark cell.  
19. 24 do. do. do.—Cursing and  
swearing.  
23. 24 do. do. do.—Trying to  
escape.  
26. 6 raw-hide, and bread and water.  
July 14. 24 cats, and 48 hours dark cell—Cursing  
and swearing.  
July 17. 12 raw-hides, and bread and water.  
18. 6 do. do. do.  
27. 12 cats, do. do. do.—Talking  
and cursing.  
Aug. 11. 24 do. do. do.—Cursing  
and swearing.  
24. 9 raw-hides, do. do.  
Sep. 30. 12 do. do. do.—24 hours  
dark cell.  
Oct. 10. 48 hours own cell.  
12. 48 do. do.  
27. Bread and water.  
31. 24 hours dark cell in irons—Threatening to  
take life, cursing and swearing.  
Nov. 12. 48 do. do. do. do. do.  
16. 48 do. do. do.  
Dec. 26. Bread and water.  
March 3, 1847. do. do.  
5. do. do.—and box.  
April 7. do. do.  
May 6. do. do.  
15. do. do. do.  
17. 36 cats, do. do.—Threatening to take  
life—cursing and swearing.  
18. Box, do. do.  
19. do. do. do.  
20. do. do. do.  
June 5. do. do.  
9. do. do. do.—Fighting.  
10. do. do. do.  
12. do. do. do.  
17. do. do. do.  
21. do. do. do.  
22. do. do. do.  
23. do. do. do.  
26. do. do. do.  
28. do. do. do.

July 6, 1847. Box—cursing and swearing  
8. do. do. do.  
20. do. do. do.  
21. do. do. do.  
30. do. do. do.  
Aug. 2. do. do. do.  
2. do. do. do.  
3. do. do. do.  
4. do. do. do.  
5. do. do. do.  
6. do. do. do.  
7. 36 cats, and bread and water—Cursing and  
swearing—threatening to take life.  
16. Box, and bread and water.  
19. do. do. do.  
20. do. do. do.  
21. do. do. do.  
28. do. do. do.  
Sept. 9. do. do. do.  
10. 48 hours dark cell.  
Sept. 29, 1847. Box, and bread and water.  
Oct. 8. do. do. do.  
9. do. do. do.  
12. do. do. do.  
23. do. do. do.  
26. do. do. do.—Cursing and swearing.  
Nov. 1. do. do. do.  
8. do. do. do.  
10. do. do. do.  
Dec. 27. do. do. do.  
30. 36 cats—(Not given) for outrageous con-  
duct.  
Jan. 3, 1848. Bread and water—Cursing and  
swearing.  
22. do. do.  
29. do. do.  
March 14. do. do.

On 30th December, 1847, the Surgeon was called on to report on Brown's fitness to receive corporal punishment, when he entered on the record, "fit as to bodily health." This stopped the punishment, and the Inspectors called on the Surgeon to report on Brown's mental condition. Dr. Sampson reported on the 16th February, that Brown was of "unsound mind." The Warden and Inspectors seem to have dissented from the opinion of Dr. Sampson, and contrary to the usual practice the case was not reported to Government till April following. A long correspondence ensued upon the case which will appear elsewhere, but does not affect the present issue. Brown, since the Surgeon's report, has not been punished, but still remains in Prison.

The defence made by the Warden upon this charge is, that Brown is not mad, but a violent, bad character, who deserved all the punishment he got, and was the better of it.

The evidence on both sides is as follows :—

James Gleeson—preliminary examination :—

"Another man, named Brown, was also much lacerated, but thinks he became at length almost insensible to it. These two (Donovan's and Brown's) cases, occurred before the rule was made as to the Surgeon's being present. Witness thinks both of these men were insane." \* \* \* \* \*  
"Brown's usual offence was making a noise, talking, singing, swearing, threatening to strike his Keepers, and attempting to run away."

John Swift—preliminary examination :—

"Knows James Brown; he was very severely flogged; he is insane; he has been often been pun-

ished for acts of madness. He struck witness with a crow-bar on the chest, without object or reason that could be imagined. He was standing quietly past, and turned round on a moment's impulse and struck witness.

By Mr. Smith :—

“ Knows James Brown. His conduct has been very violent ; does not think he can be in his right senses ; he would not carry on as he does, if he were ; of course he must see what he is doing when he acts in this rough way ; does not know if the Surgeon has reported Brown insane ; witness thinks Brown's conduct has been much the same all through the time that he has been at the Penitentiary. Witness's attention was not directed to Brown's conduct before Brown struck witness with a crow-bar in 1843 ; does not know how long Brown had been in the Penitentiary previous to this transaction ; never heard of violence committed by Brown to other officers prior to that period. Brown has frequently attempted to escape. Never knew a Convict pronounced to be insane by the Surgeon.”

Rev. R. V. Rogers—preliminary examination :—

“ Recollects Convict James Brown ; always regarded him as an insane man ; thinks that he was often punished for acts committed under the influence of insanity.”

By Mr. Smith :—

“ Witness thinks that James Brown was at the Penitentiary when witness first attended the Institution. Remembers Brown having attacked some one shortly after witness became acquainted with him ; believes that the Surgeon has pronounced Brown to be of unsound mind ; does not know whether it was this year or last year that the Surgeon so reported Brown ; knows nothing about the time. Believes that Brown's conduct has occasionally been very violent. Frequently had private conversations with Brown on religious matters ; had great difficulty in persuading Brown to attend school ; believes he can now read a little. Brown attends the Divine Service generally on Sundays, so far as witness has observed. Witness thinks, but would not positively say, that Brown once misconducted himself during Divine Service ; would say that he generally conducts himself well during Divine Service.

Guard Kearns—preliminary examination :—

“ Recollects James Brown ; he was very severely punished ; has no doubt he was insane ; has known him often punished for acts of madness.”

By Mr. Smith :—

“ James Brown's conduct has been pretty bad ; could not say whether he was insane ; should think he was from his conversation ; has been the same, so far as witness knows, all the time witness has been at the prison, which is four years ; does not know that the Surgeon has pronounced Brown to be insane. Brown has been very violent in his conduct ; has heard that he has threatened to do mischief to some of the officers. Brown has not been punished for some time, so far as witness knows.”

By Commissioner :—

“ Considers James Brown to be insane.”

And Mr. Utting, White, Keely, M'Garvey, Robinson, M'Carthy, Wilson, Fitzgerald, and Free-land—all declare him to be insane.

On the other hand, we have Watt, William Smith, Hooper, Manuel, Pollard, Gibson, Ballentine, Grass, M'Mahon, Martin, Matthews, Sexton, Ramsden, Thomas Smith, and Costen—all testifying that Brown is not mad ; and many of them say his conduct has been always the same since he came to the prison.

Keeper Little says, he does not think Brown mad ; but on his cross-examination, he admits that he has seen him “ break out very violent without any provocation or cause for it.”

Keeper Hermiston—By Mr. Smith :—

“ James Brown used to break out into raptures sometimes when witness first came to the Penitentiary. Witness thinks Brown is worse now than formerly ; he uses very obscene, filthy language. Witness is not a proper judge whether a man is mad or not. Brown talks like a madman.” \* \* \* \* \*  
“ Witness thinks that Brown has become worse since punishment has ceased to be inflicted on him ; his talk has become much worse.”

Guard Rowe—By Mr. Smith :—

“ James Brown talks sometimes in a very deranged state ; witness does not know what is the matter with him ; sometimes Brown talks very sensibly, sometimes the reverse.”

Dr. Sampson—By Mr. Smith :—

“ Had heard of the violent conduct of James Brown before witness had been shown a statement of the punishments inflicted upon him ; it was not from that statement alone that witness formed his opinion of the insanity of Brown ; does not recollect having seen any account of Brown's punishments previously to the statements shown to him by the Warden. The Punishment Book is exhibited, by which an entry appears on the 17th May, 1847, as follows :—‘ Threatening to take the lives of Keeper M'Garvey and Guard Funstan, and to raise a mutiny in prison ; cursing and swearing in a violent way continually, day and night.’ Sentence—‘ 36 lashes with the cats ; one meal bread and water ; to be kept in irons until further orders.’ To which is appended as follows—‘ Fit to receive the same. James Sampson, Surgeon.’ A further entry appears on the 7th August, 1847, as follows—‘ Making a great noise in his cell ; disturbing the whole of the prison ; cursing and swearing, and threatening to take the life of the Keeper.’ Sentence—‘ 36 lashes with the cats ; one meal bread and water.’ To this is appended—‘ Fit. James Sampson, Surgeon.’ Both of these entries refer to the Convict James Brown. Witness did not think Brown insane at the date of the last quoted entry.”

The ex-Warden asks the following question :—  
“ When did you first perceive symptoms of insanity in James Brown ?”

“ Witness states in answer, that his suspicions of Brown's insanity arose on the 30th December, 1847. His suspicion arose from the previous cases which had been brought under his notice, and from having heard that Brown had been often punished ; and from having seen Brown's violence on this day, being the first time that witness had been an eye-witness to it. From all these circumstances, witness began

to suspect that Brown was insane ; and was induced to make the entry in the Punishment Book of the 30th December, 1847, as follows—' Fit as to bodily health ;' not wishing to pronounce positively as to Brown's state of mind, without farther investigation. Witness reported the insanity of Brown on the 16th February, 1848. Brown's bodily health is good. When persons become insane from ill-treatment, the body generally suffers with the mind ; the suffering of the body would depend upon the temperament of the party ; a callous man would not suffer in body ; a sensitive man would do so. Witness further states, that he considers Brown the sort of man who would not suffer in body from frequent punishment. Has had no personal opportunity of judging of Brown's conduct, until called upon to certify to the propriety of the sentence passed upon him in May, 1847. Brown has seldom been on the sick list ; and when he was so, he always behaved, in witness's presence, quiet and orderly. Witness never, on such occasions, observed acts of insanity in Brown."

Thomas Kirkpatrick, Esq.—By Mr. Smith :—

"The cats, witness supposed, were used upon the most hardened offenders only. Brown was one of those hardened offenders ; he was an obstinate violent man, of low intellect."

James Hopkirk, Esq.—By Mr. Smith :—

"Has had conversation with Convict James Brown, in presence of the Board, since Dr. Sampson pronounced him insane ; thinks Brown exhibited no symptoms of insanity ; his answers to the Board were perfectly rational."

Mr. Sheriff Corbett—By Mr. Smith :—

"Has had conversation with Brown since he has been declared insane ; he did not appear to be insane, but has heard him carrying on at an immense rate in his cell ; asked Brown why he behaved so ill ; he said it was because so many were pardoned for worse crimes than he had committed, while he was kept a prisoner ; witness told him that the best way for him to get out was by behaving himself well. His answers were all perfectly rational ; he knew who witness was ; said he was the Sheriff."

We are bound to believe, from the report of the Surgeon of the Institution, that Brown was, on the 30th December, 1847, and still is, insane. And from the evidence, as well as from our own personal examination, of the Convict, we have not a doubt on the subject. The very acts for which Brown was so often and so severely punished, would of themselves lead to a belief in his insanity.

Mr. Kirkpatrick has well described him as "naturally a violent obstinate man, of low intellect ;" a man without sufficient judgment to carry him through the world. To subject a man of this disposition to the cruel punishments which have been incessantly inflicted on him for over eight years, is the direct way to drive him mad.

Brown was originally sentenced to be transported, and was committed to the Penitentiary by an order of the Lieut. Governor of Upper Canada, until ordered otherwise ; and there he has remained ever since. He has some idea that he is improperly retained in confinement, and broods over it from morning to night, breaking out into paroxysms of passion, in which he recounts with monotonous perseverance the history of his grievances. Such par-

oxysm have formed his offences ; and for these he has been punished so severely.

The tables show that Brown was ordered 1002 lashes of the cats, and 216 of the raw-hide ; but 36 lashes of the cats having been stopped by the Surgeon, the whole number of lashes inflicted on him has been 1182. Thirty-five times has this man been subject to the torture of the cats.

We are well satisfied that whether a different treatment would have been successful or not, if tried upon him, incessant and severe punishment could only make him more reckless and stupid than before ; and we cannot doubt, that the treatment which he has received in the Prison has greatly aggravated his predisposition to insanity.

15. IN GOADING JOHN DONOVAN, BY EXCESSIVE PUNISHMENT, INTO A STATE OF INSANITY, OR AGGRAVATING THE MALADY UNDER WHICH HE LABORED.

This Convict was a Private of the 82nd Regiment ; he was committed on 8th May, 1845, and was discharged by order of the Assistant Adjutant General on 2nd August, 1845. The following punishments were inflicted upon him :—

1845.

- |         |    |   |                          |
|---------|----|---|--------------------------|
| May 14. | 12 | raw-hide, bread and water—Swearing at Convicts ; throwing piggin across rail. | } All committed on 19th. |
| 19.     | 12 | do. do. do.—Destroying tin cup by crushing it.                                |                          |
| 20.     | 12 | do. do. do.—Throwing contents of bucket on gallery.                           |                          |
| 21.     | 12 | do. do. do.—Striking Keeper with his hand during divine service.              |                          |
| 26.     | 12 | cats, bread and water—Frequently striking Convicts with his hand.             |                          |
| 27.     | 12 | raw-hide, bread and water—making noise in cell, rising too early.             |                          |
| 28.     | 12 | do. do. do.—Rising from seat and walking across two tables.                   |                          |
| 29.     | 24 | cats, bread and water—Striking Guard Robertson for reporting him.             |                          |
| 30.     | 9  | raw-hide, bread and water—Remaining in privy ; said he did not hear the bell. |                          |
| 31.     | 9  | cats, bread and water—Striking Guard O'Neil ; breaking windows.               |                          |
| June 2. | 6  | do. do. do.—Striking Keeper when mustering to breakfast.                      |                          |
| 7.      | 12 | do. do. do.—Talking, and jumping on dinner table.                             |                          |
| 9.      | 12 | do. do. do.—Striking Convict in Chapel.                                       |                          |
| 10.     | 12 | do. do. do.—Striking Convict.   |                          |

Or 168 lashes in 28 days.

James Gleeson—preliminary examination :—

"Has frequently seen a man flogged with cats, whose back was much lacerated before the flogging began ; it was hard to find a whole spot on which to strike the first blow ; his name was Donovan." \* \* \* \* \* "These two (Donovan's and Brown's) cases occurred before the rule was made as to the Surgeon being present ; witness thinks both of these men were insane ; Donovan's usual offence was striking his neighbor without apparent cause, and even in the Chapel ; witness often had to take him out of Chapel, and on one occasion he made an attempt to chuck the Priest under the chin."

Ex-Assistant Warden Utting—preliminary examination :—

“ Recollects Donovan ; he was very severely flogged ; feels convinced he was mad. On one occasion this man jumped over the bannisters down on the stone floor, from the first floor. Guard Mills reported on one occasion that Donovan would kill himself, by knocking his head against the stone wall, and he had to be removed. Donovan was quite outrageous ; he was flogged after these circumstances occurred ; he was even flogged for these very occurrences.”

By Mr. Smith :—

“ Recollects Donovan ; did not think him insane when he came into the Penitentiary ; but began to think so afterwards. Shortly after Donovan came in he became very outrageous ; after he had been frequently flogged, witness observed that he became more outrageous ; he became stark mad. Witness, upon referring to the Punishment Book, is of opinion that Donovan must have been refractory from the commencement of his imprisonment ; his back was sore, when he came in, from previous punishment. It depends upon a man's constitution as to the length of time which is required to heal the back after punishment. Cannot say how often Donovan was flogged ; it was often ; does not recollect if Donovan was flogged after the Surgeon reported him insane.”

Martin Keely—preliminary examination :—

“ Recollects Convict Donovan ; he was often very severely punished ; this man was certainly out of his mind ; he would throw himself back on his head, on the flag stones, without the least apparent cause.”

Thomas Fitzgerald—preliminary examination :—

“ Convict Donovan was very severely punished ; he was evidently insane ; his punishments were often inflicted for acts committed under the influence of insanity ; never knew Donovan to be punished for an offence which a man in his senses would have committed ; Donovan has been frequently punished when his back was unhealed from previous punishments.”

And a number of other witnesses give similar evidence.

Dr. Sampson says :—“ Recollects Convict John Donovan, a soldier. It was not long after Donovan's arrival at the Penitentiary that the Surgeon reported him to be of unsound mind. Witness presumes that he examined Donovan on his arrival, in pursuance of witness's general practice with regard to those newly committed. Thinks there were three Military medical officers who sat in the investigation of Donovan's sanity. Does not know what became of Donovan after he left the Penitentiary ; believes he was sent to Fort Henry, and that he was there set to work under a guard. Heard a report that Donovan was sent to the Lunatic Asylum at Toronto, but did not believe such report.”

The Surgeon having pronounced Donovan insane, the attention of the Military authorities was called to the fact. The following letter from Col. Young, explains the ulterior proceedings in the case :—

“ Assist. Adjutant General's Office,  
“ Kingston, 5th September, 1848.

“ Sir,

“ In reply to your letter, dated 4th instant, I beg to inform you in reference to the case of Private John Donovan, 82nd Regiment, that in consequence of a communication made to the Military Secretary at Head Quarters, and returned to this Department by order of the Commander of the Forces, it was deemed advisable to assemble a Military Medical Board at the Penitentiary, for the purpose of examining the condition of mind of Private Donovan. The result of which was, that on due enquiry the Board found—‘ That John Donovan has, since his confinement, manifested on various occasions, strong symptoms of insanity ; and although the Board (being fully impressed with the difficulty of the question, as to the real or assumed nature of the affection) hesitate to pronounce a decided opinion, they are fully satisfied of the inadequacy of his present position to establish the true nature of the case ; and, therefore, the Board beg to recommend that Private John Donovan be removed, for more close medical superintendence, to the Hospital of the 82nd Regiment, near Fort Henry, Kingston.’

“ In compliance with the above, John Donovan was removed to a Military Hospital, where he remained until the early part of June, 1846, at which time he was forwarded to Montreal, with other invalids, for final examination by a Medical Board, and thence to England, as unfit for service ; but whether from insanity or not, I am unable to say. The man having been brought to Kingston, (a prisoner,) and marched off at once to the Penitentiary, I am not aware of what his previous state of mind may have been.

“ I have the honor, &c.

(Signed) “ PLOMER YOUNG,  
Lt. Col., A.A.G.

“ George Brown, Esq.”

The only defence made by the Warden in this case, is, that he thought the Convict was simulating insanity ; and to sustain this position, he put in the following certified copy of Donovan's committal to the Penitentiary by the Military authorities :—

(Copy.)

“ I, James Forlong, Commanding Officer of the 43rd Light Infantry, do hereby require and order you to receive into your custody, and to keep in confinement for the space of two years, from the 29th day of January, 1845, inclusive, Private John Donovan (3) of the 43rd Light Infantry, pursuant to the sentence of a District Court Martial, held at Quebec, Canada East, on the 29th day of January, 1845.

“ Crime 1st. Violent and outrageous conduct when a prisoner in the Guard-room, in striking Private Martin Devenny a violent blow in the face, with his fist, without the least provocation.

“ 2nd. For disgraceful conduct in feigning insanity between the month of October, 1844, and January, 1845, thereby endeavoring to evade his duties as a soldier.

“ 3rd. For highly insubordinate and outrageous conduct when a prisoner in the Guard-room, in striking Corporal John Webbe, the Corporal of the Guard, a violent blow in the face with a broom handle.

"Sentence—To undergo imprisonment, with hard labor, for the space of two years; and, also, the forfeiture of all advantages as to additional pay and pension on discharge.

"To be imprisoned at the Head Quarters of the Regiment, until an opportunity serves of sending the prisoner to the Kingston Penitentiary.

(Signed) "J. A. HOPE,  
Major General.

"Quebec, 30th January, 1845."

"General character, extremely bad, (will not work if he can help it, and is at times very violent.)

"I certify that I have examined Private John Donovan, (3) 43d Regiment; he is in good health and free from disease.

(Signed) "J. MILLER,  
"Surgeon, 43d Regt."

"Description:—"Name, John Donovan, (3); age, 33 years, 9 months; height, 5 feet 8 $\frac{1}{2}$  inches; complexion, sallow; hair, brown; eyes, gray.

(Signed) "J. FORLONG, Lt. Col.  
"Commanding 43d Light Infantry."

"To the Governor of the  
"Penitentiary, Kingston."

(Additional.) "It is my opinion that Private John Donovan, (3) 43d Regiment, has been simulating insanity, and that his aim at present is to intimidate those about him, by which means he escapes hard labour.

(Signed) "J. MILLER,  
"Surgeon, 43d Regt.

"Quebec, 1st May, 1845."

"A true copy,

(Signed) "F. BICKERTON,  
"Clerk."

We cannot think the Warden's defence a good one. His attention had been specially called to the fact that symptoms of madness, whether real or feigned, had been exhibited by Donovan; and while it was his duty to guard against being imposed on by the simulation of insanity, it was much more his duty to investigate closely and bear patiently with such a subject, until it was clearly ascertained that he was a responsible agent. Instead of this we find that within six days of his arrival, Donovan is subjected to the lash, flogged again within a week, and almost daily afterwards, until he is pronounced insane.

The punishment inflicted on him is frightful. Seven floggings with the cats in a fortnight, and fourteen floggings in four weeks with cats or raw-hides. It is very clear that if the man was deranged when he arrived, or had any tendency towards it, that the treatment he received was calculated to drive him into hopeless insanity. We think no one can read Donovan's committal, and the list of offences committed by him in the Penitentiary, without coming to the conclusion, that he was not sane.

This case strongly manifests the reckless and unfeeling manner in which corporal punishment has been awarded in the Penitentiary.

16. IN GOADING CONVICT NARCISSE BEAUCHE', BY EXCESSIVE PUNISHMENT, INTO A STATE OF INSANITY, OR AGGRAVATING THE MALADY UNDER WHICH HE LABORED.

This Convict was committed on 7th Nov., 1845, for three years, aged 19. Having been declared insane, he was removed to the L. C. Lunatic Asylum 12th August, 1846.

The following punishments were inflicted on him:—

1845.

Dec.	4,	4	raw-hide, and bread and water—Talking at dinner.
	19.	4	do. do.—Talking and laughing at breakfast.
	19.	4	do. do. do. at dinner.
	24.	4	do. do. do. do.
	27.	4	do. do.—Making noise in cell.

1846.

Jan.	3,	6	do. do.—Having tobacco.
	3.	6	do. do.—Talking and playing.
	5.	6	do. do.—Talking in cell at 4 A. M.
	6.	6	do. do.—Talking and laughing at work.
	16.	9	do. do.—Talking, laughing and playing with Convict.
	31.		Bread and water—Making signs.
Feb.	9.	6	do. do.—Talking and staring.
	16.	6	do. do.—Laughing and playing.
	17.	6	do. do.—Talking at breakfast.
	24.	6	do. do. do. at dinner.
March	3.	6	do. do. do. at breakfast.
	5.	9	do. do.—Quarrelling with Convict.
	5.	9	do. do.—Tricks with Convicts.
	6.	9	do. do.—Stubborn and disobedient.
	9.	9	cats, and bread and water—Outrageous and disorderly in cell.
May	20.	9	raw-hide, and bread and water—Dancing in cell, and impertinent.
	25.	6	do. do.—Noise in cell, impertinent to Keeper.
	25.	9	do. do.—Unruly in cell.
June	1.	9	do. do.—Walking in cell at half-past 4 A. M. disorderly.
	8.	6	do. do.—Disobedience.
	20.		Bread and water—Being very insubordinate, when brought out to work; said he would not—nor could not—work for any one.

All committed in one day.

Thomas Fitzgerald—preliminary examination:—

"Recollects Narcisse Beauché, the French boy, who was sent to the Lunatic Asylum; he was very severely flogged; he was only a small boy about 13 or 14 years of age; to the best of witness's belief he was flogged with the cats; witness was well convinced that Beauché was insane for many months before he was sent to the Asylum."

James Kearns—preliminary examination:—

"Recollects the French boy Beauché; he was a small chap; he was severely punished with the raw-

hide, and witness thinks once or twice with the cats; thinks he was not in his right mind; he was often punished for getting excited through the night; witness thinks this was one of the turns of his insanity."

By Mr. Smith :—

"Recollects Narcisse Beauché; he was from fifteen to twenty years of age, witness thinks. He was very unruly; the Keeper used to say so; does not know whether he was insane when he first came to the Penitentiary; believes he was punished with the cats; thinks two or three times, but kept no memorandum of punishment. Witness thinks it might be six months before Beauché went out, that he was insane. Thinks it would be very cruel of any officer to report him for punishment, if the officer knew him to be insane; if witness believed him to be insane, he would not report him for punishment. (The Punishment Book is produced, by which it appears that Beauché was reported by witness on the 2nd March, 1846, being three months before Beauché left the Prison.)"

By Commissioners :—

"Would not report Brown with a view of having him punished, but for the purpose of making the Warden acquainted with the violence committed. Witness does not consider himself a proper judge whether a Convict should be punished or not, but reports the irregularities of Convicts as a portion of his duty. In reporting Beauché, witness did not do so for the purpose of having him punished, but for the reason above stated.

Keeper Swift—preliminary examination :—

"Recollects the boy Beauché; he was very severely flogged; he was a small boy; he was not in his right mind; he displayed the most frantic manoeuvres; he was quite crazy; he was often punished for acts committed in a state of mental excitement."

By Mr. Smith :—

"Recollects the Convict Beauché, who was insane; would not say he was more than fifteen or sixteen years of age; he might have been older; he was very unruly at the time he was said to be insane; did not know anything of his conduct prior to that period. Witness thought him insane; it was not when he first came in, but afterwards. Cannot say how long it was after he came in that witness considered him to be insane; it is witness's belief that Beauché was a year in the Penitentiary before witness thought him to be insane. Believes he has been punished with the cats; does not know how often; he may have been punished six times, but witness cannot say about it; does not know how often he was punished with the raw-hide. Witness supposes that Beauché remained five or six months after witness thought him insane; he may have been more or less; witness cannot speak confidently about it. Witness may have reported Beauché within two months of his leaving the Prison. Keepers have to report irregular conduct."

For the defence, the Warden called the following witnesses :—

Dr. Sampson—By Mr. Smith :—

"Recollects Narcisse Beauché, but cannot remember any particulars of his case. He was a boy with a bald head from former disease of the scalp. Beauché came in with a sore head; cannot say

whether Beauché's sore head affected his brain; it might have done so."

Keeper Manuel—By Mr. Smith :—

"Narcisse Beauché was once in witness's gang; does not recollect how long he was in the gang. He was a very wicked boy; if Beauché did not get what he wanted, he would fly into very great passions; he was quite furious. Witness had no reason to think that Beauché was mad while under witness's care, excepting that he was subject to these violent fits of passion for a little while."

By Commissioners :—

"Is aware that Beauché has been declared insane, and has been sent to the Lunatic Asylum."

Discharged Convict Ramsden—By Mr. Smith :—

"Recollects Beauché, a boy with a sore head; he was not mad."

It appears that this youth got twenty-four corporal punishments within six months of his arrival, and all for offences either childish in their character or the evident results of a disordered mind. The circumstance that the lad was afflicted with a disease in the head, should have secured for him, if not milder treatment, at least protection from punishment hurtful to his health, mental or bodily.

But there is another feature in this case, which marks it more strongly than the previous ones :

Ex-Guard Robinson—preliminary examination :—

"Recollects a Convict boy, named Booshee, (Beauché); he was a very small boy, from twelve to fourteen years of age; he was often punished very severely with the cats. His usual offence was making a noise in his cell. Recollects one night, about two years ago, when witness was on guard over the prisoners, the Prison was disturbed by this boy. He awoke in a great fright, and commenced shouting out that there was something under his bed, and calling for the Priest to come and see him. He climbed up on the rails of his window and door, screaming at the height of his lungs; blood and froth came from his mouth. Keeper Hooper went to the Warden, and called him out of his bed; it was near midnight. When the Warden arrived, the boy was still screaming. The Warden immediately said—"open the door, till I bring this scoundrel out." Hooper opened the door, and at Warden's desire, witness brought out Booshee, who was quite naked; the boy was laid on his back, and they tried to put a gag in his mouth, but did not succeed. The boy then told the Warden, in French, that he would be quiet, and he was put back into his cell. Warden told witness what boy said. The moment the boy was put back he became as bad as ever, crying out that something was under his bed. The Warden then ordered him to be taken out of his cell again; Hooper and witness held him down on the ground, and the Warden flogged him with a rope's end, as long as he could stand over him. The boy was very severely cut; the stripes broke the skin. Witness's shirt received so much blood from contact with the boy, that he had to change it next morning. The boy never left the cell afterwards, witness thinks, until he was declared insane, and sent to the Lower Canada Lunatic Asylum in the custody of witness."

To meet this the Warden produced,—

Keeper Hooper—By Mr. Smith :—

“ Recollects being called upon one night to go to the East wing to Narcisse Beauché, who was making a noise in his cell. Witness was one of the Keepers on guard that night; there were two Keepers; the other Keeper was Ballantine; the Warden was in the Wing before witness came there. The Warden ordered witness to put Beauché in the dark hole, and the boy was taken out of his cell for that purpose. He used violence towards witness; he bit witness in the hand, which was sore for nine months in consequence. Witness put Beauché in the dark cell; he remained there until breakfast time. It was towards morning when witness and Warden were sent for to Beauché's cell. Witness saw the Warden strike Beauché with a small cord; this was for climbing up the door of his cell, of which he would not lose his hold. Beauché was struck about the hands; Beauché's shirt was on at this time; did not see any blood about Beauché; if there was any it must have proceeded from witness's hand, which bled very much. Did not hear the Warden use any violent or harsh language toward Beauché. Beauché was on the ground when witness tried to put the gag in his mouth. All three Beauchés were very bad boys. Cannot say whether Beauché went to his work the next morning; thinks he was punished that morning for his conduct the preceding night.”

By Commissioners :—

“ Would think that Narcisse Beauché was about sixteen or seventeen years of age; he was small of his age. He was shouting and screaming in his cell at the time when witness and the Warden went to him; his shouts and screams were such as might proceed from fear. Did not hear Beauché complain of having seen a ghost, but had heard other officers say that he complained of having seen the ghost of his mother in his cell; this was previously to the night in question. Does not know of his having complained that some one was under his bed. He did not call for the Priest in witness's hearing; has not been told that he did so. Beauché spoke French to the Warden; he could speak broken English. Witness did not understand what Beauché said when he was crying out in his cell. When the Warden went to Beauché, Beauché was removed from his cell, and upon his promise to be a good boy, the Warden directed him to be replaced in his cell. Beauché immediately continued his noise, and it was upon the second attempt to remove him from his cell that witness was bitten in the hand, and that the rope-end was applied to Beauché's hands. The Warden then had Beauché removed from the cell for the second time. Beauché was then placed in the avenue in the front of his cell; he was still screaming and shouting. Mills and, witness thinks, Robinson, were holding Beauché while witness was trying to put the gag in his mouth; the boy was then laying down on the floor. Witness did not see the Warden strike Beauché excepting with the rope upon his hands to make him let go his hold of the door. The Warden was with Beauché before witness arrived. Witness had to go away before Beauché was removed to the dark cell, in consequence of his hand bleeding so much. When witness left, Beauché was still in the avenue; witness returned as soon as possible, and assisted in the removal of Beauché to the dark cell. Witness believes that Beauché was shortly after this declared to be insane, and removed to the Lunatic Asylum.”

By Mr. Smith :—

“ Does not know whether Beauché was sent out to work the morning after he had been in the dark

cell. Believes that he was punished the next morning; thinks he was punished with the raw-hide. Witness supposes he was away between five to ten minutes, when he left Beauché to attend to the bleeding of his hand. It was in the struggle with Beauché, in attempting to gag him, that Beauché got upon the floor.” \* \* \* \* \* “ The Punishment Book is produced, by which it appears that on the 9th March, 1846, Narcisse Beauché was punished with nine cats and bread and water, for being outrageous and disorderly in his cell. Witness believes that this entry refers to the transaction of which witness has spoken.”

We think Hooper confirms, in every essential point, the evidence of Robinson. The thought of the Warden of a high penal Institution, in the middle of the night, and while evidently labouring under personal excitement, flogging a maniac lad with his own hands, is too horrible to dwell upon. The facts of the revolting affair are so fully elicited in the evidence, as to require no comment.

17. IN GOADING CONVICT MICHAEL SHEEHAN, BY EXCESSIVE PUNISHMENT, INTO A STATE OF INSANITY, OR AGGRAVATING THE MALADY UNDER WHICH HE LABOURED.

This Convict was committed on 27th November, 1846, for life. On 13th November, 1847, he was pardoned, and sent to the Lunatic Asylum. The punishments inflicted on him were as follows :—

1846.  
 Nov. 30. 48 hours own cell—Refusing to work.  
 Dec. 9. 48 do. do. —do. and walking about.
1847.  
 Jan. 30. 48 do. dark cell, in irons—Assaulting Guard, and swearing.  
 Feb. 8. 36 cats, and bread and water—Refusing to work; insolence.  
 Mar. 31. Bread and water—Bedding badly put up.  
 April 19. Box, and bread and water—Insubordinate.  
 20. Bread and water—Bedding badly made up.  
 May 19. do. do. —Talking in cell.  
 21. 36 cats, do. do. —Insubordinate, and attempting to strike Keeper  
 26. Bread and water—Sleeping with clothes on.  
 June 8. Box, do. do. —Making noise in cell; wearing clothes all night.  
 21. Bread and water—Refusing to work.  
 24. Box, do. do. —Swearing in cell.  
 30. do. do. do. —Staring, laughing, and talking at table.  
 July 1. Bread and water—Talking in cell.  
 2. do. do. —Idling and staring.  
 5. do. do. —do. do.  
 6. 36 cats, do. do. —Striking a Convict; raised fist, and threatened to strike Guard.  
 7. Box, do. do. —When taking him to be ironed, caught Guard by throat.  
 14. do. do. do. —Sleeping with clothes on.  
 19. do. do. do. —do. do. do.  
 20. do. do. do. —do. refusing to obey; calling officers a “ bloody murdering crew.”  
 21. do. do. do. —Sleeping with clothes on.  
 26. do. do. do. —do. do.  
 29. do. do. do.  
 Aug. 5. Bread and water—Talking;

1847.  
 Aug. 16. Box, and bread and water—Sleeping with clothes on.  
 Sept. 7. do. do. do. —Striking a Convict.  
 17. do. do. do. —Saying he would not oil his boots.  
 21. Bread and water.  
 22. do. do.  
 25. Box, do. do. —Refusing to leave his cell in the morning.  
 Oct. 1. Bread and water.  
 6. do. do.  
 21. do. do.

The Warden called witnesses for the defence.

Guard Watt—By Mr. Smith :—

“Recollects Convict Sheehan; he was a very sullen, obstinate fellow; saw no difference in him from the time he came in till the time he went out; he was always outrageous. Does not know whether he was reported by the Doctor to be mad.”

Keeper Hooper—By Mr. Smith :—

“Recollects Sheehan. Does not know that he saw any difference in him from the time he came in to the time he went out; does not know whether he has been reported by the Surgeon to be insane.”

Guard Martin—By Mr. Smith :—

“Recollects Convict Michael Sheehan. He acted very curiously sometimes; he was very sullen and obstinate. Saw no difference in him from the time he came to the time he went away.”

Dr. Sampson—By Mr. Smith :—

“Recollects Convict Michael Sheehan. Reported him to be insane on the 3rd November, 1847. Sheehan was always strange in his manner; he was of a sullen disposition; witness considered him so the first time he saw him. Witness’s attention was first called to Sheehan’s insanity on the 4th October, 1847; did not report to the Board on this case until called upon by the Board to do so, further than the entry made in the Punishment Book on the 4th October, 1847,—‘seems insane,’—which entry witness was aware would call for a report from the Board. Witness considered Sheehan to be of sound mind on July 5, 1847. Came to no conclusion as to the cause of Sheehan’s insanity.”

By Commissioners :—

“With reference to the foregoing evidence, relative to the state of Sheehan’s mind on the 5th July, 1847, witness does not wish to express the opinion that Sheehan was of sound mind at that date; but that his attention had not been so given to Sheehan as to induce witness to doubt his sanity at that period. Cases of insanity might exist for months among the Convicts without the attention of the Medical attendant being given to it. It does not necessarily come under the Doctor’s notice so to observe Convicts as to discover such insanity, unless his attention is specially directed to it.”

Discharged Convict Ramsden—By Mr. Smith :—

“Recollects Convict Sheehan; he was not mad.”

This is another case of insanity occurring after frequent punishments for insane-like offences; but some of the objectionable features found in previous cases, do not here present themselves.

18. IN GOADING CHARLOTTE REVELLE, A CONVICT, BY EXCESSIVE PUNISHMENT, INTO A STATE OF INSANITY, OR AGGRAVATING THE MALADY UNDER WHICH SHE LABORED.

This Convict was reported by the Surgeon on 18th January, 1848, to be of unsound mind. Her time is expired, but she is still in the Penitentiary. The following punishments have been inflicted on her, as appears by the Warden’s Punishment Ledger :—

- 1846:  
 July 11. 24 hours dark cell—Refusing to walk.  
 16. 24 do. do. —Bad language;  
 19. 46 do. do. —Outrageous behavior.  
 23. 36 do. do. —No offence reported in Punishment Book.  
 28. 24 do. do. — do. do. do.  
 13. 24 do. do. — do. do. do.  
 18. 24 do. do. — do. do. do.  
 Aug. 12. 48 do. do. — do. do. do.  
 15. 48 do. do. — do. do. do.  
 31. 48 do. do. — do. do. do.  
 Sept. 7. 48 do. do. and 6 raw-hide—do. do. do.  
 26. 12 hours dark cell—Outrageously noisy and abusive.  
 28. 11 do. do. —No report.  
 28. 48 do. do. —Destroying clothes; great violence.  
 Oct. 1. 48 do. do. —Great violence.  
 16. 19 do. own cell—Refusing to wear shoes.  
 Nov. 3. 48 do. dark cell, and bread and water—Refusing to work; revengeful feeling to Mrs. Cox.  
 20. 24 do. own cell—Abuse; accusing the Matron of starving her.  
 23. 48 do. dark do.—Disorderly conduct; breaking panes of glass.  
 Dec. 4. 48 do. own do.—Grossly insulting the Surgeon.  
 24. 48 do. dark do.—Destroying slippers.

1847.  
 Jan. 6. 48 do. do. do.—Abuse, &c.  
 March 2. Box, and bread and water—Disorderly conduct.  
 3. do. do. do. — do. do.  
 4. do. do. do. and pinioned—Cutting strait waistcoat, and saying, “now report me for that, d—d brutes.”  
 19. do. do. do. —Disorderly.  
 22. do. do. do. —Punished for offences committed on 20th.  
 20. do. do. do. and strait waistcoat—Disorderly; cutting her shoes; knife concealed in pocket.  
 29. do. do. do.  
 31. do. do. do. —Tearing blankets.  
 April 1. do. do. do. —On being relieved, called Matron names, and said, “nobody should conquer her.”  
 2. do. do. do. —Cursing the Matron; breaking cell down.  
 2. Bread and water—Destroying lock of handcuff.  
 3. Box, and bread and water—Not reported in Punishment Book.  
 3. do. do. do. —Abusing Matron; “saying all the devils in hell, should not conquer her.”

- 1847.
- April 13. Box and bread and water—Disrespectful language respecting Warden.
15. do. do. do. —Telling Warden that she would tear her clothes and be fixed in hell; sick, not punished.
16. do. do. do. —Abuse; not punished; sick.
7. do. do. do. Abusing Matron.
17. 48 hours own cell—Saying Warden was “an old brute;” and threats.
19. Box, and bread and water—Throwing shoes into night bucket.
20. do. do. do. —Calling Warden a “d—d old brute,” and saying they must not try to master her, for she’d rather die than give in.
21. Own cell—Not reported in Punishment Book.
- May 5. 48 hours dark cell—Abusive to Surgeon and Matron.
- June 14. 24 do. own do.—Impertinence to Matron.
15. 48 do. dark do.—Endeavoring to break out of cell.
28. Box, and bread and water—Tearing clothes; abusive.
- July 2. 24 hours own cell—Quarrelling with Bridget Donnelly.
3. 24 do. do. do.—Impertinent to Matron.
- Oct. 7. 30 do. dark do.

On the 15th January, 1848, the Board of Inspectors having had their attention called to the violent conduct of this Convict, and to an attempt at suicide made by her; called upon the Surgeon “for a certificate as to the state of her mental condition, with the view of application being made to the Government for her removal to a Lunatic Asylum, should her case require it.” On the 16th January, the Surgeon, in accordance with the desire of the Board, reported that Reveille “labours under that species of mental derangement which may be termed moral insanity.” It appears, however, that when the Warden and Inspectors received this report of Dr. Sampson’s they dissented from the Surgeon’s opinion, and desired to call in further medical advice, but without the knowledge of Dr. Sampson. A long correspondence ensued on the case which is given elsewhere, but is not material to this issue. (Reveille was not removed to a Lunatic Asylum, and her time of incarceration expired on 14th February, 1849, but in consequence of her condition, bodily and mental, the Warden and Inspectors have felt it their duty not to discharge her from the establishment at this inclement season.)

The defence of the Warden to this charge, is, that Reveille is not, and has not been, insane; and that part of the punishments charged as inflicted on her, were awarded, but not executed.

On the former point, the evidence is as follows:—

Mrs. Cox—preliminary examination:—

“There was only one instance of flogging women while witness was in the prison; the name of the culprit was Reveille. Witness thought, at times, that this woman was insane. Witness reported to the Warden that she thought her insane. ‘Well,’ answered the Warden, “report it, and I will forward

the report.” Witness did not report, as she was unwilling to do this on her own judgment. She thought the Warden should have advised with her, and sent the Surgeon to speak to her about it; but he did not; all he would say, was as above. The only instance of gagging was in the case of Reveille. It was done without the knowledge of witness. Mrs. Pollard reported her, and the Warden ordered the punishment, without any reference to witness. She lost the use of her limbs in the box, and was carried to her cell, where she remained until she was sent to hospital by the Surgeon. She recovered the use of her limbs.”

Mrs. Coulter—preliminary examination:—

“Recollects Convict Reveille. She behaved very well while witness was in the Penitentiary. Witness has no doubt this woman was insane, and always thought so; told this to the Doctor.”

By Mr. Smith:—

“Witness left the Penitentiary in June or July, 1846. Reveille was in the Penitentiary only a short time before witness left. Reveille was very sick; thought she would have died; she was swelled by constipation. She never deserved, and never had, punishment before witness left; her conduct was very good. Thought by the look of her eye, and the way she talked, that she was insane; told the Surgeon she thought so; the Surgeon said she was odd in her ways, but time only would tell if she were insane; he instructed witness to keep her quiet, and let nothing excite her mind.”

Rev. R. V. Rogers—preliminary examination:—

“Is quite convinced Reveille is insane; was the first to mention her insane; mentioned this to the Warden, he thinks—at any rate, to the Surgeon.”

By Mr. Smith:—

“Witness thinks that Reveille is insane; would say so from her conduct generally while at the Penitentiary. Witness states several occurrences in Reveille’s conduct which led witness to this opinion; has stated this opinion to the Surgeon much more than a year ago; has understood that the Surgeon has reported Reveille to be insane; does not know when the Surgeon did so. Has had frequent private conversations with Reveille on religious subjects.”

For the defence, the Warden called several witnesses.

Mrs. Martin—By Mr. Smith:—

“Recollects a Convict named Reveille; she was taken sick about a fortnight after she came to the prison; she frequently reported herself to be ill. The Surgeon always saw Reveille when she was keeping her bed; he never refused to see Reveille, so far as witness knows. She used to complain of a lump in her side, and used to have large swellings on her body; she complained of inability to walk from weakness in her limbs; she complained of being unable to straighten her leg. Dr. Sampson once gave Reveille up as likely to die; he came on one occasion with another Doctor. Reveille has told witness that she was worse when in Montreal. (Mr. Smith puts in a certified copy of a letter from Dr. Arnoldi, respecting the case of Reveille, while under that disease in the Montreal Jail, dated June 15, 1848.) The box was not used as a punishment while witness was at the Penitentiary. Never

thought Reveille mad; considers her a very wicked woman, of very violent temper. Her punishments were confinements in her own cell, and once in the dark cell; such punishments are not calculated to injure a Convict's health. Reveille sewed, and did what she wished, in the dark cell."

Mrs. Pollard—By Mr. Smith :—

"Is not aware that Reveille ever lost the use of her limbs from confinement in the box—witness was Assistant Matron under Mrs. Cox—does not think that Reveille was ever in the box more than three times; witness once put her in the box for six hours; had authority to do so; her general conduct was very violent. Reveille has told witness of a hurt in her side which he got before she came to the Penitentiary; Reveille said she was on a step ladder in a shop, and met with an accident which produced this hurt in her side; she was six months in bed with it; Reveille has complained of that hurt since she has been here; Dr. Nelson attended her in Montreal; from the nature of Reveille's complaints here, witness would think that they are the same as those she suffered from before she came; Reveille was in good health; her usual health, after being put into the box. She has destroyed a very great number of things in the Prison; witness does not think she is insane; she was very frequently violent and abusive to Mrs. Cox; once heard Mrs. Cox say that she would glory to stand, without a wince, to see Reveille get three dozen with the cats. In general Reveille would put herself on the sick list when ordered for punishment. Dr. Sampson has sometimes said that it was of no use to see Reveille, when he has been asked to do so, as he did not think she was sick. The Doctor said that he wished a stone place could be built for Reveille, where she could not destroy anything, as she was not fit to be placed where she was. The Doctor has given her up as going to die. Witness has not the least idea that Reveille will die in the Penitentiary; thinks she is too strong and too wicked to die. Every indulgence has been shown to Reveille; no expense has been spared, either in food or clothing, to make her comfortable; witness has many times given her provisions; she has been fed a very great deal from the Warden's table."

By Commissioners :—

"Reveille would commit acts of great violence without any provocation; she would smash the windows with a bucket, because the Doctor has refused to give her a warm plaster. Some of the indulgencies proceeded from the doctor's order; he has said she was to get whatever she wanted."

Mrs. Chase—By Mr. Smith :—

"Reveille frequently speaks of her leg being contracted; she says that it arises from laying in bed so long; she cannot straighten the leg; the leg was not in this state when witness first came to the Penitentiary. Reveille has never been put in the box since witness has been at the Penitentiary, nor has she had any punishment. Reveille has told witness that she could contract her leg by tying it up; Convict Cooke had told her how to do it. Cooke is in a similar state, she cannot stand without a crutch; another Convict has tried the same experiment; witness discovered it. Reveille told witness that the cause of the lump in her side was falling down stairs, and falling against some candlesticks when in Montreal; she said that Dr. Nelson attended her for a long time. Reveille has always

shewn the same temper and disposition since witness has been here." \* \* \* \* \* "Witness never stated before the Inspectors that she believed Reveille to be mad; nor before the Commissioners."

Dr. Sampson—By Mr. Smith :—

"Convict Reveille is a very violent woman. Has understood that she has been frequently punished for her bad conduct; thinks the punishments she has received have been instrumental in causing her illness; the restraints of punishment were productive of violent conduct on her part, and this violence aggravated her complaint. (There is put in the following entry from the Hospital Registry of 17th October, 1847): —'Admitted this day Charlotte Reveille, with rather profuse Menorrhagia, brought on, no doubt, by her extreme violence and undue exertion while frequently confined to her cell, and placed in the punishment box for outrageous behaviour; the complaint is of some days standing, and she has been treated for it in her cell; the skin is cool, and there is no constitutional disturbance, pulse not accelerated, but rather weak.' Was called upon by the Inspectors to give an opinion as to the effect of the punishment of the box; made a report in consequence; does not remember more than one report on this subject; this was on 15th December, 1847. Is shewn a report in witness's handwriting on the subject of the box, dated the 20th June, 1847, which witness admits to be his. (Certified copies of each of these reports are handed in.) Witness has sometimes declined to put Reveille on the sick list when she has complained; has several times said that he would not go near her; the rule is, that witness should visit every day every sick and complaining Convict. Witness has expressed an opinion that Reveille should be put in some place where she could neither see nor hear any one. Witness considers that Reveille would often express a wish to see him for the mere purpose of violence; she often complained when there was no necessity for witness to visit her. Reveille went upon the sick list, for the first time, on the 17th May, 1846; thinks that the complaints entered in the Hospital book of that date, viz., "Constipation and Colic," were put down at the time that Reveille's name was entered in the book; will not be certain of it—sometimes adds to the entry after it is first made—Reveille was taken into the Hospital the next day; she was discharged from Hospital on the 1st July, 1846. She was again put on the sick list, on the 30th July, but no complaint was stated; it is sometimes difficult for a medical man to determine at the moment the nature of a complaint; witness therefore sometimes leaves this entry blank, with the intention of filling up the blank when the nature of the complaint is determined: she was discharged from the sick list on the 3rd of August, 1846. She was taken into Hospital on the 22nd August, 1846, and was discharged from thence on two days after; her complaint was then injured loins. She was placed on the sick list on the 5th November, 1846, no complaint stated; she was discharged from thence on the 13th November. She was again placed on sick list on the 11th January, 1847, complaint "Colic;" taken into Hospital on the 14th January, and on 19th January was discharged therefrom. None of the complaints for which Reveille was treated as above, appeared to witness to have been the result of confinement in the box. (The Punishment Book is produced, by which it appears that the first time on which Reveille was punished by the Box, was on the 2nd March, 1847.) Witness has several times expected that Reveille was going to die; this was subsequent to the 2nd March 1847; thinks that he once considered Reveille in great danger in Mrs. Coulter's time. The Chaplain has frequently stated to wit-

ness that it was his opinion Reveille was insane ; does not remember that Mrs. Coulter ever stated a similar opinion, but she may have done so ; thinks Mrs. Cox has given such an opinion, but cannot speak with certainty. The mind of Reveille was a problem to witness from the time he first saw her."

Thomas Costen—By Mr. Smith :—

" Knows Convict Charlotte Reveille ; has seen her behave in a very outrageous manner ; it has been necessary to restrain her ; has superintended punishment inflicted on her ; does not believe she is insane, only bad-tempered. As far as witness knows, her conduct has always been the same since she came to the prison." \* \* \* \* \*

Witness is asked, if the Inspectors did not, by minute of 5th April, 1847, order " Charlotte Reveille to be gagged, whenever it might be necessary to reduce her to silence ?" and witness says, " they did."

Mr. Sheriff Corbett—By Mr. Smith :—

" Recollects seeing Convict Reveille in the summer of 1848 ; it was in June ; asked her how she was treated ; it was on a Sunday ; cannot remember what she said, but knows she complained of no ill-treatment ; thinks she said Mrs. Smith and Mrs. Pollard were kind to her, and that the former had sent her in nourishing food ; she said the Warden was kind to her ; does not remember that she said anything of her own conduct, or of Dr. Sampson's conduct to her."

The second ground of the Warden's defence, viz., that the punishments contained in the preceding table were awarded, but not actually inflicted, rests on the testimony of the Head Keeper.

Thomas Costen—By Mr. Smith :—

" Witness is referred to the Punishment Book of 20th March, 1847, and says, Reveille was reported on that day, and punished ; on 22nd March, she was reported, but not punished ; on 29th March, she was reported, but not punished ; on the 3rd April, 1847, she was reported, and punished on 5th and 6th ; on 7th, she was reported, and confined to the box on 17th ; on the 13th April, she was reported, but not punished ; on the 15th April, she was reported, and not punished ; on the 16th April, she was reported, and not punished ; on the 17th, she was reported, and punished, but witness cannot say from the book on what day ; on 19th April, she was reported, and not punished, being sick ; on 20th, she was reported, and not punished, being sick ; on 21st, she was not reported ; on 5th May, 1847, she was not reported."

By Commissioners :—

" Presumes every punishment entered in the Warden's Punishment Ledger, was inflicted."

Q. You have sworn that Convict Reveille was reported for punishment on 22nd March, 29th March, 13th April, 15th April, 16th April, 19th April, and 20th April, 1847 ; but that in no one of these instances was punishment inflicted on her. Please to refer to the Warden's Punishment Ledger, and say if punishments are not registered in that book as having been inflicted on Reveille on these days ?

A. Yes ; Reveille is registered in the Warden's Ledger to have been put in the box on each of these days. The entries are in the Warden's hand-writing.

Q. How then did you swear that these punishments were not inflicted ?

A. Because in the original Punishment Report Book a memorandum is made opposite each of these entries in question, stating that punishment, although ordered, was not inflicted.

Q. Are not these memoranda you speak of, in pencil, and in the Warden's hand-writing ?

A. Yes ; in every case.

Q. If these pencil memoranda had not been there, would you not have sworn that, to the best of your knowledge, these punishments were inflicted ?

A. Yes.

Q. In every one of these instances, was not the punishment awarded by the Warden, and are not all the entries in his hand-writing in ink ?

A. Yes.

Q. Are not these awards of punishment entered in the Punishment Book immediately before breakfast, and are they not carried into effect immediately after breakfast ?

A. Yes.

Q. Could any Convict have been relieved from punishment without the special consent of the Warden ?

A. No.

Q. Is there not a mark made in the Punishment Book, by the Kitchen-keeper, showing the date when any given punishment was inflicted ?

A. Yes ; a date is put in opposite the punishments inflicted for any given day.

Q. Are not these marks regularly made on all the days in question as to Reveille, and would you not have pronounced from them (but for the pencil marks) that all the punishments in question were inflicted ?

A. As regards the males, would have said so ; but in the case of women ordered for punishment, it is the duty of the Head Keeper to see the sentence carried out ; and in several instances, when witness went to see Reveille put in the box, she was sick, and punishment was deferred.

Q. Refer to the Warden's Ledger, and say if Reveille is there registered as having been put in the box twice on 3rd April, 1847, and once on 7th April ; in her own cell on 17th and 21st April ; and in the dark cell on 5th May, 1847 ?

A. Yes ; she is.

Q. Look at the Punishment Book of 1st April, 1847, and say if Reveille was not on that day ordered to be confined in the box ?

A. She was ; but there is an addition to the award in ink, stating, that from sickness she was not then punished.

Q. Is that ink entry in the same place on the page of the book, as the pencil memoranda you have formerly referred to ?

A. No; in the ink entry it is under the award; in the other cases, the memoranda were placed in a different column.

Q. You swore that the two reports of 3rd April were inflicted on the 5th and 6th April, 1847—how did you find that such was the case?

A. From date placed opposite the awards.

Q. Are not these dates placed in the column where the Kitchen-keeper usually places his mark of the date of punishment?

A. Yes.

Q. When you swore that the offence of 7th April was punished on 17th April, was it not on precisely the same foundation as in that of 3rd April?

A. Yes.

Q. Are not all these dates, from which you have sworn, in the hand-writing of the Warden?

A. Yes.

Q. Can you find any entries in that column in the Warden's handwriting, except in the case of Reveille?

A. No; the entries in that column are all in Frank Smith's writing, or in witness's, except in the case of Reveille.

By Mr. Smith:—

Witness, whenever punishment of Reveille by box or dark cell was to be inflicted, went to the women's apartments, and superintended such punishment.

Frequently returned without inflicting punishment on account of her reporting herself sick. The Kitchen-keeper does not see the punishments inflicted on females; nor has he any other means of knowing that such are inflicted except through the information of other officers. Witness refers to Punishment Book, and on 4th May, 1847, finds that Convict Bridget Donelly was twice reported on that day, and that opposite the awards the dates "4th May" and "6th May," are written in the hand-writing of the Warden, as the dates when the punishments were inflicted. Witness, on reference to the Punishment book, says the following are the only entries of dates in the case of Reveille made in the hand-writing of the Warden:—Opposite the award of 2d March, 1847, the Warden has written as the date of infliction—

		" 2d March."
Opposite 19th March, he has put	" 20th March."	
" 31st "	" " " 31st March."	
" 1st April	" " " 3d April."	
" 2d "	" " " 5th April."	
" 2d "	" " " 6th April."	
" 3d "	" " " 13th April."	
" 5th "	" " " 16th April."	
" 7th "	" " " 17th April."	

It was impossible for Reveille to be twice punished by the box on 3d April, as stated in the Warden's Ledger.

By Commissioners:—

Q. You say that the two reports of 4th May against Bridget Donelly are entered in the Punishment book, in the Warden's hand-writing, as having

been inflicted on "4th May" and "6th May;" please refer to the Warden's Ledger and say when they are there stated to have been inflicted?

A. They are there stated to have been inflicted on 4th May and 5th May.

Q. Is it not the usual practice when a Convict is reported for two offences on the same day, to punish them on two successive days?

A. Yes; always, except in cases of sickness.

Q. Is it not the fair conclusion then, that the words "4th May" and "6th May," have been written in the Punishment Book by the Warden, since his ledger was posted, as otherwise he would have posted the punishments on the days they are now said to have been inflicted?

A. Cannot say; the Warden may have made an error.

There has been for some years in the Prison a Punishment Report Book, ruled with a column for the offence, a column for the sentence awarded, and a column for the date when the sentence was inflicted; then there is a Punishment Ledger into which the several punishments, inflicted on each Convict, are carried from the Punishment Report Book to his or her debit in a separate account opened for every prisoner. The former book is kept by the Kitchen-keeper, except the award column in which the Warden every morning inserts his award upon each offence. The Ledger has been kept exclusively by the Warden.

All the offences given in the return of Reveille's case are regularly reported in the Report Book—punishment regularly awarded in the Warden's hand-writing—and the date of infliction regularly certified, in the usual manner, by the Kitchen-keeper; and all of them are regularly posted from the Report Book into the Ledger, as having been inflicted, precisely as in our return, in the Warden's own hand-writing.

On the 4th January, 1849, we learned for the first time, (through Mr. Costen's evidence) that any doubt of the infliction of these punishments existed. On examining the Punishment Report Book, we found that opposite several of the entries as to Reveille, pencil-marks had been made by the Warden, stating that these punishments had not been inflicted. We find no such pencil-marks opposite the names of any other Convict. We also observed that in the column kept by the Kitchen-keeper, in which the date of infliction is recorded, the Warden had made pencil-entries opposite several offences of Reveille's, differing from those of the Kitchen-keeper. To understand how this was done, it must be explained that the Kitchen-keeper does not put a date of infliction opposite each offence, but makes one date include a number of punishments; so that although the date of infliction is clearly designated, the date column is frequently left blank. The only similar pencil entries to be found in the books are in two cases of punishment inflicted on Convict Bridget Donelly—and her sanity was doubted as well as Reveille's—a report on her mental condition was also ordered to be made by the Surgeon. A return of punishments inflicted on her, too, was called for by the Surgeon, and all the motives which could have made interpolation desirable in Reveille's case operates in her case.

Cases have frequently occurred, and as to Reveille among others, in which Convicts had punishment awarded, and escaped the infliction at the time, in consequence of sickness; but an entry is made in ink of the circumstance, and in quite a different column from that used in Reveille's case. It is certain that if these punishments had not been inflicted on Reveille, the Warden must have known it immediately after he awarded the punishment, as his consent must have been had to remit the punishment; and if he possessed the knowledge that they were remitted, was he likely to have recorded these punishments in his Ledger as inflicted—and that not in one case, but in many successive instances? There is the strongest possible reason, from the records alone, to believe that the punishments in question were inflicted according to the entries in the Ledger.

But the Punishment Report Book has been often closely examined by at least three members of the Commission, and they have no recollection of having observed these pencil-marks; and Mr. Commissioner Thomas, who compiled the return of Reveille's punishments, feels fully assured that when he extracted the matter from the Report Book, in August 1848, no such pencil-marks were in existence; he is satisfied that he could not have made up the return without seeing these marks, and he states that he would have considered it of the utmost importance in making out such a charge as the present, to be particularly careful in crediting the Warden with every point which might be considered favourable to his defence.

Upon the whole case we think that Reveille came to the Penitentiary in bad health, and probably with a predisposition to insanity; we are fully satisfied that she is quite deranged at frequent intervals; and have no doubt that the severe punishment she received, has greatly aggravated her maladies, physical and mental. We are also of opinion that the Warden has endeavoured to shield himself from the censure, which his treatment of this woman so well deserved, by deliberate falsification of the Prison Records.

Charge VIII. we consider amply established.

### CHARGE IX.

#### GROSS MISCONDUCT AS WARDEN OF THE PENITENTIARY.

1. In granting notes for large sums of money, without authority, and concealing the existence of such notes in his returns to Government.

It appears that the Warden has at different times granted notes to the creditors of the Penitentiary, to the gross amount of £13,812 9s. 5d., and that he thereby kept a large debt due by the Institution afloat without the knowledge of Government, and entailed a considerable amount of interest on the Institution. He was charged with having granted such notes without any authority by statute, and without the consent of the Board of Inspectors.

The Warden called the following witnesses:—

Mr. Bickerton—By Mr. Smith:—

“The Penitentiary is very frequently out of funds; has to pay the contractors with promissory

notes when witness has no money. Keeps an account of all the promissory notes given by the Warden. There were a few such notes given in the time of the Kirkpatrick Board; that Board raised some thousands of pounds by the joint note of the Warden and Inspectors for the use of the Penitentiary.” \* \* \* \* \* “During the existence of the Kirkpatrick Board, the Institution was sometimes out of funds from the Government. Money was raised on promissory notes drawn by the Warden, and endorsed by the Inspectors; there were a few promissory notes issued to contractors by the Warden during the Kirkpatrick Board.”

By Commissioners:—

“There is an estimate of the amount needed for the ensuing year for carrying on the Institution, sent annually to Government by the Warden. For several years, at the commencement of the Institution, the Government seldom gave what was asked; for the last six or eight years all the money asked for by the Warden has always been granted and furnished; the instalments have been regularly paid; but sometimes a larger sum was wanted at one part of the year than other parts, and being out of funds notes were granted. When the whole grants asked for, were paid up by Government, the debts were not fully paid; the amounts asked for were not sufficient to carry on the Institution, and left it in debt. This debt has been accumulating for four or five years; the debt is now about £5000; the Government has never been made aware of the existence of this debt; until the past year this debt has not brought much interest on the Institution.” \* \* \* \* \*

“The only notes ever granted by the Kirkpatrick Board, or any other Board of Inspectors, were three in 1841; one at 90 days from 24th February, for £1500; one on 3rd April, for £1000, and one on 2nd July, 1841, for £500. These notes were not passed away, but negotiated at the Bank by the Inspectors themselves.”

By Mr. Smith:—

“Does not know the cause of the debt due by the Penitentiary; has never compared the amount of the estimate for building purposes with the amount expended; the Master-builder makes out the annual estimate for building materials. In the estimates for the year 1841, the debt due for the preceding year was included; the debt was returned at £2,155 15s. 2d.

Thomas Kirkpatrick, Esq.—By Mr. Smith:—

“Witness does not remember any monies being advanced by the Bank to the Penitentiary on promissory notes during the time that witness was President of the Board of Inspectors. The Cashier of the Bank advanced on the credit of the Institution, and allowed the account to be overdrawn.

The advance was made on the word of witness that the amount would continue to be kept at the same bank. Witness does not recollect that a report was made to the Government, complaining of the personal responsibility of the Inspectors, but such report may have been made.”

James Hopkirk, Esq.—By Mr. Smith:—

“The Board of Inspectors were aware that the Warden was officially in the habit of granting promissory notes; thinks it would have been better to have given money, if they had had money, but as there was no money, the next best thing was to give

notes, which was an accommodation to the creditors of the Institution.

By Commissioners :—

Q. Had the Inspectors ever laid before them a statement of the debts due by the Institution ?

A. Is not aware that they had, unless there was such a statement in March, 1848, though there is no trace of any such in the Minute Book.

Q. Do you know what has been the current amount of debt due by the Institution during your incumbency ?

A. Is not aware.

Q. Are you aware, that a large indebtedness due by the Institution, has been carried from year to year, on which interest has been paid ?

A. Is not aware that such an indebtedness has been carried from year to year ; knows that there is a large debt now, but how long it has existed does not know.

Q. Have you ever informed the Government of the existence of the said debt ?

A. Is not aware.

Q. Has the debt ever been included in the estimates for the ensuing year, annually sent to Government ?

A. Cannot say.

Q. Have not the Government always granted the Officers of the Penitentiary the full amount they asked for in their annual estimates ?

A. Has no doubt they have done so since witness has been an Inspector ; but has paid no particular attention to matters of finance.

Q. Did the Inspectors ever officially authorize the Warden to grant notes ?

A. Is not aware that any such authority has been granted in witness's time.

Q. Are you aware of any such authority before your time ?

A. Is not ; but has not particularly examined the minutes, and cannot tell what they contain.

Q. Do you know the number or amount of notes officially granted by the Warden during your incumbency ?

A. Does not.

Q. Do you know that there was no money in the Penitentiary exchequer when the said notes were granted ?

A. I do not know.

Q. How then did you testify that the said notes were granted as an accommodation to the creditors of the Institution ?

A. Witness's testimony was to the effect, that when there was money, it was best to give it ; but when there was no money, the giving the notes was an accommodation to the creditors of the Institution.

Mr. Sheriff Corbett—By Mr. Smith :—

“ Witness was aware that the Warden gave notes to the creditors of the Penitentiary ; saw one note in the Commercial Bank ; does not know that he ever saw any other note ; saw no objection to the Warden's giving notes when there was no funds. Recommended Mr. Harper to cash the note witness has spoken of, and he did.”

By Commissioners :—

Q. Did your Board ever authorize the Warden to grant notes ?

A. Not to witness's knowledge. The Warden stated that he could pay the Contractors in no other way at the time.

Q. Did you know whether he had money on hand or not, except from the Warden's assurance ?

A. Never ; except when witness saw the monthly return, which showed the cash on hand.

Major Sadlier—By Mr. Smith :—

“ Witness recollects of money being raised by the Inspectors to carry on the Penitentiary on their own notes. The Warden made the note, and the Inspectors endorsed it.”

The evidence, in this case, establishes that the Warden had no authority, by statute, for granting notes, nor from the Board of Inspectors ; that the Warden did, however, officially grant notes to the creditors of the Institution to a large extent, without any such authority ; that there was no occasion for granting the said notes, as the Warden got all the money he asked for from Government, and was paid with great regularity ; and that the facility afforded him by these notes, enabled the Warden to carry on a large debt due by the Institution, which he has never reported to Government, and which has entailed a heavy amount of interest on the Institution.

We can see no necessity for committing a power, so liable to abuse, as that of granting notes in his official capacity, to an unlimited amount, to any Warden ; and we are satisfied, that in the present case there was no such power given or required by the circumstances of the case. We, therefore, think the Warden's conduct in this particular most censurable.

The allegation that the Kirkpatrick Board recognized the practice, is incorrect. The sum raised by that Board was obtained under special circumstances ; and, moreover, that transaction was the act of a large Board, made direct with their bankers—a very different case from the unauthorized and indiscriminate granting of notes by an individual officer. The circumstances under which the Kirkpatrick Board acted, are explained in their report to the then head of the Government.

Extract from the Annual Report of the Board of Inspectors of the Provincial Penitentiary, January, 1842 :—

“ The Legislature, at its last Session, having granted a sum sufficient to cover the expenses of materials necessary for the completion of the East Wing, and also for the erection of some Cottages for the accommodation of the Keepers, the Inspectors hope that they will not for some time be obliged to ask for a larger sum than will be sufficient to cover

the current expenses of the Institution. They cannot, however, let this opportunity pass, of expressing their hope that they may not again be placed in the same position in which they were during the past year: the funds granted by the Legislature of the Province of Upper Canada being exhausted previous to the end of the year 1840, and the Session of the United Parliament having closed in September, a period of nine months elapsed, during which the Inspectors were obliged, on their individual responsibility, to borrow a large sum of money to pay off the arrears due to the officers, and provide means for the support of the prisoners, and were also compelled to postpone the settlement of other claims, by which, no doubt, the credit of the Institution was materially affected. They trust that, as soon as the time of the future sittings of the Provincial Parliament is determined upon, the necessary supplies will be granted to the Penitentiary for a period ending with the close of the Session. With this in view, the Inspectors defer making out the annual estimate until the meeting of the Legislature."

"A true extract.

(Signed) "F. BICKERTON,  
"Clerk."

2. IN PAYING MR. EDWARD HORSEY, ARCHITECT AND MASTER-BUILDER OF THE PENITENTIARY, £200 PER ANNUM, CONTRARY TO LAW.

The salary of the Architect and Master-builder for some years previous to 1846, was £200 per annum; by the new Act of 1846, it was cut down to £100. The Board of Inspectors remonstrated with the Government, but without avail; and Mr. Coverdale resigned in consequence. This was one of the reasons for the resignation, also, of the then Board of Inspectors. This new Board having come into office, Mr. Edward Horsey was appointed as the successor of Mr. Coverdale, and application made again to Government to restore the salary to £200. This time the application succeeded, and Mr. Horsey from that date got £200 per annum.

This charge, as against the Warden, rested on the points, that the salary was reduced by an Act of Parliament framed by the Warden and his son, Mr. Henry Smith, M.P.P.; that the moment Mr. Coverdale was thus ejected, Mr. Horsey was put in his place, and shortly after received the original salary; and that all this was brought about to settle a difficulty existing between Mr. Horsey and Mr. H. Smith, M.P.P., as to the dower of Mrs. Horsey, on a house purchased from her husband by Mr. Smith.

This charge has been, however, entirely disproved; and the Warden is exonerated from all blame in the premises.

H. Smith, Esq., M.P.P.—By the Warden:—

"There was no money transactions between Mr. Horsey and witness immediately before the passing of the Act in question; never had any transactions with Mr. Horsey but two; bought a house from him in 1838 or 1839; paid him for the house on the day he made a deed of it to witness. The other transaction was for a lot which witness bought from a third party, but had to get the deed from Mr. Horsey; this was previous to the purchase of the house; paid Mr. Horsey for the house in 1839, since which he has had no money transactions with Mr. Horsey."

By Commissioners:—

Q. Was Mrs. Horsey's right of dower barred at the time you got the deed of the house you purchased from her husband?

A. No; she refused to bar it.

Q. Has it since been barred?

A. It has not. Thinks it was a plan of Mr. Horsey's; that he regretted the bargain he made with witness, and put his wife up to refuse barring her dower, in order that witness might throw up the bargain.

Q. Have you been since in treaty with Mr. Horsey to get his wife's dower barred?

A. Never spoke to him on the subject since.

Q. Have you never applied to Mr. Horsey to put you in a better position as regards his wife's dower?

A. Never.

The following is the Provincial Secretary's letter on which the additional £100 per annum has been paid to Mr. Horsey:—

"Secretary's Office,  
"Montreal, 7th Oct., 1847.

"SIR,

"I have the honour, by command of the Governor General, to inform you that his Excellency has had under his consideration in Council your letter of the 4th June, recommending, by desire of the Board of Inspectors of the Provincial Penitentiary, that the Salary of the Architect and Master-builder of that Institution be increased to £200 per annum.

"The 48th Section of the Statute 9 Vic. Chap. 4, limits the Salary of the Architect and Master-builder of the Penitentiary to the sum of £100 per annum, for superintending the erection of the buildings and other works necessary for their completion, and His Excellency, therefore, cannot direct any augmentation of the regular Salary of that officer, beyond the amount authorized by the Act referred to.

"As, however, His Excellency considers it to be of the greatest importance to procure the services of a competent Architect and Master-builder, I am directed to convey to you His Excellency's authority for remunerating that officer in such manner as the Inspectors may think just and reasonable, for any extra services he may be called upon to perform, not included in the mere superintendence—such as drafting, working out other plans, preparing estimates, specifications, and the like; provided that such extra remuneration does not exceed £100 per annum; and also, provided that his whole time and services are placed at the disposal of the Board, and that the nature and amount of remuneration for such extra services, be specified in the Annual Accounts of the Penitentiary.

"I have the honour, &c.,

(Signed) "D. DALY,  
"Provincial Secretary."

To T. A. CORBETT,  
President Board of Inspectors.

"Certified to be a true copy,

(Signed,) "F. BICKERTON,  
"Clerk."

3. IN DRAWING UP A NEW ACT OF PARLIAMENT, FOR THE REGULATION OF THE PENITENTIARY, WITHOUT CONSULTING THE BOARD OF INSPECTORS; AND IN WITHHOLDING FROM THE INSPECTORS, DRAFTS OF THE BILL AND AMENDMENTS, SENT UP FOR THEIR USE, UNTIL IT BECAME LAW.

The evidence under this Count is, that the Warden and his son Mr. Henry Smith, M. P. P., drew up together the draft of an amended Penitentiary Act, throwing new and unheard of powers into the hands of the Warden; that the Warden did not consult with the Inspectors on the subject nor advise them of what he was doing; that the said Bill was handed over to Mr. Attorney General Draper, with the Salaries blank; Mr. Smith, jun., thinking it "better that the Government should introduce it." That Mr. Draper struck out several clauses giving extraordinary power to the Warden, but in no shape otherwise altered the Bill. That the Bill, as it then stood, still gave greatly increased power to the Warden. That by its provisions the Warden's salary was raised from £300 to £500; the Chaplain's reduced from £150 to £125; the Architect's reduced from £200 to £100; the Clerk's reduced from £175 to £150; and the Assistant-Warden with £150 was reduced to Head-Keeper with £125. That the Bill was introduced into the House of Assembly by Mr. Draper, and carried without amendment; that the Board of Inspectors knew nothing of these proceedings, and heard of the new Act, for the first time, by the action of the House of Assembly; that a draft or drafts of the Bill were forwarded to and received by the Warden, though it does not appear they were for the use of the Inspectors; that the Warden did not communicate with the Inspectors on the subject, nor submit the draft to them; that amendments were made on the Bill in the Legislative Council, and copies of them sent to and received by the Warden, but not communicated by him to the Inspectors; that the Inspectors never saw a copy of the Bill until it became Law; that in consequence of the character of the new Law, and the manner in which they had been treated in regard to it, the Board of Inspectors refused to hold office longer, and resigned.

We think the Inspectors were the proper parties to have been consulted on the Provisions of a Penitentiary Act; and that it was the duty of the Warden to have communicated with them on the subject.

4. IN SUPPLYING EXTRA RATIONS TO THE CONVICTS WHEN DISTINGUISHED VISITORS WERE EXPECTED, WITH A VIEW OF CONVEYING AN ERRONEOUS IMPRESSION AS TO THE REGULAR DIET OF THE PRISONERS.

It is established that additional food was served to the Convicts, on several occasions, when persons of distinction were expected. The regulations lay down a fixed scale of diet for the Prisoners, and we can see no reason for deviating from it; but such a practice would be still more censurable were it intended to mislead strangers as to the real amount of food supplied to the Convicts.

5. IN USING THE INFLUENCE OF HIS OFFICE FOR POLITICAL PURPOSES.

A good many witnesses gave evidence on this point; but one or two extracts will explain the charge:—

James Gleeson—preliminary examination:—

"Some few days before the election, (the late General Election,) the Warden called witness out of the gang as he went into the dining-hall, and asked if he had a vote in the city? Witness said he had. 'Well,' said the Warden, 'I suppose you'll vote for Mr. M'Donald?' Witness said, 'if you (the Warden) desired me to do so?' The Warden said, he 'did not force any one to vote.' 'Then,' said witness, 'if that is the case, I will not vote for any one.' On the morning of the election, George M'Mahon, a Town-Councillor, came for witness to go to vote for Mr. M'Donald; witness positively refused to go. A few moments after Mr. M'Mahon left, a Convict-messenger came for witness to go in and see the Warden; witness was met in the hall of the Warden's apartments by Mrs. Smith, wife of Warden. Mrs. Smith said to witness, 'here is a letter from my son Henry, for you to go and vote for his friend Mr. M'Donald.' Witness said, he had 'determined not to vote at all.' Mrs. Smith laid one hand on each of witness's shoulders, and looking him full in the face, said, 'Wont you do this much to oblige me?' Witness said, he 'would be very happy to do anything to oblige her, but he could not do this.' Mrs. Smith said, 'the Warden told her witness had promised to go.' Witness said, he 'had not.' Mrs. Smith went in to the Warden, and coming out again, said, 'Mr. Smith tells me you did promise him, and you must do so.' Witness said, 'if he must, he must;' and he accordingly left the hall, on the understanding that he was to go. Witness then went into Blacksmith's shop, and told Keeper M'Carthy what had occurred, and asked his advice. M'Carthy recommended him to vote for Mr. M'Donald. Witness declared he would not, though he was well aware he would lose his situation. Spoke also to Keeper Keely. Both recommended witness to vote for Mr. M'Donald, on the ground, that if he did not, the first opportunity of getting rid of him would be taken by the Warden. Witness was fully determined not to vote for Mr. M'Donald in any case; and that should the contest run close, he would vote for Mr. M'Kenzie at all hazards. Witness went into town, and saw Mr. M'Donald; witness asked Mr. M'Donald to excuse him from voting unless he was hard pushed; Mr. M'Donald did so. Witness did not vote, and returned to the Penitentiary next day. Never had any future conversation on the matter with Mr. and Mrs. Smith."

Edward Utting—preliminary examination:—

"Recollects frequent occasions on which Guards and Keepers were refused leave of temporary absence, on the score, that they could not be spared from the Institution. Witness thinks it was right to be strict in this matter, as, if a number of officers were absent at the same time, the safety of the Prison would be endangered. Witness recollects the Warden coming to him on the 24th or 25th October, 1844, and desiring witness to send all the Keepers and Guards witness could spare to Waterloo, to aid his son Henry at the Frontenac Election; the Warden said his son wished to show his strength on the first day. Thirteen Keepers and Guards were sent, according to the Warden's orders; they did not return to the Penitentiary that day; witness understood they all voted, and heard some of them say they had not got their deeds."

By Mr. Smith:—

"There may have been six, seven, or eight Keepers and Guards absent from the Penitentiary at the election for Frontenac in 1844; this is under the

number. Witness has a memorandum of the exact number, and their names; witness has not brought the memorandum with him. There were a few substitutes provided; does not recollect the number of substitutes; there might be three or four. To the best of witness's recollection, the instructions which Warden gave, were, to send as many of the Guards and Keepers as could be spared, to show Mr. Henry's strength the first day. There was a laugh and talk among the officers, that some who had voted had not got their deeds; forgets the names of those who were mentioned; did not hear any of those who had voted say they had not got their deeds at the time of the election in 1844. Warden was not confined to his room; he came to witness at the wooden steps to give the order; witness afterwards visited the Warden in his room. Witness, on reflection, remembers that he was sick, but was able to come out upon the steps."

By Commissioners:—

"Witness kept an account of the number of officers which were sent at the request of the Warden to the Frontenac election in 1844. At the time witness gave his evidence before the Commissioners last summer, witness spoke from reference to a memorandum which he had referred to; witness had not that memorandum when he gave his evidence yesterday; witness then spoke from the best of his recollection."

Terence M'Garvey—preliminary examination:—

"It was the general practice to refuse leave of absence to more than two or three Guards and Keepers at a time: if others, beyond this number, asked, they were told they could not be spared; there were occasions when exceptions occurred as to this rule. At the Frontenac election a number of the Officers were absent at the same time. At the election of 1844, witness was canvassed by Mrs. Smith for her son; witness is a reformer, but he knew that if he voted against Mr. Smith, he would very likely lose his situation, and so he voted for Mr. Smith. Witness was canvassed by the Warden, at the late election, to vote for his son; the Warden asked him "if he would not vote for the Orangeman?" Witness said he was not fond of the Orangemen. The Warden said, "shall I tell my son you will vote for him?" Witness said he might. Mr. Bickerton was present. Witness has a brother who resides in Kingston, and who had a vote in the City at last election; just before the election, the Warden sent for witness, and said he would be forever obliged to him if he would get his brother to vote for Mr. M'Donald; witness did speak to his brother but did not persuade him; his brother voted for M'Kenzie. Recollects of two Officers getting leave of absence to go to a political meeting at Mill-creek; the object of the meeting was to send a delegate to Montreal, to present an address to the Governor General; Mr. Henry Smith, M. P. P., was trying to get himself sent as the delegate, but Mr. Marks was sent."

John Watt—preliminary examination:—

"Not more than two Officers are allowed to be absent on leave at once, from the Penitentiary. There were several Officers absent together at the Frontenac election in 1844; witness recollects seven who were then absent at once; some of them may have had substitutes. Witness was canvassed to vote for Mr. Henry Smith, on that occasion, by Mr. Frank

and Mr. Henry; did vote for him; witness had not a deed at the time; witness was also canvassed by Mrs. Smith, the Warden's wife, to vote for her son. Witness had a substitute during his absence; witness paid him; does not know his name; never knew it; he was a Ship-carpenter; cannot swear that he was ever employed as a substitute for any other Officer; the man is gone away from Kingston."

John Swift—preliminary examination:—

"Only two Officers were allowed leave of absence from the Penitentiary at a time; has never known this rule to be broken except at election times; has counted seven Officers attending the Frontenac election at Waterloo. Witness is a reformer, and has a freehold in the County of Frontenac. In 1844 was canvassed by the Warden to vote for his son, and did vote for him. Witness thought, and thinks now, that his situation was at stake; and that he would have lost it had he voted for Mr. Thibodo; would certainly have voted for Thibodo had his choice been free, at the late election. Witness was also canvassed by the Warden to vote for his son, and promised to do so against his conviction. No deduction was made from witness's pay, for his absence at the election of 1844; he lost half a day; never was absent on any other occasion when his lost time was not deducted from his pay. At a political meeting, held at Mill-creek some time ago, two or three Officers were allowed to be absent."

By Mr. Smith:—

"Witness went to the Frontenac election in 1844; believes there were some substitutes provided for Officers who went to the election; cannot say there were substitutes for all who were away. Witness was absent half a day at the election. Believes there were three Officers absent at the Mill-creek meeting, Little, Tyner, and witness thinks Funstan. Witness thinks it would be unjust if a person who had a vote at an election had not the power to give his vote. Witness does not think it would be so unfair to prevent a person from attending a political meeting as to prevent him from attending an election."

Keely, Robinson, M'Carthy, Fitzgerald, Wilson, Bannister, Kearns, and Cooper give similar testimony.

There is no doubt that the Warden's influence has been exerted over the Officers in political matters; but it does not appear to have been to an extent prejudicial to the interests of the Institution, and we therefore acquit the Warden of "gross misconduct" in the premises.

6. IN KNOWINGLY APPOINTING A WOMAN OF NOTORIOUSLY BAD CHARACTER, TO BE DEPUTY MATRON OF THE PENITENTIARY; AND IN APPOINTING THE MAN, WHO HAD LIVED IN PROSTITUTION WITH HER, TO A CONFIDENTIAL SITUATION IN THE INSTITUTION.

The evidence under this count is, that Mrs. Martin, for some years before her marriage, was a servant in the Warden's family; that while so living, within the walls, in the Warden's house, she became *enceinte* by William Martin, then an occasional temporary Guard in the Prison, and was turned away in consequence. That she had a room given her in the house of Joel Sturges "out of pity," where she and Martin "lived together before their marriage;" that a child was born; that Mrs. Sturges told the parties that "they must either leave the house, or be married;"

that Mrs. Martin was then brought back to the Warden's house as his private servant, and was married to Martin nine or ten months afterwards. That the Warden sometime after found an Assistant-Matron was required, and appointed Mrs. Martin to the situation, for which he afterwards obtained the sanction of the Board of Inspectors; that William Martin, eighteen months afterwards, was appointed a permanent Guard in the Penitentiary; that Mrs. Martin was discharged, in 1846, for incapacity; and that Martin still remains an Officer of the Penitentiary.

The defence of the Warden is, that the parties were only prevented from marrying by the opposition of Martin's father; that, with this exception, they have lived moral lives; and that the appointment of Mrs. Martin was sanctioned by the Board.

As regards this last plea, the minutes show that the Warden was the only active party in the appointment.

"Extract from the Minutes of the Board of Inspectors of the Provincial Penitentiary, 18th Dec., 1843 :—

"The Warden stated to the Board, that owing to the increased number of Female Convicts, and with a view to prevent any conversation passing between them during the time they are locked in their cells at night, he had engaged the services of Mrs. Martin as Assistant-Matron, as well to sleep in the Prison, as to take charge of those belonging to the Roman Catholic Church, during the time of Divine Service. For this duty the Warden has engaged to pay her at the rate of two pounds per month; and he recommends that she have the free use of the small frame-building on the West corner of the Penitentiary lot, (as soon as it may be vacated by the Messenger) as long as she may continue her present duties. The Board being of opinion that this arrangement is necessary, now sanction the same."

Thomas Kirpatrick, Esq.—By Mr. Smith :—

"Mrs. Martin, witness presumes, was appointed with the sanction of the Board. The applicants for situations in the Penitentiary who were recommended by the Warden, were always appointed; in some instances the Warden made no recommendations."

By Commissioners :—

"Witness thinks it would have been most improper to appoint a woman Assistant-Matron of the Penitentiary, who had been living in open prostitution. Mrs. Martin was strongly recommended to the Board by the Warden. It strikes witness that the Warden had placed her in the situation and applied to the Board to confirm the appointment. The fact that a woman had a bastard child, and afterwards married her seducer, might necessarily have prevented witness from assenting to her appointment as Assistant-Matron of the Penitentiary. Thinks the point never came before the Board."

As regards the other points of defence, whatever may have been the degree of culpability attachable to Mrs. Martin's lapse from virtue, the exceeding impropriety of appointing to the Matronship of the Penitentiary a person open to such a reproach, must be obvious. And the fact that the circumstance occurred within the walls of the Penitentiary, and was matter of notoriety, marks the appointment as one of the most censurable character, and attaches great culpability to the Warden in making it.

We know of nothing more ruinous to the success of such an Institution than the appointment of Officers of low moral character. Put it in the power of the Convicts to look down on their Keepers, and adieu may be bid to all hope of reform.

We can find nothing in the previous employment of Mrs. Martin, or in her suitability for the duties of the office to redeem her appointment; and the fact that she cannot write her own name, alone proves that she was unfit for the situation.

As regards the appointment of Martin, in the circumstances of the case, we must also consider it as objectionable, but not so detrimental to the discipline as in the former case.

The imputations of dishonesty against Mr. and Mrs. Martin, which are found in the evidence under this count, we do not think proved.

7. IN CONSPIRING TO REMOVE EVERY OFFICER OF THE PENITENTIARY, WHO DID NOT BECOME ENTIRELY SUBSERVIENT TO HIS WILL, FROM THE INSTITUTION.

A vast amount of evidence has been received as to the treatment of the Officers of the Penitentiary by the Warden, both before and since the charges were served on the Warden; but under this count we confine ourselves to the cases referred to in the formal charges. The evidence on all of the cases herein mentioned, is given very fully elsewhere, and it is unnecessary to do more here than state the facts as proved.

We find that the salary of Mr. Coverdale, the Architect, was reduced from £200 to £100, by the amended Penitentiary Act of 1846. That this Act having been got up by the Warden and his son, Mr. Coverdale and others considered the reduction was procured by the Warden for personal reasons of his own; and that the result of the reduction was the ejection of Mr. Coverdale from the Institution.

In the case of the Chaplain, the Rev. R. V. Rogers, we find that from the first appointment of this gentleman there has been constant jarring between him and the Warden; that the Warden has often brought Mr. Rogers before the Board of Inspectors, upon trivial complaints, in a very harassing manner. That the Chaplain's salary was reduced from £150 to £125, and the effect of the reduction construed by the Warden to date back, so that Mr. Rogers had to refund money previously paid to him. That Keeper Pollard was induced by the Warden to write a letter of complaint against Mr. Rogers, detailing some conversation he alleged to have passed between the Chaplain and himself, more than a year before, and previous to Pollard's coming into the establishment, and which letters the Warden laid before the Board of Inspectors. That inferior officers were sent round the Convicts by the Warden, to know from them if the Chaplain had written letters from them to their friends; and that this was done with the intention of bringing the matter before the Board of Inspectors. That Keeper Pollard was charged and proved guilty of having called Mr. Rogers a liar, in the presence of a number of other officers; but was let off upon writing an apologetic letter to Mr. Rogers; an apology as public as the insult, being asked by Mr. Rogers, but declared unnecessary.

In Mr. Utting's case we find that when that officer obtained his appointment as Deputy or Assistant-Warden, Mr. F. W. Smith, the Warden's son, was an unsuccessful candidate for the situation. That

constant quarrels existed between the Warden and Mr. Utting, while the latter was in the Prison. That his salary was cut down by the new Act from £150 to £125, and the title of his office to Head-keeper. That the Warden frequently preferred charges against Mr. Utting before the Board of Inspectors, and finally had him dismissed, though under circumstances which come up hereafter, under the charge of "false representations."

We find that Guard Robinson gave evidence highly prejudicial to Kitchen-keeper Smith, the Warden's son, at the trial of that Officer by the Board of Inspectors; that a few days after so giving evidence, he was himself brought before the Board on a charge of leaving one of the double outside wicket-gates open at night, and found guilty; that Robinson denied the charge, and asserted that the gate was opened by some one, from malice; and that he was forgiven on account of his previous good character. That a few days after this again, Robinson was brought before the Board on a charge preferred against him by the Warden, of having a stove-pipe stone in the watch-tower for the purpose of stealing it; that the said stone had been in the tower for a year, and was not put or kept there with fraudulent intent, and that the Warden had often been in the Tower when it lay openly, without making any remark. That at the trial of the case, Robinson conceiving that these repeated accusations and the whole character of the proceedings, showed a predetermination to dismiss him, lost his temper, and that he was thereupon acquitted of the charge as to the stone, but dismissed for insolence.

It appears that Mrs. Cox, while Matron of the Penitentiary, had frequent difficulties with her Assistant-Matron Mrs. Pollard, (wife of the Keeper of that name) and that the Warden generally upheld Mrs. Pollard against her superior officer. That Mrs. Cox gave testimony at the trial, by the Board of Inspectors, of Kitchen-keeper Smith, prejudicial to Smith; that Mrs. Pollard, on the same occasion, gave evidence in Smith's favour; that Mrs. Cox's situation was made so uncomfortable, that notwithstanding the salary of £75 per annum, she felt compelled to resign her appointment; and that Mrs. Pollard was immediately installed in her place.

The proof in the case of Keeper Gleeson, is that he gave evidence at Kitchen-keeper Smith's trial before the Inspectors, unfavourable to Smith. That Gleeson was brought before the Inspectors in Feb. 1848, upon a charge of appropriating to his own use, materials for making blacking, the property of the Penitentiary, to the value of seven pence half-penny, currency; was found guilty, and discharged.

Keeper M'Carthy gave evidence at Kitchen-keeper Smith's trial before the Inspectors, in Oct. 1847, unfavourable to Smith. It appears that shortly after so giving evidence, the Warden applied to Keeper Pollard to write him a letter, detailing circumstances of which Pollard had informed him. That on 15th March, Pollard did write a letter, addressed to the Warden and the Board of Inspectors; that in that letter Pollard stated that Mr. Rowlands, of the *Chronicle and News*, had told him (Pollard) that Dr. Sampson had told him (Rowlands) that "there was also others who could tell quite enough to ruin the Warden, and that was the Keepers M'Garvey, M'Carthy, and Keely, who had told the Surgeon things the Warden little thought of." That the Warden laid this letter before the Board of Inspectors; that the Inspectors, upon the sole foundation of this passage of Pollard's letter, sent for M'Carthy, on 18th March, and asked him if he knew

anything against the Warden; that M'Carthy said he did not. That various general questions were asked him as to the character of the Warden, and answers elicited favourable to Mr. Smith; that the Inspectors asked him to swear to the truth of his answers, which he refused to do; that he was pressed to do so, and still refused; and that for refusing to swear or subscribe his statements, he was suspended until the Commission, then daily expected to be appointed, should assemble; and that some weeks after, without further proceedings, or reason recorded for the change of sentence, M'Carthy was dismissed from his situation; such dismissal being subsequent to the appointment of the present Commissioners, and shortly before they assembled at Kingston.

It is shown that Keeper Keely gave evidence at Kitchen-keeper Smith's trial, before the Inspectors, unfavourable to Smith. That he, also, was brought before the Board of Inspectors in consequence of Pollard's letter; that similar incidents occurred at his examination as in that of M'Carthy; that he too was asked to swear to his answers and refused; that he too was suspended, and finally dismissed for the same reasons and on the same day as M'Carthy.

It is clear that Keeper M'Garvey gave evidence at Kitchen-keeper Smith's trial unfavourable to Smith. That he, too, was brought before the Board of Inspectors, and similar questions put to him, as to M'Carthy and Keely; that he answered as the others had done, favourably for the Warden; that he subscribed and swore to a statement founded on his answers; that he regretted having done so immediately afterwards, and now declares that the said statement did not contain his real sentiments. That about two months afterwards he was again brought before the Board of Inspectors on a charge of losing two pairs of boots from his shop; that he declared the boots were stolen from his shop; that he was called on to pay for the boots or take the consequences; that he refused to pay for them, as he considered it would be confessing to an act of dishonesty, and declared that he was not responsible for articles stolen; that he was thereupon dismissed from his situation, on the very same day as M'Carthy and Keely. That articles have often been lost in the Penitentiary, by probably all the Keepers; but that, in no other instance, was a Keeper ever asked to pay for such losses, or dismissed in consequence of them.

James Hopkirk, Esq.—By Commissioners:—

Q. Were not Mrs. Cox, E. Bannister, Gleeson, Kearns, Robinson, M'Garvey, Keely, M'Carthy, Swift, and Richardson, the only officers of the Institution who gave testimony at Frank Smith's trial, in October, 1847, unfavourable to Smith?

A. Cannot tell, without careful reference to all the evidence.

Q. Of these ten officers, have not five been since dismissed by the Inspectors, one resigned from dissatisfaction, two twice brought before the Board on various charges, and one reported against to the Government?

A. Five have been dismissed. Cannot tell on what ground Mrs. Cox resigned. Another (Bannister) was twice before the Board; once about the bag of oats, and again about having taken money at the gate. And one (Kearns) was once before the Board. As to the one reported against to the Government, the Warden objects to evidence being received, as it occurred since his dismissal; and the Court upheld him.

Q. Of the eighteen witnesses, officers of the Institution, who on the same occasion gave evidence in Frank Smith's favor, viz., Little, Hooper, Nursey, O'Neil, Baldwin, Tyner, Thorpe, Mrs. Pollard, Bickerton, Hermiston, Matthews, Costen, Thomas Smith, Watts, Sexton, Martin, Manuel, and Pollard, is there one who is not still an officer of the establishment?

A. These officers all gave evidence at Frank Smith's trial; but without careful perusal of the evidence, cannot distinctly say what the character of each officer's testimony was; they are all still in the establishment.

Q. Has any one of these officers ever been brought before the Board on any charge, since Frank Smith's trial, with the exception of Manuel and Pollard; and these only on the Skinner affair, in which the complainant against them was dismissed for bringing the charge?

A. No, none of them have; Pollard, however, was brought up a second time on the complaint of Mr. Rogers, formerly referred to."

By Mr. Smith:—

"Wilson and Skinner are the only officers who have been dismissed by the Inspectors since the sitting of the Commission. Gleeson, Keely, M'Garvey, Robinson, and M'Carthy were discharged by the Board, of which witness was a member; and Fitzgerald by the Warden, previous to the sitting of the Commission. Bannister, Richardson, Kearns, Swift, Cooper, Watt, Costen, Waldron, Jones, and Horsey gave evidence before the Commissioners, and still are officers of the Institution; also, the Chaplain, the Surgeon, and the Clerk, of whom the Board have not the dismissal in their power."

Some of these facts may admit of explanation; but from the whole body of the evidence, we are satisfied that there has been a determination, on the part of the Warden, to remove from the Prison every officer not entirely subservient to his will; and that, by the influence he exercised over the late Board of Inspectors, he was enabled to carry out his determination to a great extent, and much to the injury of the Institution.

8. IN ATTEMPTING TO INTIMIDATE THE INMATES OF THE PENITENTIARY, AND OTHERWISE TRYING TO BIAS THE EVIDENCE OF OFFICERS AND CONVICTS EXPECTED TO APPEAR AS WITNESSES BEFORE THIS COMMISSION.

Under this count, the Warden was charged with acting towards the officers of the Penitentiary, and the Convicts, in a manner calculated to affect the testimony of the witnesses to be brought before this Commission; and a great deal of evidence has been received on this point.

Guard Wilson was the first officer of the Penitentiary examined by the Commissioners, and his evidence was unfavorable to the Warden. His examination began on Friday, 21st July, and was resumed on Monday, 24th July. Up to that time his conduct as an officer had never been called in question, and his daily duty was to act as Guard in the shops and wings of the Prison. The day after he was before the Commissioners, (25th July,) he was removed to a post on the wooden fence outside the Prison, as his permanent station, and another man placed in the more confidential post from which Wilson was ejected.

Mr. Costen swears, that he removed Wilson to the outside fence by express orders of the Warden, to prevent Wilson from coming in contact with the Convicts; and that the reasons for this step having been taken, were, 1st. That Wilson had idled his time while stationed in the yard on one occasion, and had a deduction made from his pay in consequence; and, 2nd. That he had recognized two discharged Convicts in the streets of Kingston. Mr. Costen swears the Warden told him these were the reasons for Wilson's removal, and that they were the only reasons. As regards the first, it was elicited on the cross-examination of Mr. Costen, that this case of idling occurred on the 31st March, 1848; or four months previous to the date on which Wilson is said to have been punished for it; and no reason is given for the delay. It does not appear that Wilson knew that this deduction had been made from his pay, or that any complaint had been made against him for idling, until 24th July, the very day he was before the Commission. But it is proved that on that day he appealed to the Warden as to the injustice of the deduction. Called Costen and Guard Tyner, as witnesses, to prove that he had not idled his time on the occasion alleged. And Mr. Bickerton proves that, by directions of the Warden, the deduction was refunded to Wilson on the 24th July, the very day previous to the one when he is alleged to have been sent on the outside fence as a punishment for this very idling.

As regards Wilson's recognizing discharged Convicts; if it is true that this was a reason for his removal, then he was punished first and tried afterwards; for, on 31st July, he was brought before the Board of Inspectors, and tried on that very charge. It does not appear who urged the complaint. Wilson says, Francis W. Smith and Guard Sexton were the complainants. Costen says, it was Frank Smith. Mr. Hopkirk says, he cannot say whether it was the Warden or Mr. Costen, or who it was. The minutes of the Inspectors are quite silent on the subject; and the notes of evidence, if any such there were, cannot be found. The evidence shows that Wilson in going to the Commission-room, on the 24th July, from the Penitentiary, met two discharged Convicts, and talked with them; and that one of them walked home to his (Wilson's) house, and entered it. Wilson acknowledged to the Inspectors that he had held such intercourse with the discharged Convicts in question, but urged that it was quite of an accidental and harmless character, and that he had committed no offence. The Inspectors alleged that he had broken the following rule:—"No discharged Convict is to be recognized by any officer or other person belonging to the Institution, nor is he or she to be made known by them to any other person." Wilson explained that he understood this rule meant simply, that no one was to "recognize discharged Convicts so as to hurt them;" and the substance of Mr. Hopkirk's explanation of the rule is similar. It is proved that the recognition of discharged Convicts by officers, has been a frequent occurrence with probably every officer, and that many of them have had them living in their houses as domestics and otherwise; and Wilson alleges that he stated so to the Board of Inspectors, and Mr. Hopkirk does not deny that he did. The Board, however, ordered Wilson to be censured for his misconduct, and notified that "upon the next well-founded complaint against him of any dereliction of duty, he will be immediately dismissed from his situation." Mr. Hopkirk also states that Wilson would have been "more severely punished," but "the Board understood Wilson had been before the Commissioners, with some discharged Convicts, and they wished to avoid the appearance of any interference with the Commissioners." The evidence

shows that the recognition of discharged Convicts by the officers, was a notorious practice, and that Wilson was the first person ever called in question for it.

Guard Waldron was examined by the Commissioners on the morning of the 19th August, and his evidence was prejudicial to the Warden; he was brought before the Inspectors the same evening, on two charges preferred against him by Mr. Costen. One of these charges was, in allowing a Convict to get into one of the Towers to do some Carpenter work, without having the authority of the Warden or Head-Keeper; and the other was, in replying to Mr. Costen, when told to look more sharply after the mortar-men, as they had too much of their own way, that "they were encouraged to that;" and when asked what he meant, replying, "I know that myself." Depositions on oath were taken in the examination by the Inspectors, but they are not to be found among the records of the Prison; and what the merits of the case were, we do not, therefore, know; but Waldron appears to have obtained an acquittal. The remarkable feature of this case, is the moment at which these charges were brought up. It is proved that all complaints against officers were taken up regularly by the Board, immediately after the report was made; but it appears that the first charge against Waldron was reported on 28th June, and that meetings of the Board were held on 28th June, 1st July, 31st July, and 17th August, and no notice taken of the matter; and it appears that the second charge against him occurred on 5th August, but that no notice was taken of it at the meeting of 17th August; and it also appears that Waldron never heard of these complaints against him, until 18th August, the very day he was summoned before the Commission, and that even then he was only informed by the Warden, "that a charge had been laid," but the Warden said he "did not remember what it was for."

Guard Bannister gave evidence before the Commission unfavorable to the Warden; he testified that he was of opinion "the Warden, Mr. Costen, and Mr. Frank Smith, have been trying to get a catch at him on which to dismiss him." He was subsequently brought before the Inspectors for trafficking in provisions in the Penitentiary; Mr. Hopkirk says the charge was brought either by the Warden or Mr. Costen, "probably the former," and that Bannister "was not punished, because it was not altogether proved against him." It afterwards appears, however, that the whole extent of the trafficking was in Bannister's buying one bag of oats, *outside the Prison*, from a Farmer; that the man had some provisions to deliver in the Penitentiary and passed inside the gate without throwing off the oats; that Bannister discovered the mistake before the cart had gone many yards inside the gate, and brought it back at once. The practice has been for the Warden to decide on all trivial complaints against officers, and refer only serious complaints to the Board of Inspectors. Mr. Hopkirk admits that in this case the Warden "might possibly" have decided without reference to the Board.

The case of Convict Thomas D. M'Cormick is a very remarkable one, and it is so well supported by other evidence that we place every reliance on the truth of the facts alleged. We give the evidence in full:—

Thos. D. M'Cormick—preliminary examination:—

"Is a Convict in the Penitentiary. This spring, Mrs. Smith, the Warden's wife, spoke to witness on the wharf, while measuring timber; she said the

Warden was using his influence to get witness pardoned; and after expressing great interest in witness, she began to examine him as to what he had to say against Dr. Sampson. Witness answered some of her questions and evaded others. The same day Head-keeper Costen came to witness in the Carpenter's shop, and said he understood that witness had some complaints to make against the Doctor, and he would leave pencil and paper in his cell, for him to write out what he had to say. Witness told this circumstance to his Keeper, Mr. Richardson, who recommended him not to refuse the paper and pencil. Witness resolved from the first not to write. Mr. Costen, in the course of the same day, told witness that he would find the writing materials under his Bible in his cell; or going to his cell at night, witness found paper and pencil on his bed, covered up with his bible, the bible had been taken down from the shelf on purpose; witness did not write. In the morning, just as the bell rang, and before the cells were opened, Costen came to witness's cell; he was never there at that hour before; witness told him he had not written; Costen still pressed him to do so, and asked him to come to the hall when he got out of his cell, and he (Costen) would give him (witness) pen, ink and paper, to write; witness did not go the hall. The same day Costen ordered witness to go to the office, and see the Warden; witness said he did not want to see the Warden; Costen ordered him to go; witness went, and the Warden cross-examined him as to what complaints he had against the Doctor. He wrote out some complaints which witness named, and witness then went to his work. The Warden and his son Frank, have constantly kept up the hope in witness's mind that he would be immediately discharged; witness has no doubt they did so to make a tool of him for their own purpose. There are many other Convicts who have been so treated, and undoubtedly with the same object; they would not venture to ask witness to swear to what was untrue, but there are many men in the yard who have been plainly asked to swear to what was false. James Parker, in the Carpenter's shop, and Martin in the Kitchen, can speak to this point."

James Wilson—preliminary examination:—

"Witness saw Mr. Costen come into the Prison, at a quarter before six in the morning, on 29th April last; witness never saw Mr. Costen in that part of the Prison at so early an hour before; Mr. Costen on the morning in question, went up to the cell of Convict M'Cormick, in the third range, and took paper and pencil from him through the grating. Witness afterwards asked M'Cormick as to this affair; and M'Cormick told him that Costen had given him paper and pencil to write against the Doctor, but that he had not done so; M'Cormick also said that he had been offered the use of Costen's room and of the Warden's room, with pen, ink and paper, to write against Dr. Sampson, but he had not done so."

By Mr. Smith:—

"Witness saw Mr. Costen take paper and pencil from Convict M'Cormick at a quarter before six one morning, and witness sent to M'Cormick and asked him what he was doing with the paper and pencil? M'Cormick said, Mr. Costen had given it to him to write against the Doctor. Witness was on duty, and he thought he was bound to ask M'Cormick about the circumstance; this occurred on 29th April, 1848. Costen got the paper and pencil from M'Cormick through the grating. Witness did not

think that in doing so he was interfering improperly with his superior officer."

Thomas Costen—preliminary examination :—

"Has never spoken to any of the officers on the subject of the evidence to be given before this Commission, nor to any of the Convicts; has never spoken to any of the officers or Convicts about complaints against Dr. Sampson. Witness has given paper and pencil to Convict M'Cormick; he complained of some bad usage he received from the Doctor when in the hospital, and the Warden wished him to state his grievance in writing. The first thing witness heard of the affair, was from M'Cormick, who came up to him in the Carpenter's shop, and complained of the treatment he had received from the Doctor; witness cannot tell what reply he made to M'Cormick; witness reported what had occurred to the Warden; cannot say when this happened; it was this year; the Warden then desired witness to furnish M'Cormick with paper and pencil to write out his complaint; by the Warden's directions, witness accordingly gave M'Cormick paper and pencil; witness gave it to him in his cell in the evening; he did not give to him—he left it in his cell for him; put it in his cell before the evening muster; put the paper and pencil on the bed, and a book on top of them. Witness had previously told M'Cormick that he would leave paper and pencil for him in his cell; told him so in the yard; he promised to write what witness wanted. M'Cormick did not write what witness asked of him; he gave back the paper and pencil next morning; after the cells were opened, M'Cormick brought them to witness, and said he would not write, but would go before the Warden, and repeat what he had said. M'Cormick did not bring the paper and pencil to witness; he left it in his cell, and witness went for it; witness went for the pencil and paper immediately after the prisoners were let out of their cells, and had gone to their work. Witness will not swear that he did not go to M'Cormick's cell before the Convicts were let out for the day, and get the paper and pencil handed to him through the bars by M'Cormick. It is quite possible that witness may have gone to M'Cormick's cell in this way, before the prisoners were let out. Does not recollect of any other instance when he visited the prisoner's cells in the morning, before they were let out for the day. Witness never offered M'Cormick the use of his own room to write out his complaint against the Doctor. M'Cormick visited the Warden next day, after he returned the writing materials, in his private office; cannot say what passed; does not know whether he wrote out his complaint. Witness reported to the Warden that he had given M'Cormick writing materials, and that he had not written as desired, but was prepared to repeat his complaint to the Warden."

Keeper John Richardson—preliminary examination :—

"Has reason to believe that Convicts have been spoken to on the subject of this Commission. Mr. Costen came lately to witness's shop, and began to talk with Convict M'Cormick; when Mr. Costen went away, M'Cormick came to witness, and told him, that Costen had been proposing to give him paper and pencil to write out what had passed between him and the Doctor, the last time he (M'Cormick) was in the hospital."

There are also several other cases which are not so clearly proved as the last, but which are evidently not without foundation. In the case of Convict Tuey, Guard Wilson in his preliminary examination,

says :—"Witness has known several instances lately of Convicts being canvassed as to the evidence they should give before this Commission; saw Keeper Manuel take a Convict, named Tuey, into Mr. Wm. Smith's writing shanty, and talk with him there for three quarters of an hour; witness asked Tuey, when Manuel went away, what he had been saying to him; Tuey said that Manuel had been taking down his evidence to be given before the Commissioners; that he was to prove that Gleeson had been two years in Prison for killing a man, before he came to this country; that he had been spoken to on the same subject, by the Warden and Frank Smith, and that he (Tuey) was to get a black suit when he went out, for giving his evidence. Witness knows that Tuey had been with the Warden previously."

By Mr. Smith :—

"The Keepers and Guards often talk to the Convicts about other matters than the business of the establishment; witness has so talked to Convicts; asked Convict Tuey what he was doing in Wm. Smith's shanty talking to Manuel; Tuey said Manuel was asking him what evidence he could give against Gleeson; Tuey told witness that he was to give evidence against Gleeson, that he had killed a man in Ireland. Tuey said Mr. Frank Smith was to treat him well for giving this evidence, and was to give him a suit of black clothes when he went out of the Penitentiary."

Keeper Hugh Manuel—By Mr. Smith :—

"Witness has not taken down any conversation which he has had at any time with Tuey, but has reported a communication from Tuey to the Head-keeper."

The case of a colored Convict named M'Nair, alias M'Keener, is also a noticeable one. This man gives the following account of himself :—"Witness came to the Penitentiary first, in Nov. 1844, for larceny, for three years, under the name of M'Keener; the name was put down so by mistake. Came in for the second time, on 25th April, 1848, for larceny on two indictments; three years on one, and four years on the other; was never apprehended on any other charge in Canada. Was a prisoner in Auburn State Prison, two years, for larceny; went in there in 1837 or 1838. Was convicted on another charge of larceny, in the United States, before going to Auburn Penitentiary; it was in the state of Ohio; was 18 months in gaol there. Was once apprehended in Buffalo, and once in Rochester for larceny, besides the times he has named. Was sent to Auburn for a second affair in Buffalo; always went by the name of M'Nair. Was not put on his trial on the two affairs he has named in Buffalo and Rochester. Witness is over 30 years of age, but is not sure if he is 31; thinks he is over 31: when witness came into the Prison he was not asked his age or anything about it. The first winter witness was in the Prison, he worked in the quarry; in the summer following, he carried the hand-barrow; in the winter following, he swept the chimneys and blacked stoves; the second summer, witness carried the barrow; the third winter, witness was Barber, fixed the razors and shaved some of the Convicts; the third summer, witness was on the quarry, or working on the buildings. While witness was barber, he belonged to Frank Smith's gang; for some three or four months. Witness has been very often punished while in the Penitentiary; had the cats often; had the raw-hide often; was only once in the box; has been in the dark cell three times; has been put in irons twice;

was never gagged. Witness, when under punishment, has had full rations notwithstanding, very often; witness is on the punishment list now, and had only bread and water at dinner to-day; but he has no doubt a full dinner-ration is waiting for him; if the Commissioners will allow him to go for it, he has no doubt he can bring it, and show them he speaks truth. Any Convict can manage to get full rations, notwithstanding the Prison Rule that when under punishment they shall get nothing but bread and water. Witness always manages some way or other to get full rations, except when closely confined to his cell."

Guard Wilson, in his preliminary examination, stated:—"There is also a black Convict in the Penitentiary, committed, this time, under the name of M'Nair, but who was formerly committed under the name of M'Keener, who has been employed for some days in getting up evidence against the Doctor. Witness, on several occasions, saw this man talking to Convicts, and stopped him; M'Keener said he was electioneering against the Doctor, and had been permitted to do so by Mr. Frank Smith. Witness reported this man for so electioneering, contrary to the rules of the Prison, on four several occasions; but he was not punished for any of these offences. Witness reported him as the Guards usually do, to the Kitchen-keeper, who wrote the complaints down on a slip of paper; this memorandum should have been copied into the Punishment Book, and read out next morning with the Warden's prescribed punishment to each offence: but in no one of these four instances was any notice taken of witness's report. This affair of M'Nair's occurred early last month."

By Mr. Smith:—

"Has reported M'Keener or M'Nair for talking; has reported him five times lately during the summer; he was only punished once upon these reports to witness's knowledge; did not report to the Warden or Head-keeper that he had not been punished."

Guard Waldron, in his preliminary examination, says:—"A Convict named M'Keener was for some days employed electioneering among the prisoners for complaints against the Surgeon. Witness challenged M'Keener for doing so, and he replied that he was authorized to do so by the Warden, Mr. Costen and Mr. Frank."

M'Keener was produced by the Warden as a witness to prove misconduct on the part of Dr. Sampson; Keepers Richardson and Gleeson, and Guards Wilson, Fitzgerald and Robinson, and he gave evidence as to conversations which he alleged these parties had held with him.

Convict A. B. DeBlois, who was alluded to under the charge of favoritism, and who appears to have had no cause of complaint as to his treatment, makes the following statement in his preliminary examination:—

"The day after the Commissioners first arrived in the Penitentiary, Mrs. Smith, the Warden's wife, came to witness, and told him, that if he would give evidence in favor of her husband, he would endeavor to obtain witness's pardon; no one was present but themselves on the occasion. Convict Henry Smith is usually in the shop with witness; he was not present when Mrs. Smith spoke to witness; witness told him afterwards what had passed, and Smith said, Mrs. Smith had made the same proposal to him. Witness made no answer to Mrs. Smith. Witness's work-shop is next to the Warden's apart-

ments; it is opposite the entrance to the store-room and the women's departments; it is the bookbinder's shop. Mrs. Smith, since then, has treated witness very kindly; she gave witness a piece of melon, a glass of wine, and permission to take cucumbers from the garden whenever he desired; he has taken advantage of this permission every day for over a fortnight; he is in good health; not in the hands of the Surgeon. Convict Smith has had cucumbers in the same way, and several of the officers knew of it; he never had such liberty before. When Mrs. Smith gave witness the wine, Keeper Martin was present, and a young lady from 15 to 18 years of age; her father is dead, but does not know her name. Convict Smith said her father was formerly security for the Warden; she very often visits the Warden's wife. Before the Commissioners came, witness was treated very severely; had no indulgences; was flogged with raw-hide, twice; two or three times had bread and water." \* \* \* \* \*

"When he said he was severely treated, he does not mean to say that he was punished more often or more severely than other men, but that Frank Smith treated him contemptuously—called him "a d—d Papist," &c."

By Mr. Smith:—

"The day after witness had arranged some books for Mrs. Smith, and had received a glass of wine from her; Mrs. Smith came to witness where he was working alone, and told witness if he would be a good witness; and then, Mrs. Smith supposing that witness could not understand that, said "a good boy," for the Warden before the Commissioners, that she would speak to her husband, and that the Warden would speak to the Commissioners in witness's favour, and the Warden would be sure to obtain witness's pardon."

In contradiction of DeBlois' statement, Convict Henry Smith is called by the Warden, and states as follows:—

"Mrs. Smith never told witness that he would get his pardon if he gave evidence in the Warden's favour. Mrs. Smith told witness that he might get cucumbers out of the garden for Mr. Horsey; she never gave witness a melon; the little child once gave witness a piece of one."

Smith and Guard Martin also testify that DeBlois had shown hostile feeling towards the Warden.

Keeper Jones, in his preliminary examination, says:—"He has often been spoken to by Mrs. Smith, as to Dr. Sampson, in a way which struck witness as very incorrect."

Convict Hugh Cameron, the Warden's gardener, and already alluded to as favoured in the Dining-hall, says, when under examination by Mr. Smith:—"No one has spoken to witness about being pardoned but Mrs. Smith; she told witness that he was down on the Warden's list as recommended for pardon: it was about the month of July of this year."

Keeper John Richardson, one of the witnesses who gave evidence before the Commissioners unfavourable to the Warden, says, in his preliminary examination:—

"Is Carpenter-keeper in the Penitentiary; has been so since December, 1837; got his situation through Mr. Coverdale. Witness never had any serious misunderstanding with the Warden; witness gave evidence at Mr. Utting's trial; his evidence

was in Mr. Utting's favour: since then, witness's situation has not been so comfortable as previously; he means that slights and insults has been shown him on various occasions. The impression on witness's mind is, that his evidence in Utting's case is the cause of this change in the treatment he receives."

\* \* \* \* \* "Witness has reason to believe that Convicts are encouraged to go to the office, and make complaints against him."

By Mr. Smith:—

"Does allow Convicts in some cases to speak to one another on matters not relating to the business, without reporting. A great many Convicts have been sent for to the office, who told witness that they were asked about matters connected with the shop, and witness considering that such proceedings were intended to affect his character, did not refuse to hear these Convicts when they mentioned such proceedings to him. The practice of sending for Convicts to the office, it is witness's opinion, has continued for eighteen months, or two years; and that they are not generally the best men in the shop who are sent for. Witness cannot swear that Warden sent for any Convicts before the month of September, 1848, on his own personal knowledge. Witness has been told lately that every Convict was entitled to come before the Warden any morning at 9 o'clock, but he never knew before he was then told so, that any such rule existed; witness previously understood that the rule was, that Keepers might allow Convicts to go to the office at any time, or to speak to the Warden when he (the Warden) was passing through the shops; the Keeper had the right to give or refuse his consent to their so going or speaking to the Warden; cannot say how long it is since he first gave Convicts his consent to go to the Warden; has no recollection of the date. It was Mr. Costen who told witness lately that Convicts were entitled to go to the Warden's office at 9 o'clock, with the Keeper's consent." And again:—"Witness gave evidence at Mr. Utting's trial before the Board of Inspectors; does not know whether he was Utting's witness or the Warden's; believes that his evidence was favorable to Utting. Has experienced annoyance at the Penitentiary. If witness makes a report, as Keeper, and that report is not attended to, witness considers it an insult. Witness reported Eusebe Lemay, for scandalous report about a Guard; witness's report was not attended to. The report in question is on or about the 7th May, 1847. Witness states, that to the best of his recollection, he gave in a written report to the Kitchen-keeper or Head-keeper, and signed the same in the usual way. (The Punishment Book is produced, which describes the report, and has, in the punishment column, the words, 'to be con.' The report has not been signed in the book; the Convict did not receive any punishment.) It was customary for officers to sign the Punishment Book; witness would have done so, had he been asked to do so; witness was not asked to sign on that occasion. On the morning after witness reported, the Warden had a conversation with witness about it; witness again mentioned to the Warden the offence of the Convict, and does not know why his complaint was not attended to. Witness is shown another report in the Punishment Book, which has his signature appended to it; witness does not know whether that signature was made before or after the punishment was inflicted; sometimes, when an officer is out of the way, the signature is taken after the punishment has been inflicted."

To meet this, and to affect Richardson's character as a witness, the Warden called a number of Convicts in Richardson's gang, to prove that their Keeper

showed favoritism to certain of his men; that he had been carrying on a conspiracy against the Warden and Mr. Costen for months; that flagrant irregularities were constantly permitted in his shop; that he stole tools and other property from the shops; and that he prevented the Convicts under his charge from holding communication with the Warden. The whole of the evidence comes entirely from Convicts, and nothing has been adduced to cast the slightest doubt on the honesty of Keeper Richardson. As to great irregularities having existed in his shop, there can be no doubt; and Richardson does not attempt to deny it. But he sets up the defence, that there has been a systematic attempt made to destroy his character, and that the Convicts in his charge were encouraged by the Warden and Head-keeper to carry tales against him to them; that his authority over his men has not been sustained; and that he was forced to permit irregularities, and to do things in his own defence, which he would not have done in other circumstances. The fact, that Richardson has borne an unexceptionable character for eleven or twelve years, as an officer of the Prison, must give weight to what he says. Whether Richardson was justified in his proceedings, is not at present the question; but in the course of the evidence produced by the Warden against Richardson, a great deal comes out, showing that underhand exertions have been making, for a length of time, to get up a case against Richardson. We give two extracts:—

Head-keeper Costen says:—"Witness does not know that any Convicts have been up before the Warden upon the subject of matters before or to be brought before this Commission. The Warden has not asked witness to inquire of Convicts what they could say in regard to matters before this Commission. Witness has spoken to Convicts about the evidence they could give as to matters likely to come before this Commission. Has spoken to Convicts Parker, M'Donagh, Montgomery, Crandell, James Dwyer, Thomas Condon, and Booth; all these Convicts are in Mr. Richardson's shop, except Condon. Every one of them spoke first to witness, and complained of his Keeper. Condon, also, complained of Richardson, though not of his gang; he saws for Richardson. Witness has spoken to Convict Parker, in this way, three or four times, as near as he can recollect; perhaps five or six times. Parker complained of the violent manner in which Richardson acted towards him. Parker said Richardson swore at him, and spoke roughly to him. Parker said Richardson wished to make a party against the Warden in the shop:—He (Parker) had seen Convict M'Cormick ask Richardson's leave to speak to Convict M'Donagh, and M'Cormick went directly from Richardson to M'Donagh, and Parker heard M'Cormick say to M'Donagh, that whatever Convict was for Costen or the Warden, might never expect his pardon, but would remain his full time in the Prison. Parker told witness that he wished to go before the Warden, and state his complaint against Richardson, of the treatment he had shown to Parker, and his getting up a conspiracy against the Warden. Witness reported this to the Warden; the Warden told witness to send Parker to him; Martin went for Parker, and brought him to this office; it was at nine in the morning, about three weeks or a month ago; was not present when Parker was at the office. At the subsequent conversations witness had with Parker, Parker told witness of Richardson's trying to get over other Convicts against the Warden; witness mentioned these conversations to the Warden. Parker was brought up again before the Warden about these matters; he has been so brought up frequently; Parker may have told other matters of Richardson, but they

escaped witness's recollection. Witness has heard that tools were missing from Richardson's shop; several of the Convicts have told witness so; the Convicts suspected Richardson of taking them; all the Convicts witness has named have spoken to witness about Richardson having stolen the missing tools; they said they were using tools and gave them up to Richardson, but never saw them after. Reported this to the Warden; did so for the first time, three, four, or five months ago; heard something of the kind a long time ago, but gave no heed to it until lately; does not know that any inquiry has been made into the matter; the Convicts in question came up to the Warden for the purpose of explaining to the Warden about the tools having been stolen; no Convict is punished on the testimony of another Convict. Witness has not told Richardson of the complaints made against him by the Convicts, either as to his bad treatment of them, or the conspiracy against the Warden, or the stealing of the tools; does not know that the Warden has informed Richardson of any or all of the three complaints made against him by the Convicts. Witness has spoken to M'Donagh three or four times on the same subjects; thinks he (M'Donagh) has also been several times before the Warden making the same complaints. Witness has spoken to Convict Montgomery upon these subjects, several times; will not swear that he has not spoken to Montgomery on these subjects ten times; could not swear that he had not spoken to him twenty times; cannot tell how often he has spoken to Montgomery upon these subjects; Montgomery has been frequently before the Warden on these subjects. Witness has conversed on the same subjects with Dwyer, Condon and Booth, several times; and they have been all up before the Warden several times. He thinks witness has not conversed so often with Crandell as with the others; has only talked with him once or twice; does not know if Crandell was before the Warden. These conversations have run over the last three or four months; witness communicated the purport of all these conversations to the Warden immediately after they occurred. Witness being asked, if it was right of the Warden and of himself, the Head-keeper, to allow these complaints and accusations to be going on for four months against another officer, on the veracity of Convicts, without informing that officer of them? Says it would depend on the circumstances. Cannot say whether there were any circumstances in Richardson's case which justified the receiving of such accusations against Richardson for so long a space, without informing him of them."

Mr. Costen was recalled next day by the Warden and made the following statement:—"Witness first informed the Warden about the tools being stolen from the Carpenter's shop sometime last month. Witness was in error yesterday when he stated that he informed the Warden of this matter three or four months ago. All the Convicts witness spoke of yesterday, expressed a desire to come before the Warden about their complaints; the men came to the Warden. Thinks it is the Warden's duty to get all the information he can when any wrong act is reported to him. It is witness's duty to report to the Warden any wrong act that he hears of."

Convict James W. Parker, the leading witness against Richardson, makes the following statements:

By Mr. Smith:—

"Mr. Costen has asked witness to swear things against Mr. Richardson. Witness met Mr. Costen and told him that Mr. Richardson abused witness,

and asked him to remove witness from the Carpenter's shop. Mr. Costen said it was not in his power, and that witness had better remain quiet, and that he did not know where to put witness. Mr. Costen asked witness about what was going on in the shop, and witness told him; told him that tools were missing, and Mr. Richardson was trying to lay it to the Convicts; told him that the tools were last seen in Richardson's cupboard, under his lock and key. Mr. Costen asked witness if he was willing to go before the Warden and qualify to his statements. Mr. Costen said, "if you know anything it will be none the worse for you to tell it; you need not be afraid to tell it." When witness said Mr. Costen asked him to swear against Mr. Richardson, he referred to the affair of the tools, and to nothing else: it was after witness had spoken to him about the tools." \* \* \* \* \* "Witness told Mr. Richardson that Mr. Costen asked witness if he would swear against Mr. Richardson; this was in relation to the tools which witness spoke to Mr. Costen about. Witness has watched Mr. Richardson pretty closely since he has been here. Mr. Richardson has called witness a fool; but he is not such a fool as he takes him to be. When witness told Mr. Richardson that Costen had asked witness if he would swear against Richardson, Richardson was trying to pump witness for things against Costen. Witness was wide awake for him. Richardson asked a few questions of witness, and would go off to his desk and write down the answer; he would return again in a few minutes and ask a few more questions, and so on. Witness knew well enough what he was about. Richardson so came, three times in one day."

By Commissioners:—

"Was sentenced to six years imprisonment for two robberies; has been in the Penitentiary three years and a half. There are two parties in the Carpenter's shop—one for the Warden and the other for Mr. Richardson. M'Cormick is on Mr. Richardson's side; Henry Montgomery is on the Warden's side; O'Donnell is on the Warden's side; Johnston is against Mr. Richardson's proceedings. Witness is against Mr. Richardson for the abuse he has given him; has always been on good terms with Mr. Richardson; has been in Mr. Richardson's gang all the time he has been in the prison. Mr. Richardson and M'Cormick know pretty well which of the Convicts are on their side and which for the Warden; they don't tell any of their secrets to the opposite party; M'Cormick has told witness all their secrets; and when M'Cormick has asked witness what he did in the Warden's office, witness has put him off with some frivolous excuse; did not tell him the real cause which took him to the Warden's office, nor to Mr. Richardson, when he asked him on the same point. Mr. Richardson thinks that witness is on his side, and under this impression has had frequent conversations with witness, and told him things he would not otherwise have done. Mr. Richardson has not abused witness within the last nine or ten months; it was previous to that he abused witness. The only complaint witness has had against Richardson lately has been about the tools. When witness said Richardson used him worse than a dog, it was a year or two ago he referred to. Witness did not refer to any particular period about the tools; tools have disappeared from the shop which had been last seen in Richardson's cupboard, continually, since witness came to the prison. Witness first spoke of the loss of the tools to Mr. Costen, about fifteen or sixteen months ago. Spoke to him about his complaints against Mr. Richardson three or four times; about twelve or

fifteen months ago. Spoke to Mr. Costen, next, about the tools, five or six weeks ago; never mentioned the loss of the tools between the two periods. The conversation which passed between witness and Mr. Costen in the yard of the Penitentiary—the particulars of which witness related in examination by the Warden—occurred fifteen or sixteen months ago; is quite sure of this; witness did not go before the Warden at that time. The next time witness held conversation with Mr. Costen, was about five or six weeks ago; it might be two months ago; it was in Mr. Costen's private room off the Dining-hall. Mr. Costen asked witness if he would go to the Warden and testify to what he had said? Witness said he would. Convict Henry Smith came for witness, and he went to the office; the Warden wrote down witness's statements. Witness spoke to Mr. Costen a day or two afterwards on the same subject, and told him what witness had seen and heard in the shop; has frequently done so since; up to the present time, told him all witness saw and heard, from time to time. Witness has been three times before the Warden telling him what went on in the shop; the Warden wrote down what witness told him. Has spoken to Mr. Costen very often to let him know what was going on in the shop; perhaps twenty times. Witness has found out all that Mr. Richardson and his party have been saying and doing for the last two months, and carried it immediately to Mr. Costen."

All the cases which we have enumerated were brought under the notice of the Warden in the charges preferred against him; and from the whole of the evidence, we are of opinion that he has attempted to intimidate the inmates of the Penitentiary, and otherwise tried to bias the evidence of Officers and Convicts, expected to appear as witnesses before the Commission.

In the course of the inquiry, but subsequent to the charges being transmitted to the Warden, other similar cases have been elicited from the witnesses.

The course pursued towards Guard Wilson in reference to his removal to an outside post, has been already shown. On the 31st October, he was again brought before the Board, on a charge of using violent language to Guard Fee one Sunday. The notes of evidence taken in the case are not to be found, so that we do not know, except from the testimony of Mr. Hopkirk, what the evidence before the Inspectors was. We gather, however, that the Sunday duty was taken by the Guards in turn; that the Guards were formed into patrols, and that the same men always came on together; that it was the habit of the Guards of each patrol to agree among themselves which post each man should occupy, and that each regularly took the place assigned him; that Guard Wilson had assigned to him a particular tower, and had regularly taken his station there for many months; that one Sunday, Guard Fee took the key of Wilson's tower, that Wilson remonstrated, but Fee persisted, and took Wilson's station for that day. Wilson says, that he complained to Mr. Costen of Fee's conduct, who said the Guards must settle the matter among themselves. That the following Sunday the same occurrence took place; and that, in the course of the words which passed between Fee and Wilson, the latter said to Fee, if he would not give up the key, he would twist his nose; that Wilson did not use any violence towards Fee; and that simply for using these words, he was dismissed from his situation. It also appears, that during inquiry into this matter, several Convicts were sent for, and interrogated by the Inspectors, as to various thefts which, they alleged, Wilson had

committed within their knowledge; that Wilson was not present when these Convicts were examined, and never knew that they had anything against him; and that, by the rule of the Institution, laid down by the members of the then Board themselves, the Inspectors were debarred from using Convict evidence in any complaint against an officer. The unexplained disappearance of the depositions taken in this, and other similar cases, by the Board of Inspectors, we regard as deserving grave reprehension; and the more so, as the books and papers, except in a few marked instances, have, from the first, been carefully preserved.

The proceedings in reference to the cases of Gate-keepers Bannister and Cooper, have appeared to us to be strongly confirmatory of a desire to bias the evidence of the witnesses to be examined by the Commissioners; we have already adverted to the charge brought against Bannister, relative to a bag of oats; we would now direct especial attention to the following circumstances:—On the 18th of October last, Gate-keepers Bannister and Cooper were examined by the Commissioners, and gave testimony, in some respects, unfavorable to the Warden. In the course of their cross-examination by the Warden, these witnesses were severally asked, if they had ever received money at the gate from visitors?—They appealed to the Commissioners, whether they were required to give evidence inculcating themselves? And, upon a written pledge having been given by the Warden, that they should suffer no annoyance for any matter which might arise in evidence, except in the case of perjury, they were instructed by the Commissioners to reply to the question.—Then they each admitted, that in a few cases, money had been pressed on them and accepted. On the 31st of October, at the meeting of the Board of Inspectors, however, the Warden referred these offences to the Board, but no action at that time was taken upon the charges exhibited. On the 13th of November following, being the day upon which Guard Wilson was finally examined, the Warden again called Bannister and Cooper before the Commissioners, in defence of the charges then under consideration. The Commissioners adjourned at the usual hour, and late the same evening, a Board of Inspectors was convened, and adjourned until eight o'clock, of the following morning, when the report of the Warden of the 31st October previous, relative to the whole of these Guards, was considered, and Guards Bannister and Cooper, having been found guilty upon their admission before the Commissioners, of the charges offered against them, they were degraded by the Inspectors from the responsible office of Gate-keepers, to the comparatively inferior position of Yard-watchers. The nature of the testimony given before us, did not lead us to conclude that these officers were in the habit of receiving money from visitors; and their general good conduct, during many years of service in the Institution; would preclude the idea that such degradation was necessary to the due discipline of the Prison. Upon our remonstrating with the Warden upon the impropriety of converting the evidence given before us into charges to be used against officers before the Inspectors, and more particularly in direct violation of his own pledge that he would refrain from such a course; the Warden replied, that his promise had merely been given to the effect, that officers should not be dismissed. But upon exhibiting to the Warden his written word, that no officer should suffer any annoyance; he declared that these parties had not suffered; as they had been merely removed from one place to another.

We have already shewn that the nature of the removal was to degrade these officers throughout the

Prison. Considering the whole of the circumstances of this case, in connexion with the proceedings of Guard Wilson and others, and feeling that the effect of such proceedings could not fail to be injurious in the further taking of evidence, we suspended the further examination of witnesses, and decided to bring the affair under the immediate notice of Your Excellency. Your Excellency, after hearing the report of the Inspectors upon the subject, was pleased to order that Guards Cooper and Bannister, should be immediately restored to their places at the gate.

Keeper James Skinner, one of the witnesses unfavorable to the Warden, having reason to suspect that fraud had been committed by Keepers Pollard and Manuel, as to some perpetual motion machinery, executed for the officers in the Prison by Convict labor, applied to the Warden to stop the said articles when they were passing the gate on the 21st August, 1848, and had them stopped accordingly.

Skinner addressed a letter of complaint on the subject, to the Board of Inspectors, dated 22nd August, and pointed out the grounds on which he suspected fraud; these being mainly the statements of Convicts.

The Board investigated the matter on the 29th August, but on the very day of the trial, and before entering upon it, they passed a rule against receiving Convict evidence.

Notwithstanding the obstacle raised by this new rule, it was proved on the examination, that some work had been done on a brass wheel, some large lead balls cast, and some wedges and shafts made for the said machinery; all which were being passed out at the gate when Skinner stopped them.

It was deemed sufficient by the Inspectors, for Manuel and Pollard to produce a Bill of Parcels from the Kingston Foundry, unreceipted, for a brass wheel, and a wooden wheel, to prove that these were the brass wheel on which the work was done in the Penitentiary, and the wooden wheel stopped along with it at the gate; and the Warden's oath that "a bill must have been given to the Clerk, or a permit would not have been granted," was taken as sufficient evidence that such bill had been given in to the Clerk, and the proper charges made. It was proved that the Warden had authorized some gearing to be cleaned, and two small shafts to be made some months before, but no authority was proved for the other work. On this state of facts, the Inspectors declared Skinner's charge unfounded, and dismissed him from his situation for bringing it.

To ascertain the truth of the case, we examined the Clerk, and on desiring him to show the bill on which he granted a permit for the machinery in question, he produced one containing the following items:—"8 wedges for brass wheel, 4d; 2 small shafts, 2s. 3d.—total, 2s. 7d." and stated that it was the only bill ever rendered to him of the machinery in question.

This bill bears date the 25th August, four days after this machinery was stopped at the gate; and besides includes only a small portion of the work done. It is therefore clear, that at the moment when Skinner stopped the machinery at the gate, no charge for the work had been made; that but for this prompt action, no charge might ever have been made for it; and that to this day the full charge has not been made. We also examined Pollard and Manuel, and from the whole evidence, cannot doubt that Skinner was

justified to the full extent, in bringing the charge he did.

Guard Watt gave evidence at the trial of F. W. Smith, by the Inspectors, in October, 1847; he also gave evidence before the Commission on the same points, and his evidence broadly contradicted his previous testimony. When Kitchen-keeper Smith was served with the charges and evidence against him by the Commissioners, the discordancy in Watt's testimony was brought by him under the notice of the Inspectors. The Inspectors applied to the Commissioners for information on the subject, with a view to Watt's immediate dismissal; which having been declined, the matter fell through. Watt was called for cross-examination by the Warden, on 19th October, when the following evidence was elicited:—

By Commissioners:—

"The Warden read over the evidence to witness which he (witness) gave before the Commissioners; it was when Mr. Frank's charges came; does not know what the Warden's object was in doing so. No one has ever threatened witness with a prosecution for perjury on account of that evidence. Mrs. Smith asked witness to go into Kingston to a lawyer, and take advice about the evidence; understood that she wanted witness to make an affidavit, that the evidence witness gave before the Commissioners was not true. Talked with Mrs. Smith only once. Only conversed with the Warden once about the evidence he had given before the Commissioners; has never spoken with Mr. Henry Smith, M.P.P., on the subject; has never spoken with Mr. Frank Smith about it; has never spoken with Mr. Costen about it."

By Mr. Smith:—

"Cannot tell what induced Mrs. Smith to advise witness to go to a lawyer; told Mrs. Smith that part of his evidence before the Commissioners was incorrectly taken down; said to Mrs. Smith, that in speaking of giving out bread between meals, that sick Convicts were among them, and that this circumstance was not taken down. Does not recollect of saying to Mrs. Smith, that the list of names of persons given to the Commissioners by witness, as having received provisions from Frank Smith, was incorrect. Some of the officers, whose names witness gave, have told witness that he was mistaken as regards them. Thinks he told Mr. Brown that he was not certain as to some of the names he gave in; Mr. Brown never said it would be rectified afterwards. It was not possible for witness to recollect with certainty every person who got provisions."

By Commissioners:—

"The whole of the evidence witness gave before the Commissioners was read aloud to witness; it was read rather quick for witness to make any observations upon what he did not approve of; does not recollect if he was asked whether the evidence was all right before witness signed it. Witness is shown the minute book of the Commission, page 254, and asked, if the following words were read to him before he signed his evidence:—"The foregoing evidence having been read over to witness, he declared it correct and signed it?" And witness answers, that he does recollect of these words being read to him by Mr. Brown; and that this is his signature. Mr. Brown told witness, before he commenced reading the evidence, that any alterations witness desired would be made. Mr. Brown asked witness, before signature, if he had any thing more to add.

Witness has never represented to any of the Commissioners up to this moment, that his evidence was incorrectly taken down. Witness has told the Warden that he thought a little more was written down than he said. Mrs. Smith commenced the conversation with witness about his evidence; she was not there over five or ten minutes; it was in the Hall, when witness was on duty after six o'clock." \* \* \* \* "When Mr. Brown read over the evidence of witness to him, at his examination on 8th August, witness pointed out several portions of the evidence which he thought needed amendment, and the corrections were made which witness desired."

We are of opinion that Charge IX is established on several of the Counts, and that the Warden has been guilty of gross misconduct.

### CHARGE X.

#### MAKING FALSE REPRESENTATIONS.

1. In representing articles, the property of the Penitentiary, in the annual Inventory of the Institution, to be worth sums much above their value.

As an instance of the system here complained of, the valuation of 3 carriages used by the Warden and Inspectors, was referred to:—In September, 1846, a carriage 10 years old, another 3 years old, and a third 2 years old, were valued together at £140; before the next Inventory was taken, the oldest was sold for £4 15s., and the remaining two inventoried at £90.

The Warden did not meet the general charge intended to be conveyed, by showing that the Inventory was accurately taken yearly, but confined his defence to the case of the carriages. He called Mr. Bickerton on this point, who testified as follows:—"Does not know who valued the carriages at the taking of the Inventory in 1846. Cannot tell whether Mr. Carthy valued articles in the Penitentiary higher than they were worth; his returns showed a higher profit than those of any other gang; does not know that the Warden lowered the value of the carriages in 1847, in consequence of their being too high in 1846, three carriages were valued in 1846, at £140; two carriages were valued in 1847 at £90; one of the carriages was sold between the two periods of stock-taking; the value was reduced in 1847, from £120 to £90 by the Warden."

We are satisfied that an improper valuation was put on the carriages, and from personal inspection of the books, that the annual Inventory of the moveable property has been very loosely made up.

It is evident that great care should be taken in the execution of so important a duty, as an erroneous view of the financial condition of the Institution might otherwise be conveyed.

2. IN INDUCING THE ARCHITECT OF THE PENITENTIARY, TO PUT A FALSE VALUATION ON THE BUILDINGS.

William Coverdale—preliminary examination:—

"After the Penitentiary had been some years in operation, witness was desired to value the buildings; witness did so: it was during Mr. Power's time. Warden frequently came to witness while he was making the necessary calculations, and expressed a

strong desire that the estimate of the value of the buildings should be equal to the aggregate of the public grants, and said, if so, he would care for nothing else. The Warden repeatedly used such language to witness; witness's impression was, that the Warden wished to bias his report. Witness's report of the value of the buildings did exceed the public grants; his report was biased by these expressions of the Warden, to the extent of ten per cent., that is to say, witness put the valuation at the very highest rate. Witness's impression is that the present buildings might have been built for thirty per cent. less, by contract."

The Warden has not attempted to deny this statement. Mr. Coverdale is an intelligent witness and a man of unimpeachable integrity.

3. IN REPRESENTING THE CONVICT LABOR TO BE WORTH, AND TO HAVE PRODUCED, A RATE MUCH ABOVE ITS TRUE VALUE; THEREBY GIVING A FALSE APPEARANCE OF PROSPERITY TO THE INSTITUTION.

When the Penitentiary was first opened, the labor of the Convicts was valued at 2s. per day in the winter time, and 2s. 6d. in the summer; but after a few years, this was changed by the Warden's orders, and the daily value of the Mechanic's labor was afterwards calculated at 3s. in winter, and 3s. 6d. in summer, and the laborers were put down at 2s. 6d. throughout the year. All the Convicts,—men and boys, good, bad, and indifferent, whether fully employed, or only partially so, unless when sick,—have been returned as producing these rates. At the annual balance, the gross amount thus taken to have been produced by each gang, is added to the cost of the materials consumed by the said gang, and the sum total is then charged to the Government, as having been expended on the buildings. By this means, a deliberate misstatement of the business success of the Institution has been got up annually; and the Convicts represented as having earned a rate of daily wages altogether fallacious. And these statements have been yearly sent to Government as the *bona fide* results of the Convict Labor.

In this way, during twelve years and four months previous to 30th September, 1847, the Convicts in the Penitentiary have been represented to the Government and Legislature, as having earned, on work done for the public, £116,203 0s. 3d., or 2s. 9½d. per day on an average, for each man and boy.

Were any evidence necessary to show that Convict labor could not in any Penitentiary produce so high a return as 2s. 9½d. or 55½ cents per day, the operations of the best Institutions in the United States amply furnish it. We find that in the years 1847, the Convicts in Massachusetts State Prison, averaging 270, produced \$30,635.21, or 36½ cents a day for each man, which paid all the expenses of the Institution, and left a profit to the State. That the Convicts in Connecticut State Prison, 143 in number, produced \$12,641.87, or an average of 28½ cents, which paid all expenses, and left a profit to the State. That the Convicts in Auburn Penitentiary, earned 31½ cents per day, for the same year, and those of Sing-Sing, not so much. And these are Prisons in which the labor department has been long regulated, the gangs well trained to their several employments, and the details sharply looked after.

A good deal of evidence has been received as to the value of Convict labor in the Kingston Penitentiary, but no one has rated it above 2s. per day.

We think the Warden, in this matter, has pursued a system of wilful misrepresentation, and it cannot be doubted that the false picture which he has annually conveyed of the business results of the Institution, prevented an earlier inquiry as to the reason why greater success was not attained.

But it appears that in one instance, the Warden was not satisfied with the result which even this system afforded. A very large quantity of heavy iron work has been done in the Prison; doors, gratings, railings, &c.; the raw material of such articles forming the greater part of the value; the Warden desired the Blacksmith-keeper to depart from his general rule in returning them, and instead of charging the material at cost price, and the labor at 3s. 6d. per day, to weigh each job when finished, and return it by weight, at the rate of 6d. per lb. On this point the evidence is as follows:—

James M'Carthy—preliminary examination:—

"The price of all work done in the shop, (Blacksmith's) was arrived at by calculating the number of days spent on it, at 3s. 6d. per day, the quantity of iron and coal used, and adding them together. For work done on the Prison Buildings, the Penitentiary was charged, for every man and boy in the gang, except when sick, whether working or not, at 3s. 6d. per day. Some of the men were good hands, and some of them were not worth twopence per day. Witness is a regularly bred blacksmith. He would not give 2s. per day, overhead, for the labor of an average gang, the men keeping themselves. In calculating and returning the cost of making the heavy gratings used in the Prison, by the Warden's directions, witness did not charge the quantity of iron used at the price paid for it, and the work per day put upon it; but he weighed the railing when finished, and charged it, in gross, at 6d. per lb. Witness did this on all jobs weighing over a stone. By this way of charging, witness used to get from 7s. 6d. to 10s. per day, out of his men. As there was very little work done on these articles, the iron had only to be cut and rivetted. Witness thinks 4d. per lb. would have been a good price for this work. There was a great quantity of this work done—all charged in this way—galleries, doors, railings," &c.

By Mr. Smith:—

"Witness was desired by Warden to charge 3s. 6d. per day for the men's time, and add the cost of the iron; or to charge 6d. per lb. for the iron in the job, to cover everything—on Penitentiary work done in the Blacksmith's shop. Followed this rule in all work done for the Penitentiary, to the best of his knowledge." \* \* \* \*

Q. Have you ever charged higher rates for work done at the Penitentiary, than it could have been done for elsewhere?

A. Yes; was directed how to charge. Some of the work witness was directed to charge at 6d. per lb., could have been done outside for 4d.

Q. Is there a great deal of work on such jobs as grating, doors, &c.?

A. Principally drilling and rivetting, which any hand could do.

Q. Do you know how many holes have to be drilled in each door? Are there a hundred?

A. Cannot say; could soon calculate.

Q. Is not the labor very great in drilling holes?

A. Not very great; and a laboring man can do it. \* \* \* \* "Has seen the shop-books kept in the office; does not know all that was in them. Witness was always given to understand that the Blacksmith's shop was given credit in the office books for the men's time, at 3s. 6d. per day, and the material used. It was the Warden's direction that witness should charge in this way, with the exception of the heavy jobs, which were charged 6d. per lb. The gratings and doors were charged 6d. per lb. Skinner charged 7½d. for some of his doors. The Warden told witness to charge 6d. per lb. Skinner's charge of 7½d. came through witness's hands. Allowed Skinner to make this charge, because Skinner told witness they could not be done for less; they were sheet-iron doors; and Skinner said he had spoken to the Warden about it. Used to know the price of sheet-iron—used to see the bills; never kept an account by the day, of how much iron a man could work up in a day into gratings, railings, and doors. Does not think he was ever told to charge work to the Penitentiary at the Kingston prices. Witness was desired to charge 3s. 6d. per day, and time and materials; or 6d. per lb., including everything. At some work, by charging 6d. per lb., he could make 5s. to 7s. 6d. per day out of some of his men; and at others, if he charged in the same way, he could not make 1s. 3d. per day. Forgets if he ever made 10s. per day out of some of his men. The real value of the Blacksmith's Convicts was not 2s. per day."

For the defence, the Warden called

Keeper Pollard—By Mr. Smith:—

"The fair Kingston price for iron gratings and cell doors laid down ready made, would be 6d. per lb.; that is the regular price. The fair price for sheet-iron doors, he does not know."

Mr. Horsey—By Mr. Smith:—

"Cannot say what the laborers in the Penitentiary are charged at; has no personal knowledge." \* \* \* \* "Cell doors and gratings made in Kingston, witness thinks, would be worth from 6d. to 7½d. per lb., as turned out of the shop."

We find that, in consequence of this system of charging, the Blacksmith's returns have shown the average value of the men employed in his shop, to be 7s. 1d. per day, for the last six years. Notwithstanding the valuation put on the heavy iron-work by Pollard and Mr. Horsey, we are satisfied M'Carthy's estimate of 4d. per lb. much nearer the truth. On application at the principal Foundry in Kingston, we found that a contract could be effected for such work, to any extent, at 4d. to 4½d. per lb.

4. IN HIS COMMUNICATION WITH THE COMMISSIONERS, IN REFERENCE TO THE NEW ACT OF PARLIAMENT, REGULATING THE PENITENTIARY.

Extract from Minutes of the Commissioners, 26th June, 1848:—"At 10 o'clock, Mr. Hopkirk, Inspector, and Mr. Smith, Warden of the Penitentiary, had an interview with the Commissioners." \* \* \* \* "Mr. Smith, on being interrogated (not under oath) stated that he and his son, Mr. Henry Smith, M.P.P., had framed the late Penitentiary Act; that it was adopted by Mr. Draper; that previous to the second reading in the Lower House, a copy was sent up, which he (the Warden) handed to Major Sadler for the use of the Board of Inspectors; that the Major offered no objection to

the bill; that amendment having been made on the bill in the Upper House, a draft of said amendment was sent up to the Warden, who submitted it to the Inspectors; that no objection was made to the bill by the Inspectors, previous to the passing of the bill, but afterwards much objection, and that the Inspectors resigned their appointments in consequence of this bill."

Henry Sadlier, Esq. :—" Was one of the Inspectors of the Penitentiary, from 1840 to 1846; resigned with the other Inspectors in 1846, in consequence of the passing of the new Penitentiary Act, 9 Vic. cap. 4. Never saw a copy or draft of the said bill until it was the law of the land; it was then produced at the Board by the Warden, in consequence of a remark of the Chairman, Mr. Kirkpatrick, inquiring of the Warden, if he knew of the Act before it passed. The Inspectors were never consulted as to the clauses of the Act before it was passed through the Legislature, and had no knowledge that such a bill was to be introduced. A new Act was frequently mentioned by the Inspectors, in presence of the Warden, as desirable; it was expected that Government would introduce a new bill, and would send for the Inspectors to attend the Committee of the House. Witness never heard that a copy of the bill was sent up for the use of the Inspectors, before it became law; was not shown any copy of bill, or any draft, or amendment of it, at any time, before it became law. The Inspectors heard by common report that a bill was before the House, but were thrown off their guard, as they fully calculated on being consulted by the Government upon it, before it passed. (The statement of the Warden, made to the Commissioners, on page 14, from line 23 to line 32, (extract given on that page 201,) having been read to the witness,) he declares it to be untrue."

Thomas Kirkpatrick, Esq.—By Mr. Smith :—

" Witness never saw the amendment made by the Legislative Council to the Penitentiary Bill of one thousand eight hundred and forty six until that Bill became law: never saw the Bill before it was passed. The Inspectors heard through the public papers of such a bill being before Parliament. Witness expected that a copy would have been sent to the Inspectors, and therefore did not take any steps to procure one."

James Hopkirk, Esq.—By Mr. Smith :—

" Witness was present with the Warden at an interview with the Commissioners, at the Court house, on the first day they sat; has some recollection of the Warden mentioning a copy of the last amended Penitentiary Act having been sent to him; did not pay much attention; thinks the Warden said the Copy of the Act alluded to was sent for his own use; has no recollection of any thing being read over to the Warden by either of the Commissioners; no deposition was read."

The letter of resignation by Messrs. Kirkpatrick, Manahan, Marks and Sadlier, says, the Act " was framed, introduced into the Legislature, and passed both houses, without the slightest reference to them."

The statement of Mr. Smith is, therefore, directly contradicted by the Inspectors; and the transaction shows how little dependence we were able to place on the unsupported information of the Warden, on any point submitted to him for explanation.

##### 5. IN STATEMENTS MADE TO THE COMMISSIONERS IN REFERENCE TO HENDRY AND BLACKLOCK'S CONTRACT.

This charge is developed in the following correspondence :—

No. 1.

" Copy—Letters Secretary of Commission to Warden Provincial Penitentiary.

" Provincial Penitentiary Commission Room,  
" Kingston, 27th July, 1848.

" Sir,

" I am instructed by the Commissioners of the Penitentiary Inquiry, to transmit to you certain extracts from their Minutes of 19th and 20th instant, on the subject of the Ration Contract of Hendry & Blacklock, with the Penitentiary; and I am to state, that, should you have any corrections or additions to these Minutes, which you would desire to have entered on the Records of the Commission, we will be happy to hear from you on the subject.

" I have the honor to be,

" Sir,

" Your most obedient Servant,  
(Signed,) " GEO. BROWN,  
" Secretary.

" HENRY SMITH, Esq.,  
" Warden, Provincial Penitentiary."

" Extract from Minutes of Penitentiary Commission, of 19th July, 1848 :—

" The Warden's attention was this day directed to the subject of Hendry & Blacklock's Contract for the delivery of the Convicts' Rations, from 1st December, 1846, to 30th November, 1847; and an explanation was demanded from him in reference to the short supply of potatoes delivered under that Contract.

" Mr. Smith thereupon stated, that the Contractors had been unable to procure potatoes to fulfil their agreement, and had proposed to him to supply white bread in lieu thereof; that he had referred the matter to the Inspectors, who authorized him to make the best terms he could with Hendry & Blacklock; that he thereupon entered into an arrangement with that firm, to receive from them bread instead of potatoes, and finally settled with them at the rate of four-fifths of a pound of white bread, in lieu of each ration of one twenty-second part of a bushel of potatoes.

" It was then suggested to the Warden, that it was a very poor arrangement for the Convicts, to give them four-fifths of a pound of bread, in lieu of two pounds\* of potatoes per diem. It was further suggested to him, that even this arrangement had not been carried out, for the Contractors fell short in their delivery of potatoes, 102,710 rations, (of one twenty-second part of a bushel each,) which, at four-fifths of a pound of bread to each ration, required 82,188 lbs. of bread to supply the place of the deficient potatoes; and that, as only 56,499 lbs. of white bread were received in all, the supply fell short, even of the agreed compromised quantity, 25,689 lbs., reducing the rations of the Convicts so much.

" The Warden replied that he was aware of all this, and that white bread had been received from

\* This should have been 3 lbs. See Letter of 21st August.

Mr. Williamson to make up this deficiency of 25,689 lbs., and the amount deducted from Hendry & Blacklock's bill.

"Mr. Smith was, however, shown by the Provision Receipt-Book, kept by the Kitchen-keeper, this was not the case, for that only 56,499 lbs. of white bread had been delivered altogether by Hendry & Blacklock, and Williamson. He was likewise shown, that even in his own way of settling, the proper deduction had not been made from Hendry & Blacklock; for, even had they delivered the whole of this quantity of 56,499 lbs., the deficit still remaining was 25,689 lbs. of white Bread, which, at 1½d. per lb., left £160 12s. 3d. to be deducted from their bill, while £145 17s. only, was deducted.

"Mr. Smith was further shown that a much more serious error than even this, had been made in the settlement of this Bread Account; for that, while 56,689 lbs. of white bread, only, had been delivered altogether, about one-half of which was by Hendry & Blacklock, and the other by Williamson, Hendry & Blacklock were paid for the whole quantity, and Williamson was paid £178 6s. 6d. for his share, thereby injuring the Penitentiary to the extent of £178 6s. 6d.

"The Warden being unable to account for these things, it was agreed that he should look into them, and give what explanation he could to-morrow morning."

"A true Extract.

(Signed,) "GEO. BROWN,  
"Secretary, P. P. C."

"Extract from the Minutes of the Penitentiary Commission, 20th July, 1848 :—

"This morning the Warden met the Commissioners at the Penitentiary, and admitted that the sum of £178 6s. 6d., in question, had been paid twice; that it had been paid to Mr. Williamson with the intention of deducting it afterwards from Hendry and Blacklock's Account, but that this had not been done.

"Mr. Smith was interrogated as to the probability of recovering the sums (£178 6s. 6d. and £14 15s. 3d.) overpaid to Hendry & Blacklock; when he replied that this firm had recently failed, and their affairs were in the hands of an Assignee, but that a dividend might be expected from their Estate.

"As to the short supply of white bread, alleged by the Commissioners to have been furnished to the Convicts, Mr. Smith admitted that the Convicts had received 25,689 lbs. of white bread too little, in lieu of their potatoes. But Mr. Smith informed the Commissioners that in its room, 11,238 lbs. *extra*, of brown bread, had been furnished to the Convicts during the time they had no potatoes, and he added that the short allowance to Convicts on the Sick and Punishment Lists, accounted for the remaining deficit. In support of this statement, Mr. Smith handed in a written memorandum, showing that these 11,238 lbs. of brown bread had been furnished to the Convicts in 3,220 extra rations of one-sixth of a loaf each; and 9,114 extra rations of one-fourth of a loaf each."

"A true Extract,

(Signed,) "GEO. BROWN,  
"Secretary, P. P. C."

No 2.

"Copy—Letter Warden to Secretary.

"Provincial Penitentiary,  
"28th July, 1848.

"Sir,

"I have the the honor to acknowledge the receipt of your letter of yesterday's date enclosing extracts from the Minute Book of the Penitentiary Commissioners, dated 19th and 20th instant.

"The verbal statement given by me to the Commissioners respecting Messrs. Hendry & Blacklock's contract, and the number of rations consumed during its existence, should not of course be depended on; as having been given without reference to the books of the Institution, and with the reservation of the number of sick Convicts which were not known at the time. I have therefore now enclosed an account by which it will be seen, that after making full allowance for the bread rations, and appropriating the surplus to make good the deficiency of potatoes furnished during the year, there appears to be, as regards potatoes alone, a deficiency of 2943 rations, distributed to the Convicts, being at the rate of about 1½ per cent on that article, or so much less consumed by them during the year, and this without considering that a less quantity of bread is equally nutritious with a greater quantity of potatoes. In order to show that a sufficiency of provisions has been allowed to the prisoners, I have examined the statements made by sixty-seven discharged Convicts, and I find that fifty-one of them declare that they have always had sufficient food, and five of them that they have always had more than enough. On the other hand, there appears to be sixteen who state that they had not always enough, but the majority of these were very frequently punished by low diet, for infractions of the rules of the establishment, and therefore their remarks on this head are readily accounted for. In addition to the above sixty-seven Convicts, there were 193 soldiers discharged, who were not questioned on their release from confinement, as their answers would not tend to throw any light upon the cause or progress of crime, their offences being simply of a military character. I have, however, questioned several of this latter class of prisoners, while undergoing their sentences, and such as I have spoken to have assured me that they are not only well fed here, but receive a greater amount of provisions during the day, than they are allowed in the barracks. As I have no recorded opinions of the military prisoners, I must beg to refer the Commissioners to the Major General Commanding the District, and to the Town Major, for a corroboration of my statement, as I have reason to believe that they have made particular examination into the treatment of soldiers while under confinement here. I would beg leave further to observe, that the general robust appearance of the Convicts, and the absence of sickness from nearly the whole of them, furnish ample evidence that a sufficiency of food is distributed to them; therefore any complaints that can be made on this score, must be from the persons I have before described as receiving short allowance as a punishment for their own bad conduct; and I should have deemed myself highly censurable to have permitted any waste, by allowing the distribution of a greater quantity of provisions for the sustenance of the Convicts, than was absolutely necessary.

"It is the duty of the Surgeon to examine the rations from time to time, and I have never received any report from that officer that they were insuffi-

cient, nor have I learned that any Convict has suffered from sickness arising from a deficiency of food.

"With regard to the white bread furnished by Mr. Williamson to the amount of £178 6s. 6d. and the quantity of which was erroneously credited to Messrs. Hendry & Blacklock, and for which they were afterwards paid; when I stated to the Commissioners that the account of the former was distinct from that of the latter, such was my impression, as the Clerk knew that a separate agreement had been entered into with Mr. Williamson, and from the circumstance of that officer having handed to Messrs. Hendry & Blacklock a memorandum of the amount already paid to Mr. Williamson for the purpose of being entered in their books to the credit of the Penitentiary, and which was done by them, it would appear that the Clerk was aware that the bread in question was credited to Messrs. Hendry & Blacklock; and therefore it was owing to his omission to charge the amount agreeably to what he had previously stated to them that the error has occurred. If Messrs. Hendry & Blacklock had had the candour to have made known the mistake at the time of settling their account, it would immediately have been corrected.

"The sum stated in the minute of the Commissioners, as being chargeable to Messrs. Hendry & Blacklock for the difference between the amount of white bread purchased on their account, and the potatoes deficient in their contract is £14 15s. 3d., which should be £32 9s. 6d., and which latter sum is credited to the Penitentiary by the Assignee of Mr. Hendry.

"I have the honor to be Sir,  
Your most obedient Servant,  
(Signed.) "H. SMITH, Warden.

"GEORGE BROWN, Esq.  
" &c. &c. &c."

"Statement of the distribution of Bread Rations from 1st December, 1846, to 30th November, 1847:—

"Total amount of Bread to be issued during the year, had each Convict, borne on the books, received their rations ..... 186,778 lbs.

Less for Convicts discharged during the year:—  
Sunday rations..... 47= 64 lbs.  
Week-day do. .... 213= 213

Less for Sick Convicts:—  
Sunday rations..... 719= 988  
Week-day do. .... 5044=5044

6309 lbs.  
Less furnished to Convicts for supper. 1565  
4744 lbs.

"Statement of the distribution of Potatoe Rations, or substitutes therefor, from 1st December, 1846, to 30th November, 1847:—

"Total number of rations, had each Convict on the books received full diet..... 173,286

Less Convicts discharged, whose names were borne on the books the day they were liberated, but who did not receive rations ..... 260

Rations deducted on account of punishment ..... 6043  
Do. do. do. sick diet. 5763=12,066

Total number of rations to be provided .... 161,220

Potatoes furnished by the Contractors, equal to rations..... 70,576  
White bread furnished by J. Williamson, and Contractors..... 70,623  
1-6 of Brown loaf } 11,238 lbs. furnished { 3,220  
1-4 do. do. } extra ..... { 9,114  
1-4 do. do. 4,744 lbs. as per statement above..... 4,744  
Rations deficient in lieu of potatoes..... 2,943  

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161,220

No. 3.

"Copy—Letter Secretary of Commission to Warden Provincial Penitentiary.

"Provincial Penitentiary Commission Room,  
"Kingston, 15th August, 1848.

"Sir,

"I was duly in receipt of your favor of 28th ultimo, with accompanying statement of rations supplied to the Convicts in 1846-7, in reply to my communication of the previous day. I did not fail to lay your letter immediately before the Commissioners, but I have been prevented from replying, by a pressure of other business, until now.

"The Commissioners are happy to observe, that there is complete harmony between you and them, in regard to the facts embodied in their Minutes of 19th and 20th ultimo, as transmitted to you.

"The Commissioners are surprised at being informed by you, that 'Verbal statements made by you to the Commissioners, respecting Messrs. Hendry & Blacklock's Contract, and the number of rations consumed during its existence, should not of course be depended on; they cannot but think, that in so grave a matter, every statement made by you to them, should be well considered, and strictly accurate.

"The Commissioners regret still more to find that your written statements, prepared with all deliberation, are not more 'to be depended on' than the verbal ones; the calculations accompanying your letter are, to say the least, exceedingly erroneous.

"Taking it for granted, that the annual numbers on the Sick and Punishment Lists, and those nice calculations as to discharged Convicts, borne on the books, but not fed, are correct,—I proceed to point out certain inaccuracies in your statement, to which the Commissioners invite your attention. The first portion of the calculations which accompany your letter, is as follows:—

"Total amount of Bread to be issued during the year 1846-7, had each Convict borne on the books received their rations.....lbs. 186,778

Less for Convicts discharged during the year:—

Sunday ration ..... 47= 64 lbs.  
Week-day do. .... 213= 213

Less for Sick Convicts:—

Sunday ration ..... 719= 988  
Week-day do. .... 5044=5044

6309 lbs.  
Less furnished Convicts for supper. 1565

4744 lbs.

" You will perceive that in this calculation you have not made allowance for the extra brown bread furnished to every Convict while under punishment. You afterwards give the number of Convicts punished during the year as 6,043 ; this, at half a pound of bread to each punishment, would make 3,021 lbs., making your statement of overplus bread, that number of pounds too much.

" Your second statement is as follows :—

Total amount of potato rations for 1846-7, had each Convict on the books received full diet.....rations	173,286
Less Convicts discharged, whose names were borne on the books the day they were liberated, but who did not receive rations .....	260
Less rations deducted on account of punishment.....	6043
Do. do. do. sick list.	5763=12,066

Total number of rations to be provided..... 161,220

" The number of rations here deducted, we shall assume for the present to be correct, and that 161,220 rations of potatoes was the nett number to be served to the Convicts. Your statement then goes on to show how these 161,220 rations were supplied, as follows :—

" Potatoes furnished by the Contractors, equal to rations.....	70,576
White Bread furnished by J. Williamson, and Contractors.....	70,623
1-6 of Brown loaf } 11,238 lbs. furnished {	3,220
1-4 do. do. } extra..... {	9,114
1-4 do. do. 4,744 lbs. as per statement above.....	4,744
Rations deficient.....	2,943
	161,220

" The first item of the above is correctly stated.....	70,576
The second item is also correct.....	70,623
But the next item (Extra Rations which you say were furnished) is erroneous ; for these 3,220 rations you only allege to have been one-sixth of a 4 lb. loaf each ; you have in your next two items calculated one-fourth of a loaf, or 1 lb. as equal to a ration, or two pounds of potatoes ; this is certainly below the just comparative value, but we shall take it at that rate.....	2,147
The next item, (further alleged Extra Rations,) with the same reservation as to the comparative nutritive value of 1 lb. of brown bread and 2 lbs.* of potatoes, will be as you have it.....	9,114
And the last item, with the correction pointed out above, viz., 4744—3021 will leave.....	1,723

Total rations furnished..... 154,183

" It thus appears that, even had all your allegations been correct, the Convicts had 154,183 rations of potatoes or their substitute, instead of 161,220 rations or 7,037 rations short.

" But so far from your allegations being correct, they are utterly baseless. The charge of starving the Convicts, now under consideration, lays during the period when you agreed to furnish the Convicts

\* Should have been three pounds.

with four-fifths of a pound of white bread in lieu of two pounds\* of potatoes—and when your supply to them fell short, even of this compromise, 25,689 lbs.—and does not include any other portion of the year. Your allegation that extra brown bread rations were supplied in lieu of the deficient white bread, we have the means of demonstrating, cannot possibly be true. Your own Books show not only this much, but that the ordinary supply of brown bread was not furnished during the period in question. The correctness of this statement you will not fail to see by examining the following calculations :—

" Hendry & Blacklock's Contract commenced on 1st December, 1846, and from that date to 23d March, 1847, the regular supply of Potatoes was furnished by them to the Convicts. During this period, 54,385 was the number of rations of brown bread to be supplied ; and to meet these, 69,209 lbs. of brown bread were actually supplied.

" The potatoes ceased to be supplied on and after the 24th March, 1847, and up to the 26th August, 1847, none were delivered. During this space, the number of ordinary rations of brown bread to be supplied by the contractors was 73,666.

" Now, the 'rule of three' comes at once into play ! If to meet 54,385 rations of brown bread, it required (when there was a full supply of potatoes) 69,209 lbs. of brown bread, how much brown bread did it require to meet 73,666 rations ? Answer, 93,745 lbs. of brown bread.

" It thus appears that had you given the Convicts only the same quantity of brown bread which they had with full rations of potatoes, during the five months on which this charge is founded, they would have received 93,745 lbs. of brown bread. Now, Sir, if you will examine the Kitchen Receipt-book, you will find that only 79,229 lbs. of brown bread were actually supplied to the Convicts during this period ; which proves that not only is your allegation, that you had supplied extra brown bread rations, in lieu of the deficient white bread, incorrect, but that, in fact, there was a deficiency of 14,521 lbs., on the ordinary brown bread rations, during the very period when the white bread fell so much short.

" Confident as the Commissioners felt that these calculations were strictly correct, they were still unwilling to believe that you could have deliberately concocted these extra rations—so many of one-sixth of a pound, and so many of one-fourth of a pound—and to set every doubt at rest, they resolved to examine on oath, the officers under whose inspection these extra rations must have been expended, had they any existence. The following extracts from the evidence obtained, you will see fully corroborate the calculations of the Commissioners :—

" Thomas Costen, Head-keeper of the Penitentiary, stated :—' Extra rations of brown bread were never, on any occasion, served to the Convicts, while the white bread was substituted for potatoes. When the potatoes were very bad, some days, extra rations of brown bread were served out, but never when potatoes ceased to be served.'

" John Watt, Assistant Kitchen-keeper, states :—' The quantity of brown bread was never increased when the potatoes failed to be supplied ; the daily ration of brown bread has continued steadily the same ; at no one particular time has extra brown bread rations been served to the Convicts.'

\* Should have been three pounds.

"James Kearns, a Guard, states:—"Has known—at the time when the potatoes were very bad, and much clamour excited on the subject—the Kitchen-keeper to send round an extra supply of brown bread, after the white bread came instead of the potatoes. No extra brown bread was served in this way. Witness is quite sure that during last summer, when white bread was supplied in lieu of potatoes, there was only the ordinary supply of brown bread served out; there never were any extra brown bread rations served out during this time, he is quite certain."

"It was the more remarkable your attempting to set the brown bread expended during the year, beyond the Statutory allowance, against the deficient white bread, when you were well aware that the extra consumption of brown bread was not peculiar to the year in question, but that for several previous years the Government had been charged for a large quantity of brown bread beyond the statutory allowance, and that when the potatoes were fully supplied.

"You state that the potatoes were only  $1\frac{1}{4}$  per cent short, 'and this without considering that a less quantity of bread is equally nutritious with a greater quantity of potatoes.' We say nothing of the erroneous per centage; but after giving four-fifths of a pound of one article in lieu of two pounds\* of another article, on the score of its high nutritive properties, it is a strange mode of reasoning to palliate a deficiency of the substituted article on the score of its being more nutritious than the article for which it was substituted.

"The statements of the sixty-seven discharged Convicts you name, as to the sufficiency of food furnished to them, were they entitled to any weight, would not alter the facts of the case, viz.: that in the one hundred and fifty-six days referred to, each Convict in the Penitentiary was entitled to have received 312 pounds† of potatoes; that you agreed to substitute for the quantity of potatoes, 125 pounds of white bread to each Convict, and that in fact, you only supplied 86 pounds of white bread. On the opinions of the Convicts and of the Military, as to the sufficiency of food and on the general appearance and condition of the Convicts, we shall, however, have occasion to enlarge hereafter, and we do not, therefore, enter on these points at present.

"The Commissioners are glad to observe that passage of your letter in which you say:—"I should have deemed myself highly censurable to have permitted any waste, by allowing the distribution of a greater quantity of provisions for the sustenance of the Convicts, than was absolutely necessary." The Commissioners thoroughly agree with you in this, and extend the same remarks to the several departments of the Institution; but, in the case before us, your economy appears to have been exercised rather for the benefit of the Contractors than of the Government, for while the Convicts were short supplied, the Contractors were fully paid.

"You say 'it is the duty of the Surgeon to examine the rations from time to time,' and so it is; but the charge at present made, is not that the rations were bad, nor yet that the quantity fixed by law was insufficient, but simply that the full statutory quantity was not furnished; and it was scarcely to have been expected that the Doctor could check the daily quantity of food given to each Convict. Had he attempted to do so, he was not likely to have

\* Should have been three pounds.

† Should have been four hundred and sixty-eight pounds.

detected the deficiency when you, the Warden, and your Deputy, the Head-keeper, and the Kitchen-keeper, whose daily duty it was to see to this very matter, failed to discover it, and are even now trying to establish that the supply only fell short  $1\frac{1}{4}$  per cent.

"As to the error in settling with Hendry & Blacklock, the Commissioners have no desire to enter now upon the question of whether the Clerk, acting under your instructions, found out, sooner or later, that an error had been made; and still less do they desire to discuss whether if Hendry & Blacklock 'had had the candour' to refuse the money when you paid it to them, the error would 'immediately have been corrected.' All that the Commissioners have to know in the matter is, that the Government is minus the sum overpaid to Hendry & Blacklock, and that you are responsible for the transaction. In justice to the contractors, however, the Commissioners must say, that as Hendry & Blacklock settled on a statement made out from the Penitentiary books, and furnished by you, and as you, yourself, did not discover the error, and were with difficulty persuaded of its existence, the fair conclusion is, that they did not discover that they had been overpaid.

"You are good enough to correct the calculations in my letter of 27th ultimo, but with all deference, I beg to refer you again to the Minutes of the Commissioners of 19th ultimo, when I think you will perceive that the short deduction is £14 15s. 3d. and not £37 9s. 6d. as you assert. If Hendry & Blacklock have given the Penitentiary credit for this latter sum, they must have done so by deducting the sum you kept from them at settlement (£145 17s.) from the amount paid to J. Williamson (£178 6s. 6d.) and not as they should have done, from the value of 25,689 lbs. of white bread, short delivered, or £160 12s. 3d.

"I have the honor to be, Sir,

"Your most obedient Servant,

(Signed,) "GEORGE BROWN,  
"Secretary.

"HENRY SMITH, Esq.  
"Warden, Provincial Penitentiary."

No. 4.

"Copy—Letter, Warden to Secretary.

"Provincial Penitentiary,  
"18th August, 1848.

"Sir,

"I beg to acknowledge the receipt of your letter of the 15th instant, which only reached me on the evening of the 16th, and as I was engaged with the Board of Inspectors on the following day, and have since had to attend to other matters consequent upon their meeting, as well as my ordinary daily duties in the Institution, I have been unable to reply to it until the present time.

"In your letter you state that the Commissioners are happy to observe there is complete harmony between me and them, in regard to the facts embodied in their Minutes of the 19th and 20th ultimo; but I do not see how this can be, as by the Minute it is assumed that four-fifths of a pound of white bread were given at all times during the absence of potatoes, whereas I have shown in the statements accompanying my letter of the 28th ultimo, that

when there were neither potatoes or white bread, one-sixth of a brown loaf for a week, and one-fourth of a loaf of the same description for a longer period, were substituted for potatoes.

"On reference to my letter of the last mentioned date, you will find that respecting the 'verbal statement' I made to two of the Commissioners, regarding Messrs. Hendry & Blacklock's contract, that the statement I made should not 'be depended on as having been given without reference to the books of the Institution;' and also, without a knowledge at the time of the number of sick Convicts, which could only be ascertained by an examination of the Hospital books; and considering the instantaneous answer I was called upon to give, I cannot imagine how, under such circumstances, any statement made by me could be 'well considered and strictly accurate;' the time in putting and answering the question not occupying two minutes.

"Before further answering that part of your letter respecting the calculations forwarded to you, I request you will be pleased to inform me whether you have, in your counter statement accompanying yours of the 15th, excluded the extra rations of one-sixth and one-fourth of a brown loaf, which if I correctly understand your letter, must be the case, as you there state 'the following extracts, from the evidence obtained, you will see fully corroborate the calculations of the Commissioners.'

"After reading the extracts of the evidence alluded to, I called upon Mr. Costen, who tells me that he was put upon oath, and that when asked the question whether extra rations of brown bread were given to the Convicts when potatoes ceased to be served out, he meant by his answer that none was given to the Convicts except the usual daily allowance of brown bread, and that which was served to them in lieu of potatoes when there was no white bread.

"I also spoke to the Guard John Watt, on the same subject, who tells me he also was sworn, and that he did not at all understand that brown bread was referred to in the questions put to him; and that, furthermore, he knows that two pieces of bread have always been furnished to each prisoner, when neither potatoes or white bread were supplied.

"I have also questioned the Guard James Kearns, who is stated in his evidence to have said, 'there never were any extra brown bread rations served out during this time, he is quite certain;' which conveys an erroneous impression, as he says, his meaning being, that the Convicts, when without potatoes, had always two allowances of bread, and that anything beyond that, he considered extra.

"These discrepancies would have been avoided, had I been allowed to be present at the examination of any witnesses who gave evidence in matters wherein I was personally concerned; and I take this first opportunity of pointing out the consequences of receiving testimony under oath, in my absence, relating to any transactions in which I have been officially or otherwise engaged.

"It may appear strange, until it is explained, that there should at any time appear to be a surplus of brown bread when potatoes have been furnished during the whole year; but it is well known that, at certain seasons, that vegetable becomes strong and unwholesome; and notwithstanding their apparently sound state before being cooked, when served out for breakfast and dinner meals, a great portion of them

prove to be unfit for consumption, which is fully elucidated by the evidence of James Kearns, who says, he 'has known, at the time when the potatoes were very bad, and much clamour excited on the subject, the Kitchen-keeper to send round an extra supply of brown bread.'

"From these circumstances, I trust you will see that there was no attempt on my part to deceive or mislead the Commissioners in any statement I felt called upon to lay before them, or that it is my wish to palliate any inaccuracies, real or supposed, on my part. I am free to confess that, like all men, in preparing statements extracted from accounts of daily transactions during a year, I might be liable to make some inaccurate statement, particularly when I have but a short time to make them, and even then in the midst of my daily occupations, which cannot be set aside; but that I would wilfully endeavour to impose a false statement on the Commissioners, or on any one, no one who has known me for any length of time will attempt to assert.

"I was rather surprised to find that the Commissioners did not appear to think the declarations of the 67 discharged Convicts were entitled to any weight; particularly as I had reason to know that the evidence of such description of persons had been taken, and would be acted upon, by the Commissioners; and I must again assert, that their declarations are borne out in this respect, by their general robust appearance, and the testimony of the public.

"Neither the Head-keeper nor the Kitchen-keeper have had anything to do with the preparation of the statements already furnished by me to the Commissioners, nor is it my special duty to see to the serving out of the daily rations, but 'to exercise a general supervision and control over the government, discipline, and policy of the said Penitentiary.' It might, with equal propriety, be expected that I should count, weigh, or measure every article furnished for the service of the Institution.

"With regard to the error in Hendry & Blacklock's settlement, whatever excuses may be made for them, it is too mild a term to call it a want of candour on their part; more particularly when it is known that the amount credited by them to the Penitentiary was balanced on the debit side of their books by the unmercantile entry of 'to error.' Had the account furnished to Mr. Hendry from the Penitentiary been examined by him, and compared with the Bread Pass-book in his possession, in which the accounts of bread furnished by Mr. Williamson, as well as by himself, were kept distinct from each other, he would immediately have discovered that he had been overpaid, without reference to the entry before alluded to, and the strange counter-entry made to balance his books.

"You are pleased to state that it was with difficulty I was persuaded of the error. The only difficulty in my mind was, how the white bread should be credited to the two accounts; but when Mr. Bristow showed me that the entries in Hendry & Blacklock's provision account, and those in Mr. Williamson's bill, exactly corresponded both as to date and quantities, I became convinced there was an error, and immediately proceeded to Mr. Williamson's and to Mr. Hendry's, and had the matter fully explained.

"I do not hold myself responsible for any loss sustained by the negligence of the Clerk, as that officer is not appointed by me, neither is his bond for the faithful performance of his duties given to

me, but to the Government, by which he is appointed; neither can he be removed or suspended but by the Government. However, I do not believe that any loss will be sustained by the transaction referred to, as the Penitentiary Solicitors have informed me they have no doubt of recovering the money from Messrs. Hendry & Blacklock's sureties.

"I have the honour to be,  
" Sir,  
" Your most obt. Servant,  
(Signed,) " H. SMITH,  
" Warden.

" GEO. BROWN, Esquire,  
" &c. &c. &c."

No. 5.

" Copy—Letter, Secretary to Warden.

" Provincial Penitentiary  
" Commission Room,  
" Kingston, 19th August, 1848.

" Sir,

" I have to acknowledge receipt of your letter of 18th, in reference to the short supply of food served to the Convicts during Hendry & Blacklock's contract.

" The Commissioners understand you now to state, that the alleged overplus brown bread was not given, as you before stated, as 'extra rations,' but as ordinary rations; brown bread being substituted for white. It is immaterial to the real question at issue, in what shape they are asserted to have been given. The Commissioners have shown that they were not given in any shape between the 23rd March and 26th August, 1847, the period now under investigation, and to that point they beg again to direct your attention.

" You say 'I have shown in the statements accompanying my letter of the 28th ultimo, that when there were neither potatoes or white bread, one-sixth of a brown loaf for a week, and one-fourth of a loaf of the same description, for a longer period, were substituted for potatoes.' Will you be good enough to state the precise date of these two transactions?

" You ask, if in my counter-statement I have excluded 'the extra rations of one-sixth and one-fourth of a brown loaf?' If you will re-peruse my letter, you will find that I first took up your calculations, and showed that allowing you the full benefit of your alleged extra rations of one quarter and one-sixth of a brown loaf, the short supply of bread was 7,037 rations, and not 2,943 as your figures went to show. But I went on further to show that your allegations were not founded on fact, and that these extra rations could not have been served to the Convicts, as you had not the bread to give them.

"I have the honour to be,  
" Sir,  
" Your most obt. Servant,  
(Signed,) " GEO. BROWN,  
" Secretary.

" H. SMITH, Esquire,  
" Warden, Prov. Penitentiary."

No. 6.

Copy—Letter, Secretary to Warden.

" Provincial Penitentiary  
" Commission Room,  
" Kingston, 19th August, 1848.

" Sir,

" I am led to believe that I have fallen into an error as regards the quantity of potatoes, per diem, to which each Convict is entitled; and I now write to beg that you will inform me, at your earliest convenience, what weight you receive for each bushel of potatoes under your ration contract.

"I have the honour to be,  
" Sir,  
" Your most obt. Servant,

(Signed,) " GEO. BROWN,  
" Secretary.

" HENRY SMITH, Esquire,  
" Warden, Prov. Penitentiary."

No. 7.

Copy—Letter, Warden to Secretary.

" Provincial Penitentiary,  
" 21st August, 1848.

" Sir,

" I beg to acknowledge the receipt of your letter of the 19th instant, and to state to you, for the information of the Commissioners, that potatoes are not supplied for the service of this Institution by weight but by measure. They will vary very materially in regard to their weight according to their age and size, for when they are young and small they are much heavier and will pack closer, which is not the case when they are larger and in their more advanced growth; I should imagine they would diminish one-third in weight.

" A bushel of potatoes, at the present time, will weigh sixty-six pounds.

"I have the honour to be,  
" Sir,  
" Your most obt. Servant,

(Signed,) " H. SMITH,  
" Warden."

" GEO. BROWN, Esquire,  
" &c. &c. &c."

No. 8.

Copy—Letter, Warden to Secretary.

" Provincial Penitentiary,  
" 22d August, 1848.

" Sir,

" I now beg leave to notice such parts of your letter of the 15th as have not yet been replied to, as well as yours of the 19th instant.

" You state, that I made no allowance for extra brown bread furnished to every Convict while under punishment. It is not customary to allow extra bread when a Convict is placed on short allowance,

he merely gets one allowance, or half a day's bread ration, at each of his meals.

"I find I have made an error in making no allowance for punishment supper-meals; but you have also fallen into a mistake in assuming that the punishments are the same in number at each of the three daily meals, which is not the case; as many of the Convicts are furnished with only one or two meals of bread and water, which does not at all interfere with the supper meal, and would therefore very materially alter your calculations of 3,021 rations, as not having been allowed in the deficiency of supply.

"I now furnish a statement of the distribution of bread rations and bread furnished in lieu of potatoes, from 24th March to 26th August, 1847, during which period you say the charge of starving the Convicts lays.

"On this subject I have already ventured my opinion, and must again assert that the Convicts have always been well fed, although a few, from only two causes, may declare to the contrary.

"Total number of brown bread rations, if all borne on the Books had received them from 24th March to 26th August, 1847, both days inclusive, 73,666; of which there were, Sunday rations, 10,389; Weekday do., 63,277. Less for discharged Convicts, borne on the books, but not fed the day of their discharge:—

	Sunday. 21	Week-day. 80
Less for sick Convicts	276	2,101
	<hr/> 297	<hr/> 2,181
Leaving to be provided for bread rations.....	10,092	66,096
These rations are equal in weight to ...		74,972 lbs.
To this add for 2,370 supper punishments.....	1,185	"
		<hr/> 76,157 lbs.

This last amount, if deducted from 79,224 lbs., the quantity received, will leave a surplus of 3,067 lbs.

Total number of potatoe rations to be provided.....	71,188
To meet these 42,291 lbs. of white bread were furnished, being equal to 52,864 rations, and the above surplus of brown bread 3,067, making together.....	55,931
Shewing a deficiency of potatoe ration..... after the bread rations have been fully supplied.	15,257

"This deficiency is in a great measure made up by the consumption of large quantities of cabbages, cucumbers, lettuces, carrots, parsnips and onions, besides other vegetables grown in the Penitentiary Gardens, of which no notice is taken in the Provision Book. Whenever I have heard complaints from Convicts of not having sufficient food, I have directed the Kitchen-keeper's attention to it, and the complaints have ceased. These applications have been very few, and only from those who have extraordinary appetites; and as nearly the whole of the Convicts appeared to be thoroughly satisfied with their meals, I judged that sufficient was prepared for them. To serve out more provisions than were absolutely required, would have been waste; and if the principle, that all should be served out,

that is required by law is to prevail, I might by the same rule so have distributed the stated allowance of vinegar, pepper, and molasses, of which great savings have been effected; and yet I have heard no complaints of a want of any of these articles.

"In the foregoing calculations I have allowed one-fourth of a loaf as the ration in lieu of potatoes, as I have no means of discovering the exact period when the week's supply of one-sixth of a loaf was issued.

"I have the honor to be, Sir,  
Your most obedient Servant,

(Signed,) "H. SMITH,  
"Warden.

"GEORGE BROWN, Esq.  
" &c. &c. &c."

No. 9.

Copy—Letter, Secretary to Warden.

"Provincial Penitentiary  
"Committee Room,  
"Kingston, 23rd August, 1848.

"Sir,

"I have to acknowledge your letter of 22nd instant, in reply to mine of 15th and 19th, all having reference to the short supply of white bread between 23rd March, and 26th August, 1847.

"The Commissioners are glad to find, that you have at last come to the point sought for by this Correspondence, and that they conceive it may not be without benefit to look back, and recapitulate the various positions you have taken up during its progress:—

"On the 19th July, you were shown that by your compromise with Hendry & Blacklock, the Convicts should have received 82,188 lbs. of white bread in lieu of potatoes, during the period specified; that only 56,499 lbs. were however, supplied to them, and that they were thus deprived of 25,689 lbs. of their just allowance.

"To this you replied, the same day, that you were aware Hendry & Blacklock fell short in their delivery of white bread 25,689 lbs., but that in its room you had purchased an equal quantity from James Williamson, and supplied it to the Convicts.

"You were thereupon shown that this was not correct, as Hendry & Blacklock and Williamson, had furnished in the aggregate, but 56,499 lbs. of white bread, leaving 25,689 lbs. short of the proper quantity.

"On the 20th ultimo, you admitted the deficiency of 25,689 lbs of white bread, but averred that 'in its room, 11,238 lbs. extra of brown bread had been furnished to the Convicts, during the time they had no potatoes; and that 'the short allowance to Convicts on the Sick and Punishment Lists, accounted for the remaining deficit.' In support of this statement, you handed in a memorandum showing that these 11,238 lbs. of brown bread, had been furnished to the Convicts in 3,220 extra rations of one-sixth of a loaf, and 9,114 extra rations of one-fourth of a loaf, each.

"On the 28th you followed up your explanation of the 20th, with an elaborate statement, in which you asserted, and attempted to show, that 17,078

lbs. of brown bread had been supplied to the Convicts, in lieu of the deficient white bread, in 3,220 rations of one-sixth of a loaf; and 13,858 rations of one-fourth of a loaf, and you tried to show that with these extra brown bread rations, and the savings made on the white bread, through Convicts on the Sick and Punishment Lists, the full quantity of white bread due to the Convicts had been made up to them, with the trifling exception of 2,943 rations, or 2,355 lbs.

"On the 15th instant, I showed you that these statements, as to brown bread having been supplied in lieu of the deficient white bread, were inconsistent with fact; as your own Receipt Book clearly established, that you had received no such quantity of brown bread from the baker as you alleged was served to the Convicts. And I then showed, further, that so far from having overplus brown bread at your disposal, to serve in lieu of deficient white bread during the period in question, you had received 14,521 lbs. of brown bread less from the baker than you required to supply each Convict, with the same quantity per diem you allowed them for several months previous, with full rations of potatoes.

"On the 18th you replied to my letter of 15th, and professing indignation at being charged with creating imaginary extra brown bread rations, you persisted in affirming that 'when there were neither potatoes or white bread, one-sixth of a brown loaf for a week, and one-fourth of a loaf of the same description, for a longer period, were substituted for potatoes.'

"On the 19th I asked you by letter, to state the precise dates when 'one-sixth of a brown loaf for a week, and one-fourth of a loaf of the same description, for a longer period,' were supplied; and I recalled your attention to your own Receipt Book, from which it clearly appeared that you had no bread to give in such a manner.

"Your letter of 22nd, (to which I am now replying,) sweeps away all your previous statements, and admits that you made no arrangements for meeting the large deficiency of white bread, under Hendry & Blacklock's contract; and indeed the whole correspondence proves distinctly, that you had no knowledge that any deficiency occurred.

"You say you have 'no means of discovering the exact period when the week's supply of one-sixth of a loaf was issued.' This I can readily believe, as well as of the 'one-fourth of a loaf of the same description, for a longer period;' for, leaving the 'longer period' out of the question, a single week of one-fourth of a loaf would have required 3,304 lbs.; while you now admit that, with all the aid you can collect from sick Convicts, Convicts under punishment, and Convicts 'borne on the books, but not fed,' you had only 3,067 lbs. of brown bread at your disposal, and that, too, running over a space of five months. And as the average total supply of brown bread delivered weekly to you by the Baker, was only 3,556 lbs. during these five months, and as the average ordinary consumption of brown bread (allowing all your deductions) was 3,416 lbs. per week, it is impossible to conceive where you procured overplus bread enough for one day's extra rations of one-fourth of a pound, much less of one week.

"So, the 11,238 lbs. in 3,220 extra rations of one-sixth of a loaf, and 9,114 extra rations of one-fourth of a loaf, of your first statement; and the 17,078 lbs. in 3,220 rations of one-sixth of a loaf, and 13,858 rations of one-fourth of a loaf, of your

second statement; and the 'one-sixth of a loaf for a week, and one-fourth of a loaf, of the same description, for a longer period,' of your third statement, have, at last, all died away into 3,067 lbs. of brown bread; being the aggregate amount assumed as remaining over from the daily supplies, through the absence of Convicts sick and under punishment; an assumption evidently without warrant, as, so far from a saving having been realized on this score, at other times, you are well aware that the actual consumption of brown bread has for years past exceeded, by many thousand pounds, the full quantity allowable to all the Convicts, had none been sick, and none under punishment.

"But we have a fourth statement, as to the mode in which the deficient white bread was made up. It now appears, that in addition to the savings on sick and erring Convicts, you supplied the Convicts with 'large quantities of cabbages, cucumbers, lettuces, carrots, parsnips, and onions, besides other vegetables,' of which, as you truly remark, 'no notice is taken in the Provision Book.' On this latest statement the Commissioners conceive it unnecessary to make any comment.

"I have the honor to be,

"Sir,

"Your most obedient Servant,

(Signed,) "GEO. BROWN,  
"Secretary.

"HENRY SMITH, Esq.,  
"Warden, Provincial Penitentiary."

No 10.

Copy—Letter, Warden to Secretary.

"Provincial Penitentiary,  
"26th August, 1848.

"Sir,

"I have to acknowledge the receipt of your letter of the 23rd instant. Respecting my statement made to you on the 19th ultimo, to which you again advert, you are well aware that it was given verbally, on the spur of the moment, without reference being had to any books or documents in the Institution; and I merely mentioned what my impression was at the time, as it can hardly be supposed I can carry in my mind all the transactions of so extensive an establishment as this; but when I came to examine the books, and get other evidence of the provision account, I gave the statement as I found it.

"The statement of the distribution of the 11,238 lbs. surplus brown bread was given to me by the Head-keeper, whose duty it is to be present during the meal hours, and who, therefore, sees all the rations supplied.

"My statement of the 28th ultimo refers to the whole year's supply, whereas that of the 22nd instant only applies to five months in the year; but it is made to appear by your letter that the 3,067 lbs. surplus brown bread is the result of misstatement, as well as the other, which it is impossible to be.

"I cannot imagine how the conclusion has been arrived at by the Commissioners, that even when the Convicts had full rations of potatoes, I had not sufficient bread to give to them; as the Provision Book shows, that after getting their daily brown bread rations, there was a surplus of 11,238 lbs.,

after making allowances for more than was actually required.

"I could not but feel indignant at a charge of deception, although I admit myself liable to error; as that, of all others, is the last that with any justice can be alleged against me.

"It frequently occurs that it requires 27 loaves to make up 100 lbs. brown bread, which gives eight rations extra to every hundred, as the loaf is in all cases divided into four for the day's ration. These are issued over and above the rations mentioned in the Provision Book, and of course causes an apparent supply of so much less than we actually distributed.

"You say that I have tried to show that a saving of white bread had been effected through the diet of the Sick and Punished Convicts; and you further state that I have assumed, without any warrant for so doing, that 3,067 lbs. brown bread had been thereby saved, as stated in the return made to the Commissioners during the months inclusive, from March to August, 1847.

"All I have to say in answer to this, is, that the statement regarding the diet of the sick Convicts is taken from the Hospital-keeper's return, and that of the punished Convicts from the Punishment Books, in which they will be found to be added page by page.

"The yearly surplus of brown bread to which you refer, is to be accounted for by supper punishment rations; supper to Convicts with whom mush does not agree, and the occasional distribution of that article when potatoes are beginning to decay.

"I have the honor to be,

"Sir,

"Your most obedient Servant,

(Signed,) "H. SMITH,  
"Warden.

"GEO. BROWN, Esq.,  
"Secretary."

The evidence, as to the Convicts having been supplied with vegetables, is as follows:—

Dennis Chagnon—preliminary examination:—

"The Convicts got cabbage in their soup daily, for three months, last year; they got only the outside of the cabbages; about two bucketfuls of this cabbage was thrown into the soup daily; during the last month (August, 1848,) the whole cabbage has been given; onions have also been given for the soup, and carrots, to the extent of 30 or 40 bushels during last year. Each Convict got a head of lettuce, twice a week, for six weeks last year, and also this year; and a slice of cucumber was given twice to each Convict. There were some 12 or 15 bushels of parsnips included in the 30 or 40 bushels of carrots. These are the only instances in which vegetables, (potatoes excepted,) have been supplied to the Convicts."

John Dyas—(Head-cook)—preliminary examination:—

"Cabbages, carrots, onions, and parsnips were got from the garden last year, and put in the soup; the Convicts did not get the hearts of the cabbages, and the number of them would vary; some days there would be 10, at others 15 or 20; 8 or 10

carrots, and as many parsnips would be given each day. One lettuce was given to each man, twice a week, for six weeks, last year, and a slice of cucumber twice or thrice; one cucumber was divided between 5 or 6 men."

Hugh Cameron—(Gardener)—preliminary examination:—

"The whole benefit which the Convicts have derived from all the Gardens, from first to last, is as follows:—In 1844-5, they had the outside leaves of the cabbages, and some chives from the old garden; in 1846, they had cabbage leaves and chives from the Warden's new garden; in 1847, they had cabbages from the Penitentiary garden, which were very poor, and cabbage leaves from the Warden's garden. Thinks there might have been, in all, 400 to 500 cabbages, such as they were; 60 to 70 bushels of carrots; 15 to 20 bushels of onions; lettuce to supply all the Convicts, twice a week, for six weeks; 15 or 20 bushels of parsnips, and a piece of cucumber twice or three times, to each Convict. This year, the Convicts have had lettuce, cabbages and onions."

It will be observed that these vegetables were supplied during the whole year 1847, and the time in question is only five months.

#### 6. IN A RETURN TO GOVERNMENT OF THE BOX PUNISHMENTS.

In November 1847, the attention of the Government seems to have been called to the box punishments employed in the Penitentiary, and information as to the number of these punishments was demanded from the Warden, by letter from Mr. Assistant Secretary Meredith. The Warden replied on the 8th November, that "the number of cases of punishment by confinement to the box, from the 1st August last, to the present time, is, including male and female Convicts, 221."

This is about the number of box punishments inflicted within the period specified; but the Warden did not tell the Government, that during these three months the amount of this punishment had been greatly reduced, and that only the month previous, in the month of July, 1847, alone, there were 143 box punishments.

The Warden, however, produced the letter of the Under Secretary, and it appeared that the return was only asked for from 1st August, so that the Warden is entirely exonerated on this head.

#### 7. IN A RETURN TO GOVERNMENT OF THE WOMEN FLOGGED IN THE PENITENTIARY.

The Warden wrote to the Attorney General, on 19th September, 1846, in answer to a letter from that Official asking information on the subject, as follows:—

"It will be seen by the accompanying return of punishments inflicted on female Convicts, during the last two years, that three have been punished with the raw-hide, which took place in the presence of the Assistant Warden, and one of the Matrons; but none of their garments were removed, the stripes being given over their gowns, stays, and handkerchiefs on their shoulders.

"These are the only women who have been so punished since the opening of the Penitentiary, in

1835, and so good has been the effect, that they have not since been corrected, and are now among the best behaved female Convicts in the Prison."

The Warden's Punishment Ledger, in his own hand-writing, shows that eight women have been flogged; and that among them nineteen different floggings have been inflicted. The return to Government was, undoubtedly, a deliberate misrepresentation.

8. IN A RETURN TO GOVERNMENT OF THE AFFAIRS OF THE INSTITUTION.

On 25th March, 1848, Mr. Sheriff Corbett, President of the Board of Inspectors, wrote to Mr. Secretary Sullivan, with statements of the operation of the Penitentiary, from the time of its commencement to the end of the year 1847. It was attempted to be shown by this statement, that a great gain to the Province had been made, after paying expenses of all kinds. The parties who made the estimates are stated to have been employed on the task five months, and are ready to verify the correctness of their measurement and valuation on oath.

The statement is as follows :—

Dr.	
To amount received Parliamentary Grant, to 1st October, 1847.....	£116,255 16 11
Balance, profit to Province.....	11,096 3 7
	£127,352 0 6
Cr.	
By value of Buildings, as per accompanying estimates of Messrs. Horsey & Cull...	£113,998 18 9
" Stock of materials, tools, &c. on hand, 1st October, 1847....	11,520 10 11
" Cash on hand, do.....	1,404 18 0
" Debts due to the Institution ...	427 12 10
	£127,352 0 6

In this statement, the debts due by the Institution were concealed. On the 31st December, 1847, to which the account professes to be made up, the debt of the Penitentiary was £5,677 12s. 6d. This was a very remarkable omission, as a note which accompanied the statement shows, that it was intended to carry the impression, that all transactions were included in it; and from the debts due to the Institute being carefully given, it is unaccountable how those due by it could be omitted. The note is as follows :—

"Note.—From the above account current, it will be perceived that there is a profit of £11,096 3s. 7d. to the credit of the Institution, after defraying the whole expenses of every kind whatever, including all salaries to every officer of the establishment, clothing and bedding of Convicts, rations, Hospital stores and medicines, clothing, and travelling expenses to discharged Convicts; as also, large sums unavoidably expended in the erection of temporary buildings, &c., fences now removed, and of buildings destroyed by fire, for which no credit has been taken."

(Signed,) "H. SMITH,  
"Warden."

The evidence on this count is as follows :—

James Hopkirk, Esq.—By Mr. Smith :—

Two papers (marked Exhibits A and B,) having been shown to witness, he identified them as in his hand-writing. Exhibit A is the original balance

sheet made of the affairs of the Penitentiary, from the commencement to end of 1847, for the information of the Governor General, and must have been made up from statements and documents laid before witness and Mr. Gildersleeve by Warden and the Clerk. Exhibit D is an original memorandum of a proposed Note to the statement. Exhibit A, although in witness's hand-writing, was principally prepared under the direction of Mr. Gildersleeve; another draft was submitted, either by the Warden or the Clerk, which Mr. Gildersleeve thought was not properly stated; the one in question was substituted for it. Horsey and Cull were directed to make a valuation of all the works of the Penitentiary in existence, at the end of 1847.

By Commissioners :—

Q. Did the Inspectors employ Messrs. Horsey and Cull to make an estimate of the value of the property of the Penitentiary?

A. They did.

Q. When? Is there any Minute of it?

A. There is a Minute of the 9th August, 1847, directing the Warden to employ some one to make an estimate of the value of the buildings, and other works, up to the close of 1846. On the 8th October, the Inspectors, by Minute, instructed the Warden not to pay over £50 for said estimate; and on the 15th March, 1848, the estimate was laid before them.

Q. Was not the Warden, at the meeting of 15th March, 1848, instructed (in connection with the said estimate) to prepare a statement of the gain to the public, by the operations of the Institution "to the close of the year 1847?" and was not the President requested to forward it to the Government in the name of the Board?"

A. Yes.

Q. Was the said statement prepared, and transmitted to the Government, with a letter from Mr. Corbett, of 25th March, 1848?

A. A statement of the operations of the Institution, founded on Cull and Horsey's estimate, was sent to Government, with a letter from Mr. Corbett, dated 25th March, 1848.

Q. Do the Minutes show that either the said statement, or the said letter, was submitted to the Board for approval?

A. They do not; but there is a notice, on 8th April, that Mr. Secretary Sullivan had acknowledged the receipt of both.

Q. You gave evidence, formerly, as to the manner in which the said statement was prepared. Did the proceedings of yourself and Mr. Gildersleeve, which you have detailed, take place at a meeting of the Board?

A. Thinks not.

Q. You have stated that the Warden made one financial statement, but Mr. Gildersleeve disapproved of it, and drew up another. In what respect did the two estimates disagree?

A. Does not remember. Thinks it was in the way the figures were arranged; but there was in the first statement an item credited to the Institution

for the profits on private work done, and an amount debited for the salaries and other expenses.

Q. Did the Inspectors examine the calculations of Horsey and Cull's estimate?

A. They examined the report, or letter, which accompanied the estimate itself, but they did not examine the details.

Q. Did Cull and Horsey furnish the details?

A. Not the minutiae of measurements and prices.

By Mr. Smith:—

It was not an intentional omission on the part of witness, the leaving out of the debts due by the Institution, in the *Vidimus* of the affairs of the Penitentiary in March last. The letter which accompanied the said statement and estimate, was seen by Mr. Corbett, Mr. Gildersleeve, and witness, before it was despatched; but witness is not certain if Dr. Baker saw it, or if it was ever submitted to the Board before it was sent.

Mr. Sheriff Corbett—By Commissioners:—

Q. Please refer to the Inspectors' Letter Book, and say, who drafted the letter and statement of the affairs of the Institution sent to Government, in your name, as President of the Board, and dated 25th March, 1848?

A. Cannot tell.

Q. Were you not aware when that statement was forwarded to the Government, that a Commission on the affairs of the Penitentiary, was about to issue?

A. Yes. On the 17th March, 1848, Dr. Sampson stated by letter to the Board, that he had received a letter from Government, intimating that the Governor General intended to appoint a Commission of Inquiry upon the general management of the Institution."

The whole proceedings in regard to this exhibit of the affairs of the Institution, are remarkable. No such statement was asked for by the Government; it was not prepared as a part of the Inspectors' Annual Report; it was got up when the complaints against the Institution were loudest, and at the very moment when the propriety of a general investigation into the management, was under the consideration of Government. The estimated value of the buildings is double the original estimate; and as is shewn in another part of our report, the Book containing the particulars of the calculations was first refused to be submitted to us by Mr. Horsey, and was afterwards alleged to have been stolen from Mr. Horsey's office within the Penitentiary, since such refusal, and during the sitting of the Commission at Kingston. Mr. Horsey declares himself unable to furnish the measurements or prices on which his estimate was grounded.

But the only point in which the Warden is affected is the omission of the debts due by the Institution. His defence is, that the Inspectors were responsible for it, and not he. But Mr. Hopkirk admits that the calculations were furnished to Mr. Gildersleeve and himself by the Warden or Clerk; that the Exhibit went to Government as they so got it, with an alteration merely of the arrangement of the figures; and it appears, moreover, that the document was never officially before the Board, but was merely shown to Mr. Hopkirk and Mr. Gildersleeve,

individually, and sent off, accompanied by a letter, the original draft of which we find is in the Warden's hand-writing; and it also appears that though Mr. Corbett's name was attached to the letter, he does not know who wrote it.

We cannot understand how the debt due by the Penitentiary could have been omitted, when those due to it were put in.

9. IN A RETURN TO DR. SAMPSON, SURGEON OF THE PENITENTIARY, OF THE PUNISHMENTS ON CONVICT JAMES BROWN.

Dr. Sampson having been called on by the Inspectors to make a report on the mental condition of Convict James Brown, wrote to the Warden on 24th January, 1848, as follows:—

"In order to enable me to form a more correct opinion with respect to the mental state of Convict James Brown, it would be requisite that I should be acquainted with the several amounts and descriptions of punishments inflicted for the offences committed by him since his admission to the Prison."

In compliance with this request, a statement of the punishments inflicted on the said Convict was transmitted to Dr. Sampson; and by comparing it with the Punishment Books of the Institution, the Commissioners find the following punishments were suppressed in the statement given to the Surgeon:—

1841.			
Feb.	4.	24	cats.
April	14.	12	do.
May	14.	48	do.
June	15.	24	do.
Aug.	7.	24	do.
Nov.	4.	48	do.
1842.			
Feb.	16.	12	do.
	21.	6	do.
May	9.	Bread and water.	
	23.	24 raw-hide.	
Sept.	15.	Bread and water.	
	22.	12 raw-hide.	
	30.	Bread and water.	
Nov.	1.	do.	do.
	29.	36 cats.	
1843.			
Jan.	28.	Bread and water.	
April	17.	6 raw-hide.	
May	24.	36 cats, irons, and bread and water.	
Nov.	10.	Bread and water.	
1844.			
Feb.	17.	Bread and water.	
Mar.	15.	12 raw-hide, and bread and water.	
	28.	Bread and water.	
July	16.	Is reported to the Surgeon, 12 cats, but the Punishment Book says 36.	
1845.			
Jan.	13.	9 raw-hide, and bread and water.	
	16.	9	do. do. do.
1846.			
April	27.	9 raw-hide, and bread and water.	
May	22.	12	cats, do. do.
June	26.	6	raw-hide, do. do.
July	17.	12	do. do. do.
	18.	6	do. do. do.
Aug.	24.	9	do. do. do.
Sept.	30.	12	do. and 24 hours dark cell.
Oct.	10.	48 hours own cell.	
	12.	48	do. do.

1846.			
Oct.	27.	Bread and water.	
Dec.	26.	do.	do.
1847.			
Mar.	3.	Bread and water.	
	5.	Box, and bread and water.	
April	7.	Bread and water.	
May	6.	do.	do.
	15.	Box, and bread and water.	
	18.	do.	do.
	19.	do.	do.
	20.	do.	do.
June	5.	Bread and water.	
	10.	Box, and bread and water.	
	12.	Bread and water.	
	17.	Box, and bread and water.	
	21.	do.	do.
	22.	do.	do.
	23.	Bread and water.	
	26.	Box, and bread and water.	
	28.	do.	do.
July	6.	do.	do.
	8.	do.	do.
	20.	do.	do.
	21.	do.	do.
	30.	do.	do.
Aug.	2.	Bread and water.	
	2.	Box, and bread and water.	
	3.	do.	do.
	4.	Bread and water.	
	5.	Box, and bread and water.	
	6.	Bread and water.	
	16.	Box, and bread and water.	
	19.	do.	do.
	20.	do.	do.
	21.	Bread and water.	
	28.	do.	do.
Sept.	9.	do.	do.
	10.	48 hours dark cell.	
	29.	Box, and bread and water.	
Oct.	8.	do.	do.
	9.	Bread and water.	
	12.	do.	do.
	23.	do.	do.
Nov.	1.	Box, and bread and water.	
	8.	Bread and water.	
	10.	do.	do.
Dec.	27.	do.	do.
1848.			
Jan.	22.	Bread and water.	
	29.	do.	do.
Mar.	14.	do.	do.

All these punishments were omitted in the return made to the Surgeon.

The evidence, on this matter, is as follows :—

James Sampson, Esq.—By Mr. Smith :—

“ Recollects making a requisition for a return of the punishments inflicted upon James Brown.” (Two certified copies of letters from Dr. Sampson to the Warden are handed in, on the several dates of the 18th and 24th January, 1848, by which Dr. Sampson desires to ‘ have access to all the records of the various acts of violence which James Brown has committed,’ &c.

James Hopkirk, Esq.—By Mr. Smith :—

“ Recollects of a letter from Dr. Sampson, asking for a return of punishments inflicted on Convict James Brown, being laid before the Board ; thinks the Warden mentioned on that occasion that some of the reports could not be found ; thinks general directions were given to the Warden to furnish a

list of all the punishments inflicted on Brown for acts of violence which could be found ; but merely states so from recollection.”

By Commissioners :—

Q. Did not Dr. Sampson, on 30th December, 1847, when called upon to certify Convict James Brown’s fitness for corporal punishment, enter on the Punishment Book, “ Fit as to bodily health ?”

A. Yes.

Q. Was the attention of the Board called to the said report ?

A. It was ; and the Board, on 15th January, 1848, directed the Warden to call on the Surgeon, “ to furnish a full and explicit report as to the health, both mental and bodily, of the said Convict.”

Q. Did not the Surgeon, by letter of 24th January, 1848, write to the Warden, in the following words :—“ In order to enable me to form a more correct opinion with respect to the mental state of James Brown, it would be requisite that I should be acquainted with the several amounts and descriptions of punishments inflicted for the offences committed by him (Brown) since his admission to the Prison ; and I beg to submit, that instead of calling on all the Guards and Keepers to answer such questions as I might put to them, touching this case, it would be more convenient if I were furnished with the names of the officers who reported the Convict on the various occasions of violence for which he was punished ?”

A. Has no doubt he did ; and that the letter now shown, is the letter in question.

Q. Was not the said letter laid before the Board on 3rd February, 1848 ?

A. It was ; along with another letter from Dr. Sampson of 18th.

Q. Did not the Board, thereupon, instruct the Warden in the following terms :—“ It appears from his (Dr. Sampson’s) letter of 24th ultimo, that he is unable to make his report on this (Brown’s) case, unless he is made acquainted with the several amounts and descriptions of punishments inflicted upon the Convict ; the Warden is directed to furnish the statement required ?”

A. They did.

Q. Did the Warden write to Dr. Sampson on 3d February, 1847, as follows?—“ I have to inform you that your letters of the 18th and 24th ultimo, respecting the case of Convict James Brown, have been laid before the Board, and I am to say they have directed me to lay the statements of punishments inflicted upon that Convict, before you, as soon as it can be prepared ; although the Board is at a loss to conceive what assistance it will afford you in coming to a conclusion as to the present state of the prisoner’s mind, as in neither of the cases of John Donovan and Michael Sheehan, both of whom, before their being reported by you as insane, had been frequently punished for acts of violence, was it deemed necessary by you to be put in possession of a similar statement to enable you to come to a decision on their respective cases ?”

A. Sees a copy of a letter to this effect in the Warden’s Letter Book, addressed to Dr. Sampson, but has no recollection of ever seeing it before.

Q. Please to look at the Minute Book, and say, if the Inspectors authorized the Warden to express any astonishment at the request of the Surgeon?

A. Sees no such authority or feeling stated in the Minute.

Q. Do you not consider that, by the Minute of the Board, the Warden was instructed to furnish Dr. Sampson with a list of the amount and description of all punishments inflicted on James Brown since his admission to the Prison?

A. Does consider that such were the instructions of the Board by their Minute."

By Mr. Smith:—

"Witness is shown the copy of Charges transmitted by the Commission to Mr. Warden Smith; and is asked, if a letter given there, on page 255, purporting to be from Dr. Sampson, contains any reference to acts of violence? and says, it does not. Witness is asked to compare the said copy with a letter in Dr. Sampson's hand-writing, handed to him by the Warden, and to say, whether the charges contain a copy of the whole letter? and says, only the first portion of the letter is given, and the latter portion, as follows, is not given:—'And I beg to submit, that instead of calling on all of the Guards and Keepers to answer such questions as I might put to them touching this case, it would be more convenient if I were furnished with the names of the officers who reported the Convict on the various occasions of violence for which he was punished.' There are two sentences in the said letter, one given by the Commissioners, and one not given; they are divided by a semicolon. The Commissioners do not mention the portion they gave as a copy of Dr. Sampson's letter; they do not mention it as an extract. At the time Dr. Sampson's letter of 24th January was received, witness understood that he referred to acts of violence; speaks to the best of his recollection. Witness is shown a letter of Dr. Sampson's, of 18th January, on the same subject, and is asked, if he therein speaks of acts of violence? and witness says, he does, twice. Is not aware that Dr. Sampson ever made any objections to the return that was made to him in reply to his demand. Witness does not know whether any knowledge Dr. Sampson might acquire of trivial offences committed by Brown, would enable the Surgeon to form an opinion of Brown's insanity; it would depend on the nature of the offences. Dr. Sampson never asked for any return of the punishments for acts of violence committed by Sheehan before declaring him insane, as far as witness knows."

By Commissioners:—

"Witness is again referred to the letter of Dr. Sampson of 18th January, 1848, in which he asks for a statement of 'the various acts of violence,' committed by Convict James Brown—to the letter of the Warden of 21st January, sending him that statement—and to the letter of Dr. Sampson, of 24th January, asking, still further, for a statement of the several amounts and descriptions of punishments inflicted for the offences committed by him (Brown) since his admission to the Prison—and is asked, if the fair meaning of this request of 24th January, is not, that Dr. Sampson desired a statement of every punishment inflicted on Brown, whether for acts of violence or other offences, since his admission to the Prison? Witness answers as follows:—Considering that Dr. Sampson had in his letter of 18th January, stated his wish to have access to the re-

ords of the various acts of violence, and said nothing as to the Punishments inflicted; and that in his letter of 24th January, he does not especially ask for a return of other offences besides acts of violence, but only for the amounts and descriptions of punishments inflicted for the offences committed by him since his admission to the Prison; and that, in the latter part of his letter, he asks to be furnished with the names of the officers who reported the Convict on the various occasions of violence for which he was punished, it may fairly bear the interpretation that Dr. Sampson wished for a return of the acts of violence, only, though the matter is by no means clear.

Q. If the first statement sent Dr. Sampson contained the amount of punishment inflicted on Brown for every act of violence given, would that fact alter the opinion you have just given?

A. Yes; it would show that he had no need to ask for the punishments inflicted, specially for acts of violence; and the fair deduction, in the mind of a person who knew that, would be, that Dr. Sampson wanted a statement of all punishments inflicted on Brown.

"Is not aware if Dr. Sampson had any means of knowing whether the return sent him contained truly, the information he asked, or not; does not know if Dr. Sampson has any doubt on the subject now."

Mr. Bickerton—By Mr. Smith:—

"Recollects Dr. Sampson making an application, by letter, for a return of the acts of violence committed by Convict James Brown; he afterwards made another application; does not know if both returns, made in answer to Dr. Sampson's application, showed the punishments inflicted. Mr. Bickerton is referred to a letter of the Warden to the Surgeon, of 21st January, 1848, and says, there is nothing in it about punishments. The Surgeon asked for no return, but of acts of violence, in either of his letters. The Surgeon was not satisfied with the first return made him, and required a second; cannot tell why the Surgeon was dissatisfied with the first return made him. Witness is referred to 'a return of the punishments inflicted on Convict James Brown, for violent conduct,' as entered in an old Minute Book of the Building Commissioners, and says, that is a copy of the second return made to Dr. Sampson. The punishments are stated in that return."

By Commissioners:—

"Witness is referred to the Warden's letter to Dr. Sampson of 21st January, 1848, spoken of in his direct evidence, and is asked if there is a copy of the return of acts of violence, spoken of in that letter, as accompanying it when sent to Dr. Sampson, in the letter book? and says, there is not. Witness is asked to produce a copy of the return of acts of violence therein referred to? and having searched his office, returns and says, he can find no copy of it." \* \* \* \* \* "Witness having examined the two letters of Dr. Sampson of 18th and 24th January, 1848, asking for returns in the case of Convict James Brown, says he was mistaken in saying, in his direct evidence, that Dr. Sampson 'asked for no return but of acts of violence in either of his letters;' in the letter of 18th, he asked for a return of acts of violence, but in that of 24th, he asked for a return of 'the several amounts and descriptions of punishments inflicted, for the offences committed by him, since his admission in the Prison.' Witness is

referred to the return of punishments inflicted on James Brown, spoken of by him in his direct testimony, as entered in the old Minute Book of the Building Commissioners, and he is asked, if that is merely a Return of acts of violence committed by the said Convict? and says, there are many acts of violence included in the Return, but there are also many offences which cannot be so designated, such as cursing, swearing, and leaving his work. Believes the said Return was principally made up by the Warden, and that Mr. Costen did the remainder."

By Mr. Smith:—

"Witness read the whole of Dr. Sampson's letter of 24th January, 1848, before he gave his evidence upon it this morning."

The Warden's defence on this matter is, that Dr. Sampson only asked for returns of acts of violence, and punishments inflicted for acts of violence, and that he furnished all he demanded. We think, however, that such a defence is quite in opposition to the facts.

Dr. Sampson, by his letter of the 18th January, made two demands—1st. For "access to the records of all the acts of violence which this Convict has committed in the Prison;" and 2nd. "For the means of making personal enquiry of such officers or persons as have witnessed them," (the acts of violence).

The Warden wrote Dr. Sampson, on 21st January, in reply to his of 18th:—"I have enclosed a return of the acts of violence committed by the Convict in question during his confinement in this Institution." The return enclosed in this letter contained but 10 offences, including one "talking at work," and another "using indecent language," and only four of them could be properly construed, as "acts of violence."

This return forms the first misrepresentation, in the case of Brown; for a large number of "acts of violence" committed by him, were altogether suppressed; the number stated, bearing no proportion to the truth; and it is impossible that these omissions could have been the result of unintentional accident, as the Punishment Books show each infliction clearly and simply; and could any doubt on this score exist. The Warden removed it himself, by sending (on a farther application of Dr. Sampson,) a second return, in which a large number of additional instances of "violent conduct" are stated. It is also remarkable, that no copy of the return of 21st January was preserved in the records of the Penitentiary, the copy used by us having been obtained from the Surgeon.

In reference to Dr. Sampson's demand for the means of making personal enquiry of the officers who witnessed Brown's acts of violence; the Warden informed him in the same letter (of 21st) that "all the Keepers and Guards of the establishment are cognizant of the several acts of violence recorded."

Dr. Sampson having received, as he supposed, a return of "all the acts of violence which this Convict has committed in the Prison," wrote farther to the Warden on 24th January, for "the several amounts and description of punishment inflicted for the offences committed by him (Brown) since his admission to the Prison;" and in reference to the Warden's answer to his second demand, (to be made acquainted with the persons cognizant of Brown's conduct) he says, "and I beg to submit that instead of calling on all the Keepers and Guards, to answer

such questions as I might put to them on the case, it would be more convenient if I were furnished with the names of the officers, who reported the Convict on the various occasions of violence for which he was punished." The Warden laid this letter before the Board, by whom he was instructed to furnish the statement required of the several amounts and descriptions of punishment inflicted upon the Convict." The Warden, accordingly, made up a return, which he entitled, a "Statement of Punishments inflicted on the Convict James Brown, for violent conduct;" and which he forwarded to the Surgeon, with a letter, informing him that by directions of the Board, he sent "a statement of punishments inflicted upon that Convict." The statement sent, on this occasion, was not a true return of the punishments inflicted on Brown; the long list given, at the beginning of this count, having been suppressed.

The Warden says, he never professed to send Dr. Sampson a list of all the punishments inflicted on Brown, but only those for acts of violence. This cannot be so, however, for the wording of the correspondence shows the contrary; and the return actually sent, included punishments for many offences besides "acts of violence," while among those omitted, cases of "acts of violence" are found. The plea that the second paragraph of Dr. Sampson's letter of 24th January qualified the first part of it, and made him ask only for punishments inflicted for acts of violence, cannot be sustained. This portion of the Surgeon's letter was evidently intended as a rejoinder to the second portion of the Warden's letter of 21st; and the Minute of the Board, and the Warden's own letter of 3rd February, show that they so regarded it.

Our opinion is, that the Warden has been guilty, in this matter, of gross and wilful misrepresentation.

The whole of the correspondence in the case will be found in the Appendix.

#### 10. IN STATEMENTS MADE TO THE GOVERNMENT, IN OCTOBER, 1846, TO PROCURE THE REMOVAL OF ASSISTANT-WARDEN EDWARD UTTING.

In October, 1847, the Warden preferred charges against his Deputy, Mr. Utting, to the Board of Inspectors; he having previously suspended Mr. Utting upon them. The charges were:—

"1st. Pulling down a quantity of the plank fence, and carrying it away, without the knowledge of the Warden, and afterwards refusing to replace it.

"2nd. Sending out Convicts to his private dwelling, and to his lot in Union Street, for the purpose of carting cord-wood and lumber, without the knowledge or permission of the Warden, being contrary to their sentences, as well as to the discipline of the Institution.

"3rd. For giving, to some person unconnected with the Penitentiary, a statement of the punishments inflicted upon the Convicts, &c.

"4th. Employing Convicts to work for his private advantage, without the knowledge of the Warden; and placing them in such a position, that they might have effected their escape."

The Board investigated the matter on 12th, 13th, and 14th October, and finally came to the following decision:—

"On the first charge, they are of opinion, that Mr. Utting caused some of the fence, on the west

side of the Prison, to be taken down, without the knowledge of the Warden. They consider, however, in doing so, Mr. Utting may have supposed that he had authority, from the fact that he had permission of the Warden to purchase some other old lumber which had formed part of the fence on the east side.

"With respect to his refusal to replace it, they consider that he virtually complied with the order, by proceeding to make good the fence in another place with other material, the old stuff having been sawed into studs.

"On the second charge, the Board are of opinion, that the Convicts were very improperly taken off the ground of the Institution, and thereby unnecessarily exposed to escape. They do not, however, impute any mercenary motive to Mr. Utting in doing so.

"The third charge, the Board conceive, is not supported by any evidence which it would be safe to rely on.

"With regard to the fourth charge, the Board are of opinion that there is no evidence to satisfy them that any work was done for Mr. Utting by Convicts, for which he has not been charged; and with regard to the latter part of the charge, they consider that the Convicts were not more exposed to an escape in collecting the pickets for Mr. Utting, than they were in pulling down the rest of the fence."

Having thus expressed their opinion on the several charges, two of the members of the Board considered that the facts of the case would not warrant them in dissenting from the removal of Mr. Utting by the Warden. The other member present is of opinion that the punishment of dismissal is too strong for the offence. "But as the Board are not satisfied how far they are competent, with the present number now assembled, to act in the affairs of the Penitentiary, according to the terms of the Statute 9 Vic., chap. 4, the Warden is directed, in such reference as he may make to the Governor General on the subject, to submit the whole case to the decision of His Excellency."

The Warden, accordingly, addressed the Government on 17th October, asking for the dismissal of Mr. Utting; and in the contents of this letter, the present charge of false representation lies.

In communicating the decision of the Inspectors, the wording of the last clause was essentially altered. Instead of the words commencing, "But as the Board," and ending, "of His Excellency," the Warden stated the paragraph as follows:—

"In the examination of these charges, there were three Inspectors present, but as the Board are not satisfied how far they are competent with that number, to act in the affairs of the Penitentiary, according to the terms of the statute before mentioned, and although a majority\* of those present concur with the Warden in the necessity of Mr. Utting's removal from his situation, they prefer that the matter should be first submitted to the decision of His Excellency."

The Warden also travels away from the case at issue, and enters into statements criminatory of Mr. Utting, on various matters not connected with the charges on which he was suspended, and against which Mr. Utting had no opportunity of defending himself.

\* The majority did not "concur with the Warden;" they simply did not feel warranted, in dissenting from a step taken by the Warden.

Among other matters brought to bear against Mr. Utting, the Warden tells the Government, that in March, 1845, he had felt it his duty to prefer nine charges against that officer, before the Inspectors. After stating the particulars of these nine charges, the Warden proceeds to give the decision of the Inspectors upon them. He says:—

"Of the 1st, 2nd, 4th and 7th charges, he was declared by the Board to be guilty, and as the evidence given on the other charges, was principally that of Convicts, the board did not consider them to be proved." On that account he was ordered to be admonished, and in doing so the President of the Board informed Mr. Utting, that it was only in consideration of his family that he was not dismissed from his situation; and a Minute, to that effect, was made."

The true decision of the Inspectors was as follows:—

"Upon maturely considering the evidence adduced by the Warden, in support of the several charges preferred against the Assistant-Warden, the Board are of opinion, that the 3rd, 5th, 6th, 8th and 9th charges, are not proved; that the 1st charge has been proved; and the 2nd, 4th and 7th charges, have been proved, in a great measure, by Convict evidence.

"The Board regret that they cannot exonerate the Assistant-Warden from much irregularity, and the improper exhibition of temper; yet taking into consideration his large family, and hitherto good character, contents itself with admonishing him to be more careful in future.

"Through the whole of this investigation, it appears to the Board that very many cases of complaint have originated from the employment of Convict servants in the families of the officers, and which, being contrary to law, is strictly forbidden for the future."

Upon this letter of the Warden's, without any communication of its contents to Mr. Utting, the Governor General ordered the dismissal of the Assistant-Warden.

The evidence on this case has been given already in an early portion of the report. The Warden has not attempted to justify his conduct in the matter; and we cannot comment in language too strong, upon the wilful and deliberate misrepresentations which it brings to light.

We have thus gone through Charge X., and we consider it completely established.

In the course of the inquiry, and subsequent to the Charges being served on the Warden, we discovered that in certain Punishment Returns, made annually by the Warden for the Imperial Government, a number of mis-statements has been made.

The following evidence explains their nature:—

Thomas Bickerton—By Commissioners:—

"The Punishment Returns, witness has spoken of as made annually, do not appear in the Annual Reports of the Institution to the Provincial Government, but are made for the information of the Imperial Government, in obedience to an extract from a Despatch from Lord John Russel, and are forwarded to the Warden for his guidance, by the Governor General. These returns have been made

since 1837; the Warden has always compiled them. Witness is asked to refer to the return of 1846, and especially to the statement of whipping, in that year, and says, the cases of whipping are their stated to have been, of Males, 2,053, and of Females, 1. In a subsequent part of the same return, the cases of flogging by cat-o-nine-tails, are particularly stated as 25 Convicts so flogged, once; 5 twice; and 1 seven times; making in all 42 punishments with the cats.

Witness is then asked to go over the Punishment Book, and say, if this is a correct statement of the number of punishments actually inflicted, in 1846? and says, it is not. In that year—

44 Convicts were flogged with the cats, once.  
 14 “ “ “ “ “ “ twice.  
 7 “ “ “ “ “ “ thrice.  
 1 “ was “ “ “ “ twelve times.

Total Cat-Punishments, from the Report Book, for the year 1846, 105.

In the Report of the Raw-hide Punishments, the Warden reported that for the same year—

1	Convict had been flogged	20	times.
1	“ “ “ “	21	“
3	“ “ “ “	22	“
2	“ “ “ “	23	“
2	“ “ “ “	30	“
1	“ “ “ “	32	“
2	“ “ “ “	34	“
1	“ “ “ “	48	“
1	“ “ “ “	60	“

Witness is referred to the Warden's Punishment Report for 1847; and says, the Warden, in the list of punishments inflicted during that year, puts down the number of Box Punishments as 599. Witness is asked to examine the Punishment Book, and say, if that is a correct statement of the Box Punishments actually inflicted in 1847? and says, it is not. He finds the actual number was 770.

Nothing could more forcibly depict the loose morality which has prevailed in the Prison, than the fact, that the official documents prepared by the chief officer of the establishment have been unworthy of reliance.

### CHARGE XI.

#### PECULATION.

1. In Feeding a Horse, for Seven Years, out of Penitentiary Stores, and not charging himself with the expense of the same.

It appears that when the Penitentiary opened, the Warden owned a bay horse; and that in August, 1835, the Warden, with consent of the Board of Inspectors, hired it and a cart from himself, for the consideration of 2s. 6d. per day. This transaction lasted for a considerable time, but was at length terminated. In 1840, Mr. Smith moved into the house built for him within the walls of the Prison; and he asserts that he then made a bargain with himself, as Warden, that his bay horse should do the light work of the Prison, and be fed at the public expense. It is certain that this horse was fed at the public expense, from 1840 to 1846; and it is also proved that the Warden used him for his own personal purposes during the period in question, but that he was chiefly employed as the Messenger's horse, and in

doing light work about the yard. It is certain, moreover, that the transaction was never sanctioned by the Board of Inspectors; and that after the purchase of the brown carriage horses in December, 1842, there was not the slightest necessity for the services of this bay horse.

Mr. Smith has, however, proved by the testimony of two of the Inspectors who held office from 1840 to 1846, that they knew the Warden's bay horse was fed at the public expense, so that we must acquit him of peculation in the matter. The whole transaction, however, we regard as highly improper, and expressly contrary to the Statute, which forbids officers from being parties in contracts with the Penitentiary.

2. IN FEEDING A COW, FOR EIGHT YEARS, OUT OF THE PENITENTIARY STORES, AND NOT CHARGING HIMSELF WITH THE EXPENSE OF THE SAME.

It is proved that the Warden kept one cow from 1840 to 1848, within the walls of the Penitentiary; a second cow for "a few weeks;" and frequently calves during eight to nine years.

It is proved that these animals were regularly fed, with the Penitentiary cattle, from the same stores of hay, oats, potatoes, turnips, and straw, and were tended by the Convicts along with the other animals.

It is proved that the Warden has paid into the Penitentiary funds, the following sums for provender:—

December, 1842....	5 bushels oats.....	£
September, 1843...	hay.....	1 6 6
January, 1844.....	potatoes.....	0 8 1
December, do.....	5 bushels do.....	0 9 7
	1 ton hay.....	1 12 6
	5 bushels oats.....	0 5 0
March, 1845.....	1 ton hay.....	1 12 6
July, 1846.....	3 bushels oats.....	0 4 3
September, do.....	4 do. do.....	0 5 8
	15 cwt. 3 qrs. hay.....	1 5 8
November, 1847...	1 ton hay.....	1 12 6
	4 bushels oats.....	0 9 6
February, 1848....	6 do. do.....	0 10 6
November, do.....	1 ton hay.....	1 12 6

And he may also have paid £1 10s. in February, 1846, for a load of hay. But the Warden has not attempted to show that the provender, so paid for, was measured and set aside for his personal purposes, or that this charge was regulated by the actual consumption; on the contrary, all the evidence goes to show that the sums in question were paid into the public exchequer without any reference to the amount of provender consumed.

An attempt has also been made to prove that the Warden brought provender into the Penitentiary for his own use.

Mrs. Martin says, she recollects the Warden brought some hay from the cottage when he moved in; she does not know how much.

It is shown that Baron Grant presented some hay, probably five or six loads, to the Warden, which was brought into the prison.

There is also the testimony of Mr. Henry Smith, M.P.P., that he saw his mother pay John Van Luven £1 12s. 6d. for two loads of hay, in the winter of 1840-1.

There is also an attempt to show that the Warden purchased and raised potatoes, and purchased turnips for his own use ; but it is successful to a very limited extent ; and there is not the slightest proof that articles so purchased were given to the Warden's cow ; on the contrary, the proof is direct, that it was fed regularly from the same stores as the Penitentiary animals.

It is very obvious that, even if no fraud existed in this matter, it was most improper to mix up private property with the public stores ; such a practice could not fail to open up the way to much irregularity, and subject the participators in it to constant suspicion ; but having resorted to so dangerous a practice, the Warden was bound to show that he had reimbursed the Institution for all the food his animals consumed. This, however, he has not attempted ; he has merely shown that he paid for some hay, and had some oats, potatoes, and turnips ; but he does not attempt to prove that his animals got them ; and it is very evident that, had all the provender he alleges he purchased, been actually supplied, the whole would have been nothing like adequate to the support of one cow. It is very clear, on the Warden's own statement, that his cattle have been fed since 1840, almost entirely at the public expense.

It will be proved, under a future count, that the expense of supporting the Penitentiary animals has been enormous, averaging, for several years back, nearly £40 per head, annually ; and as it appears that the Warden's cow was fed with oats and other provender in the same manner as the Penitentiary oxen, no other conclusion can be arrived at, than that the Institution has been wronged on this item, at the least calculation, to the extent of over £200.

#### 4. IN FEEDING LARGE QUANTITIES OF POULTRY, OUT OF THE PENITENTIARY STORES, AND NOT CHARGING HIMSELF WITH THE EXPENSE OF THE SAME, DURING EIGHT YEARS.

It is proved, by many witnesses, that poultry in large quantities, the property of the Warden, have been fed regularly, for years, from the Penitentiary stores. The Convict who fed them for some time, testifies that there were, in his time, over 150 head of poultry ; and Guard Wilson says, he has counted 200 to 300 head at a time.

The quantity of poultry, the Warden tries to show, was much less than represented ; but he does not attempt to contradict, directly, the evidence as to their having been fed from the public stores. He tries, however, to show that he kept grain of his own, with which they were fed. This allegation rests entirely on the veracity of Thomas Smith, the Messenger, and his Wife ; and we, therefore, give their evidence in full.

Elizabeth Smith—By Mr. Smith :—

“ Is wife of Thomas Smith, Messenger to the Penitentiary. Has attended to the feeding of the Warden's poultry ever since she came to live in the Prison Lodge ; no one else has had the care of them ; has lived at the Lodge five years. When witness first came, the Warden had not a dozen fowls. The largest number of chickens ever raised in one year, was 30, and of ducks 16, and these did not all get to any size ; they (the chickens and ducks) were fed with Indian meal, crumbs, sour milk, and other refuse from the Warden's kitchen ; the old fowls were fed with different kinds of grain, sometimes

oats, and at others Indian corn, which was supplied by Mrs Smith ; the fowls would not eat much grain, as they picked up food on the dunghill and about the yard. Has seen the ducks fed with salad and other green stuff from the Warden's garden. Witness is frequently about the stables ; has seen the oxen eating potatoe-pairings in the morning ; they have always had them for the last five years, when the Convicts were getting potatoes.

The greatest number of turkies the Warden ever had at one time was 11 ; the smallest number was 1 ; no turkies were ever raised by the Warden. Never saw more than 2 geese at one time ; they were four or five days in the stables.

Knows that 30 bushels and over of grain had been purchased every year for the Warden's poultry, besides what was brought from the house ; witness kept the key of the hen-house. Convict Henesey had nothing to do with the poultry, unless witness entrusted him with the grain, to give to them when she went to town ; always left sufficient for the fowls on such occasions ; never told Henesey to give any Prison oats to the fowls, they had no need of it ; never saw him, or knew of his giving oats to the fowls.

“ If any one has sworn that the Warden had 93 chickens, 21 ducks, 40 old fowls, besides a number of purchased chickens, turkies and ducks, in one season, he has sworn falsely.

“ If any one has sworn he has seen from 200 to 300 head of poultry, within the Penitentiary at one time, within the last two years, he has sworn falsely. If any one has sworn he has seen 54 turkies at one time, within the Penitentiary, during the last twenty-six months, he has sworn falsely.”

By Commissioners :—

“ Witness has always been on good terms with the Warden's family ; has known them better than eight years ; has never received any kindness from the Warden or his family, but free quarters, and her husband's salary. Has had presents of a bit of pork occasionally, and vegetables from the garden. The house witness has occupied for five years, is the property of the Penitentiary ; has paid no rent for it. Witness supplied the Penitentiary with beer, for about two years ; charged 2½d. per pint ; never sold any beer to any other party ; has no license : has supplied the Penitentiary Hospital with bread, for about four years ; got a profit on it, of one loaf in twelve ; sometimes they got one loaf per day, sometimes three, and sometimes none : never sold any thing else to the Penitentiary.

“ The Warden's hen-roost is in the Penitentiary stable ; fed the fowls regularly three times a day, and sometimes oftener, Sundays as well as week days. The Warden never had 50 chickens and fowls at one time, thinks there might be 40 ; the largest number of ducks he ever had at one time was 18 ; the Warden never had a live goose within the walls but 2, and these only for a night or two ; the largest number of turkies was 11 ; never had any pea-hens, or any other kind of fowls. Witness swears that the Warden never had over 71 head of poultry on hand at one time ; witness kept the grain for the Warden's poultry, in her own house at the Lodge ; it has always been kept there during the last five years, except what little was got from the kitchen ; sometimes kept the grain in a bag, and sometimes in a barrel ; sometimes witness bought the grain, sometimes her husband did, and sometimes Martin, and

sometimes Mrs. Smith did. Witness cannot tell how often she has bought grain for the fowls; has bought grain upwards of twenty times for the Warden's fowls. Bought sometimes corn, and sometimes oats, and sometimes Indian meal; does not remember how often she has bought Indian corn. Cannot tell the names of the shops where she bought it; bought it wherever she could get it cheapest; cannot name one of the shops. Bought sometimes one bushel and two bushels, but never over four and a half bushels of corn, for the Warden's fowls at once; whatever the bag held. Sometimes the man who sold the corn would bring it into the Penitentiary, and sometimes witness's husband; believes they brought it in at one of the gates; cannot tell any one farmer, who so brought in corn. Will swear what farmers have brought in corn for the Warden's fowls, and left it at witness's house twenty times, in the last five years; witness's husband has several times brought in corn for the fowls, which witness had purchased in town; Martin has bought corn for the Warden's fowls, and left it at witness's house, many times; witness's husband has bought Indian corn for the Warden's fowls many times; Mrs. Smith, the Warden's wife, has bought Indian corn for the Warden's fowls many times. Witness has bought oats for the Warden's fowls 30 times, and more than that; bought them mostly from boats lying at the Penitentiary wharf; the boatman brought the oats in through the west gate; bought from 2 bushels to 8 bushels at a time; cannot tell how often she has got oats from boats. Witness never bought any oats in town; all the oats witness bought were from boats lying at the west wharf. Cannot tell how often her husband has bought oats for the Warden's fowls; not so often as witness, but very often; cannot say where he got them; does not remember what quantity he bought in at a time. Does not remember Martin ever bringing any oats for the Warden's fowls; Mrs. Smith the Warden's wife, has bought oats for the Warden's fowls many times, and sent them down to witness; sometimes the farmer brought them in."

"Witness has bought Indian meal for the Warden's fowls many times, cannot tell how often; bought from a peck to a bushel at a time; bought it in the market, and once or twice in shops; cannot name any one farmer or shop she purchased it from; sometimes the farmer brought it home, and sometimes witness's husband. Would think her husband had brought home Indian meal, that witness had purchased for the fowls, a dozen of times. Does not remember of her husband ever buying Indian meal; nor of Martin doing so; Mrs. Smith has bought Indian meal many times, and sent it to witness for the fowls.

Mrs. Smith gave witness the money to pay for all the grain; more of it was bought this last year than any previous year. Grain for the Warden's fowls has been regularly purchased and kept on hand, in witness's house, for the whole of the last five years; Mr. Tyner, the Gate-keeper, knows that witness has been in the habit of feeding the fowls occasionally, from stores kept in her house; does not know any other person who knew the fact; witness's son, Thomas, knows that the fowls have been so fed. Cannot tell how much grain she used for the fowls; has had five bushels of Indian corn and some oats on hand at one time; some of the corn was in a bag, and some in a barrel; has two or three barrels for keeping the Warden's grain in; sometimes keeps the barrels in the house, and sometimes in the gateway.

By Mr. Smith —

"The Warden had more fowls at one time than another; the quantity of grain bought for the fowls was more than they would eat."

By Commissioners:—

"The grain for the fowls has often been brought in by farmers at the west gate; when witness made purchases in the market for the fowls, witness's husband would call for her and take the grain to the Penitentiary. Witness never conversed with the Warden on the subjects spoken of in her evidence of this day, nor to Mrs. Smith, nor with any one else."

Thomas Smith—By Mr. Smith:—

"Has bought grain for the Warden's fowls; has bought Indian corn and oats; that was all. Witness's wife has had charge of the fowls since witness has come to live at the lodge; has lived there nearly seven years. The Warden's fowls have often been given to the sick Convicts.

Has bought shorts for the Warden; never bought peas or pollard.

By Commissioners:—

"Witness has purchased bran for the Warden very often, so often that he cannot tell the number of times. Bought sometimes more and sometimes less, from one hundred to three hundred pounds at a time. Bought it in shops; always paid cash for it; cannot name any one shop where he bought bran for the Warden; has bought bran for the Warden at a shop on the corner of Brock street, several times; cannot swear that he bought bran there three times; cannot recollect how often; bought bran in that shop for the Warden about a month ago; cannot tell when the first purchase he made in that shop was; did not buy any bran for the Warden, in that shop, previous to Frank Smith's trial in October, 1847; did not buy bran in that shop previous to June, 1848, that he recollects of. The people from whom witness bought bran for the Warden, in other shops, have all left Kingston; they have given up their shops; they kept shops in different parts of the town; there was one shop where witness used to buy bran for the Warden, in Wellington street, which was burned down at the fire; it was a bran and corn store; does not know the name; cannot say if it was five years ago, he bought bran there; cannot say when the fire took place; cannot designate any other shop in which he ever bought bran for the Warden. Has brought in bran in a mattress, for the Penitentiary, but only once for the Warden; at other times brought it in for the Warden in his own bags. Witness solemnly declares he has brought in bran for the Warden at other times, besides the one occasion on which he brought it in in a mattress. Sometimes took the bran, when he brought it in, to the Warden's house, and sometimes to his own house; kept it there, and gave it to the stable man, when he wanted it for the Warden's cow; never had any bran in his house, for the Warden's cow, previous to June, 1848. Does not know, of his own knowledge, what became of any of the bran witness purchased for the Warden. The unthreshed oats witness has spoken of came from Mr. Hopkirk; cannot tell when it was. The oats came in, and were put in the Penitentiary stable over the Ox-stalls, and that is all witness knows about it; saw the oxen eating them; the horses might have got some, as they were in the same stable."

“Witness has bought Indian corn for the Warden, three times; once from Mr. Morton, and twice in the market; does not recollect how much he bought at a time; those are all the occasions on which witness bought corn for the Warden. Martin bought corn for the Warden once. Witness's wife has bought corn for the Warden in town, and witness has brought it home for her; cannot tell how often, nor where she got it; witness's wife kept corn for the fowls stored in witness's house, up stairs, in barrels; it was always kept there, to the best of his recollection. On the three occasions on which witness bought corn, himself, for the Warden, part of it he left in Warden's house, and part of it he took to his own house for the fowls. Could not tell whether there was one bushel of corn on each of the three occasions when witness bought corn for the Warden—thinks there were three bushels from Morton—on the other occasion thinks it was a bushel, or a bushel and a half. Will swear he has purchased corn for the Warden previous to June, 1848; does not know if Morton's was previous to that date; cannot tell if the other two occasions were previous to that date. Witness's wife kept corn and oats on hand, for the Warden's fowls, in witness's house; does not know that she kept any thing else for them. Could not tell when witness's wife first began to keep grain for the Warden's fowls.

Q. Will you swear that grain has been kept in your house, for the Warden's fowls, previous to last year (1848)?

A. Cannot swear that it has.

Q. Will you swear that grain has been kept in your house, for the Warden's fowls, previous to the Commission sitting in Kingston?

A. Cannot swear that it has.

Cannot tell how often witness's wife fed the fowls; knows nothing about it. She commenced taking charge of the fowls after the new stables were built; moved into the new stables after the fire in which Richardson's shop was burnt down; has no personal knowledge of how the fowls have been fed, except what he has been told.

Witness has bought oats for the Warden.

Q. Will you swear that you have bought oats three times for him?

A. Yes.

Q. Will you swear you have done so five times?

A. No.

Q. Where did you buy them?

A. Wherever they could be got cheapest on the market place; never bought any in shops.

Q. What quantity did you purchase at a time?

A. Cannot say.

Q. Did you ever buy five bushels at once?

A. No.

Q. What is the most you ever bought for the Warden, at once?

A. Thinks three bushels.

Q. Will you swear you ever bought any oats for Warden previous to last year (1848)?

A. No; cannot say when he bought them.

Q. Will you swear you ever bought any oats for the Warden previous to the sitting of the Commissioners?

A. No; could not swear that he had.

Q. Do you know that any one besides yourself has bought oats for the Warden?

A. Witness's wife has gone to town for oats for the Warden, and witness has brought it home for her.

Q. How often has she done so within your knowledge?

A. Cannot tell.

Q. Will you swear that your wife ever bought a grain of corn or oats for the Warden previous to last year (1848)?

A. Could not swear she had.

Q. Will you swear she has done so previous to the sitting of the Commissioners in Kingston?

A. No; cannot swear she has.

Q. Have you ever bought any Indian meal for the Warden?

A. Does not think he ever did.

Q. Did you ever know any one else to buy Indian meal for the Warden?

A. Cannot say that he has; his wife has told him that she has done so; she was feeding the fowls with it at the time; it was last summer.

Q. How often did you buy shorts for the Warden?

A. Four or five times.

Q. Where did you buy it?

A. In bran shops, in Kingston; cannot tell any one shop in which he ever bought any shorts.

Q. What is the largest quantity of shorts you ever bought at once for the Warden?

A. One cwt.; half a cwt. was the smallest.

Q. What did you do with the shorts?

A. Left them in the Warden's kitchen.

Q. Will you swear that you ever purchased shorts for the Warden previous to the sitting of the Commissioners in Kingston?

A. No; cannot say when it was he purchased the shorts.

Q. Did you ever know the Warden to purchase produce from boats at the west wharf, or to have any purchased there for him?

A. Yes; butter, eggs, and fowls; nothing else.

Q. Did you ever know corn, oats, Indian meal, or shorts, purchased for him in that way?

A. Never knew of such a circumstance within his own knowledge.

Q. At which gate was all this grain, you have spoken of, brought in ?

A. Sometimes at one gate, and sometimes at the other, until the north gate was opened. Since the north gate has been opened, has brought everything in by it; the north gate has been open about four years.

The statements of these witnesses do not harmonize as to date, quantity, and number of purchases; they differ so widely as to cast much doubt on their evidence, even had it stood uncontradicted otherwise. But we believe the truth is elicited in the cross-examination of Smith. There is little doubt that a few small purchases of all the articles named have been made by these parties for the Warden, and that such grain has been kept in Smith's house to feed the Warden's fowls; but all the evidence, and Thomas Smith's own admissions, lead us irresistibly to the conclusion, that such a practice has only existed since the opening of our Commission, and that previous to that time the Warden's poultry were fed entirely at the public expense.

There are numerous witnesses who testify that the fowls were regularly fed from the public stores, and that they never knew the Warden to have grain for his own use. Had the Warden been in the habit of keeping such stores, it is scarcely possible that the Gate-keepers could have been ignorant of it; but the following evidence shows that they were not aware of his doing so :—

John Cooper—By Mr. Smith :—

“Has seen Smith, the Messenger, bring in bran or shorts, cannot say which, for the Warden, only once or twice; it was in a bed-tick, such as the Convicts use; does not know the quantity, nor where it was taken to.

“The Warden had no place for holding grain in the stable, never saw any place set apart for him; receives the Penitentiary grain and fills all the stable bins with it.”

By Commissioners :—

Q. Did you ever know Smith, the Messenger, bring in bran or shorts, for the Warden, previous to 1848 ?

A. Thinks it was last year he brought the bran or shorts.

Q. Did you ever know Smith to bring in Indian corn, oats, or Indian meal, for the Warden ?

A. Has no recollection of his ever doing so.

Q. Did you ever know Martin bring in any of these articles for the Warden ?

A. No; never in his recollection.

Q. Did you ever know Mrs. Smith, the Messenger's wife, to do so ?

A. No.

Q. Did you ever see Mrs. Smith, the Messenger's wife, feeding the fowls ?

A. No; has no recollection of seeing her.

Q. Could she have fed the fowls three times a day for the last five years, without your seeing her ?

A. Thinks she could not, as witness was often down at the stables.”

We are fully convinced, that for at least seven years large numbers of poultry have been fed for the Warden's benefit, from the public stores; and if it is true, as sworn to by Convict Henesey who fed them for some time, that they got “not far from half a bushel of oats per day,” the cost of feeding them must have amounted to a considerable sum in so many years.

4. IN FEEDING LARGE NUMBERS OF HOGS, DURING EIGHT YEARS, OUT OF THE PENITENTIARY STORES, AND NOT CHARGING HIMSELF WITH THE EXPENSE OF THE SAME.

It is proved that from 1840 to 1848, inclusive, the Warden kept from 6 to 14 hogs within the walls of the Penitentiary, buying them young, and killing them off as fattened.

It is proved that they were regularly fed with offal from the Penitentiary kitchen, and oats from the Penitentiary stores.

For the defence, it was attempted to be shown that the Warden purchased shorts and Indian corn, but only to a small extent; and the only witness (Thomas Smith,) who gives evidence on the point, will not swear that he ever bought such articles for the Warden, previous to the sitting of the Commission in June, 1848. Not one witness testifies that he ever saw the Warden's hogs fed with other than Penitentiary property.

It is therefore clear to us, that the Warden's hogs have been fed almost, if not entirely, at the public expense; and if the testimony of Convict Henesey is to be relied on, who says they got from one to two and a half bushels of oats per day, the cost of maintaining them must have been very considerable in so many years. The offal of other Penitentiaries is usually sold, and produces a respectable sum annually, and had it been sold here, the amount in eight or nine years would not have been inconsiderable.

Undoubtedly this count explains in part, the enormous sums charged for oats, potatoes, &c., for the Penitentiary stables. In the long period during which this abuse has existed, the public must have been wronged through it by Mr. Smith, to the extent of several hundred pounds.

5. IN EMPLOYING CONVICTS FOR HIS PRIVATE BENEFIT, AND CHARGING THE VALUE OF THEIR TIME TO GOVERNMENT.

Under the original Act for the regulation of the Penitentiary, 4 Wm. IV. Chap. 37, the Warden's salary was fixed at £200 per annum, and he was expressly debarred from receiving any perquisites or emoluments other than his salary; “a dwelling at or near the Penitentiary, and shall be furnished with fuel and candles, from the Stock provided for the use of the Province, and with servants from among the Convicts, if he shall think proper.”

On 1st November, 1837, the Board of Inspectors, in their report to the Lieutenant Governor, recommended the “granting to the Warden and Deputy Warden, a competent allowance for servants,” as the

employment of Convict servants is "in some degree at variance with the express terms of the sentence pronounced upon the Convict by the Court, consigning him for the period of his confinement to *hard labor*," and "is unquestionably at variance with that essential part of discipline, which is intended to prohibit Convicts from obtaining information of what is going on, either within or without the walls of the Prison."

During the succeeding Session, by Statute 1 Vic. Chap. 53, passed in the Session of Parliament 1837-8, the original Act was repealed, "so far as relates to the Warden and his Deputy being furnished with servants from among the Convicts," and in the same Session an Act was passed, giving the Warden an increase of £100 to his salary.

Since the winter of 1837-8, therefore, the Warden has been prohibited by Statute, from employing Convicts for his private purposes, but notwithstanding this, it appears that the Warden has been in the regular habit, since his removal into the Penitentiary, of using the services of as many Convicts as he thought proper.

It is proved, that he had one Convict working constantly in his house since 1840, and 1, 2, 3, or 4 more, as occasion required.

It is proved, that he had one Convict employed for the greater part, if not the whole of his time, in feeding his cows, hogs, and poultry.

It is proved, that since the fall of 1843, Convict Cameron has been employed as gardener; that for three years he has had another Convict regularly to assist him, and sometimes three or four more, as occasion required. It is true, that for the last two years there has been a Penitentiary garden, which was kept by Cameron and his assistants, but during the previous years their services were entirely employed for the Warden's benefit, and the greater part of them since.

It is proved, that a gang of several Convicts, and one or two officers, have been sent out on the bay, for several winters past, to cut ice, and were so employed for several days each year. This appears to have been authorized, one year, on the score of ice being required for surgical purposes; but it does not appear that the ice so procured has ever been used, except for the private purposes of the Warden.

All these transactions were throughout contrary to Statute, and the Inspectors have more than once alluded to the practice, in terms of strong disapproval. On 12th March, 1845, the Board said it was "contrary to law" and "is strictly forbidden for the future," but this had only the effect of interrupting the practice for a short time, and in a few weeks it was resumed as before.

The only palliation which is offered for these violations of the law, is the sanction of the Board of Inspectors, for the employment of Convict Cameron, as gardener. On 10th June, 1844, the following Minute was recorded:—"The Board conceiving it to be necessary, that a quantity of shrubs and plants, fit for ornamenting the space in front of the north wing, should be prepared, direct the employment of one of the Convicts for that and such other purposes as the Warden may require." But Cameron had been so employed for nearly a year before this order passed, and though it sanctioned the employment of Cameron, it certainly did not of his assistants, and moreover this order was completely cancelled

by the order of the same Board, in March following, already alluded to.

On June 3rd, 1847, the late Board recommended the employment by the Warden, of as many Convicts as he chose for his private purposes, but nothing was said about payment.

The time of the men so employed in the private service of the Warden has been regularly returned to Government, as employed in the public service; and in the annual returns, their labor is charged to the Government and credited to the Institution, as having been expended on the Prison buildings, at an average of about 3s. per day.

The conclusion we have arrived at is, that the Warden has had, on an average, three Convicts regularly in his employment since 1840; and at the rate returned to the Government, as having been produced by these men, the value of their labour must have amounted to over £1000.

6. IN FEEDING A PAIR OF GREY HORSES, THE PROPERTY OF HENRY SMITH, ESQ., M. P. P., FOR NINE MONTHS, AND CHARGING THE EXPENSE OF THE SAME TO GOVERNMENT.

A great deal of evidence has been received on this point, and the facts are simply as follows:—

It appears that a pair of grey carriage horses, the property of Mr. Smith, M. P. P., came to the Prison in December, 1845, and remained till July, 1846; that they were fed, groomed, and shod, during the time they remained, at the public expense; and that they were brought to the Prison, and remained there, without any sanction from the Board of Inspectors.

The Warden alleges that he borrowed these horses from his son for the use of the Penitentiary, and agreed to feed them for the use of them; that one of the brown carriage horses was lame at the time, and others were wanted to bring the Inspectors to the Penitentiary, and to draw the Messenger's cart. In support of this explanation the Warden proves that the greys were used on two, or three, or four occasions, to draw the Inspectors to their meetings at the Prison; that one of them went to town frequently, in the Messenger's light waggon; and that one of them drew a cart in the yard, for the benefit of the Penitentiary, on several occasions, but was not regularly so employed.

We do not think the Warden's defence satisfactory. His first plea, that horses were wanted to bring the Inspectors to their meetings, is destroyed by the fact, that the Inspectors held only four meetings while the greys were in the Prison; and besides this, the lame brown horse was sold in March, 1846, and another purchased in his place, after which there could have been not the shadow of a pretext for retaining the greys. Then, as to their being required for the Messenger's purposes, there were in the Prison, at the same time as the greys, the lame brown horse until March, and afterwards the one that replaced him; the second brown carriage horse and the bay horse, hired by the Warden from himself—all expressly kept for the Messenger's purposes; and the Messenger himself testifies that all he required from them was to draw the light cart to town, once or twice a day, and occasionally three or four times, a distance of a mile and a half.

The testimony of two of the Inspectors on this matter, is very material.

Thos. Kirkpatrick, Esq.—By Mr. Smith :—

“ The pair of grey horses belonging to Mr. Henry Smith, jun., were twice or thrice used in the carriage, bringing the Inspectors to the Penitentiary; has no recollection of seeing the Messenger in town with them. Had no knowledge at whose expense they were fed; witness's impression at the time, was, that the Warden provided food for them himself. Recollects that one of the brown horses went lame for some time, but has no knowledge as to when it was.”

By Commissioners :—

“ Had witness known that the keep of Mr. Henry Smith's (junior) grey horses was to be paid from the public chest, he would not have permitted it.”

Major Sadlier—By Commissioners :—

“ Recollects a pair of gray horses being in the Penitentiary one winter and part of the following summer; they were not the property of the Penitentiary; they were not hired for the use of the Penitentiary by the Inspectors; presumes they were not fed at the expense of the Penitentiary; never heard that any application was made to the Board for another pair of horses, at the time the greys were in the Prison; presumes if horses had been needed application would have been made for them. Never knew these grey horses to do any work in the Penitentiary yard, but they may have done so, unknown to witness; they drew the Inspectors to the Prison on two, three, or four occasions—it could not have been more; understood these grey horses were in the Penitentiary for the use of the Warden's family; they were the property of Mr. Henry Smith, M.P.P., and were not authorized by the Board, and were used by the Warden's family, and witness therefore inferred that they were in the Prison for the Warden's private convenience. If witness could have conceived that these horses were fed at the public expense, he would not, as an Inspector, have permitted their remaining in the Institution, as they did. The Warden has told witness that he paid for the feed of his own animals, and witness considered the feed of the grey horses was included.”

By Mr. Smith :—

“ Thinks he has seen one of the grey horses going to town in the Messenger's cart. If horses work for the Penitentiary, the Institution ought to feed them, but would think it very irregular if horses were taken in upon hire without the knowledge of the Inspectors. One of the brown carriage horses was lame while the greys were in the Institution; he was a little lame from the day he was bought, and grew worse while he remained, until at last he was unfit to go in the carriage.”

It is also proved by other witnesses, that these grey horses were used frequently for the private purposes of the Warden and his family while they remained in the Prison; and that, on one occasion, Mr. Smith, M.P.P., took them away on a journey for a few days.

We are led irresistibly to the conclusion, that these gray horses were not required for the purposes of the Institution; that they were there for the private use of the Warden and his family, and that they were only employed in the public service to an extent sufficient to give a cover to the transaction.

7. IN FEEDING A PAIR OF BAY MARES, THE PROPERTY OF ONE RITCHEY, OUT OF THE PENITENTIARY STORES, AND NOT CHARGING THE SAID RITCHEY OR HIMSELF, WITH THE COST OF THE SAME.

The following is the evidence on this count :—

Martin Keely—preliminary examination :—

“ About three years ago, there was a pair of bay horses in the Penitentiary; Mrs. Smith told witness that she got them from Mr. Ritchey of Glenburnie, to draw the carriage, so that the Penitentiary horses need not be used for the Warden's purposes. One of the horses died, while so employed, and witness has reason to believe, they were paid out of the Penitentiary funds.”

James M'Carthy—preliminary examination :—

“ Recollects a pair of bay mares being in the Penitentiary for a whole winter. Mrs. Smith told witness that she had got the use of them, for their feed, from her servant girl's father or brother, and that it would enable her to avoid using the Penitentiary horses when she drove out. Mrs. Smith added, that they would do enough of work for the Penitentiary to pay for their keep. Witness has seen these horses working for the Institution once and again, but not often—apparently only for a show. Witness was in the habit of shoeing these mares, and always charged the amount to the Institution. One of the mares died in foaling, and it was rumoured that the Penitentiary paid the owner, whose name was Ritchey, for her; the other mare was taken away shortly after her mate died.

John Swift—preliminary examination :—

“ Recollects a pair of bay mares being in the Penitentiary; they were the property of a man named Ritchey; one of them died, and the other was sent back to Ritchey; they were employed partly in working in the yard, and partly in carriage work.”

William Martin—By Mr. Smith :—

“ As far as witness knew, Ritchey's brown mares went to work every day in the yard; witness was not regularly employed in the Prison then.”

By Commissioners :—

“ Ritchey's brown mares were employed drawing rubbish in various parts of the yard; they worked singly in carts; they worked regularly at cart work when witness was in the yard. Witness was not then in the establishment, he merely did occasional duty for a sick or absent Guard. Never saw them in any of the carriages, or in the waggon or buggy; cannot tell how often witness was employed as a substitute while Ritchey's horses were in the stables; could not say he was employed half his time; could not say he was employed a quarter of his time; was employed more than twenty days during the winter.”

William Smith—By Mr. Smith :—

“ Recollects a pair of brown mares which were in the Penitentiary for some time; they wrought in the quarry, and drew wood and water in the yard; they worked every day in the yard, like the other horses.”

By Commissioners :—

“All that witness can say of the brown mares, is, that he saw them working occasionally in the yard.”

By Mr. Smith :—

“The brown mares worked in the yard regularly every day, while they were in the Penitentiary.”

By Commissioners :—

“Swears, as to the brown mares, from his own knowledge.”

Thomas Smith—By Mr. Smith :—

“Has never driven the Warden, or any of his family, with Ritchey's bay mares; they worked regularly in the yard; never saw them used in the carriage; they were not fit to put there.”

Thomas Costen—By Mr. Smith :—

“Recollects a pair of grey mares being in the Penitentiary; they worked about the yard; thinks they did so every day they were here.”

Andrew Ballantine—By Mr. Smith :—

“Recollects a pair of bay mares being in the yard some three or four years ago; cannot tell if they worked every day; has seen them working in the yard; they were drawing rubbish from the yard; never saw them in the carriage.”

It is certain that a pair of bay mares, the property of Mr. Ritchey, were in the Penitentiary stables, from November, 1843, to May, 1844; that they were fed at the public expense; and that the Inspectors in no way authorised their being in the prison. It is also clear to us, that they were not required for the business purposes of the Institution, as the brown carriage horses were proved to have been taken from the yard work before the arrival of Ritchey's mares, and were not so used while they remained. It is farther true, that one of Ritchey's mares died while in the Prison, and that the owner was paid £12 10s. for it, without any sanction from the Inspectors.

8. IN FEEDING LARGE NUMBERS OF PIGEONS OUT OF THE PENITENTIARY STORES, FOR EIGHT YEARS, AND NOT CHARGING THE SAME TO HIS OWN ACCOUNT.

It is proved that large flocks of pigeons have been kept in the Penitentiary for a number of years back—sometimes as many as 200 at one time; and that a pigeon-house was built for them at the public expense. It is proved that they were regularly fed with the public stores; the Convicts being deprived of a large portion of their daily supply of pease to feed them. It is also proved that these pigeons were considered the private property of the Warden, and were regularly used for his purposes.

The defence set up by the Warden, is, that pigeons were often supplied to sick Convicts; and this he has endeavoured to prove, by several witnesses.

Mr. Costen says, he has delivered pigeons for sick Convicts, on the requisition of Mr. Julien, formerly Hospital-keeper, but now dead. He “cannot name any Convicts who got pigeons while in the hospital;” he “thinks” Convict Kelly got them, “but cannot be sure.” Mr. Smith recalls Mr. Costen, however, and his recollection is better. He now says, he

“knows that pigeons have been given to sick Convicts, of his own knowledge; knows that young Kelly got them frequently; knows that pigeons were sent to the hospital for other Convicts, but does not recollect their names; it was at the time Julien was Hospital-keeper.”

By Commissioners :—

“The pigeons which Kelly got were killed by the Warden's orders, and where they were cooked, witness does not know; Kelly got them almost every day.”

Guard Martin says, he has killed pigeons for sick Convicts thirty times within the last three years, and in every case it was at the request of Hospital-keeper Julien, who is now dead; he knows that Convict John Bran got a pigeon every day, or every second day, for six or several days, but Bran is now dead; he saw Convict Kelly drink pigeon broth, but Kelly is now out of the country; he knows that pigeons were killed for Convict Fanny Johnston four or five times, and she, too, is dead. He states, however, that “not one sick Convict has had a pigeon to his knowledge, since Mr. Julien died;” and he “cannot name any one Convict, now in the Penitentiary, who has had a pigeon when sick or well.” On being again examined by the Warden, Martin “recollects” that Convict Uniak Pettis “got pigeons;” but in his cross-examination it appears that Pettis is now dead. He also “thinks he killed a pigeon, once or twice, for Convict Margaret Douglas,” but she is dead also. He “thinks Convict Margaret Hayward had pigeons killed, two or three times, for her;” and she, too, is dead. He thinks Convict Caroline Evans had pigeons also, but she, too, is among the departed; and he adds, that all the pigeons for the sick Convicts, male and female, were cooked in the women's apartments.

Mrs. Martin sustains her husband's statement. She says, Convicts Margaret Douglas, Fanny Johnston, and Margaret Hayward, got pigeons while she was Matron; and they (the Convicts) are all dead; says Mr. Julien ordered the pigeons for these women, but he is dead; and that Mrs. Parsons, who was Matron at the time, knew of their getting pigeons, but she is dead, too. She says, she never knew any other Convict, but these three women, to get pigeons; and that no other female Convicts died in the prison but these, while she was Assistant Matron. Mrs. Martin also states, that Julien brought pigeons to the women's prison, to be cooked for sick male Convicts.

The Messenger, Thomas Smith, says, he never carried any pigeons outside for any one but Mr. David John Smith, lately deceased.

Mrs. Pollard says, that the only Convict who has ever had pigeons to her knowledge, is Charlotte Reveille, and that she has only had them since November, 1847; that since she became Assistant Matron on 15th May, 1847, no pigeons have been cooked in the female ward for either male or female Convicts, to her knowledge, except for Reveille.

This is the evidence, on the part of the Warden; but there are many witnesses who testify differently.

Dr. Sampson—preliminary examination :—

“Is Surgeon of the Penitentiary; has been so from the commencement of the Institution; has been daily in the habit of ordering the diet of the sick hospital Convicts. \* \* \* \* \* Never

ordered a pigeon in his life for a sick patient ; recollects hearing from the Keeper, that Mrs. Smith intended to send a pigeon for a sick Convict ; does not know that she sent a pigeon in this case ; does not believe that pigeons were ever given to the sick Convicts."

By Mr. Smith :—

"Has not every day prescribed the diet of the sick hospital Convicts ; in some instances has said of a sick Convict, let him or her have such diet he or she desires ; if hospital Convicts were to receive a pigeon, such diet would be consistent with the foregoing wish. Has requested Mrs. Smith, on several occasions, to send sick Convicts little comforts ; does not recollect ever telling any person that sick patients got pigeons."

William Jones—preliminary examination :—

"Is Hospital-keeper in the Penitentiary ; came to the Institution in August, 1847 ; has charge of the sick Convicts in hospital ; sees them fed by the diet prescription of the Surgeon ; there has never been a pigeon given to sick Convicts while witness has been in the Institution ; never knew of any Convicts getting any pigeons, either sick or well ; never made any demand for pigeons." \* \* \* \* \*

"Never asked for, nor got any, pigeons since he came to the Institution, with the exception of once, when Mr. Smith was kind enough to let him have three for himself."

Deputy-Warden Utting, Fitzgerald, Freeland, Wilson, and others, testify that they never knew a Convict to get pigeons in the Penitentiary.

It is very clear, that if all the Convicts alleged to have had pigeons did really get them, the total number so expended formed no excuse for the constant maintenance of such large flocks at the public expense. But the fatality which seems to have attended all connected with these pigeons, is most remarkable. Out of eight Convicts who are mentioned as having had them, six are dead, one is deranged, and one is out of the country ; the Hospital-keeper who ordered them is dead ; a Matron cognizant of the facts is dead ; and a gentleman who had a few presented to him is dead also !

Convict John Dyas, the Head-cook, testifies that the pigeons had a dipper-full of peas regularly three times a day, and that the dipper would hold half a gallon ; and the evidence of many of the witnesses goes to sustain this statement. Dyas also explains that the peas consumed by the pigeons were abstracted from the daily rations of the Convicts.

We can find no palliation for the Warden's conduct in this matter, and can only regard it as deliberate peculation.

9. IN GETTING ARTICLES MADE FOR HIM IN THE PENITENTIARY, WHICH WERE NOT CHARGED TO HIM.

The several Keepers return a Weekly Labor Bill, showing how their men have been employed during the past week. They also return a Monthly Bill of the work done for the Officers of the Penitentiary. On comparing the two, there are articles alluded to as having occupied the time of the men, on the Labor Bills, which were not charged to the Warden on the Monthly Bills. The following items are examples of this :—

IN BLACKSMITH'S RETURN.

- 1840.
- 1. Jan. 11. A dumb stove, 13s.
- 1843.
- 2. Dec. 15. A waggon, 168 lbs. English iron ; 16 lbs. Swedes iron ; 60 counley ; 30 bushels coal ; 108 days labor.
- 1838.
- 3. June 9. A lock repaired, 2s.
- 1841.
- 4. Nov. 13. 4 horse shoes.

IN CARPENTER'S RETURN.

- 1839.
- 5. March 2. Repairing chairs, 2s.
- 6. Jan. 2. A sleigh repaired, two days.
- 1841.
- 7. Feb. 27. Repairing sofa, churn, and cask.
- 1842.
- 8. May 14. Child's chair, one day.
- 9. Sept. 3. Making picture frames, four days.
- 1843.
- 10. Jan. 7. Making book-case, 6 days.
- 11. March 4. Making furniture, 3 days.
- 12. do. 11. do. do. 5½ days.
- 13. do. 18. Making 2 foot-stools, and repairing sideboard, 5 days.
- 14. April 22. Making tables, 1½ days.
- 15. do. 29. do. footstools and sofa, 5 days.
- 16. May 6. do. tables, 1½ days.
- 17. do. 13. do. do. 5½ do.
- 18. do. 20. do. do. 3 do.
- 19. do. 27. do. do. 2 do.
- 20. June 10. do. cupboard, 2½ days.
- 21. June 17. do. cupboard, 1½ days.
- 22. July 1. do. wash tub, 1½ do.
- 23. Sept. 2. do. flower pots.

The Warden called Mr. Bickerton, who explained some of the above items as follows :—

Item 5, he swears, was paid for by the Warden.

Item 6, or "12 feet 1 inch board, 1½ lbs. paint, and two days work," was paid by Mr. Smith, M.P.P., amount 6s.

Item 8, was paid by F. W. Smith, 2s. 6d.

Item 10, was paid by Mr. H. Smith, M.P.P., amount £2 11s. 6d.

11, 12, and 13 he says, were included in a charge against the Warden, on 25th March, 1843, of £6 7s. 11d.

20, 21, 22 and 23, were paid by F. W. Smith.

Items 1, 2, 3, 4, 7, 9, 14, 15, 16, 17, 18 and 19, are totally unexplained.

The shop accounts are so negligently kept, that it is almost impossible to trail back any transaction ; we therefore hesitate to pronounce this a case of peculation, though it manifests the grossest irregularity.

10. IN HAVING ARTICLES MADE FOR HIM IN THE PENITENTIARY, CHARGED AT PRICES MUCH BELOW THEIR VALUE.

The Warden had a quantity of drawing-room and dining-room furniture made for him in the Penitentiary ; it appears to have been mahogany and walnut furniture of a superior description, but there is no

record of these articles in the books. From allusion in the labor bills, however, to the work the men were employed in, from September 1842, to March 1843, the Commissioners are under the impression that these articles consisted in part of,

- One or more four-posted bedsteads.
- A quantity of picture frames.
- Two or more centre tables.
- A book-case.
- Two drawing-room couches.
- A music stool.
- A fire screen.
- Several handsome drawing-room ottomans.
- One or more ladies' work tables.
- A sofa.

The only charges against the Warden, for what he had done in the months in question, are as follows:—

1842.				
Oct.—6 days on a bedstead, walnut and a pine board .....	£1	2	6	
Dec.—Making two ottomans .....	0	6	1	
1843.				
Jan.—Making work table, sofa and circular table .....	3	11	0	
4 bed posts .....	0	15	6	
Feb.—Making and repairing furniture, 34 days .....	3	8	0	
Picture frames .....	0	8	0	
Walnut 16s. 9d., veneers 3s. 4d., Canvass 12s. 6d., webb hair and screws, 16s. 4d.....	2	11	6	
	£12	2	5	

Thirty-four days are charged to the Warden, but the labor list shows 71 days, *casually*; and 2s. per day, is charged, though at the same moment the Government were charged 3s. 6d. per day for the labor of the very same men.

The Warden has not made any defence on this charge.

11. IN PURCHASING ARTICLES OF OLD FURNITURE FROM HIMSELF, FOR THE USE OF THE PENITENTIARY, AT HIS OWN VALUATION, AND PAYING HIMSELF FOR THEM.

Wm. Coverdale—preliminary examination:—

"Has known of the Warden turning in old articles, to pay his indebtedness for work done on his personal account in the Penitentiary. Was asked by Mr. Bickerton, on one occasion, to value a book-case, and answered that it was worth \$5; Mr. Bickerton said the Warden had turned it in for £5. Mr. Bickerton mentioned other articles which the Warden had thus transferred."

Francis Bickerton—preliminary examination:—

"Recollects of some furniture, the property of the Warden, being purchased from him, and the amount placed to his credit in the books of the Institution; the purchase was made on the Warden's own authority; the valuation of the articles was made by the Warden himself."

The following is the entry in the books of the Penitentiary, for this transaction.

"Cr. Henry Smith, 31st March, 1842.

Cart and harness.....	£8	0	0
Cupboard .....	2	10	0
Desk .....	5	0	0
Scales.....	3	0	0
	£18	10	0

By Mr. Smith:—

"Recollects the Warden furnishing a desk and book-case to the Institution, for the use of the office; it was at the first commencement of the Penitentiary; it was soon after witness came to the Penitentiary. Witness was clerk to the Building Commission before he was clerk to the Penitentiary. The Warden allowed himself for them, four or five years afterwards; the book-case is in Mr. Horsey's office; cannot tell if the feet or cornice were cut off it; the Warden allowed himself £2 10s. for the book-case; never told Mr. Coverdale that the Warden had allowed himself £5 for it.

"The Warden never had a cart made at the Penitentiary.

"There were no scales at the Penitentiary large enough to weigh meat and bread before the Warden furnished a pair, his own private property."

The Warden only called one witness:—

Edward Horsey—By Mr. Smith:—

"The value of the book-case in witness's office is about \$10 or \$12, would say \$10; if the feet and cornice were to it, it would be worth \$2 or \$3 more; would say \$3."

This transaction was completed without any reference to the Board of Inspectors. It was directly contrary to the Statute, and even if no unfair advantage had been taken in it, it would have been highly improper. But the evidence we think does not establish, that justice was done to the Institution.

12. IN APPROPRIATING CERTAIN BLANKETS, THE PROPERTY OF THE PENITENTIARY, TO HIS OWN USE.

The following is the evidence in this case:—

James M'Carthy—preliminary examination:—

"During the Rebellion, one-half of the Keepers and Guards slept in the Penitentiary every night for protection, and one pair of blankets was served out to every two men; they were excellent blankets, could not be better. When the alarm passed, this system of watching was discontinued, and the blankets were returned by the Keepers and Guards. Some time after, witness was putting up bed rods on a four-post bed in Warden's private apartment, and the clothes being turned, for witness to stand on the bed, witness saw among the clothes the pair of blankets which he had used during the Rebellion; witness is quite sure they were the same blankets; he knew them by thirteen cuts which he had made in them, to identify them from the blankets of the other officers."

By Mr. Smith:—

"The blankets used for the officers, during the Rebellion, were the best of blankets; they had no

Penitentiary mark on them, when witness used them; cannot tell the value of them; is not a judge; witness's pair were uncut, they were in one piece; they were large blankets; does not know if they cost \$6 per pair; had not used the same pair all during the Rebellion; the pair he has spoken of were given him towards the close of the Rebellion. Witness made iron curtain rods for the Warden's largest four-post bed; does not know if it was a larger bed than usual; thinks the bed witness put the iron rods on was about four and a half feet wide—a common bedstead; thinks there were two wooden bedsteads in the room; saw the blankets witness had used during the Rebellion on one of those beds; saw one of the blankets there, will not be certain that both were. As far as witness knows, the blankets could not be better; is no great judge of such things; thinks he could tell the rods which witness made, if he saw them. (Witness being shown a four-post bedstead which the Warden alleges is the bed for which the rods were made, says, he thinks that is not the bed on which he saw the blankets.) Witness knew the blankets by thirteen cuts which he had made on them, the middle cut being the largest." \* \* \* \* \*

"Witness is shown iron curtain rods for a bedstead, and says they were made in the Penitentiary, but are not the same witness was putting up on the bed on which he saw the blankets; speaks to the best of his opinion; more than one set of iron rods were made for the Warden; one set was made along with a number of other things, before a system of charging was laid down, and the Warden was not charged with them. Witness had no books at that time, no writing under his charge. Recollects of no work done for others at that time; perhaps a horse was shod for Mr. Henry Smith, M.P.P.; speaks of a time shortly before any Convicts were received in the Penitentiary; the rods were after the Convicts came; thinks he was a Keeper at the time; cannot state the year."

John Richardson—preliminary examination:—

"Recollects that the Keepers had to sleep in the Prison, during the Rebellion. Blankets were served out to them; the blankets were returned, when the troubles were over, to the Penitentiary."

Guard Martin—By Mr. Smith:—

"Witness was a supernumerary Night-guard during part of the Rebellion in 1837-8. The blankets witness slept in, then, were the common prison blankets; could not say what kind of blankets the other officers had, but as far as he knows they were all alike; witness always slept in the same blankets every night."

Elizabeth Smith (wife of Thomas Smith)—By Mr. Smith:—

"Has often made the beds in the Warden's house; every week has done so, and sometimes every day; used to live in the house in sickness. Very large blankets were used in the Warden's house, about twice as large as any witness ever saw used, and Mrs. Smith's bed was a particular large one. Has often seen the prison blankets hanging out to dry; has never seen a prison blanket on Mrs. Smith's bed; it would take three to cover it; never saw a prison blanket on any bed in the Warden's house."

Phoebe Martin (wife of Guard Martin)—By Mr. Smith:—

"Has made the beds in the Warden's house several times since witness left his service; the

blankets on the Warden's beds are large rose blankets; has never seen any prison blankets on any of his beds; a prison blanket would not cover any of the Warden's beds."

Francis Bickerton—By Mr. Smith:—

"Ten pairs of blankets were purchased from J. H. Green, in October, 1837, at 15s.; ten pairs blankets were purchased from William Wilson, in November, 1837, at 16s. 3d.; ten pairs 5½ point blankets were bought from Thomas Wilson, in February, 1838, at 15s. 4d. per pair. No blankets were ever purchased for the Penitentiary so good that they could not be better. The Penitentiary blankets are generally of a poor quality; but there were some purchased of a better quality, about a dollar per pair higher. Blankets were dearer during the rebellion than at other times." \* \* \* \* \*

"The superior blankets to which witness alluded in his evidence in chief, were purchased in 1845."

The evidence for the defence does not meet the point, but leaves M'Carthy's statement uncontradicted.

13. IN HAVING AN OLD CARRIAGE COMPLETELY REPAIRED AT THE EXPENSE OF THE PENITENTIARY, AND SELLING IT FOR HIS OWN ADVANTAGE.

James M'Carthy—preliminary examination:—

"The dennet was often repaired; at one time to the extent of over £3, besides a set of four good new wheels, and all charged to the Penitentiary. Mrs. Atkinson has now this dennet in her possession; and she told witness she took it in payment of an old debt the Warden owed her."

The Warden calls witnesses to prove that the Inspectors used the carriage in question (a dennet) when coming to the Board meetings.

William Smith—By Mr. Smith:—

"The Inspectors used the Warden's dennet when the Penitentiary was first opened; they used it for two or three years."

Thomas Costen—By Mr. Smith:—

"When the Penitentiary first opened, the Warden had a carriage of his own; alludes to the dennet; it was always used by the Inspectors to come to the meetings, until one was made for that purpose."

Richard Gibson—By Mr. Smith:—

"Witness has occasionally seen the Inspectors coming to the prison in the Warden's dennet, for a short time subsequent to the opening of the Penitentiary; there was no carriage built for the Inspectors, to witness's knowledge, up to the time witness left the prison, in 1837."

Mrs. Martin—By Mr. Smith:—

"Recollects the Warden's dennet; has seen the Inspectors use it; they always did at that time."

H. Smith, Esq., M.P.P.—By Mr. Smith:—

"Recollects the Warden having a dennet; it was new when the Warden came to the Penitentiary; it was made in Picton; has seen the Inspectors use it before the large carriage was built."

Francis Bickerton—By Mr. Smith:—

“Does not know what carriage was used for the Inspectors when the Penitentiary was first opened. A carriage was built for their use sometime after the Prison was opened; does not recollect of seeing the Inspectors come to the Penitentiary in the Warden’s dennet.”

It is quite clear that if some of the Inspectors used the Warden’s dennet to bring them to their meetings, it must have been between the opening of the Prison in June, 1835, and the building of a carriage for their own use, in 1837; and it is also obvious, that if the Warden demanded compensation for the loan of his carriage, on the very few occasions when the Board met during the two years in question, his only mode for obtaining payment was by application to the Board of Inspectors, at the time.

We find, however, that on this plea he kept this carriage in repair, at the expense of the public, long after the Inspectors had a carriage of their own; and that he finally almost completely renewed it, and sold it for his own benefit, and that all this was done without any sanction from the Inspectors. We find the charge of peculation completely established on this count.

14. IN NOT CHARGING THE COST OF A VALUABLE CARRIAGE, MADE AT THE PENITENTIARY, FOR THE USE OF HIS FAMILY, TO HIS OWN ACCOUNT.

James M’Carthy—preliminary examination:—

“Mrs. Smith came to witness one day, and said she had received the consent of the Warden to have a carriage built for herself, and added, there were enough of men and materials in the Penitentiary to let her have a carriage, without using the Inspectors’ carriage; witness said he would soon make her a carriage if the Warden gave orders for it. Shortly after, the Warden came to witness and desired him to make a lighter carriage than the Inspectors, but of similar build, and charge it to the Penitentiary. A very handsome carriage, worth about £60, was built, and charged to the Institution; it is now used by Mrs. Smith and her family. Witness has never known it to be used by the Inspectors.”

By Mr. Smith:—

“Mrs. Smith, the Warden’s wife, spoke to witness about building a carriage for her; she ordered witness to build one lighter than the Inspectors’ carriage; she said there were men and materials enough in the Penitentiary to build her a carriage, and save her from using the Inspectors’ carriage. Witness built her a carriage, after getting particular directions from the Warden. Told Mrs. Smith he would do the work when the Warden ordered it, and he did order it. It was to be built for two horses, and on the same principle as the Inspectors’ carriage, and the Warden ordered the work to be charged to the Institution. The two carriages were distinguished, the one as ‘the Inspectors’ carriage,’ and the other as ‘Mrs. Smith’s carriage,’ or ‘the Warden’s carriage;’ it was to be lighter than the other, if anything it is lighter. The springs were made after a pattern sent to the shop by the Warden; thinks the pattern was the property of Mrs. M’Leod. Mrs. Smith’s carriage was built for a pole or shafts; for one or two horses; but thinks the shafts were never made; does not think he ever charged for ironing the shafts; he may have, but if

so, it has escaped his recollection. Has seen Mr. and Mrs. Smith riding in the light carriage in question, a great many times. Has had to repair the Inspectors’ carriage; when it was under repair, it was only from night to morning, at most two days; if the Inspectors wanted to come to the Prison, when their own carriage was under repair, until lately, there was the old one (which was sold) for them to use. Does not think he had occasion to repair the Inspectors’ carriage, between the time when the old carriage was sold and witness’s dismissal; if he had occasion to repair the Inspectors’ carriage during that time, there was no carriage to bring out the Inspectors while it was under repair. Mrs. Smith’s carriage was there. There was no drawing for Mrs. Smith’s carriage ever shown to witness; witness’s part of the building of the carriage, was only the iron work.”

Francis Bickerton—By Commissioners:—

“When witness spoke of Mrs. Smith’s carriage, he referred to the small green carriage which was built in the Institution for the Warden; it was built shortly after the new Inspectors’ carriage. It appears not to have been charged; does not know why it was not charged; it must have been omitted. Has seen the carriage alluded to, used frequently; it was generally used by Mrs. Smith, the Warden’s wife.”

By Mr. Smith:—

“Articles have been on several occasions returned to the Institution, by the parties for whom they were made, on the ground that they were not made according to order.”

Guard Martin—By Mr. Smith:—

“There are two carriages now in the Penitentiary; one of them is called the Penitentiary carriage; does not know how the other is called; cannot tell how it has been used; has seen it out when the other was broken; cannot say if he has seen it out, when the other was not broken. Cannot say that he ever saw Mrs. Smith in it; has seen the Inspectors in it; cannot say how often; two or three times; cannot say when; saw the Inspectors in it this year; cannot say he saw them in it last year. Has seen Mrs. Smith in the Penitentiary carriage. Cannot say he ever heard the other carriage called ‘the Warden’s carriage’ or ‘Mrs. Smith’s carriage;’ never heard any name given to it.”

Guard Thomas Smith—By Mr. Smith:—

“The small carriage is too heavy for one horse; it is heavily ironed; the springs are very heavy; two sticks would spring as well as they do.”

By Commissioners:—

“The small carriage has only been used once or twice to take the Warden to town, and on different occasions when the large carriage was under repair. The large carriage was finished since witness was made messenger; it has broken down three times while the Inspectors were coming to the Prison in it.

Witness has no recollection of ever driving out the Warden’s family in the small carriage; it was a very rough thing; it jolted. Has brought the Inspectors to the Prison in it three times.

Q. You say the small carriage has only been used once or twice by the Warden, three times by the Inspectors, and never by the Warden’s family. Who, then, has used it?

A. Nobody else.

Q. What was the necessity for building it then?

A. Does not know.

Q. Could you have done the carriage work without it?

A. The Inspectors would have had to walk home on three occasions, if it had not been built.

Convict Chapman—By Commissioners :—

“There are two carriages in the Penitentiary; one is called the large carriage, the other is called the small carriage; never heard the first called the Inspectors’ carriage; never heard the second called the Warden’s carriage, or Mrs. Smith’s carriage. The large carriage has only been four times repaired—once, it had lamps fixed on it—once, a wheel repaired—once, some binding put on it—and once, the springs repaired. The small carriage has been only thrice repaired. The small carriage has only been twice out of the stable in two years.”

H. Smith, Esq., M.P.P.—By Mr. Smith :—

“Has seen a small green carriage in the Penitentiary; it is similar in make and weight, to Mr. Hepburn’s carriage; it is heavier; it is a very strong heavy carriage; it is too heavy for one horse.”

By Commissioners :—

Q. Have you ever seen the small green carriage, you have spoken of, in use?

A. Yes; has seen it drawn by the Penitentiary horses, but how often cannot say.

Q. Who have you seen driving in it?

A. Has no recollection of ever seeing the Warden or Mrs. Smith using it; thinks he has seen the Inspectors use it.

By Mr. Smith :—

“Witness thinks, on one occasion, when the small carriage was in town, Smith, the Messenger, told witness the large carriage was under repair. Has seen the springs of the large carriage under repair in the Blacksmith’s shop.”

We have given the evidence on this count in full. There seems to be no doubt that the carriage in question was ordered to be made by the Warden for his own private use, and that he ordered the cost of it to be charged to the Institution—that it was so charged—that he got delivery of it—and that he and his family frequently used it.

The defence of the Warden seems to be of a two-fold character. 1st. That it was badly made—not according to the pattern he furnished; and 2d, that a carriage was needed for the use of the Inspectors, to replace the one built for them, when it should be under repair.

The plea, that his instructions were not properly followed in building the carriage, would not discharge the Warden of improper conduct in the matter, had he even established it; for it is proved that from the first, the carriage was ordered by him to be charged to the Institution, and was so charged; and besides this, the Warden took delivery of the carriage, and used it. As to the second ground of defence, it is

unworthy of argument. A new carriage has just been built, expressly to bring the Inspectors to meetings, numbering some twelve or twenty a year, and it is absurd to allege that a second one was necessary to provide against accidents.

It appears that the sanction of the Inspectors was never asked for any part of this transaction, and, as far as appears, they were in utter ignorance of it.

We think speculation is here distinctly established.

15. IN CHARGING THE EXPENSES OF SHOING HIS OWN AND HIS FRIENDS’ HORSES TO THE GOVERNMENT.

It appears that the Warden has had his horses shod in the Penitentiary since its commencement, and has not been debited for the work in a single case. This charge, however, has been included under previous counts, referring to the horses on which the labour was executed. The extent of this item may be estimated from the following return of the cost of horse-shoeing in the Penitentiary, there never having been more than five horses, properly, in the Prison at one time :—

1837.....	£ 2 11 0
1838.....	8 2 3
1839.....	13 0 7
1840.....	9 4 0
1841.....	10 0 9
1842.....	20 6 5
1843.....	15 7 2
1844.....	21 9 9
1845.....	19 18 3
1846.....	21 15 6
1847.....	12 3 6
	£153 19 2

16. IN REFUSING TO SELL THE OFFAL OF THE PENITENTIARY KITCHEN, BUT RETAINING THE SAME FOR HIS OWN USE, AND NOT CHARGING HIMSELF WITH THE VALUE OF THE SAME.

It is proved, that John Lennon, a farmer residing near the Penitentiary, offered to purchase the offal of the Penitentiary, but his proposal was rejected; and it is shown that the Warden’s animals have had throughout the benefit of it. In many of the United States Penitentiaries the offal of the kitchen realizes a considerable annual sum, and it might have been made to do so here. The same remark applies to the manure, which seems to have been given away.

The Warden has attempted to show that the skins from the potatoes served at breakfast, were given to the oxen, and there is no doubt that this has sometimes been the case; but one of the Convicts who fed them, says that in his time the oxen refused to eat them. But this must have formed only a small portion of the refuse.

17. IN BUYING, MAKING, AND REPAIRING, VARIOUS VEHICLES FOR HIS OWN USE, AND CHARGING THE COST OF THE SAME TO THE PENITENTIARY.

The following is the evidence on this count :—

James M’Carthy—preliminary examination :—

“There was also a gig which Baron Grant presented to the Warden; it was frequently repaired, and the amount of the repairs was always charged to

the Institution. There is also a large double family sleigh in the Institution, which was got from Baron Grant; it was completely repaired when it came in, and occasionally repaired afterwards; all which was charged to the Institution. There was also a cutter made in the Penitentiary; it was charged to the Institution. There was also another large family sleigh, made winter before last, in the Penitentiary; the blacksmith's work was charged to the Warden's private account, by the Warden's desire. There was also another sleigh, called a berline, in the yard; it came at the commencement of the Institution, and was considered the Warden's property; it was often repaired at the expense of the Penitentiary; it disappeared—witness does not know what became of it."

By Mr. Smith :—

"Does not know whether the Warden had a sleigh in 1841—there have been several sleighs and cutters made in the Penitentiary, at different times—forgets whether more than one sleigh has been made and charged to the Warden, but he had several repaired. Some were repaired for the Warden, and charged to the Penitentiary; this was the case with a berline he had, and a large sleigh which the Warden got in a present from Baron Grant. Ironed a cutter for the Penitentiary; ironed one for the Warden, and charged it to him. Forgets if he built any other sleigh or cutter than these two in the Penitentiary."

Francis Bickerton—By Mr. Smith :—

"There is a cutter belonging to the Penitentiary. There was no winter carriage the property of the Penitentiary, when the Prison was first opened. Recollects the Warden's berline, which he had when the Prison was opened; does not know that it was used by the Penitentiary messenger; does not know what winter carriage the messenger used immediately after 1835."

By Commissioners :—

"There is an account now standing in the books of the Penitentiary, against the executors of Baron Grant; the balance is £5 8s. 10d.; it has been frequently asked for. The large sleigh witness has spoken of came into the Penitentiary as a present to the Warden from Baron Grant; it was so considered for years, until the Baron's account to the Institution was demanded, and then payment was sought for the sleigh; nine pounds currency was then struck off the bill due to the Penitentiary, on account of the sleigh. Never saw any sanction in the Inspectors' Minute-book, for this operation."

From the manner in which the shop returns have been kept, it is impossible to arrive at the precise truth in such matters as this; but it is very obvious that transactions of the most loose and improper character have occurred.

18. IN CHARGING LARGE SUMS TO THE GOVERNMENT FOR FORAGE—THE QUANTITY OF SAID FORAGE BEING BEYOND THE POSSIBLE CONSUMPTION.

The following is a return of the amount paid annually for forage since the commencement of the Institution, with the number of animals in the stables, including the Warden's bay horse, the grey horses of

Mr. Henry Smith, M.P.P., Ritchey's bay mares, and the Warden's cow :—

	OXEN.	HORSES.	COWS.	£ s. d.		
				£	s.	d.
1837*	6	1	...	54	11	1
1838	4	2	...	88	16	11
1839	8	4	...	114	6	9
1840	8	4	1	187	15	9
1841	8	4	1	369	17	6
1842	8	4	1	337	0	9
1843	10	6	1	212	14	1
1844	7	6†	1	493	3	7
1845	11†	6	2	276	15	11
1846	10	5†	2	608	16	9
1847	12	4	2	562	2	3
1848*	11	4	2	686	5	7
				£3,992	6	11

\* 6 months.

† Average.

The daily weight of provender supplied to each animal, including in the calculation all the borrowed horses and the Warden's cow, has been as follows :—

	NO. OF ANIMALS.	AVERAGE FOOD TO EACH ANIMAL.	
		Per Annum.	Per Day.
1837*	7	13,582 lbs.	37 lbs.
1838	6	9,813	27
1839	12	6,583	18
1840	13	11,009	30
1841	13	23,676	65
1842	13	18,761	51
1843	13	11,200	30
1844	14	23,494	64
1845	19	15,584	43
1846	17	26,410	72
1847	18	16,817	46
1848*	17	40,098	109

\* 6 months.

The amount stated for 1848 is larger than the actual consumption, as some provender was on hand, the amount of which could not be ascertained.

The Warden's defence is, that the Surgeon's horse had some oats; and that Deputy-Warden Utting was once charged by him (the Warden) with appropriating Penitentiary oats to his own use. As to the former case, however, it appears that the Surgeon merely put his horse in the stable while making his daily visit, on a few occasions, probably not amounting, in the aggregate, to over one hour a day for a few weeks; and as to the latter, the charge was investigated by the Inspectors, and neither then nor now has the slightest evidence been adduced to sustain so serious a charge against Mr. Utting.

The evidence, as to the actual daily consumption of forage, is as follows :—

James Hencsey—preliminary examination :—

"Is a Convict in the Penitentiary; was convicted of manslaughter; was sentenced to ten years imprisonment; has been over six years in the Penitentiary. Was employed in the stables from 25th September, 1846, to 24th February, 1848; witness's duty was to feed the oxen, the cows, hogs, and poultry; had usually another Convict to assist him, as the work

was too much for one ; each ox had daily, one-third of a bushel of oats, half a bushel of potatoes, or half a bushel of turnips, and as much hay as they could eat. Never fed the oxen with straw ; tried them with offal from the kitchen, three or four times, but they would not eat it, and it was given up ; the oats were not chopped or bruised. There was one cow of the Warden's, and one the property of the Penitentiary ; fed them both from the same stores ; the Penitentiary stores ; they got three bushels of potatoes or turnips in the seven days, and the same quantity of oats as the oxen ; they had as much as they could eat ; occasionally perhaps 20 times, gave the cows potatoes instead of oats."

William Chapman, a Convict called by Mr. Smith on another point, testifies on examination by Commissioners, as follows :—" The quantity of oats given to the four horses, is a bushel and a half per day, among them ; half a bushel three times a day ; this has been the invariable allowance since witness has been stable man. There have always been just four horses in witness's time : each horse gets a rack of hay per day ; each rack holds exactly 19 lbs. weight of hay ; it is filled once in the 24 hours : the horses get a feed of bran each, in the week ; they get two bushels among the four, and on that day they only get a bushel of oats : they get the same feed on Sundays as on other days. The horses got no other description of food. The horses get clean straw every other night ; it takes just 14 bundles of straw per week, for the four horses."

Thomas Smith—By Mr. Smith :—

" Witness has never known any hay or oats to be sent out of the Penitentiary stable.

" Has never seen any waste of hay or oats by the cattle blowing upon it, unless it were a quart of oats or so, occasionally left by the oxen ; unless it would be that they would leave a little on their horns, over their backs ; it was used for beds, when they would not eat it.

Knows of no other horses being employed and fed in the Penitentiary, during witness's time, which were not the property of the Penitentiary, but the pair of bay mares belonging to Ritchey, and the pair of grey horses belonging to Mr. Henry Smith, M.P.P., and the Warden's bay horse."

By Commissioners :—

" Witness has nothing to do with the feeding of the horses or oxen ; the stable men do it all ; has heard from them the quantity of feed they give to the animals.

It is witness's duty to oversee the horses and oxen turned out, and yoked-up by the Convicts ; witness goes to the dining-hall rotunda for the stable Convicts, and marches them to their duty ; if witness is not present when the men leave the dining-hall, another Guard takes his place ; it does not take place often, not once a week, perhaps once a month. Going to meals, the stable Convicts join in with the gang to which they are attached. Witness has fed the oxen ; on the Sundays only, and only within the last three months ; never fed the oxen previous to the last three months. Has seen the oxen fed by the Convicts occasionally ; they gave them a bucket of oats between every pair, three times a day, if they got nothing else ; if the oxen got turnips or potatoes, they only got oats twice a day ; cannot tell how much the bucket contains ; supposes about half a bushel ; cannot tell how much potatoes or turnips the oxen got.

" From the nature of his duties, witness knew very little of the work going on in the yard, or about the buildings.

The Convict stablemen feed the cows ; has never seen them feed."

\* \* \* \* \*

By Commissioners :—

" Cannot tell what was done with the oats which were blown on by the oxen ; there were some oats in a barrel in the stable, and Convict Armstrong told witness these were the blown oats. Witness never knew any horses but those he has spoken of, fed in the Penitentiary stables."

Thomas Costen—By Mr. Smith :—

" There has been usually two or three months supply of forage on hand in the Penitentiary. The amount of forage received within any particular date would not be a fair statement of the amount consumed within that date. At the time Oliphant and Watt took the Contract, there was fully three months supply of forage on hand.

The provender actually consumed by each ox, per day, in the Penitentiary, has been 27 lbs. hay, 32 lbs. potatoes or turnips, 25 lbs. oats.

The provender actually consumed by the cow, per day, has been 24 lbs. hay, 32 lbs. potatoes or turnips, 17 lbs. oats.

The provender actually consumed by each horse in the Penitentiary, has been, per day, 20 lbs. hay, 13 lbs. oats.

By Commissioners :—

" Never weighed the hay given to any of the animals. When witness was Kitchen-keeper he has overlooked the measuring of the potatoes and turnips, by the Convicts, for the oxen ; did it daily. Does not recollect what weight of potatoes was measured out for each ox ; thinks it was half a bushel for each animal at each meal, and they were fed with potatoes or turnips twice a day. Cannot tell how many pounds there are in a bushel of potatoes or turnips.

Q. Is it not the fact that the turnips and potatoes are served out to the cattle by the barrel, and were never otherwise weighed or measured ?

A. They were measured first in a bushel measure, and thrown into the barrels ; two and a half bushels or three bushels to the barrel.

Q. Have you seen the potatoes and turnips measured hundreds of times ?

A. Yes.

Q. Cannot you tell exactly, then, how much they got ?

A. Thinks it was a bushel of potatoes, per day, to each ox.

Q. What do you know about the oats ?

A. Has instructed the Convicts as to the quantity of oats they should give the animals, per day.

Q. What quantity of oats did you instruct the Convicts to give, per day, to each ox ?

- A. Does not recollect.
- Q. How much to each horse ?
- A. Does not recollect.
- Q. How much to the cow ?
- A. Does not recollect.
- Q. How much hay did you instruct the Convicts to give to each animal ?
- A. To the oxen twenty-seven pounds ; to the horse cannot tell ; to the cow cannot tell.
- Q. What Convicts did you so instruct ?
- A. The man is not here now ; witness referred to the time he was Kitchen-keeper.
- Q. What was his name ?
- A. There were different ones.
- Q. What were their names ?
- A. Does not recollect the names of any of them.
- Q. Which eats most—a cow or a horse ?
- A. A cow.
- Q. What is the weight of a cow generally ?
- A. Cannot tell.
- Q. Who made up the memorandum of weights, from which you swore so precisely to the quantities consumed, in your direct evidence ?
- A. Witness ascertained them from the Messenger, (Thos. Smith) and from the stable Convict.
- Q. Which Convict do you refer to ?
- A. To Chapman and Armstrong.
- Q. Which of them told you the quantity of food given to the oxen ?
- A. Armstrong ; also Smith, the Messenger.
- Q. If Smith swore before the Commission, that "he could not tell how much potatoes or turnips the oxen got," has he swore different from what he told you ?
- A. Smith told witness that the oxen got twenty-seven pounds of hay.
- Q. If Smith swore before the Commissioners that he "never fed the oxen previous to the last three months," would his assurance be sufficient for one to swear as to the quantity of food given the oxen during the last ten years ?
- A. Smith must have known the quantity of food the oxen got ; and witness trusted to his statement as to the hay and oats, and witness himself knew as to the turnips and potatoes.
- Q. Then you made up the Return, from which you swore to day, partly on the assurance of Smith, Chapman, and Armstrong, and partly from your own knowledge ?
- A. Yes ; they told witness the quantities they had been in the habit of giving to such animals.
- Q. What part was from your own knowledge ?
- A. The potatoes, and turnips, and oats.
- Q. What weight of potatoes did you put in the said statement as supplied daily to the oxen, from your own knowledge ?
- A. Cannot recollect.
- Q. What weight did you so put down for the cow, from your own knowledge ?
- A. Cannot recollect.
- Q. What to the horses ?
- A. Cannot recollect.
- Q. When was the said statement made up ?
- A. Cannot tell
- Q. Was it within the last week ?
- A. No.
- Q. Was it within the last month ?
- A. Does not know.
- Q. Was it within the last two months ?
- A. Cannot say.
- Q. Was it within the last three months ?
- A. Yes.
- Q. How long has Armstrong been in the stable in charge of the oxen ?
- A. A little over two months.
- Q. Where was the statement in question made up ?
- A. In the office.
- Q. Who was present—was not the Warden ?
- A. No.
- Q. How did it happen that your memory was so good then, as to precise quantities, running over a period of years, and that now you recollect nothing of the matter ?
- A. Made inquiry at the stable.
- Q. How did you swear you gave express orders as to these particular quantities, when now, it appears, you only got them from the stable ?
- A. Found, on inquiry at the stable, that the quantity now furnished was the same as witness issued when he was in charge of that department ?
- Q. How did you know the quantity you issued when you were in charge, so as to compare it with the quantity now issued ?
- A. Took it as near as he could recollect at the time.
- Q. What quantities did you recollect you had issued ?

A. Cannot precisely say now.

Q. Why cannot you recollect them as well now as you did then ?

A. Does not recollect.

Q. Can you swear distinctly to the quantity of food given within your knowledge, on any one day, to each of the oxen ?

A. Cannot recollect ; but refers to the answer, as given from his written statement, in his direct examination.

Q. Can you swear distinctly to the quantity of food given within your knowledge, on any one day, to the cow ?

A. Answers as he did in regard to the oxen.

Q. Can you as to the horses ?

A. Answers as before.

Q. Was this food given to the oxen in addition to the potatoe parings ?

A. Yes ; always while there have been oxen.

Q. When there were no parings, did the oxen get more food than you have stated ?

A. No.

Q. Then no saving was made by giving the oxen the parings ?

A. No.

Q. How many pounds of food do you think an ox could eat in a day ?

A. Can only answer from his written statement, so often referred to.

Q. Do you think an ox could eat its own weight in five days ?

A. Cannot say.

We are quite satisfied that the quantity of food paid for by Government could not possibly have been consumed by the animals in the prison ; undoubtedly the feeding of the Warden's hogs, poultry, and pigeons, accounts for a large part of the excess, but not, we think, for the whole of it. The great variation in the daily quantity of food consumed from year to year, is very remarkable ; but we can discover no trace of collusion between the Warden and any of the Contractors.

19. IN STRIKING OFF A SUM DUE BY HIM TO THE INSTITUTION, ON THE PRETENCE THAT HE WAS ENTITLED TO BE REIMBURSED FOR AN ALLEGED LOSS BY AN ACCIDENTAL FIRE.

The following is the evidence on this head :—

Francis Bickerton—By Mr. Smith :—

“ Recollects the fire in which the Carpenter's and Blacksmith's shops were burnt down ; the Wash-house was burnt down at the same time. The Inspectors passed an order, of date 9th April, 1846, that those who had suffered by that fire should be reimbursed. The Warden gave to witness a list of

the amount he had lost by the said fire ; and the amount, by the Warden's direction, was allowed to him (the Warden).

By Commissioners :—

“ Witness cannot tell what articles the Warden lost in the fire ; only knows that the Warden then lost articles by the Warden telling witness so. Does not know that the Warden submitted his claim to the Board ; there is no entry in the Inspectors' Minute-Book authorizing the Warden's claim to be settled ; there is a general minute, but no mention of the Warden's loss ; there is no entry in the Books of the Institution showing any portion of the transaction in which the Warden was repaid for his alleged loss by fire. Witness is asked, how the Warden could have got money out of the funds of the Institution without its appearing on the books ? and says, he did not get paid in money, but by work done for him. Witness is asked to produce the returns from the shops of the work done for the Warden under this transaction ? and says, there were no returns made, and witness cannot tell what the work done for him was ; the transaction occurred in 1846 ; cannot tell what value of work was done for the Warden in this way, and has no means of ascertaining ; does not know which of the shops the work was done in.”

By Mr. Smith :—

“ Witness does not know that he deducted the amount of the Warden's alleged loss from the amount of his monthly account of a future month.”

From the manner in which the books are kept, we have been unable to get more information than is given by Mr. Bickerton ; but there is enough to show that the transaction was grossly improper.

20. SUNDRY ACTS OF PECULATION COMMITTED BY HIM, OR BY OTHERS, WITH HIS COGNIZANCE.

This count included a variety of minor transactions which were brought before us ; but some of them are referred to elsewhere, and others have been explained. We conceive it unnecessary to enter upon them further.

The charge of peculation is, therefore, fully established ; and Your Excellency will perceive that the transactions are just those which were most calculated to be injurious to the moral tone of a Penitentiary. The Warden's conduct in all these matters was perfectly well known to most of the forty Officers of the establishment, and to many of the Convicts ; and though self-interest made the former close their eyes to what was passing before them, the effect on their principles must have been seriously injurious to the Institution.

In the course of the inquiry it came casually under our notice, that the Warden had drawn, from the funds of the Institution, as salary, £37 19s. 9d., more than his just due, in the years 1845 and 1846. Mr. Smith's salary, as fixed by Statute in 1838, was three hundred pounds per annum. In the Session of Parliament, 1844-5, an extra grant of one hundred pounds was voted to him in the supplies for the ensuing year. In the following Session of 1846 the Amended Penitentiary Act passed, by which the Warden's salary was raised to five hundred pounds ; this Bill became Law on 18th May, 1846. The Warden was therefore entitled to have received at the rate of three hundred pounds, up to 18th May, 1846, with one hundred pounds added ; and at the

rate of five hundred pounds after the 18th May. From 1st April, 1846, to 1st May, 1846, he should have had four hundred and twenty-five pounds; for the first seventeen days of May, 1846, thirteen pounds, nineteen shillings and sixpence; and for the last fourteen days, nineteen pounds, three shillings and sixpence; total, four hundred and fifty-eight pounds, three shillings, for the fourteen months. Instead of this we find, from the Books, that the Warden drew four hundred and ninety-six pounds, two shillings and ninepence in the fourteen months in question; thereby wronging the Government to the extent of thirty-seven pounds, nineteen shillings and ninepence.

We have thus gone through the charges against the Warden; and in doing so we have endeavoured to state each case presented, as fully and fairly as possible.

We have found the Warden guilty on all the charges preferred against him; and the case is so fully established—whether as regards indifference to the success of the Institution—neglect of his duties—incapacity—mismanagement—cruelty—falsehood—peculation—that the only course left us, is to recommend Mr. Smith's permanent removal from the Wardenship of the Penitentiary.

PROCEEDINGS IN THE CASE OF JAMES SAMPSON, ESQ., SURGEON OF THE PENITENTIARY.

We availed ourselves of the intermissions in the Warden's defence to take up the charges against Dr. Sampson. The following documents shew the manner in which this case came before us:—

No. 1.

Copy—Letter, President Board of Inspectors to Chairman of Commission.

“ Kingston, 21st June, 1848.

“ Sir,

“ I have the honor to acquaint you, that the Board of Inspectors of the Provincial Penitentiary having found it necessary, some time ago, to bring under the notice of the Governor General the conduct of the Surgeon of that Institution on various occasions—and having suggested the expediency of the appointment of a Commission of Inquiry into these and other matters connected with the management of the Institution—they have been informed, by command of His Excellency, that yourself and the other gentlemen associated with you, are to make these inquiries, and they therefore presume that you have been furnished by the Government with the communications of the Board on this subject; and being ready to substantiate the statements made by them if called upon to do so, they would respectfully beg to be informed, when it would suit your convenience to enter on this part of the inquiry, and to request, for the interest of the establishment, that the same may be commenced as early as may be convenient to you.

“ I have the honor to be, Sir,

“ Your most obedient Servant,

(Signed) “ T. A. CORBETT,  
“ President Board of Inspectors,  
“ Provincial Penitentiary.

“ Honorable ADAM FERGUSON,  
“ President, Board of Commissioners,  
“ Provincial Penitentiary.”

No. 2.

Copy—Letter, Secretary of Commission to President of Board of Inspectors.

“ Provincial Penitentiary  
“ Commission Room,  
“ Kingston, 24th June, 1848.

“ Sir,

“ I have the honor to acknowledge your communication of 21st inst. to the Commissioners of the Penitentiary Inquiry, in regard to certain charges made against Dr. Sampson, Surgeon of the Penitentiary.

“ The Commissioners are fully aware that the interest of the establishment renders an immediate inquiry into this matter highly desirable, and will proceed with it on the earliest day possible. The communications made to the Government by the Board of Inspectors of the Penitentiary on this subject have been placed in the hands of the Commissioners. The Commissioners will not fail to avail themselves of the valuable information of the Board of Inspectors, and will communicate with you as soon as a day is fixed for entering on this portion of their inquiries.

“ I have the honor to be,

“ Sir,

“ Your most obedient Servant,

(Signed,) “ GEO. BROWN,  
“ Secretary.

“ To THOMAS A. CORBETT, Esq.,  
“ President, Board of Inspectors,  
“ Provincial Penitentiary.”

No. 3.

Copy—Letter, Kitchen-Keeper F. W. Smith to Commissioners.

“ Penitentiary, 22d June, 1848.

“ Gentlemen,

“ I have the honor to inform you, that having reported to the Board of Inspectors that it was my intention to bring certain charges against one of the Officers of this Institution, and having been referred by them to the Commissioners appointed to enquire into the management of the Penitentiary, I beg leave to state, that I now prefer the following charges against James Sampson, Esquire, the Surgeon of the Provincial Penitentiary, viz:—

“ 1st. Furnishing Provisions to the Penitentiary for his own private advantage, contrary to the Statute.

“ 2nd. Improper treatment of, and negligence towards sick Convicts, and behaving with cruelty towards them.

“ 3rd. Recognizing discharged Convicts, and making them known to others, contrary to the rules of the Institution.

“ 4th. Maliciously preferring false charges against Francis W. Smith, one of the Keepers of the Penitentiary.

“ And for the due examination of which I request that you will be pleased to issue subpoenas for the undermentioned persons, viz:—

"Edmund Boyle, John Ovens, Thomas Hendry, Phoebe Martin, John Stewart, Julia Cox, Anthony Manahan, Thomas Fitzgerald, John Rowlands, Maurice Phelan, Elizabeth Smith.

"And I further beg leave to request that you will be pleased to direct that John Stewart, Esq., one of the Coroners of the Midland District, do produce before you the evidence taken by him at an inquest, held at the Penitentiary on the body of one John Murphy, a deceased Convict, in the month of October last.

"I have the honor to be,  
"Gentlemen,  
"Your most obedient Servant,

(Signed,) "F. W. SMITH,  
"Keeper.

"To the Commissioners appointed  
"to investigate the management  
"of the Provincial Penitentiary."

No. 4.

Copy—Letter, Secretary to Keeper Smith.

"Provincial Penitentiary  
"Commission Room,  
"Kingston, 24th June, 1848.

"Sir,

"I have to acknowledge receipt of your communication of 22d instant, to the Commissioners of the Penitentiary Inquiry, in which you prefer certain charges against Dr. Sampson, Surgeon of the Penitentiary, with the view of action being taken thereon by the Commissioners. I am instructed to inform you that the Commissioners will not fail to investigate the said charges, and that the witnesses you desire to be examined will be duly summoned.

"I remain, &c.,

(Signed,) "GEORGE BROWN,  
"Secretary.

"To Mr. FRANCIS W. SMITH,  
"Keeper, Prov. Penitentiary."

No. 5.

Copy—Letter, Secretary to Dr. Sampson, Surgeon of the Penitentiary.

"Provincial Penitentiary  
"Commission Room,  
"Kingston, 24th June, 1848.

"Sir,

"I am desired by the Commissioners, appointed by His Excellency the Governor General to investigate the management of the Provincial Penitentiary, to intimate to you that they have received a communication, dated 22d June, 1848, and signed 'Francis W. Smith, Keeper;' in which the following specific charges are made against you, as Surgeon of the Penitentiary, viz. :—

"1. Furnishing provisions to the Penitentiary, for his (your) own private benefit, contrary to the Statute.

"2. Improper treatment of, and negligence towards, sick Convicts, and behaving with cruelty towards them.

"3. Recognizing discharged Convicts, and making them known to each other, contrary to the rules of the Institution.

"4. Maliciously preferring false charges against Francis W. Smith, one of the Keepers of the Penitentiary.

"A list of witnesses to be examined in support of these charges is added; and a request made, that John Stewart, Esq., shall be called on to produce, before the Commissioners, the evidence taken by him, in October last, at a Coroner's Inquest then held on the body of John Murphy, a deceased Convict.

"The Commissioners have also before them, certain complaints made against you by the Board of Inspectors of the Penitentiary, to the Government; and the correspondence had in reference thereto.

"I am to intimate to you, for your guidance, that the Commissioners intend entering on the investigation of these charges on an early day.

"I have, &c.,

(Signed,) "GEO. BROWN,  
"Secretary.

"JAMES SAMPSON, Esq.,  
"Surgeon, Prov. Penitentiary."

No. 6.

Copy—Extract Minutes of Commission, 26th June, 1845.

"At two o'clock the Commissioners received Dr. Sampson, and explained to him the course they intended to pursue in the investigation of charges against the Officers of the Penitentiary, with which he expressed himself highly satisfied. A long conversation then ensued as to the general management of the Institution and its internal history, since its commencement, from which the Commissioners derived much information."

No. 7.

Copy—Letter, James Hopkirk, Esq., to Chairman of Commission.

"Provincial Penitentiary,  
"24th June, 1848.

"Sir,

"Referring to the Communications of the Board of Inspectors of the Provincial Penitentiary to the Government, which are I presume in your possession, and to the letters of the Board to you, of the 14th and 21st instant, as also to their Minute of this date, a copy of which was transmitted to you; I have now the honour on behalf of the Board to acquaint you, that they have the following charges to prefer against James Sampson, Esq., Surgeon of the Institution, which charges they will be ready to substantiate before you, when called upon to do so :—

"1. Refusing to obey the orders of the Board of Inspectors, in contravention of the 3d Clause of the Penitentiary Act."

"2. Charging officers of the Institution with improper conduct, and refusing to appear before the

"Board of Inspectors when called upon by them to  
"substantiate the charge."

"3. Publishing the proceedings of the Board of  
"Inspectors, pending the decision of the Governor  
"General in Council thereon, and endeavouring to  
"bring the Board into contempt with the public."

"I am further, on behalf of the Board, to acquaint  
"you, that the following charge was preferred before  
"them against the Surgeon, viz. :—

"Behaving with improper familiarity towards a  
"female Convict."

"The Surgeon, however, having refused to appear  
"before them, or to submit to an investigation of  
"his conduct on the occasion out of which the charge  
"arose; and having appealed to His Excellency the  
"Governor General, and requested that the matter  
"might be referred to His Excellency; the Board  
"of Inspectors came to no decision thereon.

"As the charge is, however, a very grave one,  
"and which, if well founded, would deeply affect the  
"discipline and good conduct of the Institution; the  
"Board are desirous that the Commissioners should  
"now investigate it, and they will be ready, when  
"called upon, to bring forward such witnesses as they  
"are given to understand are cognizant of the facts  
"out of which the charge arose.

"I have also to inform you, that in the course of  
"certain investigations before the Board, it was stated  
"incidentally, in the course of the evidence, 'that the  
"Surgeon had attended sick Convicts when not in a  
"proper state as regarded his sobriety.' But that  
"the investigation in the course of which this was  
"stated, not being one into the Surgeon's conduct,  
"but into that of another officer of the Institution,  
"the Board had no opportunity of ascertaining whether  
"the statement made to them was well founded; but  
"as this, like the last mentioned charge, would, if true,  
"deeply affect the interests of the Prison, the Board  
"request that it may now be inquired into; and they  
"will, when called upon, be ready to produce such  
"witnesses, as they are led to believe, can throw light  
"on the matter.

"In bringing the two last mentioned charges  
"against the Surgeon, under the notice of the Com-  
"missioners, the Board beg it may be understood that  
"they do not themselves prefer them, and that they  
"have come to no conclusion, as to their being well or  
"ill-founded. But being charges of a very grave nature,  
"and which they themselves would not have been  
"justified in passing over without duly examining  
"into and deciding upon, had it not been for the  
"peculiar circumstances in which the Surgeon had  
"placed himself in relation to them, and the prospect  
"of a Commission of Inquiry being about to issue;  
"they consider it their duty to notify yourself, and the  
"other gentlemen associated with you, that such  
"charges have been made, with a view to your inves-  
"tigating them, and coming to such decision thereon  
"as the evidence brought before you shall appear to  
"justify.

"I have the honour to be,

"Sir,

"Your most obt. Servant,

(Signed,) "JAMES HOPKIRK,  
"Inspector."

"Hon. A. FERGUSSON  
" &c. &c. &c."

No. 8.

Copy—Extract, Minute Board of Inspectors.

"The Board considering that the Commissioners  
"appointed by Government to investigate divers  
"charges and complaints respecting the conduct,  
"economy, system of discipline, and management of  
"the Provincial Penitentiary, are now in Kingston,  
"and have appointed Monday next and following  
"days, to receive such information and complaints, as  
"may be tendered, and further considering that the  
"Board have made certain complaints to the Govern-  
"ment, which will require to be substantiated before  
"the Commissioners, and that it is besides necessary  
"that some Member of the Board should attend at  
"the proceedings of the Commissioners on behalf of  
"the Inspectors, with a view of affording them on  
"their part any information which the Commissioners  
"may require, and otherwise acting on their behalf;  
"they request that James Hopkirk, Esq., will be  
"pleased to charge himself with that duty; and that  
"gentleman having, at the particular request of the  
"other members of the Board, agreed to do so, they  
"hereby authorize him to attend on the Commissioners,  
"on the behalf of the Board for the above purpose,  
"and they request the Warden to afford him every  
"information and assistance in his power.

"The Board further consider, that it would be  
"a matter of convenience, as well as a saving of time,  
"should any communications which the Commissioners  
"may consider it necessary to address to the Board,  
"be transmitted to Mr. Hopkirk on their behalf, who  
"would do what might be necessary therein; they  
"therefore direct the Warden to furnish the Commis-  
"sioners with a copy of this Minute for their informa-  
"tion, accompanied by a request, that they will be  
"pleased to act accordingly.

"Truly extracted.

(Signed,) "F. BICKERTON,  
"Clerk."

"Provincial Penitentiary,  
"24th June, 1848.

No. 9.

Copy—Letter, Secretary to Mr. Hopkirk.

"Provincial Penitentiary  
"Commission Room,  
"Kingston, 26th June, 1848.

"Sir,

"I have the honor to acknowledge receipt of your  
"letter of 24th instant, addressed to the Chairman of  
"the Penitentiary Commission, preferring certain  
"charges, on behalf of the Board of Inspectors, against  
"Dr. Sampson, Surgeon of the Penitentiary, and  
"stating certain other charges, preferred by other  
"parties, to your Board, against the same officer,  
"which you are of opinion ought also to be investiga-  
"ted by the Commissioners.

"I am to inform you, that the Commissioners will  
"not fail to investigate all the grounds of complaint to  
"which you have called their attention, and will duly  
"notify you when prepared to enter on this branch of  
"their labors.

"I have, &c.

(Signed,) "GEO. BROWN,  
"Secretary."

"JAMES A. HOPKIRK, Esquire,  
"Inspector Prov. Penitentiary."

No. 10.

Copy—Letter, Secretary to Dr. Sampson.

“ Provincial Penitentiary  
“ Commission Room,  
“ Kingston, 26th June, 1848.

“ Sir,

“ I had the honor to address a communication to you on the 24th instant, (yet unacknowledged,) stating certain charges which had been preferred before the Penitentiary Commission against you, by Mr. F. W. Smith. I have now to state, that the following additional charges have been preferred against you by James Hopkirk, Esq., on behalf of the Board of Inspectors, viz :—

“ 1st. Refusing to obey the orders of the Board of Inspectors, in contravention of the 3rd clause of the Penitentiary Act.

“ 2nd. Charging officers of the Institution with improper conduct, and refusing to appear before the Board of Inspectors, when called upon by them to substantiate the charge.

“ 3rd. Publishing the proceedings of the Board of Inspectors, pending the decision of the Governor General in council thereon, and endeavoring to bring the Board into contempt with the public.

“ Mr. Hopkirk has also communicated to us certain charges preferred against you to the Board of Inspectors by other parties, and as these are the items alluded to in mine of the 24th, as having been brought under the notice of Government, I here state them :—

“ 4th. Behaving with improper familiarity towards a female Convict.

“ 5th. That the Surgeon had attended sick Convicts when not in a proper state, as regarded his sobriety.

“ The Commissioners will investigate these charges along with the others, as before intimated.

“ I have, &c.

(Signed,) “ GEO. BROWN,  
“ Secretary.

“ JAMES SAMPSON, Esq.,  
“ Surgeon, Provincial Penitentiary.”

No. 11.

Copy—Letter, Dr. Sampson to Secretary.

“ Kingston, 28th June, 1848.

“ Sir,

“ I have the honor to acknowledge the receipt of your letter, dated 24th instant, stating certain charges preferred against me, by Keeper F. W. Smith; and beg to apologize for not having sooner returned a written acknowledgment of the same.

“ I have also to acknowledge the receipt of your letter, dated 26th instant, containing three charges against me, by James Hopkirk, Esq., on behalf of the Board of Inspectors; and also two additional charges preferred against me to the said Board by other parties.

“ I have, &c.

(Signed,) “ JAMES SAMPSON,  
“ Surgeon, P.P.

“ Geo. Brown, Esquire,  
“ Secretary Commission.”

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No. 12.

Copy—Letter, Dr. Sampson to Secretary.

“ Kingston, 28th September, 1848.

“ Sir,

“ Having reason to suppose that the Commissioners will, at an early day, proceed to investigate certain specific charges made against me, as Surgeon of the Provincial Penitentiary, which charges, as it appears from documents transmitted to me by you, are preferred by known and acknowledged parties; I beg leave most respectfully to claim from the Commissioners, the privilege of being allowed to attend personally at the examination of the witnesses who may be brought forward by my accusers, and that I may be permitted to put such proper questions to them as I may deem necessary to my defence.

“ I have the honour to be,

“ Sir,

“ Your most obedient Servant,

(Signed,) “ JAMES SAMPSON.

“ GEORGE BROWN, Esq.

“ &c. &c. &c.”

No. 13.

Copy—Letter, Secretary to Mr. Hopkirk.

“ Provincial Penitentiary  
“ Commission Room,  
“ Kingston, 2nd October, 1848.

“ Sir,

“ In reference to your letter of 24th June, preferring—as organ of the Board of Inspectors of the Provincial Penitentiary—certain charges against James Sampson, Esq., Surgeon of the Penitentiary; I have now to intimate to you, that the Commissioners are prepared to enter on the investigation of the said charges.

“ They will be happy to receive you, upon the subject, at the British American Hotel, to-morrow (Tuesday) morning, at 10, or as soon thereafter as convenient for you.

“ I have the honor to be,

“ Sir,

“ Your most obedient Servant,

(Signed,) “ GEORGE BROWN,  
“ Secretary.

“ JAMES HOPKIRK, Esq.

“ &c. &c. &c.”

No. 14.

Copy—Letter, Secretary to Mr. F. W. Smith.

“ Provincial Penitentiary  
“ Commission Room,  
“ Kingston, 3rd October, 1848.

“ Sir,

“ In reference to your letter of 22nd June, bringing certain charges against James Sampson, Esq., Surgeon of the Penitentiary, I have to notify you, that the Commissioners are now proceeding with an

inquiry into the conduct of that officer, and that they will be prepared to take up the charges preferred by you, to-morrow, (Wednesday, 4th instant,) or the day following.

"I have the honor to be,  
"Sir,

"Your most obedient Servant,

(Signed,) "GEORGE BROWN,  
"Secretary.

"Mr. FRANCIS W. SMITH,  
"Kingston."

No. 15.

Copy—Letter, Secretary to Dr. Sampson.

"Provincial Penitentiary  
"Commission Room,  
"Kingston, 3rd October, 1848.

"Sir,

"I have to acknowledge receipt of your letter of 28th ultimo. I duly laid it before the Commissioners; and I am now instructed to inform you, that in so far as the specific charges preferred by certain parties against you are concerned, you will be entitled to be present at the examination of the witnesses upon such charges, and to put such proper questions to the witnesses as you may deem necessary to your defence.

"I am also to inform you, that the Commissioners will proceed to investigate the said charges, and any others which may be preferred against you, as Surgeon of the Penitentiary, forthwith.

"I have the honor to be,  
"Sir,  
"Your most obedient Servant,

(Signed,) "GEORGE BROWN,  
"Secretary.

"JAMES SAMPSON, Esq.  
"Surgeon, Provincial Penitentiary."

We commenced the investigation into the charges against the Surgeon on 4th October, and continued it during the 5th, 6th, and 7th; we resumed their consideration on the 31st, and closed the case on 3d November. The straightforward course pursued by Dr. Sampson, in at once admitting most of the allegations of his accusers on matters of fact, and merely combating the deductions attempted to be drawn from these facts, shortened the inquiry.

The first charge preferred against Dr. Sampson by Francis Smith, was, in "furnishing provisions to the Penitentiary for his own private advantage, contrary to the Statute." Edmund Boyle, a contractor, was the first witness called in support of this charge; he testifies that Dr. Sampson sold him, on the 5th of October, 1848, pease to the amount of £7 6s. 3d.; and that Dr. Sampson was one of his sureties to the Penitentiary for the fulfilment of his contract. On his cross-examination, however, the witness says, that Dr. Sampson had no advantage nor promise of advantage by the Penitentiary contract; that the pease he sold to witness were under the market price; that he paid 2s. 6d. per bushel to Dr. Sampson for them, and 3s. 3d. to others for the same articles, seven weeks afterwards; that it was an advantage to him to get the pease from Dr. Sampson at the time and price; and that he knows

Dr. Sampson cultivates a farm, and has such produce for sale.

Dr. Sampson admits that he sold twenty bushels of pease to Hendry and Blacklock, grocers, in Kingston, while they held a contract at the Penitentiary.

Henry Smith, Esq., Warden of the Penitentiary, was called by his son as a witness, when he testified as follows:—

By F. W. Smith:—

"It is provided in the Penitentiary Act, that no Officer of the Penitentiary shall be concerned in any contract with the Penitentiary. Witness cautioned Dr. Sampson about selling some pease, witness thinks, to a contractor, for whom he (Dr. Sampson) was surety; and warned him, that by so doing he came within the meaning of the Statute referred to; Dr. Sampson said he did not think so."

By Dr. Sampson:—

"Witness accepted Dr. Sampson as a surety for contractors; thought he was not precluded from doing so by Act of Parliament or regulation, as he did not appear to receive any benefit from the transaction; if Dr. Sampson received no benefit from the contract, witness thinks his having been surety is not blameable."

John Ovens, a Forage Contractor, was then called to testify that he bought 180 or 280 bushels of turnips from Dr. Sampson, in the fall of 1847, at 1s. 6d. per bushel, deliverable at the Penitentiary by Dr. Sampson. It appears that he had bought some turnips, the same season, at 1s. 3d., but had paid 1s. 6d. to others as well as Dr. Sampson; that it was a great advantage for him to get so large a quantity in one lot; that the Doctor was very indifferent about selling them at 1s. 6d.; and that he (Ovens) got himself 2s. for these very turnips from the Penitentiary.

This is the whole of the evidence, and it in no way compromises Dr. Sampson. The purchases in question seem to have been common business transactions, in which each party looked to his own advantage, and the market value of the article transferred. There is not the slightest reason to suppose that Dr. Sampson ever had any interest in any Penitentiary contract.

## 2. IMPROPER TREATMENT OF, AND NEGLIGENCE TOWARDS, SICK CONVICTS, AND BEHAVING WITH CRUELTY TOWARDS THEM.

The first case attempted to be made out under this count, is in Dr. Sampson's treatment of a female Convict named Evans. There are only two witnesses called upon it, Mrs. Cox, and Mrs. Martin; and the only allegation seems to be that Evans died very unexpectedly, and said to Mrs. Martin, before her death, "God forgive Dr. Sampson for neglecting me." Mrs. Cox, however, says "the Surgeon saw Evans daily, before her death," and Mrs. Martin says, "Dr. Sampson went to see her (Evans) every day when he was at home, and Dr. Yates always went to see her in Dr. Sampson's absence, except one day which he missed; that day was the second day before Evans died."

Convict C. Cronk, now undergoing the penalty of his second conviction, is brought to prove that he went to Dr. Sampson, and complained that he

was afflicted with Gonorrhœa, but the Surgeon sent him away, saying, there was nothing the matter with him. On cross-examination, he admits that Hospital-keeper Jones, was present on the occasion. Dr. Sampson called Mr. Jones who swore that Cronk applied to the Surgeon, and was treated for sore eyes, but that he never heard Cronk make any such complaint as he now speaks of.

Convict Patrick Kelly, a life-prisoner for sodomy, is called to state, that he fell from a scaffold in December, 1846, on a Thursday morning; that the Surgeon did not see the injury until the following Monday, when he sent him into Hospital from his cell; that he was a fortnight in his cell before it was discovered that his thigh was broken; that a splint was then put on it, and remained on six weeks, and that he is lame still. He admits, however, that he "blames his not lying as the Doctor directed him, for the shortness of his leg now. The Doctor threatened to tie witness down, to make him lie in a proper direction." Hospital-keeper Jones proved, that every patient in the establishment has been regularly examined by the Surgeon daily, and Kelly could not have been three days unexamined; that Kelly's accident did not occur when he says it did, but that he came into the Hospital on the 26th September, 1845; that lotions were applied until 9th October, when a splint was applied for *fractured neck of the femur*; and that the case was discharged from Hospital on 7th January, 1846.

John Stewart Esq., M.D., also proves that a "fracture of the neck of the *femur* is exceedingly difficult to detect, and the best Surgeons are often for many days deceived by it," and that it would depend on the extent of inflammation about the hip, when a splint should be put on. Horatio Yates, Esq., M.D., fully corroborates the statement of Dr. Stewart, and says, from personal knowledge of the case, that Kelly "could not have been turned out better"—"he has never seen a case better turned out."

Convict Ralph Smith is called to detail his treatment for sprained ankles; he seems to be of opinion that the dry bandage application ordered for him by the Surgeon was not correct, and that liniment applications should have been longer continued. He thinks too, that he was discharged from the Hospital over-soon. Mr. Jones proves that Smith, when discharged from the Hospital, was "quite fit to walk," and "not a fit subject to be retained in the Hospital." But of all this, the Surgeon was the best and only judge, and he seems to have taken great pains with the case.

Convict Cyril Aubé also gives evidence as to his treatment for a "pain and swelling in the stomach;" but the only complaint he seems to make is, that he was kept too long in his cell without work, and had not oakum given him to pick sooner. Convict Bernard Forshee, sentenced to 14 years imprisonment for burglary, is brought to give evidence, that he went to Dr. Sampson for relief from "a pain in his head or ear, one winter;" that Dr. Sampson said he could see nothing the matter with his ear, and thought he was "scheming," (*i. e.*, trying to get on the sick list and thereby escaping work,) and that Dr. Sampson said "he (Forshee) was so great a liar, he could not believe him." Forshee admits that he had been frequently through Dr. Sampson's hands before this. Dr. Sampson states, that he used no such language as Forshee represents; and as to anything further, it is the duty of the Surgeon to detect all attempts at deception, on the part of the Convicts; and there is no reason to doubt that his judgment in Forshee's case was correct.

The only case brought before us which seems to have been worthy of investigation, is that of a Convict named John Murphy, who committed suicide in the Prison. Murphy, on 28th August, 1847, attempted to stab his Keeper: when spoken to by the Warden on the subject, he talked incoherently; and the Surgeon being called on to examine him, on 3rd September, reported him insane. The Warden wrote next day to Government for an order for his removal to a Lunatic Asylum; and he was committed to his cell to await the arrival of the order. The Government took no notice of the matter, and Murphy continued to remain in his cell until 26th October, when he committed suicide; he was found suspended from the top of the cell door with a cord taken from a strait-jacket, and by means of a button, he had opened a vein in his arm in two places, from which much blood had flowed. The charge against Dr. Sampson is, that he never saw Murphy from the time he reported him insane, till after his death. Dr. Sampson's defence is, that Murphy was in good bodily health, and was not on the sick list; that the Surgeon's duty in such cases, according to the rules of the Prison, was merely to report the Convict insane, and on that report, the Warden had to make immediate application to Government, and have the patient removed to the Lunatic Asylum. He shews that this was the invariable practice previous to Murphy's case; and he declares that until he heard of Murphy's death, he had no doubt that he had been removed from the Prison to the Asylum for some time. Dr. Sampson further shews, that he had no apartments fit for the treatment of Lunatic Patients, and that to remove them as soon as possible to an Asylum was the only way to dispose of them. He also shews, that immediately after Murphy's case, the Inspectors passed an order for all insane patients to be placed on the sick list, and that this has been regularly attended to ever since.

We think it would have been better had all insane Convicts been considered under the charge of the Surgeon from the moment of their being pronounced so; but such was not the rule of the Prison; and it does not appear that the Surgeon's attendance would, in this case, have prevented the catastrophe which occurred.

Besides these cases of alleged improper treatment, witnesses are brought to testify that they have heard Convicts complain that the Surgeon treated them badly. These witnesses are Thomas Smith, Costen, Manuel, Wm. Smith, Pollard, Little, and Hooper—but none of them profess to know anything more than that complaints were made; and the trifling character of these complaints, and the small number of them, speaks rather favourably than otherwise of Dr. Sampson's attention to the Convicts.

Such is the evidence on which the charge of improper treatment rests; and we are of opinion, that there is not the slightest ground to sustain it. On the contrary, much was elicited during the investigation, to shew that Dr. Sampson has fulfilled his duty to the sick inmates of the Penitentiary efficiently and humanely.

Mrs. Cox, late Matron, says:—"Witness conceived that Dr. Sampson ordered everything which was requisite for the sick Convicts, and he always complied with the reasonable requests of the patients. Thinks Dr. Sampson's treatment of the patients was as it should be; never knew him to be unkind to them."

Samuel Pegg, Junior, a Farmer in the Home District, who was for two years Convict Hospital

attendant in the Penitentiary, says—"he considered that Dr. Sampson paid great attention to the sick Convicts, and always treated them well and kindly, and sympathized with them when very ill. Dr. Sampson was particular in making the Hospital Officers do their duty; witness often received particular instructions, as to the proper mode of conducting the Hospital, from Dr. Sampson."

It was a common thing for the Convicts to attempt imposing on the Surgeon, by feigning sickness; the object of their doing so, in some, was to get light work given them, and in others to escape working altogether. All the patients were examined by the Surgeon, every forenoon, except on Sundays, when only the Hospital patients were examined, and any of the others whose condition required it; their cases were regularly enquired into, and the proper remedies ordered."

Mrs. Chase, the Assistant-Matron, declares—"she never heard that any of the Convicts complained of bad treatment from Dr. Sampson; witness thinks that Dr. Sampson performed his duties efficiently and humanely."

Mrs. Pollard, the Matron, who declares Dr. Sampson "has been the cause of great annoyance" to her, and that "she considers him a very rude man," gives the following testimony:—"Dr. Sampson is generally humane to the Convicts. Witness thinks he did not stay long enough, when visiting, nor inquire with sufficient minuteness into each case; never knew any case to be neglected; never knew any case mismanaged; never knew an instance when there was a necessity of a visit from the Surgeon that Dr. Sampson did not come in the forenoon to see the patient."

William Jones—By Dr. Sampson:—

"Witness was Hospital-Sergeant in Royal Artillery for nearly three years, before he came to the Penitentiary; has been Hospital-keeper in the Penitentiary since 1st August, 1847; found, when he came to the Penitentiary, that the Hospital duty was regularly and efficiently performed; considers that Dr. Sampson has been very kind to the sick, and has always acted with great forbearance towards them. Never heard Dr. Sampson speak harshly to any sick man; has heard him order a Convict out of the Surgery on one occasion, but the man had no bodily ailment and was complaining about ill-treatment he had received in having irons put on him.

"Has known Dr. Sampson to come to the Penitentiary more than once a day, when not sent for. Every Convict on the sick-list has been seen daily by Dr. Sampson or his substitute, every week-day since witness came to the Prison. On Sundays and holidays, the Surgeon comes to the Prison with equal regularity, but only sees such patients in the cells as he knows, or witness informs him, require attendance. The Surgeon sees every patient in the hospital on Sundays as well as on week-days.

"There is a great disposition on the part of the Convicts to feign sickness, and it is an important part of the Surgeon's duty to detect such deception."

By Commissioners:—

"There is a return made every day of the Convicts in their cells and in the hospital; since December, 1846, these returns have been entered in a book.

"Every sick Convict in the Penitentiary is daily examined by the Surgeon; it is not possible that a

Convict could have been three days sick without seeing the Surgeon."

Thomas W. Robinson, Esq., sworn:—"Is a Physician; has been frequently in the habit of attending at the Penitentiary since its commencement, in the absence of Dr. Sampson. Thinks the Medical Superintendence of the Institution is as good as possible; never heard any complaints from the patients as to Dr. Sampson's treatment of them. Thinks it is very difficult to discriminate between cases of real sickness in the Penitentiary, and those of feigned sickness; there is an immense amount of feigned sickness in the prison; detection in such cases is very likely to produce hostility to the Surgeon in the feelings of the Convict."

John Stewart, Esq., sworn:—"Is a Surgeon; has been in the habit of going to the Penitentiary frequently with Dr. Sampson; considered that Dr. Sampson's Medical Superintendence of the Institution was very good; had an excellent opportunity of judging as to his practice; never saw him unkind to the Convicts; on the contrary, witness thought he treated his patients most kindly. There are so many cases of feigned sickness in the Penitentiary, that it is difficult to discriminate between the real and false applicants for medical treatment."

Horatio Yates, Esq., sworn:—"Is a Physician; has attended at the Penitentiary very frequently with Dr. Sampson, as well as for him in his absence. Witness thinks Dr. Sampson's practice, at the Penitentiary, is just what it ought to be; thinks Dr. Sampson's system of superintendence particularly good; always thought Dr. Sampson kind and attentive to the Convicts; thought him more attentive to the Convicts than to many of his patients in town."

### 3. RECOGNISING DISCHARGED CONVICTS, AND MAKING THEM KNOWN TO OTHERS, CONTRARY TO THE RULES OF THE INSTITUTION.

The following entry was made in our Minutes of the 4th October:—"Dr. Sampson admits that he took discharged Convict Jones to Mr. Rowlands, of the *Chronicle and News*, and introduced him to Mr. Rowlands, for the purpose of Jones telling him his story."

Dr. Sampson meets this by the explanation, that the decision of the Inspectors, on the trial of Kitchen-keeper Smith, caused a general belief in Kingston, that he (Dr. Sampson) had brought unfounded charges against Smith; that the matter had been made public, and was injurious to his character, and he was forced to defend himself. He called, in support of this explanation, the following witnesses:—

Samuel Rowlands, Esq., sworn:—"Is Editor of the *Chronicle and News* newspaper. Understood that Dr. Sampson sent discharged Convict Jones to witness, for the purpose of establishing that arrows had been shot by Frank Smith in the Penitentiary; Jones said he had been himself hit with arrows. Dr. Sampson had no other object in sending Jones to witness, that he knows of."

By Mr. Hopkirk:—

"Was not particularly intimate with Dr. Sampson at the time referred to; Dr. Sampson had spoken to witness about an article in witness's journal, a few days before, on the subject of the Penitentiary; he spoke to witness as the Editor of the *Chronicle and News*; witness did not make use of Jones's informa-

tion; has no doubt Dr. Sampson intended witness to make use of it, if witness thought proper, after hearing it. The occurrence as to Jones happened after the decision on Frank Smith's trial, but thinks it was before witness published it in his journal."

Augustus Thibodo, Esq., sworn:—"Had a conversation with Mr. Sheriff Corbett, one of the Inspectors of the Penitentiary, as to the trial of charges preferred by Dr. Sampson against Kitchen-keeper Francis W. Smith; it was on the 20th October, 1847, witness thinks, that the conversation took place; witness was in company with Mr. Corbett, and remarked to him, 'so Frank Smith has been acquitted.' Mr. Corbett said, 'he had; that Dr. Sampson had completely failed in substantiating the charges against Frank Smith; that he had never seen a more complete break-down.'"

By Mr. Hopkirk:—

"Witness commenced the conversation; has had frequent conversations with Dr. Sampson relative to Mr. Frank Smith's trial, and other matters connected with the Penitentiary; cannot say that Dr. Sampson expressed any opinion upon the conduct of the Inspectors; has no doubt that he said the decision of the Inspectors was incorrect; cannot recollect of Dr. Sampson's saying that the decision was influenced by improper motives. Witness has sent no witnesses before the Penitentiary Commissioners for examination."

By Dr. Sampson:—

"Does not recollect of holding any conversation with Dr. Sampson about Frank Smith's charges, until after the conversation (referred to) with Mr. Corbett, on 20th October, 1847."

Whatever argument may be raised on this case, on general principles, it is clear, from Mr. Rowland's statement, that, practically, no bad result followed from it; no use having been made of Jones' statement. But the bearing of this count is almost identical with that of one of the charges preferred by Mr. Hopkirk, and which will come up hereafter.

**4. MALICIOUSLY PREFERRING FALSE CHARGES AGAINST KITCHEN-KEEPER FRANCIS W. SMITH, ONE OF THE KEEPERS OF THE PENITENTIARY.**

Mr. Smith did not attempt to sustain this charge; and the subsequent dismissal of Smith on the very matters referred to in Dr. Sampson's complaint against him, is a sufficient vindication of Dr. Sampson's conduct.

We now proceed with the charges preferred against Dr. Sampson by the Board of Inspectors.

**1. REFUSING TO OBEY THE ORDERS OF THE BOARD OF INSPECTOR, IN CONTRAVENTION OF THE THIRD CLAUSE OF THE PENITENTIARY ACT.**

In support of this charge, Mr. Hopkirk referred to the correspondence in the case of the alleged undue familiarity of Dr. Sampson with Convict Reveille, which is stated in full in an early part of this Report.

He charges Dr. Sampson with refusing to come before the Inspectors, when the Board "directed the Surgeon's attendance."

On carefully perusing the correspondence in question, however, we cannot find that Dr. Sampson was directed to attend before the Board. We find that

in their Minutes of the 24th February, the Board consider themselves bound, "in justice to that officer," to acquaint him with Mrs. Chase's report against Convict Reveille, in case he may desire to call for any investigation. Dr. Sampson's only reply to this, was a request that a copy of Mrs. Chase's report and a copy of the Board's Minute of 24th, might be forwarded to Your Excellency.

In their rejoinder to Dr. Sampson of the 28th February, the Inspectors say:—"As you have now requested that the matter may be brought under the notice of the Governor General, the Board feel that you have a right to expect from them a full inquiry into the matter;" and after naming a day, they add, "when they desire your attendance for the purpose of putting any questions or offering any observations you may consider necessary."

Dr. Sampson appeared, on the day in question, before the Board, and declined putting any questions or offering any observations, and protested against the Inspectors proceeding with any inquiry into his conduct, whilst his appeal to Your Excellency was undecided. We do not find by their Minutes, that the Inspectors considered Dr. Sampson had disobeyed any mandate of theirs, or that in their letter to the Provincial Secretary of 8th March, communicating the affair, any such complaint is urged against Dr. Sampson; but on the contrary, the whole tone of correspondence gives the impression that the examination of the 3rd March was a proceeding taken entirely from kindness and from justice to Dr. Sampson; and Mr. Hopkirk himself in his examination before us on the charges against the Warden, gives the following testimony:—

Q. Was not the inquiry of 3rd March, a trial of Dr. Sampson?

A. Cannot say that it was.

Q. Was it a trial of Convict Reveille?

A. Cannot say it was.

Q. What was it then?

A. It was for the purpose of taking Mrs. Chase's statement on oath; Dr. Sampson having requested that certain papers connected with the matter should be sent to the Governor General.

Q. Would the examination of the 3rd March not have taken place but for said request of Dr. Sampson?

A. Cannot say what the Board would have determined to do; but thinks it very possible that but for Dr. Sampson's letter, the matter would have dropped.

We do not think therefore that Dr. Sampson did, in this matter, "refuse to obey an order from the Board;" he was asked to come and defend himself as he "may consider necessary;" he attended, but did not consider any defence necessary: and surely a respectfully written protest could not be considered as an act of disobedience to any order of the Board.

**2. CHARGING OFFICERS OF THE INSTITUTION WITH IMPROPER CONDUCT, AND REFUSING TO APPEAR BEFORE THE BOARD OF INSPECTORS, WHEN CALLED UPON TO SUBSTANTIATE THE CHARGE.**

This charge is founded on the following entries made by Dr. Sampson in the Hospital Diary, in reference to the case of Convict Charlotte Reveille.

(Copy.)

"February 8th. The bowels were opened on the 5th, and the tumid abdomen again subsided, but the pain never leaves the left side, which is tender on very slight pressure. No uterine discharge since last report, but the bloody vomiting has returned this morning. Mentally there has been evident improvement of late, which I attribute to conciliatory and soothing mode of treatment.

"February 9th. The uterine hemorrhage returned last night, and is rather copious to-day. The Matron reports that this Convict was detected with the earthen vessel in which she vomits under her, in order to procure blood, mix it with gravel and shew it to me as having come from her stomach. It is difficult to suppose that this trick could have been practised when no uterine discharge existed; besides, the liquid said to be vomited contained very dark blood, while uterine discharge was of a pale scarlet colour. I may remark in this place, no credence is to be given to anything said when animosity and deceit seem to govern the actions of persons in office. I reported this Convict insane, to the Board of Inspectors on———, and I feel convinced that no improvement can take place mentally, while in this Prison."

On the 15th March, the attention of the Inspectors was directed to this entry in the Diary, and they summoned Dr. Sampson to appear before them, with the view of an investigation being had into the circumstances which called for the remark that animosity and deceit seemed to actuate the conduct of persons in office. On 17th March, Dr. Sampson replied that as it had been communicated to him by command of His Excellency the Governor General, that His Excellency intended to appoint a Commission of Inquiry not only as to what personally concerned himself, but also as to the general management of the Institution, he begged leave, respectfully, to decline now entering further upon the subject, it being his intention to bring the case in all its details and bearings, before this tribunal as soon as it should be constituted.

We think it would have been much better, had Dr. Sampson not used the objectionable words employed in his Diary; but he might have considered it his duty, whilst recording his treatment of the case, to advert to circumstances, which, in his opinion, might affect the success of that treatment; and we can allow much for the excited feelings which recent events must have produced. Under all the circumstances of the case, with the investigation of his complaint against an inferior officer, turned into a trial of himself—his medical decisions set aside by unprofessional men—his recommendation to protect a Convict from injury by frost-bite rejected—letters written him sneering at his professional proceedings, and a groundless charge of undue familiarity with a woman labouring under a disgusting disease, all fresh in his recollection, we cannot wonder at Dr. Sampson's declining to appear before the Inspectors as his judges,—and must acquit him of all blame in this respect.

3. PUBLISHING THE PROCEEDINGS OF THE BOARD OF INSPECTORS, PENDING THE DECISION OF THE GOVERNOR GENERAL IN COUNCIL THEREON, AND ENDEAVOURING TO BRING THE BOARD INTO CONTEMPT WITH THE PUBLIC.

The evidence on this count is as follows:—

"Dr. Sampson admits that he furnished Mr. Rowlands, of the *Chronicle and News*, with the copy

of the decision of the Inspectors of 29th October, 1846, as published in the paper in question."

Samuel Rowlands, Esq. :—

"Is Editor of the *Chronicle and News*. Never received a communication or article of any description whatever, in reference to the Penitentiary, from Dr. Sampson, with the exception of a copy of the Inspectors' decision of 29th October, 1846. Never received any affidavits from Dr. Sampson, as far as he recollects. Has reason to believe that Dr. Sampson was instrumental in furnishing one declaration published in the *Chronicle and News*, in regard to the Penitentiary; it was the declaration of the discharged Guard Robinson. Witness's reason for supposing that Dr. Sampson had any concern with Robinson's declaration, is, that Robinson said when he brought it to witness, that he had been with the Surgeon; has no reason to suppose that Dr. Sampson had anything to do with any of the other declarations published in witness's Journal. There were in all, declarations by six persons. One came to witness, as already stated, and the other five were handed in by Mr. Manahan; these five declarations were given to witness by Mr. Manahan, two or three months previous to that of Robinson's being received; never received any declarations from Dr. Sampson which were not published. The reason why witness retained the said declarations so long, without publishing them, was, that the general elections were proceeding at the time, and he waited until the public mind was more settled, and the declarations more likely to make a strong impression. "Has had conversation with Dr. Sampson in regard to the affairs of the Penitentiary; the first conversation witness had with Dr. Sampson was as to Frank Smith's trial in October, 1847. Dr. Sampson was one of the parties from whose statements witness was led to believe that the affairs of the Penitentiary was in disorder, and also one of those persons, resting on whose veracity, witness continued to call for investigation by the Government. The only statements made to witness by Dr. Sampson, were in reference to Frank Smith's trial; he always pleaded ignorance as to the details of the Penitentiary affairs. Witness was led from Dr. Sampson's statements, to believe that the Inspectors behaved very improperly in the matter of Frank Smith's trial; understood that from friendship to the Warden and his son, the Inspectors had relaxed that strictness which they would have enforced under ordinary circumstances; is of opinion that had the Inspectors so acted, to such an extent as to deny justice, the conduct of the Inspectors would tend to bring them into public contempt. From the statements of Dr. Sampson to witness, it would be too strong an expression to say, that contempt for the Inspectors was produced on witness's mind; would say that Dr. Sampson's statements led him to believe that the conduct of the Inspectors' was deserving of strong animadversion. Cannot say that Dr. Sampson's statements were made to witness in reference to his position as Editor of the *Chronicle and News*: they were all made subsequent to witness's first publication on the affairs of the Penitentiary, but prior to the series of articles which appeared in the *Chronicle and News*; they were not made in confidence. Dr. Sampson has referred witness to parties from whom he could get information as to the affairs of the Penitentiary; he mentioned Mr. Gleeson, Mr. Robinson, and Mr. Manahan, also other parties whom witness does not recollect at the moment."

By Dr. Sampson:—

"At the time witness had the intercourse he has referred to with Dr. Sampson, the public was divided

as to the matter of Frank Smith's trial; some persons thought that Dr. Sampson had brought groundless charges against Keeper Smith, and others that the charges were well grounded. The publications in question tended greatly to relieve Dr. Sampson from the imputations against him in the public mind. Had no particular interest in, or friendship towards, Dr. Sampson, at the time of these publications."

By Commissioners:—

"Received no payment or consideration of any kind, from any person, for the publication of the articles in question. Never received any communication on the affairs of the Penitentiary from any officer of the Institution, other than he has named. Was never requested to write or publish any article as to the affairs of the Penitentiary, by any person whatever."

Samuel Pollard—By Mr. Hopkirk:—

"Recollects the conversation witness had with Mr. Rowlands of the *Chronicle and News*: he said he was to get the copy of a paper from Dr. Sampson through Sheriff Corbett, for publication. Mr. Rowlands found great fault with the decision of the Inspectors in Frank Smith's case. Cannot say, positively, that Mr. Rowlands mentioned to witness that he had had conversations with Dr. Sampson as to Frank Smith's trial. Understood from Mr. Rowlands that he had received information as to the conduct of the Inspectors (other than the copy of the decision of the Board as to Frank Smith's trial) from some quarter; cannot say that Mr. Rowlands said he had such information from Dr. Sampson."

Thos. A. Corbett, Esq.—By Dr. Sampson:—

"Is Sheriff of the Midland District, and one of the Inspectors of the Penitentiary. Recollects of Dr. Sampson applying to witness, as President of the Board of Inspectors, for a copy of the evidence taken in the case of the charges brought by Dr. Sampson against Kitchen-keeper Francis W. Smith: it was refused, because the Inspectors thought they had no right to part with it, as the evidence was the property of the Penitentiary. Sent Dr. Sampson a copy of the decision given by the Board on the case: had the Inspectors given a copy of the evidence to Dr. Sampson, witness would have considered this an act of publication."

"Witness being shown a copy of the decision on the case, by the Board of Inspectors, says it was sent to Dr. Sampson by order of the Board; considers it was an act of publication to him. Dr. Sampson was not bound down as to the use he should make of the decision, he was at liberty to do with it what he liked."

By Mr. Hopkirk:—

"Dr. Sampson is an officer of the Penitentiary. It is usual in all cases affecting officers of the Penitentiary, to make such officers aware of the decision of the Board upon them. It is not usual to give Guards or Keepers a copy of any evidence taken. It is invariably the practice to take down examinations upon charges in writing, and make the witnesses sign their depositions. In the reports of one officer against another, when unimportant, no record of the evidence is kept; it is invariably the practice for the accused to be present at all examinations by the Board, when they can be obtained. Dr. Sampson was present during the examination into the charges against Frank Smith; he asked the Board to go on

in his absence, but they refused to do so. The evidence of each of the witnesses was read aloud to them before they signed it. Dr. Sampson expressed himself quite satisfied with the manner in which the evidence was taken down. One of the reasons for refusing a copy of the evidence to Dr. Sampson was, because the Board had never done so before to other parties; another reason was, because the whole matter was likely to be referred to the Government by Dr. Sampson, in the opinion of the Board.

"It would be very different giving a copy of the decision in any matter before the Inspectors to a party interested in the decision, and giving it to an Editor for publication in a newspaper. The decision in Frank Smith's case was not given to Dr. Sampson for the purpose of publication, but because he had a right to it; does not consider that the giving of the decision by the Board to Dr. Sampson was an act of publication by the Inspectors. Dr. Sampson had liberty to do with it what he thought proper, as far as the Inspectors were concerned. Cannot say whether the decision was published in the *Chronicle and News*, pending the consideration of it by the Governor General."

By Dr. Sampson:—

"Cannot say if the Inspectors had placed the matter under the consideration of the Governor General, at the time of publication; the Inspectors placed the whole matter before Government on the application of the Government.

"Does not think the publication of the Board's decision, on Frank Smith's case, tended to bring the Board into contempt with the public."

By Mr. Hopkirk:—

"The newspaper remarks which accompanied the decision in the *Chronicle and News*, tended to bring the Inspectors into contempt.

"The application by the Government to the Inspectors for the whole proceedings in the case of Frank Smith, witness understood was caused by the appeal of Dr. Sampson to Government, against the decision of the Board.

"Witness did express his willingness to the Editor of the *Chronicle and News*, to furnish him with a copy of the decision of the Board in Frank Smith's case, for publication; never furnished him with a copy of it; never asked the Board to give Mr. Rowlands a copy."

It is very clear that no charge can be maintained against Dr. Sampson for publishing the decision of the Inspectors in Kitchen-keeper Smith's case. Mr. Corbett, President of the Board, testifying that he sent Dr. Sampson the decision "to do with it what he liked;" that "he does not think the publication tended to bring the Board into contempt with the public;" and that he (Mr. Corbett) himself had expressed his willingness to the Editor of the *Chronicle and News*, to furnish him with a copy of the decision of the Board on Frank Smith's case for publication.

Though not coming within the scope of his charge, Mr. Hopkirk has undoubtedly established that Dr. Sampson drew Mr. Rowlands' attention to the state of the Penitentiary, and that he aided Mr. Rowlands in acquiring information as to its affairs.

Dr. Sampson's defence on this head is the same as on Count 3 of the charges preferred against him by Francis W. Smith. He alleges that the decision of the Inspectors on his complaint against the Kitchen-keeper, was prejudiced, contrary to evidence, and calculated to injure him with the public; that the Inspectors themselves spoke publicly of his proceedings against Smith, in a way to injure him (Dr. Sampson); that many persons thought he had brought groundless charges against Smith, and that the few publications which did take place were fair statements, necessary to disabuse the public mind, and did tend greatly to relieve him (Dr. Sampson) from the imputations against him.

For a full understanding of Dr. Sampson's position, reference is necessary to the proceedings of the Inspectors against the Surgeon, given at great length in the introductory part of this report. Judge Kirkpatrick therein testifies, that he "has examined the depositions taken by the Board of Inspectors of the Provincial Penitentiary, on the trial of charges preferred by Dr. Sampson against Francis W. Smith, in October, 1847; has also perused the decision of the Board of Inspectors thereon. In witness's opinion the judgment of the Board was not in accordance with the evidence before them."

There can be no question that the unauthorized publication of occurrences passing in such an Institution as the Provincial Penitentiary, by an officer of the establishment, as a means of obtaining personal redress, is strongly to be deprecated; as in such appeals there will always be two parties, and strife and ill-will within the walls will very surely be engendered and perpetuated by it, and party feelings excited outside the walls.

We are of opinion, however, that the present is altogether an anomalous case, to which general rules are inapplicable. We think Dr. Sampson did establish the charges he preferred against Kitchen-keeper Smith; that the decision of the Inspectors upon the case was not according to the evidence before them; that they might have had much more conclusive evidence against Kitchen-keeper Smith, had they sought for it; that apologies averred in their decision for Smith's admitted irregularities were voluntary on their part, and without foundation; that in the course of the investigation into Smith's conduct much evidence was taken by the Inspectors, the object of which was seriously to affect Dr. Sampson, and which had no possible connection with the matter on hand; that Dr. Sampson, during the progress of Smith's trial, had the gross irregularities existing in the Institution, but unknown beyond the Prison, forced on his attention, and that he did good public service in urging a general inquiry. Had Dr. Sampson failed to show a necessity for the inquiry which he strove to procure, his conduct would have been liable to animadversion; but the result having proved the urgent need which existed for it, in our opinion amply exonerates him from all blame.

#### 4. BEHAVING WITH IMPROPER FAMILIARITY TOWARDS A FEMALE CONVICT.

Mr. Hopkirk having closed his case on the charges formally preferred by the Board against Dr. Sampson, made reference to the two additional charges on which the Inspectors declined to be complainants, of which the following Minute was made:—

"Mr. Hopkirk then, in reference to the first of two charges named to the Commissioners as having come under the notice of the Inspectors, but in

which they declined to be prosecutors, at the request of the Commissioners, handed in the evidence of Elizabeth Chase and Mary Pollard, given before the Board of Inspectors of the Provincial Penitentiary, on 3rd March, 1848, in reference to the report of Mrs. Chase as to the conduct of the Surgeon."

The whole of the evidence as to the circumstances on which this charge is founded, has been given in full in the introductory portion of this report. The Convict in question is E. Charlotte Reveille; she has suffered for years from disease, has lost the use of her limbs, and is in a most helpless condition.

Her situation is thus described by Mrs. Chase, the Assistant Matron:—

"Does not know what was the matter with the Convict; she vomited blood; has seen Reveille vomit blood every day for a week; she discharged blood in her urine; she did so constantly, with slight intermissions; altogether she was a most disgusting person; her clothes were exceedingly filthy; she made herself quite a beast; the Doctor saw all this, and used to be quite disgusted with her."

Reveille was very severely punished while in the prison; and whether from that cause, or from her bodily infirmities, she became exceedingly outrageous in her conduct. The Inspectors, in consequence, called on the Surgeon to report whether Reveille was sound in her mind. Dr. Sampson reported that she was laboring under moral insanity. The Inspectors differed from the Surgeon's opinion, and wished to have further advice; and Reveille's sanity or insanity became a topic of keen discussion in the prison.

Dr. Sampson continued to attend Reveille, and treated her as insane. He saw her on the morning of the 18th February. Mrs. Chase says, "Reveille was worse some days than others; she said she was worse than usual on the morning in question;" and Dr. Sampson declares, he "feared her death might take place on that day." The Surgeon, in consequence, visited his patient again the same evening, at half-past nine; and it appears that while he was in the women's apartments, certain circumstances occurred which form the ground-work of the present charge, and to which we will presently refer. Mrs. Chase thus explains how the matter became public:—

"The way in which the affair became public, was as follows:—Mrs. Smith, the Warden's wife, sent for witness on the night in question, after the Surgeon had left, and asked witness what the noise she had heard was caused by? Witness said it was Dr. Sampson and Convict Reveille. Mrs. Smith said she (witness) must report the circumstance to the Warden, and desired her to go into the Warden's bed-room, and do so. Witness refused to do so, as the Warden was in bed. Next morning, Mrs. Smith and the Warden both told witness that she must make a written report of the circumstance. Witness did so make a report, and the matter came in this way before the Inspectors. Witness would have made a report whether Warden had told her to do so or not."

Mrs. Chase's report was drawn against Reveille, "for improper conduct towards Dr. Sampson—laughing and shaking hands—making a great noise." Not a word was said in it against the Surgeon. The absurdity of getting up such a report, on the freak of a deranged patient, is obvious. If only Reveille's conduct was intended to be called in ques-

tion, the Surgeon was the person to have protected himself from her improper conduct; and had Dr. Sampson's conduct been unbecoming, it was Mrs. Chase's duty to have reported it directly without any mystery.

Mrs. Chase's report was made to the Warden. Had Reveille been sane, it would have been his duty to punish her at once. In cases of insanity, if a report is made at all, no action is taken. In this case, however, Mr. Smith thought the matter of sufficient importance to be brought under the notice of the Board; accordingly, the Inspectors were made acquainted with the affair reported by Mrs. Chase, and on 24th February they had that person before them, to narrate the facts. Mr. Hopkirk says, Mrs. Chase then made a statement "very much to the same effect" as her subsequent deposition. The Board did not, on that occasion, commit Mrs. Chase's communication to writing; but they resolved to intimate to Dr. Sampson, that the statement of Mrs. Chase on her complaint against Reveille, "appeared to imply that, in her opinion, there had been undue familiarity" on his part towards Reveille, and that they "consider they are bound, in justice" to him, "to acquaint him therewith, in case he may desire to make any statement regarding it, or to call for any investigation."

Mr. Hopkirk declares, in his evidence, that the Board came to this decision, without forming any opinion whether Mrs. Chase's statement, if true, contained sufficient ground for placing Dr. Sampson on his trial, for undue familiarity with a female Convict.

Dr. Sampson, on 26th February, replied to the Inspectors' notification, by asking that a copy of Mrs. Chase's report, and the Minute of the Board of the 24th, might be transmitted to His Excellency the Governor General, to whom he was about to refer the matter.

The Inspectors addressed Dr. Sampson again on 28th February. In their letter they state, that "no charge of any kind was preferred against you to them;" and they go on at great length to justify their proceedings, which they represent as dictated entirely by a regard to "your character and position." They again tell Dr. Sampson that he was made acquainted with Mrs. Chase's report, to afford him "an opportunity of requesting an inquiry into the matter, should you think it necessary to do so;" but although Dr. Sampson has made no such request, the Inspectors did not allow it to rest there; and, still continuing the same mocking tone, they tell him, "as you have now requested that the matter may be brought under the notice of the Governor General, the Board feel that you have a right to expect from them a full inquiry into the matter."

On the day appointed for the examination, (3rd March,) Dr. Sampson appeared before the Board and declined being a party to the investigation; the Board, however, went on with it, and took the depositions of Mrs. Chase and Mrs. Pollard. On the 8th March, the Board forwarded these depositions, and the papers formerly referred to, to the Provincial Secretary.

We now proceed to look at the evidence on which Dr. Sampson was charged with undue familiarity towards this deranged woman. Mrs. Chase, the Assistant Matron, was the only officer present when

the circumstances occurred, and her testimony, when before the Inspectors, was as follows:—

"On the 18th ult. Dr. Sampson came to visit the Convict Charlotte Reveille, a little before 10 o'clock at night. When he came in, he spoke to her several times; she told him she was very bad with a pain in her side, and she showed him where the pain was; he pressed her several times about the stomach, and she said it was not there, it was lower down; he told her she would be better to-morrow, he would send her some medicine, and he shook hands with her, and they were laughing for sometime together, and making a great noise.

"The Surgeon had his hand under the bed-clothes when he pressed Reveille.

"Witness does not know if that was the place where the Convict complained of pain; she was complaining of pain there this morning. Reveille told the Surgeon to move his hand lower down, and to press hard; when he did so, she said,—'Oh! how nice that is!'—then he and she would laugh together. Reveille often pulls the doctor's hand down so. From his laughing and conduct, witness thinks the Surgeon had been drinking. Reveille said, 'What a nice man you are, doctor! You are the only gentleman that comes to see me; if you had seen me some months ago, you would have found what a nice woman I was!' The doctor smiled and laughed; told her to be quiet, and she would be a nice woman again.

"Witness does not think the Surgeon's conduct was right; she does not think it right for the Surgeon to put his hand where it was; it was on the lower part of the body, under the clothes.

"Witness does not know if his hand was on her private parts, she thought so, but could not say for certain.

"The Doctor and Reveille were laughing at the time. 'She said, how very nice it was!' On the occasion, witness certainly thought his conduct most improper. She had often thought Reveille's conduct to the Surgeon disgusting; she told the Matron so."

Mrs. Pollard, the Matron, says,—"She did not see the doctor when he was in the women's Ward, but heard him talking very loud; she listened, and heard Reveille tell the doctor where to put his hand; heard her tell him to put it lower; heard nothing more between Reveille and the Surgeon, except a great deal of laughing—very loud laughing."

We are of opinion that had any word of this been true, it was utterly unjustifiable, on such evidence, to bring a gentleman of Doctor Sampson's standing to trial on a grave charge of having had "undue familiarity" with a female Convict. The whole evidence, we repeat, if it were all true, would only prove that the Surgeon was one night somewhat excited, humoured an insane patient more than was advisable, and laughed.

But Mrs. Chase, when brought before us, completely broke down in her account of the matter; and to show the discrepancies in her testimony, we place her evidence, on the two occasions, in parallel columns:—

BEFORE INSPECTORS.

"Reveille did not appear to be that morning any worse than she is at other times."

"She showed him where the pain was; he pressed her several times about the stomach, and she said it was not there, it was lower down. \* \* \* *The Surgeon had his hand under the bed-clothes* when he pressed Reveille. Witness does not know if that was the place where the Convict complained of pain; she was complaining of pain there this morning. Reveille told the Surgeon to move his hand lower down and to press hard; when he did so, she said "Oh! how nice that is!" then he and she would laugh together. Reveille often pulls the Doctor's hand down so."

"Witness does not think the Surgeon's conduct was right; she does not think it right for the Surgeon to put his hand where it was; it was on the lower part of the body, under the clothes. Witness does not know if his hand was on her private parts—*she thought so*, but could not say for certain."

"He (Dr. Sampson) went to see no other patient that night in the wards; there were three or four other women sick, but not so sick as Reveille."

"Reveille often puts her hand in Dr. Sampson's pockets, but did not do so that night; she will pull his hand out of his pocket, or he pulls hers, witness does not know which, as she was quite disgusted with them."

BEFORE COMMISSIONERS.

"Reveille was worse some days than others; she said she was worse than usual on the morning in question."

"Reveille had complained in the morning to the Surgeon, of having a lump in her side; she has it now; does not know whether it was a tumour. Dr. Sampson generally felt her side; *he turned down the clothes to do so on this occasion*, and put his hand on her side as usual. Reveille said the pain was lower down, and took hold of his hand and pressed it down on her stomach, and began laughing; the Surgeon laughed also." \* \* \* "The Dr. had not his hand under the clothes; *the clothes were turned completely back and Dr. Sampson laid his hand openly on Reveille's stomach, over her flannels*. Witness saw Dr. Sampson's hand all the time it was on Reveille's body; Dr. Sampson's hand was not on Reveille's body over a minute or two in all."

"Thinks it was *not* on her private parts that Reveille placed Dr. Sampson's hand; thinks it was only on the lower part of her stomach; it was not a spontaneous act on the part of the Surgeon; Reveille had hold of his hand and pressed it on the spot she complained of the pain; when Reveille withdrew her hand, Dr. Sampson did so also."

"Dr. Sampson went to see Convict Cook (female) the same evening; witness was not aware of this when she gave evidence before the Inspectors."

"Never saw him (Dr. Sampson) act in the same way before; never saw him, at any time, do any thing otherwise than was becoming and proper when visiting the sick Convicts; has seen Dr. Sampson laugh and joke with Reveille before, but never in an unbecoming manner." \* \* \* "Dr. Sampson used to consider Reveille insane; he would never have taken her impudence as he

did, if he had not thought her insane."

"From his laughing and conduct, witness thinks the Surgeon had been drinking." \* \* \* "Witness's reason for supposing the Surgeon the worse for liquor, was from his conduct and smelling it on him."

"Witness smelt wine on Dr. Sampson on the night in question; thought the Doctor had been out, and probably had taken an extra glass of wine; he talked well enough, and knew what he was about well enough. Witness thinks that if she had been sick that night and Dr. Sampson had prescribed for her, and made up the medicine for her, she would have no hesitation in taking the medicine."

"There is much more familiarity between Dr. Sampson and Reveille than between him and any other female Convicts. Witness cannot say if it has a bad effect on the discipline of the Prison."

"Dr. Sampson was very indulgent to Reveille at all times. Witness and Mrs. Pollard were instructed by him to humour Reveille in all her whims; expected that the Surgeon did so as a part of his treatment of the case, as a case of insanity."

But the worst feature in Mrs. Chase's deposition, when before the Inspectors, is not in what she there says, but what she omits to tell. One or two passages of her evidence before us, clear away every vestige on which a charge could be founded. She says:—"A little before ten in the evening, Dr. Sampson came to see Reveille again; he rang the bell of the women's apartment, and witness got up and let him in. When he came in, Dr. Sampson said, "how is Reveille?" Witness said, she thought she was better. Witness then walked on before the Surgeon to the small ward where Reveille was; the Surgeon went up to Reveille's bed, and witness stood close beside him the whole time he remained; the bed stood in the open ward, in front of, and close to the doors of three cells, but there were no women in them; in the three next cells there were Convicts, and in some or all of the six cells of the upper range; these Convicts must have heard all that passed, and some of them could see all that occurred. The Doctor said when he entered, "Well, you see, I have come all this way from town to see you again." Reveille said, "What a nice gentleman you are—you are so kind!"

"When the Doctor had got through, he left the ward, and witness went with him and locked the door. Dr. Sampson walked on while witness was locking the door, and when she came up to him at the foot of the stair, he was standing speaking to Mrs. Pollard. Witness thinks Dr. Sampson was not longer than five minutes in the ward where Reveille was, altogether."

"Dr. Yates has been the Surgeon of the Penitentiary for the last few months; Reveille is as unreasonable with him as she was with Dr. Sampson, but he does not humor her as Dr. Sampson did—he gives her the go-bye. Reveille is still treated as an insane person; she has a separate room and a nurse to wait on her, and has indulgencies which other Convicts have not."

The facts presented in this case seem to be as follows :—

A gentleman of high standing in society, of unimpeachable character, and of eminence in his profession, attends an insane patient late in the evening; he is met at the Prison door by the Assistant-matron, who conducts him to the bedside of his patient, remains close beside him during the whole of his visit, sees his every action, hears every word he utters, and, *five minutes in all having elapsed*, she conducts him out of the female ward. The lunatic exhibits some of the common freaks of her distemper; the Surgeon humours her in her mood; and on this a mysterious charge of "undue familiarity with a female Convict" is founded against him; a grave investigation into the circumstances is held; the conduct of the Surgeon is reported to Your Excellency; and a *fama* is spread far and wide against him, which might have been ruinous to his social peace and professional standing. The manner in which the whole proceedings are conducted, is also remarkable. A weak woman is induced to bring the matter up—not in an open manner against Dr. Sampson, but by a grave report against the lunatic for improper conduct towards the Surgeon—the Inspectors are then solemnly convened to investigate the freak of the mad woman, and in the course of it, the misconduct of Dr. Sampson comes to light "quite incidentally." When the Assistant-Matron tells her story, the Inspectors "form no opinion" as to whether her statements, if true, are sufficient to justify them in placing Dr. Sampson on trial, but they carefully minute the grave charge on the public records of the Prison (to which many persons have access), and thus ensure for it public notoriety.

The Inspectors refrain from calling directly on Dr. Sampson to defend himself, but they feel that they would not be "acting fairly" towards him did they not make him "aware of what had been stated;" and they accordingly resolve, "in justice to that officer, to acquaint him therewith, in case he may desire to make any statement regarding it, or to call for an investigation." Dr. Sampson neither desires to make any statement, nor calls for an investigation, but asks that two documents may be forwarded to Your Excellency. The Inspectors got his letter and reply to it, detailing with much precision the steps they have taken, and carefully impressing on the Surgeon how entirely they have been actuated by a regard to his "character and position" in what they have done; but the conclusion they arrive at is remarkable:—"As you have requested," they say, "that the matter (it was not the matter, but two specified papers Dr. Sampson requested) may be brought under the notice of the Governor General, the Board feel that you have a right to expect from them a full inquiry into the matter;" and they desire his attendance on 3rd March, "for the purpose of putting any questions or offering any observations you may consider necessary." Dr. Sampson attended, and declined "putting any questions, or offering any observations," but protested against any inquiry pending his appeal to Your Excellency. The Board considered Dr. Sampson's letter, and resolved, that notwithstanding his protest, "as the Surgeon had previously requested in his letter of the 26th ultimo, that the papers relating to the matter in question should be forwarded to the Governor General with as little delay as possible, the Board proceeded to take the examination, on oath, of the Matron and Assistant-Matron." The evidence of the Matrons is taken: Mrs. Pollard's being almost entirely as to what Mrs. Chase had told her, although she herself had been just examined. Mr. Hopkirk, in his examination before us, swears that this was "not a

trial of Dr. Sampson," and throughout he endeavours to maintain the same non-committal position as is held in the correspondence. But the Minute of the Inspectors of 3rd March says, the Board "specially met this day to take into consideration the verbal statements made on the 24th ultimo, by the Assistant-Matron in regard to the report on the misconduct of the Convict Elizabeth C. Reveille, so far as they are applicable to the Surgeon;" and the formal depositions, taken by the Board and signed by the President, are entitled "Copy of the evidence taken relative to the Assistant-Matron's allegation of undue familiarity of the Surgeon of the Provincial Penitentiary towards the Convict E. C. Reveille." The evidence, such as it is, however, was taken by the Inspectors, but it appears that when finished they are unable or unwilling to tell wherein it affects Dr. Sampson. Mr. Hopkirk gives the following evidence:—

Q. Is there anything affecting Dr. Sampson, as an officer of the Penitentiary, in the testimony of Mrs. Chase?

A. Yes; to a certain extent.

Q. What improper act does she state him to have been guilty of?

A. Refers to the whole testimony.

Q. Of what acts on the part of Dr. Sampson did the alleged "undue familiarity" consist?

A. The testimony is there, and speaks for itself."

The Inspectors transmitted the evidence they had taken for Your Excellency's information, assuring the Provincial Secretary, however, that they "have thought it advisable, pending the appeal to His Excellency, to come to no conclusion on the matter."

We cannot but view the proceedings of the Inspectors in this matter as highly improper; and this opinion is greatly strengthened by a knowledge of the differences which had existed for some months previous between the Warden and Inspectors, and the Surgeon. Dr. Sampson had brought on the investigation into the conduct of the Warden's son; he was urging a general investigation of the affairs of the Prison on the Government; he had appealed from the decision of the Inspectors, and was at issue with them on several points, among which was the sanity or insanity of the very subject of the alleged undue familiarity. The evidence and documents to which we have referred in this case were elicited in a preliminary examination into the facts. We came to the decision that Dr. Sampson was not chargeable with the slightest impropriety but had been deeply wronged in the matter, and we did not call on him for any defence.

##### 5. ATTENDING SICK CONVICTS WHEN NOT IN A PROPER STATE AS REGARDED HIS SOBRIETY.

This was one of the two charges which the Inspectors brought under our notice, but on which they declined to appear as complainants. When Mr. Hopkirk closed his case on the three charges preferred by the Board against the Surgeon, the following Minute was made:—"In reference to the second of the two above named charges, Mr. Hopkirk stated in answer to the Commissioners, that the witnesses in that matter, named to the Board, were Thomas Smith, E. Chase, Mary Pollard, the Warden, and Mrs. H. Smith, sen.; but that the Board had not taken up the matter."

We conceived it proper to make a preliminary inquiry into the truth of the allegation. The following is the evidence:—

Thomas Smith—By F. W. Smith :—

“ Has been sent for Dr. Sampson to attend Convicts at unusual hours; after the Prison was shut up: has taken him to the prison. Has brought Dr. Sampson twice to the Prison when he was intoxicated; he was not in a fit state to visit sick persons; had not to assist him out of the carriage; he fell down once.”

By Dr. Sampson :—

“ Cannot recollect the date when these two instances of intoxication occurred; cannot recollect the year; did not help Dr. Sampson into the carriage; gave this same evidence before to the Inspectors; gave it voluntarily on the trial of F. W. Smith.”

By Commissioners :—

“ Recollects only of Dr. Sampson being drunk twice; the first time he was not so drunk as he was the second time. There was a note sent by the Warden to the Surgeon that night; cannot say what hour it was, whether eight at night, or twelve, or four in the morning; it was in the fall of the year; the girl opened the door of the Doctor's house; sent in the Warden's note by the girl and waited till Surgeon came; cannot say how long it was before he came; when they got back to the Gate, witness drove through into the yard; does not know what Guard was at the gate; let the Doctor out opposite the North Wing. It is usual for the Surgeon to see the Warden when he goes to the Prison during the night; does not know if he saw him that night. Waited till Dr. Sampson was ready and then drove him home again; never mentioned the circumstance to any one until he mentioned it to the Inspectors. Witness cannot tell any more about the second instance than he can about the first; cannot say what time of the year it was; both times the vehicle witness went in was the buggy. Has been four years Messenger; during these four years witness has always gone for the Doctor, when he was wanted at night; sometimes he has been wanted very often, at others not so frequently. Dr. Sampson has been often unfit to attend the sick, but not so bad as on these two occasions; cannot say how often; would not swear that he had seen Dr. Sampson six times the worse of liquor; thinks he could swear to four times.”

Samuel Pegg—By Dr. Sampson :—

(Witness was Hospital-Assistant for two years previous to October, 1847.) “ Witness slept in the Hospital during the two years he was employed in it: always attended upon Dr. Sampson when he came through the night, during the two years; never saw Dr. Sampson the worse of liquor, at any time, in the Penitentiary; never heard of such a thing.”

Mrs. Chase—By Commissioners :—

“ Witness smelt wine on Dr. Sampson on the night in question; \* thought the Doctor had been out and probably had taken an extra glass of wine; he talked well enough, and knew what he was about well enough. Witness thinks that if she had been sick that night, and Dr. Sampson had prescribed for her and made up medicine for her, she would have

had no hesitation in taking the medicine. Never, at any other time, discovered on the Surgeon any appearance that he had been drinking wine or other liquor.”

Mrs. Pollard—By Commissioners :—

“ The Doctor was not drunk when visiting the Prison on the night in question; he was merry, as if he had taken an extra glass of wine; he talked quite coherently; he walked quite steady. Witness never would have discovered anything unusual about the Doctor that night, but for the merry mood he was in, and from smelling wine on him; thinks the Doctor was not exactly fit to administer medicine at the moment.”

\* \* \* \* \*

“ Witness has seen Dr. Sampson the worse of liquor on other nights; has seen him several times as bad as he was that night, probably not less than ten times; should think it was ten; never saw him in this condition in the day time; never saw him in that state after the 18th February. Witness cannot say how often Dr. Sampson came to the Prison at night from the 1st May, 1847, to 18th February, 1848; he did not come often; sometimes a month would elapse without his being there at night. Mrs. Chase always slept in the women's apartments; the Surgeon could not have been in the Prison during the night without Mrs. Chase knowing it. Witness sleeps in the Prison every second night; does not see the Surgeon when he comes on the other nights, as she sleeps at home. Dr. Sampson was not the worse of liquor every time he came to the women's apartments at night; witness thinks that on the ten times she has seen Dr. Sampson worse of liquor he was in an unfit state to administer medicine; judged that he was so from his colour, and from smelling drink on him; cannot particularize any night on which he was in this condition, except the one in question; never heard him noisy on any other night.”

Henry Smith, Esq., (Warden) having been called before us, made the following statement on oath :—  
“ One night, about three years ago, Dr. Sampson came to the Penitentiary about ten o'clock to see a Convict; when he had seen his patient he came to witness's apartments, and witness found he was much the worse of liquor; he cursed and swore, and said he would have nothing more to do with the Penitentiary. Had witness seen the Doctor before he went to the patient, he would have dissuaded him from doing so. Next morning Dr. Sampson called on witness, and said he presumed witness would report him for the affair of the previous night; and witness said he would not. Dr. Sampson said, the fact was, he had some friends, or a friend, to dine with him, and he had taken a glass too much; it was in the fall of the year. On the occasion of Frank Smith's trial, the Messenger, Thomas Smith, blurted out before the Inspectors, that he had brought the Surgeon several times to the Penitentiary when he (the Surgeon) was the worse for liquor; out of this circumstance the whole matter arose; witness had not, until then, mentioned the matter to any one.”

By Commissioners :—

“ Dr. Sampson does not come to the Penitentiary at night often; perhaps five or six times in a year; speaks only of the times Dr. Sampson is specially sent for; he comes sometimes at night without being sent for. Witness keeps the keys of the great gate after 9, P. M., and no one can enter or leave the

\* The 18th February—on which the Revelle matter occurred.

Prison after that hour without witness knowing of it; only recollects of giving the keys to admit Dr. Sampson on one occasion when the Surgeon was not sent for. Probably on one-half of the times Dr. Sampson has come to the Prison at night, witness has seen him. Never saw Dr. Sampson the worse of liquor at the Penitentiary on any other occasion than the one he has named."

Elizabeth Smith—By Commissioners :—

"Is wife of the Warden of the Penitentiary. Recollects seeing Dr. Sampson much the worse of liquor on two occasions; the second occasion was when her husband was present, about three years ago this winter; the first occasion was when the Seat of Government was in Kingston; Dr. Sampson came to see Convict Cooté on that occasion. Both occurrences were after 10 at night.

"Witness always knows when Dr. Sampson visits the Prison at night; he does not come often at night, perhaps six or eight times in the course of a year.

"On the two nights in question, Dr. Sampson was very violent, and swore about the Penitentiary. Dr. Sampson was witness's family Physician for twenty-six years; he has not been so for the last year. For the last thirteen years has seen Dr. Sampson almost daily; never saw him the worse of liquor in the day-time in her life; never saw him in that state at night, except these two cases referred to. Witness thought nothing of these two occurrences, having come to her knowledge in so long a space."

Thomas W. Robinson, Esq.—By Commissioners :—

"Has been on terms of intimacy with Dr. Sampson since 1826." \* \* \* "Dr. Sampson is not a man of intemperate habits; he takes a glass of wine, like other men, in moderation after dinner, but never touches liquor before dinner. Witness has never seen him in an unfit state to do business; never knew him to visit a patient in an unfit state to administer to the sick—feels confident that Dr. Sampson would not do so."

The foregoing is all the evidence on this charge, and we only introduce it in justice to Dr. Sampson. We find nothing in it to affect the character of the Surgeon in the slightest degree, and we did not call on him for any defence.

The evidence of Mrs. Pollard, on this case, is far from satisfactory. She swore before the Inspectors that "he was very much the worse of liquor" on the night of the 18th February, and "not in a fit state to visit" as a Surgeon. Before us, she testified that she "would never have discovered anything unusual about the Doctor that night, but for the merry mood he was in, and from smelling wine on him;" he "was merry, as if he had taken an extra glass of wine; he talked quite coherently." Afterwards she testifies that she "has seen him several times, as bad as he was that night; probably not less than ten times; should think it was ten; never saw him in

this condition in the day time; never saw him in that state after 18th February." The Warden, however, testifies that the Surgeon comes to the Penitentiary at night, "perhaps five or six times in a year," and that he could not get admission without his (the Warden's) knowledge. Mrs. Smith says, he comes "perhaps six or eight times in the course of a year." Mrs. Pollard came to the Penitentiary in May, 1847, from which date to 18th February, 1848, there were nine and a half months; the Surgeon's visits in that space would at most be six or seven to all the prisoners, male and female—the females not being a tithe of the whole number—and as Mrs. Pollard was absent from the Prison every second night, it is impossible to conceive how her statement could be true.

We have thus laid before Your Excellency the result of our inquiries into the case of Dr. Sampson; and, in our opinion, he stands fully acquitted of every charge preferred against him. We are satisfied that the Surgeon has efficiently performed his duty as an officer of the Prison, and that the Convicts have been treated by him with humanity and attention. The following evidence of Dr. Sampson's standing in his profession was given before us:

Thomas W. Robinson, Esq., M. D. :—"Has been on intimate terms with Dr. Sampson since 1826. As a Physician, witness believes Dr. Sampson stands as high as any medical man in the country; he enjoys a very extensive practice in the City and neighbourhood of Kingston."

John Stewart, Esq., M. D. :—"Has known Dr. Sampson for the last seven years. Dr. Sampson stands at the head of the Profession in the City of Kingston; he has a very extensive practice."

Horatio Yates, Esq., M. D. :—"Has known Dr. Sampson for fifteen years, was apprentice to him. He is considered the leading Physician of Kingston and neighbourhood. Dr. Sampson has a very good practice."

## FINANCIAL POSITION OF THE PENITENTIARY.

Having laid before Your Excellency the result of our inquiries into the conduct of the Officers of the Penitentiary, and shown, incidentally, the manner in which the different departments have been administered; we now propose to bring under the notice of Your Excellency the general Financial Results, which the affairs of the Penitentiary exhibit.

The following table shows the money received into the Penitentiary Treasury, and disbursed for the support of the prisoners, and in the erection of buildings:—

CASH RECEIVED FROM

	Provincial Government.			Military Chest.			Labour and Materials.			Sundries.			Total.		
	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
Building Commissioners .....	12500	0	0										12500	0	0
1835.....	2029	16	6						27	2	9		2050	18	9
1836.....	2160	0	0				81	5	1	32	12	2	2279	17	3
1837.....	8840	0	0				304	3	3	60	12	4	9204	15	7
1838.....	5000	0	0				137	7	9	65	0	0	5202	7	9
1839.....	6000	0	0				1271	8	2	87	7	0	7358	15	2
1840.....	6000	0	0				1100	16	0	166	19	0	7267	15	0
1841.....	3800	0	0				1721	13	4	44	19	8	5566	19	0
1842.....	8771	0	0	7	12	0	1335	12	11	7	17	6	10122	2	5
1843.....	7025	12	7	416	16	1	1429	4	2	6	15	7	8878	8	5
1844.....	7166	13	5	299	3	11	807	14	6	46	10	3	8320	2	1
1845.....	15156	4	5	602	11	1	938	8	2	31	3	9	16728	7	5
1846.....	15078	10	9	540	15	8	633	18	5	61	18	5	16315	9	3
1847.....	13853	13	4	479	14	6	598	10	4	66	6	9	14998	4	11
1848.....	15012	1	8	417	9	11	871	10	7	135	19	6	16437	1	8
	£128387	12	8	2764	3	2	11231	12	8	841	4	2	143224	12	8

Which has been expended in the following manner:—

	£	s.	d.
Buildings.....	41169	10	1
Salaries.....	41378	15	9
Provisions.....	24806	5	5
Clothing and Bedding.....	12904	1	2
Fuel.....	6622	9	7
Stable.....	4363	12	4
Oil and Candles.....	2009	13	10
Hospital.....	1656	8	3
Furniture and Tools.....	2210	9	2
Contingencies.....	1203	2	3
Rope-work.....	1954	12	8
Paid to discharged Convicts.....	1251	10	11
Error.....	0	1	8
Cash on hand, 30th September, 1848.....	1699	19	7
	£143224	12	8

In the 13 years and 4 months over which these tables extend, there has been expended for Food, Clothing and Bedding of the Convicts, £37,710 6s. 7d.: the outstanding debt at the close of the statement being about equal to the value of the stock on hand. From the manner in which the books have been kept, it is impossible to state the exact sum which the daily support of the prisoners has cost in each year, but on an average of the whole 13 years it appears that the expense of providing each Convict with Food, Clothing and Bedding, has been annually, £11 6s. 7½d. or 7½d. per day.

In addition to this, during the same period, the general expenses of management, including Salaries, Hospitals, &c., have been £56,116 0s. 7d., being £16 17s. 2d. per annum for each Convict, or 11d. currency per day. The current expenses of the Penitentiary have therefore been 1s. 6½d. currency per day, for each Convict.

The number of days' labour obtained from the Convicts since the opening of the Prison, the Warden has returned as follows:—

RETURN OF CONVICT LABOUR.—NUMBER OF DAYS.

	Shoemakers.	Stone Cutters, Masons, &c.	Blacksmiths.	Carpenters.	Quarry Men.	Labourers.	Seamstresses.	Tailors.	Cooks.	Work on hire.	TOTAL.
1835.....	21	318	133	179	53	579	69	118	129		1599
1836.....	825	3533	1089	1858	1161	6939	857	948	1402		18612
1837.....	1234	5761	3078	3434	1211	13323	2161	946	730		31928
1838.....	920	9743	3085	4818	1741	16187	2353	1166	1040	1767	42820
1839.....	758	6392	2214	4562	1524	19463	2619	1040	1040	6797	46409
1840.....	895	5769	2611	5123	1776	16225	2444	1288	1044	7705	44885
1841.....	1167	6317	2421	4022	1922	19430	4418	1464	1042	6419	48622
1842.....	1070	7374	3244	3446	1827	17686	3304	1693	677	5532	45853
1843.....	2060	13433	3695	4711	3142	36674	2574	2474	678	3869	73310
1844.....	2818	25724	5951	6678	2412	44924	4325	3463	679	2597	99571
1845.....	4137	36395	7189	6925	2817	55749	7343	4602	677	1568	127402
1846.....	5133	40493	7804	8861	2907	85007	8579	5029	677	1434	165924
1847.....	4360	40217	7576	9323	1729	52280	8207	4445	677	1387	130206
1848 *											141520
											1018661

\* The Returns for 1848 have not yet been made up, but we take the labour at the average of the previous four years.

It appears, by this Return, that 1,018,661 days labour have been obtained from the Convicts since the Prison was opened; only 42,000 days of this large amount have been applied to productive work, the whole of the remainder having been employed on the Buildings, or in the unproductive occupations of

the Penitentiary. The Warden makes a Return to Government annually of the value of the work performed in the Penitentiary during the past year. From these Returns we make up the following Table :—

RETURN—SHEWING THE VALUE OF CONVICT LABOUR.

	Prison Work.			Productive Work.			Total.		
	£	s.	d.	£	s.	d.	£	s.	d.
1835.....	234	13	0	.....	.....	.....	234	13	0
1836.....	2622	13	0	185	15	5	2808	8	5
1837.....	4285	12	8	263	1	8	4548	14	4
1838.....	5737	8	0	214	17	1	5952	5	1
1839.....	5012	15	2	1086	19	0	6099	14	2
1840.....	4522	10	7	1328	12	0	5851	2	7
1841.....	5437	7	5	556	18	6	5994	0	11
1842.....	5931	13	9	527	8	10	6459	2	7
1843.....	9531	13	7	496	12	7	10028	6	2
1844.....	14287	6	4	470	14	9	14758	1	1
1845.....	17725	13	2	352	13	9	18078	6	11
1846.....	22180	14	7	321	4	11	22501	19	6
1847.....	18702	14	0	313	9	4	19016	3	4
1848 *.....	.....	.....	.....	.....	.....	.....	19737	3	1
							£142068	1	2

\* Average of previous years.

We have shown that up to 30th September, 1848, the Provincial Government had advanced £128,387 12s. 8d. towards the maintenance of the Penitentiary; and since that date, £6,250 has been further advanced, which paid off the debts of the Institution up to 31st Dec. 1848, making in all £134,637 12 8

There was also received from the Military Chest, for Military Convicts, £2,764 3s. 2d.; and since then, from the same source, £127 11s. 1d.....Total 2,891 14 3  
 Received from labor, in cash..... 6,118 2 10  
 Received from Sundries, say..... 500 0 0

Total Cash assistance towards the erection and maintenance of the Penitentiary.....£144,147 9 9

Of this sum, £93,826 7s. 2d. had been paid up to 30th September, 1848, for the current expenses of the Institution, and about £4,000 has been paid since. The balance, or £46,321 2s. 7d., and Convict labour to the amount of £135,949 18s. 4d.—total, £182,271 0s. 11d., have to be accounted for.

To meet this large sum, there are the Prison Lot and Buildings, the stock of tools, materials, furniture, &c., and the debts due to the Institution. The Stock was valued in Oct. 1847, at £11,520 10 11

The Debts due to the Prison were stated then at..... 427 12 10  
 The Buildings were valued by Messrs. Horsey & Cull, as at 1st January, 1848, to be worth 113,998 18 9  
 And to this must be added the value of the work done in 1848, say... 15,000 0 0  
 Total assets.....£140,947 2 6

It is evident that the pecuniary result from the operations of the Prison, depends on the value of the buildings. Taking Mr. Warden Smith's own estimate of the value of the Convict labor, we have shown that there should be property on hand to the amount of £182,271 0s. 11d.; but the valuation of

Messrs. Horsey & Cull, made at the instance of the Warden and Inspectors, shows only £140,947 2s. 6d. If the data were correct, therefore, there would be a short-coming of £41,323 18s. 5d.

But we are fully convinced that the ground-work on which this calculation is founded, is far from correct. We are satisfied that the valuation put on the Convict labor by the Warden has been altogether imaginary, and that the estimate of Messrs. Horsey & Cull is far above the true value of the property.

Mr. Smith's annual returns to Government represent the Convicts to have produced 2s. 9d. per day, for each prisoner who has been at work since the Institution was opened—a rate almost double the returns of the best conducted Penitentiaries in the United States—and the returns of the Warden bear internal evidence of the incorrect manner in which they have been made up. For instance, in 1846, he returns 165,924 as the number of days' labor obtained from the Convicts during that year; but had every man, woman, and child in the prison been at work every day in the year, they could only have made 148,969 days among them.

As to Messrs. Horsey & Cull's estimate of the value of the buildings, we are convinced it is equally erroneous. The original estimate of the buildings, made by Messrs. Powers & Mills, was £56,850; and as the plan has not been very materially altered, we were at a loss to understand how so large a valuation could be put upon them, while still far from completed. We accordingly applied to Mr. Warden Smith for the particulars of Messrs. Horsey & Cull's estimate, and were furnished with the following document :—

PROVINCIAL PENITENTIARY.

Report of a Survey and Valuation of the Excavations, Embankments, Drains, Sewers, Cut Stone, Masonry, Plastering, Brickwork, Carpenter's work, Flagging, Ironwork, including iron-gratings, iron-doors, clamps, and all other ironwork, with every other description of work

done in the Provincial Penitentiary, in the Midland District, which is at present ascertainable, up to 31st of December, 1847. Made by order of the Inspectors, by James Cull, Civil Engineer, and Edward Horsey, Architect, &c.:-

**EXCAVATION.**

Excavation of rock and earth at the north front, east front, within the walled gardens; for drains outside the Prison wall, drains inside the Prison wall, at the south-east corner, in the north road, inside the yard, foundations of stable, dungpit, for the towers, lodges, boundary walls, the four wings, with their foundations; do. of work-shops, garden walls, &c. &c. ....£

**EMBANKMENT.**

Outside the wall, on the south front; do. do. on the west front; do. do. in formation of wharfs; do. in the gardens; together with all other embankments, &c. &c. .... 18,339 17 11

In obtaining an admeasurement of the rock-excitation, great pains have been taken to ascertain the character of the original site, not only by making inquiries of persons who were locally acquainted with it, but by taking profiles of the adjoining land, in which no change has been made, and also by making sections for ascertaining the same.

Some of these excavations have been made in solid rock, at a depth exceeding 15 feet.

The valuers have had considerable difficulty in ascertaining the relative proportions between the earth and rock excavations; they, however, have satisfied themselves that their estimate is below rather than above the actual quantity of rock.

**SEWERS, DRAINS, AND CESS-POOLS.**

Drain leading from north wing, including cess-pool, to the river; do. from the women's apartment, with cess-pool; do. from the cellar; do. running south-west; do. from the smith's forge; main new sewer leading from the new hospital, east wing, &c., and which has been excavated 23 feet deep. .... 2,141 6 0

**CUT-STONE.**

In belt-courses, window-sills, upstarts, cornices, copings, bases to pilasters, door-sills, chimneys, column-blocks, frosted do., lintels, angles of cells, arch-stones, cut gutters, steps, anchor-stones, ventilators, safe in Warden's office; in all the various fronts of the respective buildings, with a vast variety of items in different parts of the buildings, &c., in arch-stones, fire-places, date-stones, bulls-eyes, impost-stones, arch'd pannel-stones, corbell-stones, pilasters, stove-pipe stones, bases, rustic quoins, frontispieces, &c. &c. .... 16,839 18 3

Carried forward.....£37,321 1 2

Brought forward.....£37,321 1 2

**HEAVY COURSE WORK.**

In the various wings of the respective buildings, in the wharfs, bridges over which the road passes to Portsmouth, &c. &c. .... 11,153 13 6

**AXE-STONE WORK.**

In the four wings, chimneys, gables, garden walls, &c. &c. .... 3,584 4 10

**RUBBLE MASONRY.**

In the four wings, foundations of cells, cess-pools, cellars, centre walls, foundations, boundary walls, &c. &c. .... 21,785 13 11

**LEAD.**

In cisterns, conductors, flashings, in the lodges, carpenter's shops, fixing anchors, cramps, hooks and hinges, gutters to iron ties, bolts, hold-fasts, &c. &c. .... 956 10 11

**CARPENTER'S AND JOINER'S WORK.**

In roofs of the buildings, with new work-shops, landings of the various stairs, with the stairs, window-sashes throughout the building, including the glazing and painting, &c., flooring and joisting, lintels and batten-doors, steps to cellar, heavy doors, pannel doors, linings, with hinges, fastenings, &c., rough board partitions, skirting of various depths and dimensions, grooved and tongued partitions, pulpit and stairs, hatchways, chimney-pieces, cupboards, fence round women's yard, temporary buildings in do., women's cells, with steps, landing, &c., staircases, with railing, glass doors, deafening to floors, shelving to store-rooms, columns with entablature, architraves, office partitions, with closet doors and frames, bracketing, and all other carpenter's work throughout, &c. &c. .... 11,432 16 6

**IRONWORK.**

In iron-gratings inside and outside, iron-doors, wall-hooks and eyes, round newels in the corridors, wrought iron anchors, brackets, cast-iron anchors, hand-railing, tie-irons to cells, hinges, locks, door-levers, with lead for fastenings, cramps to coping, scrapers, knockers, hold-fasts, bolts, &c. &c. .... 16,839 4 11

**PLASTERING.**

In the various wings and passages, dining hall, store-rooms, Warden's apartments, offices, including all the cornices and whitewashings, &c. &c. .... 3,235 18 6

**FLAGGING.**

In bouchard flagging, in south wing; do. do. east wing; do. do. west wing, do. do. north wing; do. do.

Carried forward.....£106,309 4 3

Brought forward.....£106,309 4 3  
 new work-shops, as well as through-  
 out the building..... 3,820 10 6

**BRICK-WORK.**

In passages between cells, division-  
 walls, haunches, partition-arches,  
 do. walls, in Warden's apartments,  
 in ovens, fire-places, chimneys, and  
 all other brick-work, &c..... 3,869 4 0

Total.....£113,998 18 9

We have given the foregoing valuation our best and most patient investigation, and shall be prepared if necessity requires, to substantiate every item. The principle on which we have estimated both the quantities and the prices, has been that on which we should have acted, had we been employed between two private individuals. We are aware that in case the work had been done by contract, the contractor must have added a considerable per centage, as a sett off for detentions and interruptions, which would have been inevitable from the regulations for the safe custody of the prisoners; we have made no addition to the value of the work on this score.

We think it right to say, that in addition to those now standing, there must, of necessity, have been a large expenditure in other temporary buildings, fences, and means adopted to prevent the escape of the prisoners, which do not now exist, and on which we have set no value; and the same remark applies to the removal of rock and earth from one place to another, contingent on the necessity of keeping within the boundary walls; the temporary work-shops, &c. now standing we have not included in our valuation.

The workmanship throughout the Prison is of the most substantial nature, and cannot be excelled for strength and durability either on the continent of North America or in England.

We have not included, in the foregoing valuation, the following items, viz:—

- The fixtures throughout the establishment.
  - The tools or working apparatus in the workshops.
  - The prepared stone or other material on the premises.
  - The temporary fences around the premises.
- All which is respectfully submitted.

(Signed,) JAMES CULL,  
 Civil Engineer, &c.  
 EDWARD HORSEY,  
 Builder, &c.

KINGSTON, March 18, 1848.

From this document we were unable to gather any proof of the correctness of the valuation put on the buildings; we therefore requested Mr. Horsey to furnish us with the measurements and prices of the different items of the estimate. Mr. Horsey informed us that he had the means of furnishing such a statement, but that it was not the custom of the profession to give anything more than Mr. Cull and he had submitted to the Inspectors; and he declined acceding to our request.

After some delay, we addressed the Warden on the subject, when the following correspondence ensued:—

No. 1.

Copy.—Letter, Secretary to Warden.

“ Provincial Penitentiary  
 “ Commission Room,  
 “ Kingston, 6th January, 1849.

“ Sir,

“ Early in 1848, Messrs Cull and Horsey made a valuation of the Penitentiary buildings and works as at 31st December, 1847, by order of the Inspectors; the gross value of the different kinds of work was given, but no details. The Commissioners wish to obtain the original calculations on which such estimate was founded, showing the measurements of the different kinds of work in the several parts of the buildings, and the price put on the work and materials, and will thank you to apply to Mr. Horsey for the same.

“ I have the honor, &c.,

(Signed,) “ GEO. BROWN,  
 “ Secretary.

“ D. Æ. M'DONELL, Esq.,  
 “ Warden,  
 “ Provincial Penitentiary.”

No. 2.

Copy.—Letter, Warden to Secretary.

“ Provincial Penitentiary,  
 “ 8th January, 1849.

“ Sir,

“ I have to inform you that in compliance with the instructions of the Board of the 6th instant, I have communicated with Mr. Horsey (Master-Builder), and in reply beg leave to submit a copy of his communication of the 7th instant, for the information of the Commissioners.”

“ I have the honour to be, Sir,  
 “ Your obedient  
 “ Humble Servant,

(Signed,) “ D. Æ. M'DONELL,  
 “ Warden, P. P.

“ To G. BROWN, Esq.,  
 “ Secretary Commissioners,  
 “ Provincial Penitentiary.”

No. 3.

Copy.—Letter, Mr. Horsey to Warden.

“ Kingston, January 7, 1849.

“ Sir,

“ I beg to acknowledge the receipt of your letter of yesterday's date, respecting the original calculations upon which the estimates of the work performed at the Penitentiary, from its commencement until the end of the year 1847, were founded.

“ The book, in which these calculations were entered in, unfortunately is lost or mislaid, as I have already informed the Commissioners.

“ I have, however, several rough memorandums which can be furnished, should the Commissioners

require them, and which may be serviceable, as from these documents the statements in the book were copied.

" I remain, your obedient  
" Humble Servant,

(Signed,) " EDWD. HORSEY,  
Provincial Penit'y.

" D. Æ. M'DONELL, Esq.,  
" Warden,  
" Provincial Penitentiary."

No. 4.

Copy.—Letter, Secretary to Warden.

" Provincial Penitentiary  
" Commission Room,  
Kingston, 8th January, 1849.

" Sir,

" I am in receipt of your letter of this date, and have laid it before the Commissioners.

" I am desired to express to you the astonishment with which they have heard that Mr. Horsey asserts he has lost the original estimate of the Penitentiary buildings, and that he had already informed the Commissioners of that fact. Mr. Horsey, when before the Commissioners, informed them that he had full details of the calculations on which the estimate was founded, but that he declined to give them up for the use of the Commission.

" The Commissioners will, however, thank you to obtain from Mr. Horsey whatever documents, relating to the estimate, he has in his possession.

I remain, &c.,

(Signed,) " GEO. BROWN,  
" Secretary.

" D. Æ. M'DONELL, Esq.,  
" Warden,  
" Provincial Penitentiary.

No. 5.

Copy.—Letter, Warden to Secretary.

" Provincial Penitentiary,  
" January 9, 1849.

" Sir,

" The accompanying package has been forwarded to me by Mr. Horsey, which he states contains the calculations upon which were founded the estimate of work at the Penitentiary, to the end of the year 1847.

" I enclose, for your information, Mr. Horsey's communication on forwarding the package, which you can return.

" I have the honor to be, Sir,  
" Your obedient humble Servant,

(Signed,) " D. Æ. M'DONELL,  
" Warden, P. P.

" G. BROWN, Esq.,  
" Secretary,  
" Provincial Penit'y. Com."

No. 6.

Copy.—Letter, Mr. Horsey to Warden.

" Kingston, 8th January, 1849.

" Sir,

" I have received your letter of this date, in which you state the Commissioners have expressed their astonishment that the records of the calculations upon which the estimate of the works performed at the Penitentiary, from its commencement until the end of the year 1847, were founded, had been lost; and requesting that I should submit, for their information, such documents as were in my possession respecting the same. And I have, therefore, now sent the undermentioned relative thereto, viz. :—

10 Memorandum Books,  
13 Pieces of Paper,

Which I request may be returned to me as soon as possible after they have been examined. With regard to the astonishment expressed by the Commissioners relative to the loss of the Book into which the above documents were copied; I would remark that the Book was in my possession when I was first examined before the Commissioners, and that when I was examined afterwards, in the presence of Mr. Smith, I stated that a Book had been taken from my office, which was the one in question.

" I remain,  
" Yours respectfully,

(Signed,) " EDWD. HORSEY,  
" Master-Builder,  
" Provincial Penitentiary."

" To D. Æ. M'DONELL, Esq.,  
" Warden,  
" Provincial Penitentiary."

The memoranda sent us, we found to be utterly unintelligible; and when afterwards put into Mr. Horsey's own hands, he could furnish us with no information from them.

We conceived it requisite to obtain some explanation from Mr. Horsey as to the disappearance of the particulars of his estimate, and also such information as to the measurements and prices as he could furnish from personal knowledge. He was accordingly summoned before us on 27th February, when he gave the following evidence :—

" Is Architect and Master-builder of the Penitentiary. Certain memoranda, from which the estimate of the Penitentiary Buildings was compiled by Messrs. Cull and Horsey, are put into the hands of witness; also, the formal estimate submitted by them to the Inspectors.

Q. Are these the only documents you have to show the particulars of your estimate?

A. They are.

Q. Had you at any time other documents?

A. Yes.

Q. What were they?

A. The detailed particulars in a Book.

Q. What has become of that Book?

A. Does not know. About a week or ten days after witness was first examined by the Commissioners on this subject, he brought the book from home to the Penitentiary, and had it in his office; it was stolen from the office about a week or ten days after it was brought to the Penitentiary.

Q. Do you suspect any one of having taken it?

A. Does not.

Q. Is there a lock and key on your office door?

A. There is; had the lock changed immediately after this circumstance.

Q. Your office is in the north wing, which is devoted exclusively to the Hospital, women's apartments, the office, and the Warden's private apartments, is it not?

A. Yes.

Q. Have any Convicts or Officers resort to that part of the Prison at night?

A. Cannot say.

Q. Can you say, from the Memoranda in your possession, how many yards of earth-excitation, removed to the distance of a quarter of a mile, there were in your estimate?

A. No.

Q. Can you say how much you estimated for such work, per yard?

A. Cannot charge his memory, and has no means of telling.

Q. Can you say at how much you valued rock-excitation, carried the same distance, and how much there was of such work?

A. Cannot tell; all the rock-excitation was estimated at so much a yard for quarrying, and so much for carrying outside the wall; the cost of carrying out all the stone got out of the site was charged for.

Q. Did your calculation of the masonry show the value of the rough stone, and of the labour put on it, or did it include both under one sum?

A. Sometimes in one way, and sometimes in the other.

Q. How did you do as to Rubble Masonry?

A. It was charged by the toise, including labour.

Q. At what rate did you value it?

A. Cannot exactly say, but thinks it was 45s. per toise, all over.

Q. How much was there of it?

A. Cannot say.

Q. Can you tell how many feet there were of Masonry, one side faced with picked coursing; or at what rate you estimated such work, per toise?

A. Cannot tell either the quantity or price.

Q. Can you of two-sided face with picked coursing?

A. Cannot tell.

Q. Can you Bouchard Ashlaer-work?

A. Does not recollect.

Q. Can you of Tooled Masonry?

A. Cannot tell.

Q. How much did you value plastering, at per yard, for two coats?

A. Cannot tell.

Q. Can you for three coats?

A. No.

Q. Can you tell how much axe-ashlaer work there was, and what price you rated it at?

A. No.

Q. Can you tell how much, per yard, you charged for excavating the Drain, and how many yards there were of such work?

A. No.

Q. Can you tell how much, per square, you valued the carpenter-work of the roofs at, or how many squares there were of such work?

A. No.

Q. Can you tell the quantity or price of sheeting, per square?

A. No.

Q. Can you of shingling, per square?

A. No.

Q. Can you of one and a half-inch flooring, best quality, per square?

A. No.

Q. Can you tell the weight of the gratings to windows and doors of cells, or at what rate, per pound, you valued them?

A. Cannot tell either; but thinks the heavy iron work was taken, overhead, at from 6d. to 7½d. per pound.

Q. Can you tell the weight or price, you put on levers or cell-doors?

A. Cannot say.

Q. Can you tell the value you put on cell-locks?

A. No.

The unexplained disappearance of so many important documents is far from satisfactory.

Mr. Coverdale, who has been Architect and Master-Builder during nearly the whole of the Prison's existence, says—his "impression is that the present buildings might have been built for 30 per cent. less, by contract;" and from all we have seen and learned on the subject, we are satisfied that Mr. Coverdale still much over-values the work. On one item of Messrs. Horsey and Cull's Estimate—the Ironwork—there has evidently been a great over-

charge. There is a large quantity of heavy iron work in the Penitentiary, on which very little labour was required; this appears to have been estimated chiefly at 7½d. per pound, but none lower than 6d. per pound. We have ascertained that such work can be got by contract in Kingston, for 4d. to 4½d. per pound. The iron work, in the estimate of Messrs. Horsey and Cull, amounts to £16,839 4s. 11d., and consists chiefly of the articles we refer to.

We are satisfied that there has been great waste of labour in the Penitentiary; and that, from the mismanagement in this department, had the buildings been erected by contract, and the labour of the Convicts hired to Contractors for manufacturing purposes, many thousands of pounds would have been saved to the Province.

We have now laid before Your Excellency the result of our labours in the first branch of the Inquiry committed to us by Your Excellency, viz. :— The past management of the Penitentiary.

We are at present engaged preparing suggestions for the future conduct of the Institution, which we will have the honour, on an early day, to submit to Your Excellency as our final Report.

All which is respectfully submitted.

ADAM FERGUSSON,  
N. AMIOT,  
E. CARTWRIGHT THOMAS,  
W. BRISTOW,  
GEO. BROWN.

Commissioners.

Montreal, 16th March, 1849.

# SECOND REPORT

OF THE

## COMMISSIONERS

OF THE

# PENITENTIARY INQUIRY.

Provincial Penitentiary  
Commission Room,  
Montreal, 16th April, 1849.

Sir,

I have the honour to send herewith, the Second and Final Report of the Commissioners appointed to inquire into the Condition and Management of the Provincial Penitentiary.

I have the honour to be,  
Sir,

Your most obedient Servant,

GEO. BROWN,  
Secretary.

Honourable JAMES LESLIE,  
Provincial Secretary.

To His Excellency JAMES, Earl of ELGIN and KINCARDINE, Knight of the most Ancient and most Noble Order of the Thistle, Governor General of British North America, and Captain General and Governor in Chief in and over the Provinces of Canada, Nova Scotia, New Brunswick, and the Island of Prince Edward, and Vice-Admiral of the same, &c. &c.

May it please Your Excellency :

With sincere pleasure, we turn from the topics which occupy our first report, to the far more agreeable subject of those improvements on our Penitentiary system which the increased light thrown, of late years, on the interesting question of prison discipline throughout the world, and the personal knowledge of the subject we have acquired, may enable us to suggest for Your Excellency's consideration.

The vast number of human beings annually committed to prison in every civilized country, and the reflection that there they may receive fresh lessons in vice or be led into the path of virtue—that, after a brief space, they are to be thrown back on their old habits, more deeply versed than before in the mysteries of crime, or returned to society with new feelings, industrious habits, and good resolutions for the future—must ever render the management of penal Institutions a study of deep importance for the Statesman as well as the Philanthropist.

The time has been when the Prison was regarded as a mere place of punishment, when fear was deemed the only passion by which prisoners could be swayed, and the law of terror the only rule of discipline; when a discharged Convict, no matter what his crime, was shunned as the leper, and driven by the cold, un pitying cruelty of his fellow-beings to despair,

too often sought revenge by plunging into the lowest abyss of guilt. But the labours of the great and good men who have devoted their lives to the cause of the out-cast of society, have not been fruitless; public attention has been gradually awakened to the errors of the prevailing systems of prison discipline, and great ameliorations have been effected. The dungeon gave way to the well regulated apartment—healthful labour has replaced vicious idleness—and now the general aim is to find in what manner the security of the public, the prevention of crime, and the reformation of the criminal can be best obtained without the appearance of revenge. And when it is considered that a large proportion of the inmates of prisons are the victims of circumstances; that many are condemned for the first act of crime, and many more for the act of a moment of passion or intemperance; and that the great majority of prisoners have been born and reared in ignorance of everything but vice—how strong is the claim on a Christian people to see well that their prisons shall not become the moral tomb of those who enter them, but rather schools where the ignorant are enlightened and the repentant strengthened—in which expiation for crime is not lost sight of, but the permanent moral reform of the Convict is the chief aim.

In Canada, while the history of our prisons does not furnish the tales of horror, which those of Europe have so often unfolded, little progress has been made towards introducing the ameliorations and improvements which the wisdom and philanthropy of other countries have tested and approved. The juvenile offender is yet confined with the hoary-headed evildoer—we have as yet no asylum by which the child of vice and ignorance may be stopped and rescued on his first entry upon the path of crime—in our common gaols the erring youth and the hardened offender, the innocent and the guilty, those committed for trial and those actually convicted, are too often found herded together in one apartment. We have but one penal Institution of which the aim is reformation, and the little success which has as yet attended its operations, it has been our painful duty to disclose.

At a very early stage of our inquiries, we became convinced that the discipline and management of the Kingston Penitentiary were susceptible of much improvement; our attention was consequently earnestly turned towards the reformatory systems in operation in other countries, with a view to culling the best portions of each and adapting them to the condition and requirements of our own land. The subject opened up for our consideration numerous points of greater or less importance; and notwithstanding our access to many valuable works and reports on prison discipline, we found that our task could not be efficiently executed without personal inspection of some of the best penal institutions of the neighbouring States. We accordingly, despatched two members of the Commission, Messrs. Bristow and Brown, on

6th November, to fulfil this mission. They were absent until the 10th December, having in the interval, visited the Penitentiaries of seven States.

### DEPUTATION TO THE UNITED STATES.

The deputation proceeded by Montreal and Lake Champlain to Albany, where they inspected the new Albany County Penitentiary. This Institution is under the superintendence of Mr. Pillsbury, who was for many years Warden of the Wethersfield Penitentiary; it is not yet in full operation. It is a very handsome building, occupying a fine site about two miles from the city, and is fitted up with many of the modern improvements in Prison building. It is to be conducted on the Auburn or Congregated system, and the labour department will be regulated as in the State Prisons. It is a great step in advance to have a County Gaol, built and conducted on so improved a scale.

From Albany, Messrs. Bristow and Brown proceeded to Boston, where they had the pleasure of meeting many gentlemen well known in connection with the subject of Prison discipline; and from whom they received much valuable information. The merits of the Congregate and Separate systems have been keenly discussed in Boston, both systems having advocates of much ability and influence. There is a Prison Discipline Society in the city, which has been in existence more than twenty years, and from which a report annually emanates, throwing much light on the subject. The Rev. Louis Dwight is the secretary of the society, and his whole time is devoted to the duties of his office. This society throws its weight in favour of the Congregate system, and the State Prison of Massachusetts is conducted on that principle; but there are many eminent citizens of the state in favour of the Separate system, and who long for its introduction into the Eastern States.

The Massachusetts Penitentiary is at Charlestown, about two miles from Boston; it is, as we have said, on the Congregate system, and has been under the superintendence of Frederick Robinson, Esq., since 1843. The spirit in which this gentleman entered on the duties of his office, may be gathered from the following extract taken from his first annual Report:—

“I came here with the most liberal views concerning the human race, with a heart of kindness towards all men. I have long looked upon a man as a man, whether he be the occupant of a Palace or a Prison, and in whatever situation he may be; entitled to human sympathy, kindness, and respect. He is my brother, wherever he may be, whatever of crime or wrong he may have been tempted to commit. The more he has erred and strayed from the path of right and virtue, the more he is to be pitied, and the louder is his call upon our commiseration, our sympathy for his sufferings, and our efforts for his reformation; for his restoration to rectitude, to usefulness and happiness. We are all liable to fall into temptation; if it were not so, we should not have all been taught to beseech our Father in Heaven to ‘lead us not into temptation.’ I felt my own frailties and imperfections, and was resolved to do by others as I should wish to be done by, if I were in their situation. It seemed to me, therefore, in entering upon the duties of this office, if I

“erred at all, I should prefer rather to err on the side of kindness, clemency, and humanity, than on that of severity of punishments.”

Mr. Robinson's views may be treated as enthusiastic and impracticable; but there can be no doubt that he holds them honestly, and he has for six years consistently carried them out in his management of the Prison. Talking among the prisoners is forbidden, but silence is not enforced as in other Congregate Prisons, and smiling and looking at strangers are not forbidden. The Convicts are likewise allowed many privileges not afforded in other Penitentiaries; they are allowed to see their friends more frequently, and to receive letters and presents from them; they have a debating society on the Thursday evening of every second week; their hair is allowed to grow; they get a suit of clothes for use on Sundays, better than their week-day apparel; and they have instruments and music-books for the use of a choir at chapel, formed from among themselves. The great aim of the system is to raise the self-esteem of the Convict, to rouse his ambition, and to prove to him the beneficial results of morality and industry. Mr. Robinson is of opinion that his administration has been completely successful. He says, in his report for 1846:—“Order, industry, kind feelings, and consequently contentment and a good degree of happiness, have constantly existed among us. There have been no outbreaks, no resistance of authority, and there has been less of punishment, and less cause for the infliction of punishment, than ever heretofore. A desire of self-improvement among the Convicts has been excited, and prevailed in a remarkable degree.”

A personal inspection of the Charlestown Prison bears out all that Mr. Robinson alleges; the prisoners look cheerful, healthy and happy; and the kind treatment they receive must enable the officers to exercise a strong influence over them for good. There seems to be no doubt that the general principle of kindness, in which Mr. Robinson's system moves, is the only one which will ever obtain high success in the moral reformation of the criminal, for any Institution; but the question is, whether it can be carried to the extent now attempted. It must be admitted that the moment a prisoner enters the Charlestown Penitentiary, and the door is locked on him, punishment for the crime which brought him there, ceases, and but one object is kept in view; to reform him. The loss of his labor during the term of his imprisonment, and his restriction within the walls of the Prison, are the only inconveniences to which he must submit. The system does not contemplate deterring the evil-doer outside, from the commission of crime, or deterring the discharged Convict by a knowledge of the hardships of the penalty from a return to evil courses. Everything is done to make the prisoner comfortable and happy, and remove from his mind all feeling of degradation. The Convicts show the effect of this system in their personal appearance; and the freedom, almost boldness, of their gait and look; there is a strong contrast between them and the prisoners met elsewhere. While there is little appearance of sullenness or revengeful feeling, there is evidently no proper sense of their position; and one takes away the impression, that the majority of them are far better off, have more true enjoyment, and are happier than they are ever likely to be outside. To the great majority of Convicts, incarceration, for a limited period in the Charlestown Penitentiary, cannot be a heavy punishment; and the dread of return can exercise far less influence over their actions when discharged, than it does elsewhere.

We cannot lose sight of the fact, moreover, that Massachusetts presents a field for the working of such a system hardly to be found elsewhere. Discharge a Convict with the views and feelings of the Charlestown prisoners, on a community dead to sympathy with him; who turn from him with fear and aversion; and the effect on his mind will evidently be much worse than if he had been trained to view his position to society differently. In the New England States, where the theory of equality is perhaps nearer realization than among any other people, where much light has been spread abroad on the subject of prison discipline, and where active benevolence is at work to find employment for the prisoner, and strengthen his resolutions the moment he is discharged; the ultra-humane system has every opportunity of being successfully worked. The Chaplain, in his report for 1846, used the following language:—

“It is matter of great satisfaction that a state of more liberal and kindly feeling is extending itself in our community, towards those who are discharged from the State Prison. These men, going out into the world with the loss of character, and labouring under manifold discouragements, need, in a peculiar manner, the sympathy and friendly aid of the Christian public. The hand of Christian kindness extended to them—a kind word to cheer and to encourage—a willingness to give them employment and a home—will do much to allay prejudice, to dissipate discouragement, and to cheer them onward in their efforts to elevate themselves to the standard of respectability and usefulness in the world. But if, on their discharge, the cold shoulder is turned to them, and they meet naught but the frowning look, the contemptuous sneer, the chilling repulse, when employment and patronage are respectfully and earnestly solicited; who that is acquainted with human nature need wonder, if discouraged and utterly disheartened, by such treatment and such repulses, they should recklessly return back to their former course and habits.”

From 1829 to 1846 inclusive, the Charlestown Penitentiary defrayed, by the Convict labour, the whole expenses of food, raiment, salaries, transportation of the prisoners from the County Gaols, and gave from \$3 to \$5, and a new suit of clothes to each Convict on his discharge,—receiving but \$2,999.64c. as assistance from the State Government in the whole twenty-seven years.

The Boston House of Correction was visited by the Deputation, and the inspection afforded them much pleasure and instruction. It is a city establishment for the confinement of vagrants, drunkards, and other minor offenders; the sentences are short, and the prisoners generally all of that hopelessly indolent character, of whom it is difficult to make much. Notwithstanding these obstacles, however, the Superintendent, Captain Robbins, has succeeded in raising the discipline to a high point. The Silent system is carried out with much strictness, but with very little punishment; and the industrial pursuits go on as systematically as in the best Penitentiaries. Order, comfort, and cleanliness pervade every department, and as a whole, it is a model establishment for prisons of its class. It is also remarkable for the economy of its management.

The Boston house of Reformation for Juveniles, proved to be well worthy of inspection. This Institution is divided into two departments; one for children, snatched from the purlieus of vice before the commission of crime, and the other for early transgressors. The establishment is under the manage-

ment of trustees, and the magistrates have the power to place children of the two classes designated, wholly under the control of the trustees until they attain twenty-one years of age: the treatment of both classes is the same, but the boys are kept totally apart. The system in operation combines strict discipline, with good education, invigorating relaxation and healthful labor. When the lads have attained a proper age, they are apprenticed to such occupations as their ability and disposition seem to point out as best adapted for them: the master is obliged to hold frequent communications with the Officers of the Prison, who can withdraw the apprentice at any time, for fault, either on his own part, or that of the master: when the apprentice reaches manhood, he becomes his own master. The Institution has been most successful; many valuable citizens now admitting the treatment there received, to be the origin of their own prosperity in life. Masters are readily found for the boys; and it is said that the greater number of the latter, turn out well.

In waging war with crime, there is no department so satisfactory, so encouraging, as the rescue and reformation of the young; and there it is the battle should be fought with the utmost warmth.

From Boston, Messrs. Bristow and Brown proceeded to Hartford; the Connecticut State Penitentiary, being situated at Wethersfield in the neighbourhood of that city. This prison is on the Congregate system; the number of prisoners is small, the average since 1828, being about 185; the labour department has been conducted probably with more success than in any other prison in the world; the profits to the State in the seventeen years, from 1828 to 1844, having amounted to \$93,146.48c. The outward discipline is superior to anything met with elsewhere, and is apparently as near perfection as possible, on the Auburn system. Silence is very strictly insisted on and maintained; the men relax not a moment from their work, and a vacant and inquisitive gaze can scarcely be detected by the visitor; the Martinet system could not be more perfectly carried out. And with all this, the authorities of the prison report that there is little or no punishment. The Warden reported, in 1846, as follows:—

“The number of punishments are a fraction over three per month, the last nine months of the year, and about four for the first three months, administered according to the offence and character of the offender; usually by solitary confinement of from six to twenty-four hours, or by inflicting from two to five stripes of the lash. No Convict has been kept in solitary confinement exceeding forty-eight hours at one time, during the year, and but two have been punished to the extent of the law, which forbids over ten stripes.”

In 1847, as the Deputation were informed by the Warden, the total punishments in the prison, were but 36, and in 1848, not so many. It is very difficult to understand how such results are effected without punishment. The men have an exceedingly depressed appearance, a grave weighted look very different from the free air of the Charlestown prisoners, or even the scared look, under the eye of the Keeper, met with, in laxly conducted Congregate prisons. We notice that in ten years, from 1835 to 1844, the deaths in Wethersfield were 45, while in Charlestown, with 50 per cent more prisoners, the number of deaths in ten years, from 1837 to 1846, was 35. While the deputation were at Wethersfield, one of the Keepers was in a dying state\* from the effect of a blow struck him with a hammer, by one

\* He is since dead.

of the Convicts, a few days previously. Mr. Johnston is the Warden of this prison, and Mr. Walker is his deputy.

The Hartford County Gaol, under the superintendence of Mr. Morgan, is a small but well-managed prison. The inmates are kept steadily at labour, and much care is taken with them. Mr. Morgan communicated some valuable information as to the management of gaols.

The Deputation went next to New York, where they enjoyed much agreeable intercourse with the officers of the New York Prison Association. This society was formed in 1844, by the exertions of John W. Edmonds, Esquire, Circuit Judge of the State of New York, and other benevolent individuals, for the following purposes:—

1. The amelioration of the condition of prisoners, whether detained for trial, or finally convicted, or as witnesses.
2. The improvement of prison discipline and the government of prisons, whether for cities, counties, or states.
3. The support and encouragement of reformed Convicts, after their discharge, by affording them the means of obtaining an honest livelihood, and sustaining them in their efforts at reform.

The society is empowered by law, "to establish a Work-house in the County of New York, and in their discretion to receive and take into the said work-house all such persons as shall be taken up and committed as vagrants or disorderly persons in said city, as the Court of General Sessions of the Peace, or the Court of Special Sessions, or the Court of Oyer and Terminer in the said County, or any Police Magistrate or the Commissioner of the Alms-house may deem proper objects; and shall have the same powers to govern the said persons, as are now by law conferred on the Keepers of the Bridewell or Penitentiary in said city."

The charter of the society also contains the following clause:—

"The said Executive Committee, by such Committees as they shall from time to time appoint, shall have power, and it shall be their duty to visit, inspect, and examine all the prisons in the State, and annually report to the Legislature their state and condition, and all such other things in regard to them as may enable the Legislature to perfect their government and discipline. And to enable them to execute the powers and perform the duties hereby granted and imposed, they shall possess all the powers and authority that by the twenty-fourth section of title first, chapter third, part fourth, of the revised Statutes are vested in the Inspectors of county prisons; and the duties of the Keepers of each prison that they may examine, shall be the same in relation to them as in the section aforesaid are imposed on the Keepers of such prisons in relation to the Inspectors thereof; provided, that no such examination or inspection of any prison shall be made until an order for that purpose, to be granted by the Chancellor of this State, or one of the Judges of the Supreme Court, or by a Vice-Chancellor or Circuit Judge, or by the first Judge of the county in which the prison to be examined shall be situate, shall first have been had and obtained; which order shall specify the name of the prison to be examined, the names of the persons, members of the said association,

by whom the examination is to be made, and the time within which the same must be concluded."

The society has been carried on with considerable energy, and, we doubt not, has effected much good.

Mount Pleasant State Prison was duly visited by the Deputation. It is situated near the village of Sing-Sing, on the Hudson River, 30 miles above New York. There are three State Penitentiaries in New York, all conducted on the Congregate system, viz., the Mount Pleasant, the Auburn, and the Clinton. There is a Head-keeper for each prison who has charge of the discipline; an Agent for each, who administers the business and finances; and three paid Inspectors who control the whole. These officers and all their subordinates, are swept out of office with every political change, and the constant removals have proved, and will continue to prove while the system exists, a complete bar to success. The political revolution occasionally throws up men well qualified to conduct a prison humanely and efficiently, but before their exertions have had time to operate, a new change in the political world, and a consequent change of management, undoes all the good effected. The labour of the Convicts is hired out to Contractors, and various branches of manufacture have been brought to great perfection. Many useful hints were obtained at Sing-Sing, as to the management of the Convict labour, and the best mode of working the Contract system. For the reasons already mentioned, it is to be presumed, the moral reform of the prisoners does not occupy that prominence here, which is desirable.

Corporal punishment was at one time inflicted to a frightful extent in this prison, but an inquiry was held and the parties removed. Notwithstanding this, a subsequent Head-keeper in his annual report, (1846) used the following language:—

"In administering the discipline of prisons, some kind of punishment has been found necessary, to coerce the inmates to the observance of healthful and necessary rules, and much solicitude has been felt to discover the best mode. Among all the modes yet devised, I am decidedly of opinion that flagellation with the cat is the most effectual, and, at the same time, least productive of permanent injury either to body or mind. This is the mode chiefly relied upon at this prison. Objections have been urged against this mode, but I believe that the only true ground of objection lies in its abuse, and applies with equal force to all other modes. At all events, it is an undeniable fact, that no system has been yet devised under which abuse and cruelty may not be practised. I am aware that much may be effected by moral suasion, and that kind admonitions and exhortations are all that in many cases may be necessary; but among so many as are here collected together, there must be some evil-disposed men who can be subdued and controlled only by corporal punishment. Prisons were instituted as places of punishment, and they should be so conducted as to effect three distinct objects: first, to punish the offender; second, to reform him, if possible; and third, to terrify the criminally inclined. If this is a correct view, then great care should be taken by those having prisons in charge, and by those having power and influence to direct in their affairs, neither to detract from the punishment its just merit, nor to debase the Convict by adding cruelty or unnecessary severity to the discipline, and especially not to strip the prison of its terror, and thereby render it inviting and desirable."

Corporal punishment has been recently forbidden by act of the Legislature, and the punishments now in use are, pouring water on the head, fastening a heavy iron bar on the shoulders with the arms stretched out upon it, and confinement in the dark cell.

The State Female Penitentiary is also at Sing-Sing, and the remarks made as to the Male department apply equally to this. There is the same changing of officers, and, at times, a good deal of business energy, but the tone of the discipline is alike unsatisfactory to the moralist and the philanthropist.

The New York City Penal Establishments were next visited by the Deputation; they are on a vast scale, and are supported at heavy cost to the public. In 1847, the total expense of maintaining the various criminal and pauper institutions of the city was \$342,188.30c. The city officers are held on a still more uncertain tenure than those of the State; and the effect of such constant changes may be seen in the present condition of the prisons; they could not be much worse. The Nursery on Randall's Island appears to be the best managed of the New York city establishments: the children are taken from the abodes of vice, so numerous in every large city, and when educated, are apprenticed out till they reach twenty-one years of age. The abuses in the Penitentiary on Blackwell's Island, have recently been the subject of investigation, and it is to be hoped that when the public mind has been aroused to the evils of its management, a thorough reform will ensue; but no permanent good can be effected until political feeling ceases to control its administration. The Penitentiary, the Alms-house, the Nursery, the Lunatic Asylum, and other city establishments, have each a chief responsible officer, and the whole are under the superintendence of an Alms-house Commissioner, through whom all business is transacted. Moses G. Leonard, Esq., is at present Commissioner, to whose kindness and that of Dr. Kelly, we are indebted.

From New York Messrs. Bristow and Brown proceeded to inspect the State Penitentiary of New Jersey. This prison is situated at Trenton, about midway between New York and Philadelphia; the average number of Convicts is about 150. New Jersey, up to 1836, adopted the Congregate system, but the Separate or Philadelphia system was in that year introduced, and is still in operation. The Physician of the Institution appears from his reports to be unfavorable to the Separate system, if not from its introduction, at least from a period immediately following it; he is spoken of as a professional man of high standing; and his annual reports are frankly written.

The deputation passed from Trenton to Philadelphia, where the Cherry Hill Penitentiary is situated. This was the pioneer American Prison on the plan of separation, and it has attained a celebrity in Europe as wide as on our own continent. All the features of the system are brought out in an examination of Cherry Hill, so that it is unnecessary to enter upon a criticism of the working of the Trenton prison. There is this very material difference between the two, however; that while in Cherry Hill, complete separation of the Convicts has been maintained, in Trenton whenever the Convict's "mind begins to fail, and he shows symptoms of derangement, another Convict is put with him in his cell." The Deputation were assured at Trenton, that only seven or eight prisoners there, required companions.

Nearly a week was devoted to a minute inspection of Cherry Hill, and to personal discussion of the merits of the two great systems of discipline with the Warden (T. Scattergood, Esq.) and Inspectors of the Institution and with the visitors of the Prison society; to these gentlemen we are indebted for much important information. The high tone of feeling on the subject of Prison discipline in Philadelphia, is most gratifying; time and labor are freely bestowed on the cause by many eminent citizens, and a truth-seeking spirit, very naturally tinged with admiration of the system for which they have rendered their city famous, pervades all their discussions. Our Deputation were afforded the fullest opportunity of satisfying themselves on every disputed point, by minute inspection of the Prison, by unrestricted conversation with the Convicts in the absence of the Warden or Keeper, and by intercourse with all the officers of the Prison. They endeavored to examine without prejudice, and did not rest satisfied until they felt convinced they had done ample justice to the inquiry. The Prison is exceedingly well managed; the kind but firm tone which pervades the intercourse of the Warden with his prisoners, the systematic employment of means for the moral and religious improvement of the Convicts, the class of men employed as Keepers, the cleanliness and order which reign throughout the establishment, are all grounds of commendation. There is a right understanding of the proper objects of a Penitentiary, and apparently an interest felt in the subject by all connected with the Prison, from the Inspectors down to the inferior officers. No system could have a more fair trial than that now undergoing by the Separate system in the Eastern Penitentiary of Pennsylvania.

The principle of the Philadelphia discipline is absolute separation and seclusion of each individual Convict from all his fellow-creatures, except such as visit him by special order, or by permission of law. The cells are apartments 11 feet 9 inches long, 7 feet 6 inches wide, and 16 feet 6 inches high in the centre of the arched ceiling. They are lighted from a window which the Convict can open, and are warmed by hot water tubes; each cell contains a bed, a table, a chair, a cupboard, and many have various other articles contributing to their comfort. Opposite the entrance to each cell, from the corridor, another door leads into a small yard, 15 feet long by 8 feet wide, and surrounded by a wall 11 feet high, in which the Convict is allowed to enjoy the air for one hour each day. It has been alleged that the Convicts in neighboring cells can hold communication with each other, by various contrivances, but if this is at all practicable, which we doubt, it cannot possibly exist to a hurtful extent. The prisoner works in his cell without any oversight, but a certain amount of daily work is expected from him, and as long as he comes up to a reasonable standard he is allowed to divide his time with labor, reading the books which are plentifully placed at his disposal, and any other relaxation which he may contrive for himself. The Keepers have occasion to visit each cell several times a day; the Warden and Physician visit each prisoner once a fortnight, and many of them much oftener; the Chaplain and Schoolmaster devote their whole time to their instruction, going from cell to cell. The Inspectors meet at the Prison twice in each month, and devote some time to visiting the cells. The Committee of the Prison Society have also access to the prisoners, and devote much time to personal intercourse with the Convicts. All the city clergymen, and certain public authorities have free access to the cells; but the public are not allowed to see or be seen by the prisoners. When divine service is performed, the doors are thrown partially open, and the clergyman speaks from the

end of the corridor ; he is heard distinctly in the cells of the corridor in which he preaches, but he does not see his auditors, nor do they see him. There is very little punishment either at Trenton or Cherry Hill. The proceeds of the labor of the Convicts at these Institutions are not equal to the support of the prisoners ; the deficit and the salaries of the officers are defrayed by the State. The salaries of Cherry Hill Prison are only \$8000 per annum.

Our Deputation found the cells generally neat and clean, and the prisoners apparently well fed. The demeanour of the Convicts was invariably respectful and subdued ; no bitterness of feeling was manifested, no rudeness, and very little sullenness. Most of them appeared glad to see visitors ; the majority declared that they would rather be confined separately, than work in a gang ; and not one of them showed any hostility to the officers.

The Deputation were satisfied that the claim of the advocates of the Separate system, that their form of discipline is highly humanizing, calls forth warmly the confidence and affection of the prisoner, and gives the officers much influence over his mind, and generally affords a good opportunity for effecting the moral reform of the criminal ; is fully established by an examination of its operation in Cherry Hill.

But as to the effect of separation and seclusion on the minds of the Convicts, the Deputation were compelled to arrive at the conclusion, that the human mind cannot endure protracted imprisonment under this system ; and that with all the care of the authorities, insanity, to a fearful extent, is to be found within the walls. The prisoners, as a class, have a sallow, worn-out appearance ; the eyes are deeply sunk, and while the eyelids have a heavy, languid appearance, the eyeballs glare with a feverish brightness. In thought and action there is a general sluggishness, tending towards torpidity. To this rule there are exceptions, but they are not numerous ; these are men who with more or less education exercise the mind and body by reading and labour, properly regulated, and who have strength of resolution to refrain from self-abuse ; for such prisoners the discipline is well suited. But there is a class, and a larger one it is to be feared, who sink from restlessness into listlessness, from listlessness to sluggishness, and who soon pass from that to imbecility. Dr. Givens, the intelligent Surgeon of Cherry Hill, says :—"It must be confessed that the tendency of all (cases of insanity in the Penitentiary) seems to be to pass into dementia." Messrs. Brown and Bristow were satisfied that, taking the men whom they visited to be a fair sample of the Cherry Hill prisoners, which they have every reason to believe was the case ; that out of three hundred Convicts then in the prison, no fewer than fifty were labouring under insanity, in one form or another, from dementia to evident weakness of intellect. While the Warden and Physician admitted the large amount of insanity in the Penitentiary, of greater or less severity, they both maintained that there was not a larger proportion of insanity in Cherry Hill than existed in Congregate prisons ; the only difference, they alleged, being, that in one case it passed unnoticed, and in the other it was detected ; they admitted, however, that the Separate system develops insanity more than the other, but they denied that it produced it. Dr. Givens is preparing a return of all the Convicts who have suffered from insanity, since Cherry Hill was opened, which is looked for with much interest.

We think that the admission, that the system develops insanity with a "tendency, in all cases, to

dementia," in persons who might, under a less strict system, have never exhibited any indication of being affected by such a malady, shows that it cannot be safely applied to all Convicts as the rule of a prison. It is unfortunate that the annual reports do not show the number of cases of insanity in the prison at any one time ; some of them show only the cases which have originated within the walls during the past year. The official Returns for ten years, up to 1846, were as follows :—

1837.....	14	of dementia.
1838.....	18	acute dementia 13.
1839.....	26	hallucination 7, dementia 9.
1840.....	21	
1841.....	11	
1842 (no return) ...	0	
1843.....	7	
1844.....	5	
1845.....	8	
1846.....	9	

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In the report for 1845, the Surgeon states, in addition to the eight cases of derangement "developed within the past year," that "independent of the many whose minds I consider more or less defective, thirteen have been received decidedly insane ; more than one of them so obviously so, that the judges were fully aware of it, but from want of an hospital for the insane poor, a due regard for the protection of society obliged them to be sent to us."

The want of an insane hospital for the poor in Pennsylvania, may account to some extent for the insanity in Cherry Hill Prison, but not we think for the excessive amount of it ; and it will be recollected that this argument does not apply to the 119 cases, reported as above, but to the two classes spoken of by the Surgeon, as being in addition to these.

During the ten years included in the above table, there were in Charlestown Penitentiary (Congregate) only seven cases of insanity ; and in our own Penitentiary, since its opening in 1835, there have been in all but 11 cases.

In the same ten years (1837 to 1846) the total numbers of deaths in these three Prisons were :—Charleston, 35 ; Kingston, 41 ; Cherry Hill, 155. The average number of Prisoners being Charlestown, 295 ; Kingston, 250 ; Cherry Hill, 364.

The frightful mortality at Cherry Hill is endeavoured to be accounted for by the larger proportion of black and coloured persons confined there ; but in the same period there were 50 deaths at Cherry Hill among the white Convicts, out of an average of 229.

And, as it is said to be a practice in prisons to obtain the discharge of dying Convicts, so as to lessen the official returns of mortality ; the pardons granted in each institution during the same period were—Charlestown, 144 ; Kingston, 142 ; Cherry Hill, 210.

Dr. Coleman, Physician of the New Jersey (Separate) Penitentiary, in one of his annual reports, used the following language :—"Among the prisoners there are many who exhibit a childlike simplicity, which shows them to be less acute than when they entered. In all who have been more than a year in the Prison, some of these effects have been observed. Continue the confinement for a longer time, and give them no other exercise of the mental

faculties than this kind of imprisonment affords, and the most accomplished rogue will lose his capacity for depredating with success upon the community."

We are convinced that this is a faithful picture, and that separation, as practised in the Eastern Penitentiary, cannot be indiscriminately inflicted for lengthened periods.

Dr. Givens says, in his annual report for 1846:—

"If prisoners were men of education; if their minds were stored with the facts of general science and philosophy, on which they could reason and converse within themselves, whether at work or in idleness, then indeed would intercourse with their fellow creatures be uncalled for; but it must not be forgotten that the majority of Convicts are men of very limited information on all subjects; men, who in fact when at liberty, require all the pressure of surrounding intellect (if I may be allowed the metaphor) to keep them within the bounds of sanity. Such I apprehend the great mass of them to be."

Dr. Givens is of opinion that all needful intercourse can be, and is at present afforded the Convicts under the system practiced at Cherry Hill. But the largest estimate made of the average daily intercourse enjoyed by the Cherry Hill prisoners, with officers and visitors of every character, is fifteen minutes daily—divided into several visits, during part of which no conversation takes place—this space is quite inadequate to relieve the prisoner from the admitted direful effects of unmitigated solitude.

From Philadelphia the Deputation proceeded to Baltimore, in the State of Maryland, and to Washington, in the District of Columbia, where they inspected the State Penitentiaries. Both are conducted on the Congregate system, and the industrial department of the Baltimore Prison is exceedingly well managed. The features presented in these establishments were very similar to those of other Congregate Prisons, but on many practical points a good deal of information was obtained.

On their return, the Deputation visited Auburn, the far-famed Congregate Penitentiary. As a manufacturing establishment the interests of the State are not neglected in its management; but the moral reform of the Convict does not occupy that prominence which would be desirable. The average number of prisoners has been about 680; the labour is hired out to contractors, and brings a high rate. The discipline fluctuates with the political changes of the State, but corporal punishment is forbidden by law. The general discipline at present at Auburn, without being so strict as at Wethersfield, does not possess the softening effect of the relaxed system of Charlestown. It is in fact a good house of detention, in which it is sought to teach the Convict habits of industry, by keeping him closely at work; the higher objects of a Penitentiary, it is to be feared, are not sufficiently attended to.

With Auburn the Deputation closed their labours in the United States; and we take this opportunity of expressing our gratitude for the marked kindness and attention received by them at every Institution they visited; our thanks are also due to the numerous friends of the prisoner's cause in many places; to whom we are indebted for valuable suggestions.

## COUNTY GAOLS.

At every step of our proceedings we have felt keenly that the entire penal system of the Province demands a thorough reform; and that so long as our Common Gaol system remains as at present, no satisfactory moral results can be expected from the higher institution. The District Gaols are the nurseries of crime and vice, and ere the prisoner is transferred from them to the Penitentiary, he is too often thoroughly contaminated and hardened. Men do not sink at once into the depths of crime—the descent is gradual and imperceptible—and while considering how to reform the criminal, we have constantly felt how much more desirable it would be to prevent the crime, and how much more hopeful would be the labor of leading the young offender into a good course, and inspire him with better feelings, than to eradicate habits which have been the growth of years.

Though the scope of our instructions did not extend beyond the Penitentiary, we have felt that the success of that Institution depends so much upon the Common Gaol system; that it was our duty to call Your Excellency's attention to the evils arising from it; and in considering the improvement of the Penitentiary system, we could not avoid associating with it, to some extent, the reform of gaol discipline throughout the Province. We cannot refrain from suggesting to Your Excellency whether the discipline of all the County Gaols might not, with advantage, be placed under the control of Government Inspectors, from whom periodical reports of their condition would emanate.

## JUVENILE OFFENDERS.

Of scarcely less urgency than the reform of the gaols, is the necessity of some immediate action on behalf of the youthful delinquent. It is distressing to think that no distinction is now made between the child who has strayed for the first time from the path of honesty, or who perhaps has never been taught the meaning of sin, and the hardened offender of mature years. All are consigned together to the unutterable contamination of the common gaol; and by the lessons there learnt, soon become inmates of the Penitentiary.

We recommend to Your Excellency the immediate erection of one or more Houses of Refuge for the reformation of juvenile delinquents. Such an establishment might be economically built on the Penitentiary lot at Kingston, and might be governed by the same Inspectors; but the expense of transporting children so great a distance from the extreme points of the Province, seems to make it necessary that there should be a House of Refuge for both divisions of the Province; one at Montreal or Quebec, and the other at Toronto or Hamilton.

We recommend that such House of Refuge consist of two departments: one for children whose parents or guardians, by vagrancy or vicious conduct, are unwilling or incapable of exercising proper care and discipline over them; and for children whose parents and guardians make complaint to the proper authority, that from the incorrigible conduct of such children they are unable to control them; and the other, for children who have been convicted of crime.

The control of the discipline and business affairs of such House of Refuge might be advantageously placed in the hands of the Penitentiary Inspectors. The weekly visiting, the apprenticing of the children, and the general carrying out of the philanthropic

objects of the Institution, might be vested in a large Board of Managers, to be appointed by Government; or, as in the United States, in a society of benevolent persons formed with this view.

All Criminal Courts of the Province might be empowered to commit children to the House of Refuge; and any two Justices of the Peace or City Magistrates, on a case being shown.

The managers of the institution should have the control of all children so committed during their minority; and they should be empowered to place them at such employments, and cause them to be instructed in such branches of useful knowledge, as may be suited to their years and capacities. They should also have power to indenture the children as apprentices to such persons, and to learn such trades, or other employments, as in their estimation will be most conducive to their reformation and amendment, and will tend to the future benefit and advantage of the children. During the continuation of his apprenticeship, the youth to remain still under the control of the managers, and in case of irregular conduct, the managers to have the power of bringing him back to the House of Refuge. The children, in the two departments, to be kept strictly apart, but the system to be the same, namely, a combination of education, labor, and healthful exercise.

#### THE PENITENTIARY SYSTEM.

The results to be drawn from all we have seen and read, and the suggestions for the improvement of the Provincial Penitentiary, to be offered for Your Excellency's consideration, have engaged our earnest attention; and we have arrived unanimously at the conclusion to recommend the combination of the two systems, the Separate and the Congregate, in the future management of the Prison.

Were a new Penitentiary about to be erected, we might have been in favour of a somewhat different plan: but with so costly and commodious an establishment nearly completed, we are of opinion that the most advisable course is to continue the Congregate system as the main principle, and to engraft on it the ameliorating influences of individual separation. We recommend to Your Excellency, the erection of a sufficient number of cells to apply the Separate system to every newly-arrived Convict; while so confined, the Convict to be furnished with secular instruction and labour, and to be earnestly dealt with by the Chaplain and Warden. The length of this ordeal, we think, should be left to the discretion of the Prison authorities, but should in no case exceed six months; and the termination of it might in many cases where mitigating circumstances existed, it is to be hoped, offer a favourable opportunity of exercising the Royal Mercy with benefit to society and to the Criminal.

Were it possible to judge correctly of each man's character, classification would form the next step after the ordeal of separation had been undergone. But this system, as far as it has yet been attempted, has depended on so many elements—as, for instance, the nature of the Convict's crime, his previous character and position, his conduct in Prison, and the prospect of his reformation,—as to make a correct classification, almost impossible, if not absolutely so. No clear principle can be laid down to guide such a system; the whole must depend on the judgment and discretion of the Warden. But unsuccessful as the

many experiments to carry out a complete plan of this character have proved, we are not yet without some hope that it might be partially introduced in amelioration of the Congregate system.

We recommend that the employments selected for the prisoners, be as little diversified as possible, and that they may be such as can be carried on within doors, and with the least needful communication between the prisoners. It is exceedingly desirable that each gang should occupy a separate apartment, and that the possibility of communication between them should be cut off; fortunately, the construction of the Prison workshops will render this easily attainable. In rating off the Convicts from the separate cells into gangs, in the hands of a judicious Warden, we are persuaded experiments may be made in the way of classification, which will prove highly advantageous; and while we refrain from suggesting any rules for the regulation of the duty, we would earnestly urge its high importance on the authorities of the Penitentiary. Were it possible to keep every gang separate and secluded from the rest of the prisoners, that worst evil of the Congregate system, viz., that the Convict is known to so many Criminals on his return to the world, would be partially avoided.

We recommend that besides employing the separate cells on the first reception of the Convict, they be used as a means of discipline; not as a frequent punishment, but in the case of continued refractory conduct on the part of any Convict, to enable the Warden to deal with him individually and endeavour to produce a change.

We recommend that fifty separate cells shall be the number at first to be erected, and that they be built with all convenient speed.

We also recommend that apartments for the treatment of insane Convicts, be erected within the walls. Heretofore the practice has been, in such cases, to obtain the pardon of the patient and consign him to the Provincial Lunatic Asylum until cured, when he was discharged from confinement.

It must be confessed that the success of any system of prison discipline will be strongly affected by the treatment which the Convict receives on his discharge from confinement. A Convict may leave his cell penitent and determined to reform, but if he is met with harshness and refused employment, and his good resolutions treated with scorn, despair will soon overtake him, poverty and the force of circumstances will too often drive him back to the haunts of crime. Governments can do little to avert this snare from the path of the reformed Criminal; the force of public opinion will alone effectually remove the evil. Much has been done in the United States by prison societies, who receive the penitent transgressor on his discharge, and aid him and strengthen him in his struggle with the frowns of the world; the tide of public sympathy has been, by their labours, turned towards the helpless out-cast, and great good has undoubtedly been effected. A more noble work could not engage the efforts of the Christian or Philanthropist. We trust that such a society will, ere long, exist in our own country, and that through the press and the lecture-room, the subject of prison discipline may engage more attention from the public than it has heretofore done.

The sum of money paid to the Convicts, on their discharge, is altogether inadequate; and we respectfully recommend that the Warden be empowered, in his discretion, to pay to each prisoner a sum not less than £1, nor more than £5.

Our attention has been called to the great evils which arise from Convicts being discharged from Prison in the depth of winter, often far from home, without chance of employment, and with only a few shillings in their possession. We suggest to Your Excellency, whether the Judges might not, with benefit in many cases, sentence the criminals to such terms as would bring their discharge at a more auspicious season of the year.

Having thus submitted such a modification of the system of discipline now in operation at the Provincial Penitentiary, as we believe would conduce to its success as a Reformatory Institution, we proceed to lay before Your Excellency the conclusions to which we have arrived, after much anxious deliberation, as to the best mode of managing its affairs, so as to "secure the confidence of the public, and to increase its efficiency and utility."

The task of governing well such an Institution as the Kingston Penitentiary, is evidently one of no ordinary difficulty. It is true that so far as mere bodily coercion is concerned, the security is ample. The walls of the Prison Buildings are of massive thickness; locks and bolts and bars are there in profusion; the outer enclosure is so high as to defy escalade, and in short effectual precautions have been adopted to baffle any attempt at escape from within its precincts.

Whatever other objections may be offered to the plan on which this edifice has been erected, so far as regards the safe-keeping of the prisoners it is unobjectionable.

Our former Report has abundantly shown that, as in the construction of the Prison, in its internal economy and management, the idea of physical force alone has been kept in view; whilst the milder, but it is to be hoped the not less powerful influence of moral suasion, has been altogether lost sight of. Here indeed the Penitentiary system has been presented in its sternest aspect, and if the cat-o-nine-tails, the raw-hide, the box, the solitary cell, deprivation of food, or of the light of heaven, could ever have deterred the criminal from again preying on society, or violating its laws, here, at all events, the salutary effect would have been produced; but we cannot say that the experiment has proved successful, or that the torture which the inmates endured within the walls of the Penitentiary, have rendered their returns to it a matter of less frequent occurrence than in similar Institutions, where a milder influence has prevailed. Have the frequency and severity of punishment conducted even to the maintenance of the discipline of the Prison? The tables which we furnished under this head in our former report clearly show, that the only effect has been to render callous and to harden the offenders, and that each addition to the weight of punishment has increased the number of infractions of the Prison rules.

The history of the principal Penitentiaries in the United States, conducted on the Congregate System, tell a similar tale of harshness and cruelty, producing the very evils and disorders they are intended to prevent.

#### REMOVAL OF OFFICERS.

From the facts disclosed in our first Report, we think the absolute necessity of extensive removals must be apparent. It is very clear that unless the parties to whom the conduct of such an Institution is entrusted are men of high moral character as well

as efficient officers, no success can attend its administration. Convicts are exceedingly sharp in discovering the moral failings of others; and the misconduct of one unfaithful officer, may undo all the good effected by years of sound instruction. In no other Institution does so strong a necessity exist, as in a Penitentiary, that the responsible officers should have perfect confidence in those who are to execute their orders; and if those who are hereafter to conduct the Kingston Penitentiary are to be successful, they must be allowed the utmost latitude in the exchange of some of the present officers for men of a higher class in morals and general attainments.

We recommend to your Excellency the immediate removal of the present Head-keeper, the Clerk, the Architect, and the Matron; and that the Inspectors and Warden be authorized to make such removals among the inferior officers as, in their discretion they shall conceive necessary for the safe and successful management of the Institution.

#### DUTIES OF THE WARDEN.

It must be conceded, as a general principle of government in a Penitentiary, that an arbitrary, almost an absolute authority should exist somewhere. The safety of the Institution, the well being of the inmates, require it. The question is, in whose hands can that be vested with the greatest safety, or rather with the smallest probability of its being abused? Shall it be divided between the Warden and the principal officers, giving to each a *quasi* independent course of action in his own department? Shall it be exercised through the Warden acting in concurrence with, or under the direction of a Board of Inspectors? Or, lastly, shall it be vested in the Warden alone, subject to no supervision, and responsible only to the Executive Government of the country?

The disadvantages of the first plan are so obvious, that it is unnecessary to dilate on them. Without some efficient control on the spot, with clashing powers, and with divided responsibility, such an Institution could scarcely be carried on for a single day without confusion.

The second plan is less objectionable, but there are still difficulties in carrying it out to advantage. If the Board have the appointment of the Warden, as well as the control and direction of his actions, he becomes their mere tool; the whole management of the Institution is virtually placed in the hands of persons but partially acquainted with the details of its internal economy, and abuses of every kind creep in. If the Board, on the other hand, have not the appointment of the Warden, and there is merely a concurrent jurisdiction, jealousy and hostility are but too apt to spring up and to lead to collisions. That vigorous and prompt action so essential to good government in a Penitentiary, is then at an end, and all the evils arising from distracted councils ensue. Nor is the case any better if there be a friendly understanding between the Board and the Warden; his thorough knowledge of the affairs of the Institution in all its branches, enables him, if so inclined, to impose on their comparative ignorance; and he uses them as a cloak to cover his misdeeds or his mismanagement. Under some plausible pretext or other, he deceives them into giving their assent to all his acts, however injurious to the interests of the Institution, or however iniquitous they may be: if the propriety of these acts be afterwards called in question, he pleads, as his vindication, the sanction of the Board. Few men like to admit that they have been duped; and a Board, so situated, will

probably rather seek to defend their own actions, however improper or injurious they may be—than acknowledge that they were committed ignorantly and under sinister influence. In such Boards, also, there is generally some one member who, whether from greater ability or greater energy than his colleagues, takes the lead and sways the decisions; if between him and the Warden there be a community of opinion, of feeling, or of interest, all control over the actions of the latter, ceases, all responsibility is at an end, and the vilest mal-practices are perpetrated with impunity. From these remarks it will readily be inferred that our opinion is decidedly unfavourable to any division of the responsibility for the government of a Penitentiary between the Warden and a permanent Board of Inspectors; that we consider such a junction of authority, powerless for all good purposes, but that it may be made potent for evil.

We arrive, therefore, at the conclusion, that the safest depository of the power and responsibility attached to the government of the Provincial Penitentiary, is the Warden. The concentration of executive action in his hands, seems to be the best mode of securing these essentials:—uniformity of discipline—prompt and decided action on emergency—proper control over the subordinate officers—and active, business-like management of the financial and other affairs. While, however, we would entrust powers so important and so extensive, guarded by checks against their abuse, which we shall presently point out, to a single individual; we would, with all earnestness and with due respect, submit to your Excellency, that we do so, under the full conviction that the appointment will be conferred on some one highly endowed with the qualifications necessary to fulfil, adequately, the duties of so responsible and honourable an office. It is impossible to overrate the importance attached to the character and conduct of the Warden of a Penitentiary, or to overstate the influence which these must exercise in the working of the Institution. A glance at the economy and discipline of a prison will generally furnish a ready index to the disposition of the Warden; and an insight into his character, manner, and habits, will, in like manner, be a sufficient clue to the management of the prison. However important, therefore, the arrangement of a system of government may be, the appointment of proper officers to carry it out, is not less so.

With the authority thus proposed to be vested in the Warden of the Provincial Penitentiary, it is clear that his duties will be of the most varied character. On him will devolve the superintendence of every department, and to him every other officer must be subordinate and yield implicit obedience, except when such obedience would be in manifest infraction of the laws of the Prison. The mere mechanical routine performance of certain functions, prescribed by the *lex scripta* of an Act of Parliament, or of some rules and regulations furnished for his guidance, is not, however, the execution of his duties contemplated from a Warden; a higher, a holier purpose must guide his every action, or he is altogether unsuited for the office. His position, and so he must feel it, is that of a high minister of justice, appointed to fulfil the benevolent object of the Penitentiary—the reformation of the unfortunate men committed to his care.

The best safeguard then, against the tyrannical exercise of power by the Warden, is in his being a man thoroughly imbued with the spirit of philanthropy, and deeply interested in the moral welfare of those under his charge. The long uninterrupted

possession of such power, however, is but too apt to be the means of blunting the sensibilities of its possessor. The dispositions of the persons with whom a Warden has to deal, are not such as to excite and keep alive much sympathy in their behalf; and even in those cases where the religious and moral instruction conveyed within the walls, appears to have produced reformation, the flattering hope is too frequently disappointed, so soon as the subject of it is again exposed to the temptations of the world. It is not to be wondered at, therefore, if the Warden of a Penitentiary, finding his efforts less successful than he anticipated, should become lukewarm in the cause, and harsh in his treatment of men whom he is led to view as incorrigible.

This evil, in the government of Penitentiaries, is little felt in the United States; the spirit and character of democratic institutions being hostile to permanency of office. But, in avoiding this danger, our neighbours in some States, as has already been shown, have produced a greater evil. The maxim, "to the victors belong the spoils," of more than questionable propriety in any department of civil government, is utter destruction to a benevolent or reformatory institution.

But whilst we would deprecate the system of making changes in such offices, on political or other extraneous grounds; we must contend that the incumbents should understand that they are subject to removal at any moment at the pleasure of the Executive Government, without specific charges of maladministration being established against them. We consider it a good and valid reason for the removal of the Warden or any other Officer of a Penitentiary, that he has not come up to the full standard of efficiency. Sins of omission as well as sins of commission, we hold, should be summarily visited with dismissal.

#### THE INSPECTORS.

We have shown the little reliance to be placed in any checks that may be imposed on the Warden's conduct, through the intervention of Local Boards, however constituted; and we have further pointed out how likely the unrestricted and continued exercise of arbitrary power is to degenerate into apathy or tyranny; it remains then to consider the best solution of the difficulty. This, we think, will be found in bringing the direct action of the Executive Government to bear on the management of the Penitentiary.

To this end, we would suggest to Your Excellency, in lieu of the Local Board of Inspectors, as at present constituted, to appoint two Inspectors to hold office during pleasure, with full power and authority to make all necessary rules and regulations respecting the discipline and police of the Penitentiary; which rules and regulations the officers and others employed therein shall be bound to obey. The said Inspectors to visit the Prison at least four times in each year, and oftener if the interest of the Institution requires their attendance; and at each visit carefully to examine and inquire into all matters connected with the government, discipline, and police of the Penitentiary; the conduct of the officers; the punishment and employment of the prisoners; the financial concerns and contracts of every description, and the purchases and sales made for the Penitentiary; to examine and audit the accounts since their last meeting, and to make such alterations on the rules and regulations of the Prison, as they may think necessary. The said Inspectors should report fully to the head of the Government, at the end of each year, the

results of their examination into the whole affairs of the Institution. They should report also, from time to time, to the head of the Government, such new rules and regulations or such alterations on the rules and regulations in force, as they may have thought proper to adopt; all such rules and regulations of the Inspectors, to have full validity immediately on their being made, but subject to disallowance at any time by the Executive. The power now vested in the Board of Inspectors, such as the issuing of subpoenas to compel the attendance of witnesses; the right of visiting the Penitentiary at all times; of examining all books, papers, &c., relating to the Institution, with all other powers properly incident to the due performance of their office, to be conferred on the Inspectors proposed to be appointed.

The duties thus imposed on the Inspectors, would, it is manifest, be much more onerous, and the responsibility more direct than those assumed by the Inspectors under the present Penitentiary Act, (9th Vict. cap. 4,) and it would be necessary that a suitable compensation should be allowed them for their services. We are satisfied that this would be found to be far more economical than the present management. The experience of the last fifteen years abundantly proves the folly of relying on the gratuitous services of the Board of Inspectors to check extravagance and waste. During that time, in no single instance, was there anything like an examination of the financial branch of the management, and the results are described in our former report. There can be no question that, had there been periodically a strict audit of accounts, thousands of pounds would have been annually saved to the country.

But far higher grounds than a pecuniary saving may be assumed in advocating the appointment of Inspectors expressly to watch over the management of the Provincial Penitentiary. Such a body would form an appropriate organ of communication with those philanthropic associations and individuals in other countries, now so actively and zealously engaged in the amelioration of prison discipline; valuable information on every subject connected therewith, would be received and imparted, and a spirit of emulation excited to elevate and maintain the character of our Institution to a level, at least, with those of a similar nature elsewhere. The reports which it would be the duty of the Inspectors to make periodically to the head of the Government, to be laid before the Legislature, would thus be replete with the statistics of crime and punishment—a species of information difficult to be procured and arranged, except through some such medium, and which is most useful to the statesman, from its bearing on the principles of penal legislation.

We have taken the liberty, elsewhere, of suggesting to Your Excellency the appointment of Government Inspectors to control the discipline of the Common Gaols of the Province; and we would respectfully submit, whether in the case of such suggestion being approved, two efficient Officers might not fulfil the double duty of Gaol and Penitentiary Inspectors.

The State of New York has, by a law passed 14th December, 1847, sufficiently provided for the harmonious working of the State and County Prisons. Under this law, three Inspectors are chosen at a general election by a vote of the people, but are subject to be removed by the Governor for misconduct in office. They are required to visit each of the State Prisons together, at least four times in each year; to make rules for the Government; to see that these rules are observed; and to report concerning the same. Each of the three Inspectors is required

to spend at least one week in each month at the Prison assigned to him. Power is given to them to appoint and remove the subordinate Officers, and to each of them, during his month of office, to suspend such officers until the next meeting of the Board. They are constituted *ex officio* Inspectors of all the County Prisons throughout the State, and are required to visit, either separately or jointly, all the Prisons at least once in each year, and to make a detailed report of their condition and management.

#### VISITORS.

As in the intervals between the periodical visits of the Penitentiary Inspectors, occasions may arise in which it would be advisable that the Warden should have the benefit of consultation with some party on the spot, we would recommend further that Your Excellency would be pleased to appoint a Board of Visitors whose duty it should be to meet as often as they might consider expedient, or as they might be invited so to do by the Warden. One of their number to take in rotation the office of Visitor for the week, and it is to be desired that he should visit the Institution, at least, once during that time. The Visitors to have, at all times, access to the Prison, and a general *surveillance* over the discipline; so far, only, as relates to the treatment of the prisoners.

They should also have the power to make rules and regulations for this portion of the discipline of the Prison, at their Board Meetings, at which the Warden should have a right to attend and vote; such rules to continue in force until the next meeting of the Board of Inspectors, and no longer, unless then sanctioned. The Visitors to exercise no control over the financial or business arrangements of the Penitentiary, their office being of a purely philanthropic character, designed more to protect the prisoners from any excess of authority, and to secure that the moral means intended for their reformation, are properly employed.

#### STAFF OF OFFICERS.

The Officers to be employed under the Warden, for the general management of the different departments, we recommend, should be the following:—

A Protestant Chaplain.

A Roman Catholic Chaplain.

A Schoolmaster—all to reside near the Penitentiary, and to devote their time exclusively to the duties of their office.

A Physician and Surgeon—not prohibited from private practice, but to devote at least two hours daily to his duties at the Penitentiary, and in all cases of emergency, to attend as often as necessary, or as may be required by the Warden.

An Hospital Assistant—to be furnished with suitable apartments, rent-free, within the prison buildings, and to devote his whole time to the duties of his office.

A Deputy Warden.

A Clerk.

A Store-keeper.

A Clerk of the Kitchen.

Overseers.

Keepers.

Watchmen.

And for the Female Department :

A Matron.

An Assistant-Matron.

The Chaplains, the Physician, the Deputy Warden, and the Clerk to be appointed and removed by the Executive Government, and to hold their offices during pleasure; the other officers above enumerated, to be appointed and removed by the Warden, subject to the approval of the Inspectors. Each appointment to have the sanction of the Inspectors, but the Warden to appoint temporarily until that is had. Removals by the Warden, to be summary and final, unless appealed against by the discharged officer to the Inspectors, who shall have power to re-instate.

#### DUTIES OF THE DEPUTY-WARDEN.

The duties of the Deputy-Warden, we think, should be nearly those which were performed by Mr. Powers, when he held that office. He should have the general superintendence, under the direction of the Warden, of all but the pecuniary affairs of the prison, and should have the special direction of its police and discipline, with due precaution for the security of the prison and the safe-keeping of the Convicts. He should be responsible to the Warden for the strict observance of the Rules and Regulations of the Penitentiary. He should be constantly moving about the different yards and places of labour to see that every officer is vigilant and attentive to the performance of his duty, and that the Convicts are diligent, orderly, and attentive.

In case of the absence of the Warden, or of his inability from sickness or other causes, to attend to his duties, the charge of the Institution, so far as relates to the discipline and the safe-keeping of the Convicts, should devolve on the Deputy-Warden.

#### DUTIES OF THE CLERK.

The Duties of the Clerk to be nearly the same as those imposed on the present incumbent; but the whole system on which the Books and Accounts of the Penitentiary are kept to be completely remodelled; but it is unnecessary here to enter on the details of the improvements to be adopted.

#### DUTIES OF THE STORE-KEEPER.

The office of Store-Keeper is a new one in the Penitentiary, but one which we consider highly essential. His duty would be to receive and take charge of articles, of every description, received for the use of the Penitentiary, with the exception of those articles which are properly within the province of the Clerk of the Kitchen. Through him, all requisitions for supplies of every kind, should be made to the Clerk, and when received under his charge they should be carefully examined to ascertain if they correspond with the requisition; and the accounts accompanying the goods should be duly certified by the Store-Keeper and handed to the Clerk. He should also keep a regular stock account of the goods on hand, of the articles received, and of their expenditure, obtaining and preserving regular vouchers for all the articles distributed to the several departments. No tools or other stores should be manufactured in any of the workshops for Penitentiary use, except on a requisition by an officer or the Store-Keeper; the latter having obtained the counter-sign of the Warden to every such requisition, should cause the article ordered to be made, and when finished should receive it, charge it to the de-

partment for which it is intended, and deliver it to the proper Officer.

#### DUTIES OF THE CLERK OF THE KITCHEN.

The duties of this Officer to be precisely those at present performed by the Kitchen-keeper.

#### DUTIES OF OVERSEERS.

Overseers to be a class of officers to superintend and instruct the Convicts in the various mechanical labors carried on for account of the Prison.

#### DUTIES OF KEEPERS.

Keepers to be stationed in the workshops in which the Convicts whose labor may be let out to Contractors are employed, to see that the discipline of the Prison is maintained, and that the Convicts perform the labor assigned to them.

The Overseers and Keepers to perform all the other duties required of them, connected with the general police and routine of the Prison regulations.

#### WATCHMEN.

In addition to the above Officers of the Prison, the Warden to have authority to employ a Messenger, and a sufficient number of Gate-keepers and Watchmen, and to remove them when he may think fit; subject however, to such instructions as may be given to him by the Inspectors.

#### MATRONS.

The duties of the Matron and Assistant-Matron to be the same as at present imposed on them.

#### MEANS OF MORAL REFORMATION.

Having thus particularized the duties of the several Officers under the system which we recommend to Your Excellency's consideration, we proceed to offer a few remarks on some points intimately connected with the discipline and management of the Prison. And, as of first importance, we earnestly recommend that the means of moral, religious and secular instruction, shall occupy much greater prominence than they at present do in our own or any of the American Penitentiaries. The more deeply the subject is examined, the more forcibly is the truth pressed home to our conviction, that ignorance is the parent of crime. We conceive that the pecuniary interests of the Penitentiary should, in no manner stand in the way of the reformation of the criminal; and that, desirable as economy is, it is a sad mistake to sacrifice for that consideration, all the higher objects of such an Institution. We trust the Inspectors may be clothed with ample power to place the means of secular and religious instruction on the best footing.

A feature in the Provincial Penitentiary which distinguishes it from most others with which we are acquainted, is the admixture of Convicts belonging to so many religious persuasions. The present law provides a Chaplain to attend to the spiritual wants of the Convicts, and makes no stipulation as to the particular Church to which he shall appertain; but it is to be inferred that he is intended to be a Protestant, since further express provision is made for that large proportion of the Convicts confined in the Provincial Penitentiary who are Roman Catholics.

The Roman Catholic Bishop of Kingston or his Coadjutor, or the ecclesiastical person administering the diocese, is authorized from time to time to direct the attendance of a Roman Catholic Priest at the Penitentiary, for the purpose of performing Divine Service according to the rules and ceremonies of that church, to the Convicts of that faith. And it is further provided, that it shall be lawful for the Board of Inspectors to make rules and regulations for the admission, at proper and convenient times, of the clergymen or ministers of any denomination of Christians, for the religious instruction of such Convicts as may belong to the same denomination as any such clergyman respectively.

The Board of Inspectors, in the Rules and Regulations for the government of the Provincial Penitentiary, defined the duties of the Chaplain and Roman Catholic priest in strict accordance with the spirit of the Act; and expressly enjoined both of these Reverend Gentlemen to "confine their religious instruction to such Convicts only whose names are included in their respective lists, furnished to them by direction of the Board; including in one, those of the Roman Catholic religion, and in the other, the remainder of the Convicts, which latter alone are to be under the spiritual guidance of the Chaplain."

They made the following further provisions:—"No attempt shall be made by either of the clergymen, directly or indirectly, to obtain converts to their respective congregations, and no change shall be allowed in this respect without the special direction of the Board."

"No controversial work or book tending to bring into disrepute or contempt either the Protestant or Roman Catholic religion, is to be brought into the establishment."

Notwithstanding the stringent character of these regulations, it cannot be denied that the very end they are intended to counteract, has existed to a very considerable extent. It is difficult, almost impossible, to define what works shall be considered controversial and classed in the category of those prohibited to be introduced in the rule above cited; nor would it be very easy to submit every work admitted into a Prison to such a censorship as would effectually preclude the introduction of such as might be considered obnoxious by one or the other party. The best security against the clashing of opinions, is to be found in a mutual good understanding between the clergymen of the two denominations; that neither shall encroach on the religious domain of the other; and in a firm determination on the part of the head of the institution to discountenance every attempt at proselytism among the Convicts. The former, we regret to state, has not existed heretofore. It is far from our intention to cast the slightest censure on any of the clergymen, whether Protestant or Roman Catholic, who have at any time officiated in the Prison; but we should be wanting in our duty to Your Excellency, were we to hesitate to probe the sore, in order to ascertain the nature of the remedy to be applied. The mutual misunderstandings, however, we believe, have arisen from circumstances which it would have been difficult to avoid, and for which neither party was, strictly speaking, censurable. The books—many of which we have already observed, might be construed as of a controversial character—distributed to Convicts of the one persuasion, successively found their way into the hands of the Convicts of the other persuasion, notwithstanding the rule of the Institution, forbidding such an interchange. Polemical discussion on their dif-

ferent religious tenets, thus arose amongst the Convicts, and were conducted with the acrimony too common in such disputes; opprobrious terms were bandied from one to the other, and were applied by each disputant to the clergy of the other denomination. Some of the Officers, also, setting all rules of discipline and good order at defiance, appear to have been mixed up in these unseemly contentions, and even to have encouraged the Convicts to cabal against their religious instructors. Of course these disputes came to the ears of the Pastors of both denominations, and the intelligence was most probably so conveyed as to leave the impression on each clergyman that Convicts under his charge had been tampered with, to induce them to change their faith. A spirit of mutual distrust ensued, leading to complaints, from each against the other, to the Board of Inspectors; who appear to have done little towards reconciling the differences so unhappily created.

Of late also another source of contention has sprung up. Some of the Convicts, either from that restless desire of novelty so natural to persons condemned to a monotonous state of existence, or from conviction, have evinced a desire to change their religion, and have made application to the Board of Inspectors, for its sanction to that step.

There appears to be nothing in the Penitentiary Act to authorize the withdrawal of the Convict, during the term of his incarceration, from the spiritual control to which he became amenable on his entering the Prison; and we can foresee numerous evil results almost certain to arise from permitting such a practice. Whilst we are ready to admit the force of the reasoning which would assert the inalienable right of every one to worship his Creator in that form which is consonant to his ideas of truth, and to attach himself to that class of Christians with whom his opinions coincide, we cannot but consider that there are peculiar circumstances which make the inmates of the Penitentiary an exception to any such general rules. Allow such changes, and you will have the consideration of the truths and precepts of Christianity give place to disputation on forms and ceremonies—the Pastor, instead of devoting the limited time allotted to his religious functions, in pointing out the enormity of sin, and the necessity of repentance, will employ himself in depicting the alleged errors of other persuasions—or the Convict, perhaps annoyed at the faithful admonitions and rebukes of his spiritual guide, or desirous to curry favour with his Keeper, will affect a conversion in which his heart has no share. A real change of opinion is altogether improbable, since the rules of the Prison, if properly enforced, will effectually prevent proselytism, directly through the clergymen themselves, or indirectly through the books which they circulate. We see no likelihood, therefore, that the consciences of any of the Convicts will be wounded by their being retained during their imprisonment, under the Chaplain to whom they were originally assigned.

We have been thus minute in describing and tracing to their source, the religious dissensions which have prevailed in the Penitentiary; because we consider it of the last importance to take effectual precautions against their repetition. Of this there will be more danger when the clergymen are constantly at the Prison, and hourly encountering each other, than when their ministrations were confined to a short daily visit. It will be most desirable that the gentlemen selected for the sacred office of Chaplain should be imbued with a truly Catholic Spirit, and should cordially co-operate for the reformation of the prisoners.

Divine service we propose to have performed in the respective chapels, every Sunday morning and afternoon; also prayers morning and evening, daily. We also recommend that forms of Grace and Thanksgiving shall be prepared by the Inspectors, and be offered up by the Warden, Deputy-Warden, or Clerk of the Kitchen, at the commencement and close of every meal. A portion of the religious instruction from which the most beneficial influence over the minds of the Convicts is to be hoped, is that of the Sabbath School. There has, as yet, we believe, been no attempt made to establish one at the Provincial Penitentiary; the religious instruction which the prisoners receive on that day being merely Divine Service in the Hall, soon after breakfast. They are then removed to their cells, where they are confined for the remainder of the day except the short space of time allotted for dinner. From so irksome a manner of spending the Sabbath, little moral good can be expected to be produced; from the knowledge we have of the benevolent and charitable dispositions of the community at Kingston, we feel justified in asserting that they would vie with each other in promoting the efficiency of a Sabbath School in the Penitentiary. There must, of course, in such an Institution, be nothing of a sectarian character tolerated, and although the Chaplain, in virtue of his office, would preside over the school, Ministers and members of every religious denomination, it is to be hoped, would zealously co-operate.

It is probable that the Protestant and Roman Catholic Sabbath Schools would be held in different apartments.

While on the subject of Religious observances, we cannot but express our desire, that the Convicts should be supplied for the Sabbath with a dress different from that in which they are clothed during their days of labour; the additional expense of such a change of garments beyond that of the first outlay, would be so trifling as hardly to merit consideration. The effect upon the minds of the Convicts would be salutary, and in harmony with the feelings intended to be promoted by the religious observances of the day. In Charlestown State Prison where the practice is adopted, the Chaplain speaks of it as producing a highly beneficial influence. Our observation bears out his assertion so far as relates to the orderly appearance and demeanour of the Convicts there assembled for divine service.

The only portion of time, at present set apart in the Provincial Penitentiary for ordinary secular instruction, is about half an hour daily after the Convicts have taken their dinner, and before they are marched back to their respective places of labor. That short interval is also made use of to go through the necessary operation of shaving. Part of the Convicts who are sufficiently advanced in learning, employ themselves in reading during this time; others are engaged in teaching such Convicts as are destitute of the ordinary elements of knowledge, and who are arranged in classes to receive instruction. There appears to be nothing like a strict supervision over these classes, and there can be no doubt that whilst apparently engaged in conveying and receiving instruction, the Convicts enjoy an opportunity of unrestricted conversation with each other. Under such a practice, the silent or Auburn System is manifestly a farce.

We are of opinion that common education should form a systematic part of the moral discipline, and should occupy the whole time of at least one teacher. The several gangs should be drafted off to school in rotation, and each Convict should be in school at

least one hour every second day. We would not hesitate to carry instruction beyond the ordinary studies of reading and writing, but the Inspectors would be guided in this by the success which they might find to attend their labors. To the Schoolmaster should probably be assigned the duty of taking charge and distributing, under the directions of the Chaplains, the books forming the library of the Institution. Holding, as we do, that ignorance is the most fruitful parent of crime, we would recommend the cultivation as well of the intellectual as of the moral faculties of the Convicts, and for that purpose that a small library, carefully selected, consisting principally of religious books, but in part of useful works of a general character, should be procured.

#### REWARDS AND PUNISHMENTS.

Much has been written in favor of a graduation in the severity of the Penitentiary discipline, founded on the conduct of the Convict during his confinement. It has been proposed as an incentive to good behaviour, that a regular record of the conduct of each individual should be kept, and the classification adopted in each case founded on the observance or non-observance of the Prison regulations. Exemplary obedience would thus purchase privileges denied to those who either occasionally or frequently infringed them. Convicts manifesting a determination habitually to violate the rules, to be subjected to a greater rigor than the ordinary discipline of the Prison imposes. This would open a wide door to favoritism, and even should the strictest impartiality be shown in the grading of the Convicts, it would be difficult to make them believe that such was the case. Each would consider himself entitled to a higher rank than that occupied by him, and comparing with the natural bias in favor of himself, the offence for which he was undergoing punishment, with that of others by whom he was surrounded, would draw the conclusion that he was treated with injustice. All Convicts should as far as possible be placed on the footing of perfect equality; each should know what he has to expect, and his rights and obligations should be strictly defined. If he break the Prison rules, he should also have the quantum of punishment to which he becomes subject. He should not witness the spectacle of offences similar in enormity treated with different degrees of severity, unless in cases of frequent repetition. One of the most important lessons to be impressed on the Convict's mind, is the justice of his sentence, and the impartiality with which it is carried into execution. This inflexibility by no means implies harshness as a necessary adjunct; on the contrary the rules of the Prison should be carried out in a mild and humane spirit. In place of wantonly seeking to degrade the criminal below his present position, every means should be taken to raise him above it. Each attempt to elevate the individual will act favorably on the general mass. The Convicts should, as much as possible, be made to understand that it is not the discipline to which they are subjected in the Penitentiary that degrades them, but that the crime which they committed outside has degraded them to the Penitentiary.

Another subject which has occupied a good deal of attention amongst Philanthropists in the United States and elsewhere, is the frequent granting of pardons to Convicts, prior to the termination of their sentences. In some States, the exercise of this power, by the Executive, is necessary, in order to reinstate the discharged Convict in his civil rights forfeited by his conviction of a criminal offence; but in this country no such necessity can be pleaded, because here his attainder ceases with his imprisonment.

The indiscriminate exercise of the pardoning power on account of good behaviour in prison, appears open to very grave objections. It tends to make the men hypocrites, and when the interest is so strong to deceive the officers, the most wily villain is most likely to be successful. It is well known that the worst men commonly make the best conducted Convicts; and so well is this understood in the British Prisons, that they generally employ, in preference, as monitors or in other confidential posts, those who have been frequently convicted, and who are up to the ways of the prison. Nothing can tend more to obliterate the distinctions between right and wrong, in the minds of the Convicts, than to confound with infractions of prison rules the flagrant violations of the laws of God or of the land, and to make obedience to the former, the means of mitigating the penalties due for disobedience to the latter. Where mitigating circumstances could by any possibility be pleaded at the trial, it is fairly to be presumed that they were adduced in most cases, and that the sentence passed by the Court, was founded on the law of the land, after a full and ample consideration of the evidence; it does seem, therefore, anomalous to reverse or alleviate that sentence, unless some good reason can be adduced to show that it was erroneous.

We have already exposed the cruel and indiscriminate character of the punishments formerly inflicted at the Provincial Penitentiary, and we need hardly add that we altogether deprecate the continuance of such harshness. It is conceded now, as an admitted principle in prison discipline, that there is no occasion to govern solely by terror, and in the best regulated Institutions the lash is seldom, if ever, resorted to. Some of the substitutes for the whip are perhaps more open to objection than the whip itself. The shower or the bolt bath has been proved to be dangerous to bodily health, and has produced, in some cases, fatal results. It is also most unequal, acting with much greater severity on some constitutions than on others. Another substitute adopted at present in some Congregate prisons, is the yoke, an iron bar of 30 to 50 pounds weight, fastened on the chest, and to the extremities of which, the arms are extended and the hands tied. This appeared to us a punishment of a revolting character, little calculated to produce any salutary effect. Confinement in a dark cellar on bread and water, is perhaps better adapted to subdue refractory spirits, but this also requires care in the application, lest either the mind or body should sink under it. The box, another *succedaneum* for corporal punishment, which was used to so fearful an extent in the Provincial Penitentiary, during the year 1847, we are convinced, is highly injurious to some constitutions, and we see no prospect of such reformatory effects likely to be produced by it, as to justify the experiment. With proper management, our conviction is, that the punishments in a Penitentiary may be few in number and mild in character. There are, however, a few characters in most prisons whom too much lenity only tends to make refractory, and who are only to be ruled by bodily fear. On such persons and for such offences as seriously involve the discipline of the prison, such as assaults on the officers, it will undoubtedly be a matter of necessity, sometimes, to inflict the severe punishment of the dark cell, or failing that, of the cat; but we conceive, that with proper management, the deprivation of comforts, and solitary confinement, and as little of these as possible, will be found sufficient aids to kindness and reason for the maintenance of good discipline.

The subject of appropriating to the Convict a share of the proceeds of his overplus labour, has also engaged our attention; and though favorably impres-

sed with it at first, an examination of the evils which have arisen from the practice in prisons where it has been tried, has convinced us that the adoption of such a system is not advisable. The plan has a tendency to break down those proper barriers which distinguish the honest artisan from the Convict labourer. It is also directly calculated to foster deception among the prisoners. The Convict manœuvres to get his stated quantum of labour rated low, and that secured, he either spends a portion of his time in idleness, or makes it lucrative to himself, as he may see proper. In practice, it has also been found to deteriorate the character of the work done in the Prison. We cannot sympathize with those who conceive the Convict entitled to a portion of the proceeds of his labour. The State is exposed to great expense through his misconduct, and we think it entitled to his services during the confinement awarded him for the protection of society.

#### EMPLOYMENT OF CONVICTS.

The task of finding employment suited to the various capacities of the inmates of a Penitentiary, and beneficial to the public, is by no means easy. It is not possible to lay down any precise rules; much must be left to the judgment and discretion of the Warden; but a few guiding principles should be kept in view. The main object, as regards the prisoner, is to withdraw him from those evil influences which led to his ruin, and in general it may fairly be presumed that the acquirement of industrious and regular habits is a great safeguard against relapse. The selection of a trade which can be learned without much difficulty, and in which employment can readily be procured, is also very advisable in most instances. Neither should the pecuniary return be considered as a matter of trifling moment; we can see no reason why the labour of able-bodied men should not produce sufficient to pay for their sustenance; and we consider that Penitentiary, in a financial point of view, as ill-managed, that does not make its revenue nearly equal to its expenditure. Grave objections may be raised to the employment of Convicts as locksmiths, whitesmiths, gunsmiths, copper-plate printers, and in such other trades requiring skill and dexterity; the knowledge of which might assist them on their discharge in nefarious attempts to prey on society. Those occupations are evidently the most eligible for a prison in which the least communication is necessary among the men in carrying it on; in which the article produced is of wide demand and easy sale; in which the Convict can readily get employment on his discharge, and pursue it in his own house, and in which the least capital is required to carry it on.

One great point of economy in the management is to have but few trades and those simple in character, neither requiring various and expensive tools nor a number of skilful mechanics as instructors.

There are three modes by which the Convict labour can be made more or less productive; 1st, in making articles for sale for account, and at the risk of the Penitentiary; 2d, in manufacturing articles to order or on contract; 3d, by letting out on hire the Convict labour.

The first, we fear, would be hard to conduct profitably. The Warden of a Penitentiary could scarcely be supposed sufficiently conversant with the details of business to manage such a trade well. He would have to rely on agents to dispose of the goods, and the charges for agency, &c., would probably absorb a large portion of the proceeds.

The second mode we consider decidedly preferable to any other, provided permanent employment in a suitable branch of trade, for a considerable number of Convicts, could be found, but it is difficult to meet with persons disposed to enter into such contracts. When opportunity offers however, we recommend that this system should have the preference. Casual orders can seldom be executed to advantage, and to rely on them for the employment of a large body of Convicts is quite out of the question. We can conceive nothing more absurd than the past management of the Penitentiary in this respect. Trifling jobs, such as mending shoes, repairing locks, &c., by which a few shillings were occasionally earned to the Institution at the cost of as many pounds.

The third plan, that of letting out the labor of the Convicts at a fixed rate per diem, offers the advantage of simplicity and certainty in the result. Great care requires to be used in contracts of this description, that there be no interference on the part of the contractors, in any way whatsoever, with the discipline of the prison; and that the Warden shall be the sole judge in all matters of complaint that may be made as to the conduct of the Convicts in performing their daily labor. With proper precaution on these heads, we are disposed, failing those of the second class, to recommend that contracts be entered into, if possible, for the surplus labor of the prison; to be employed in such trades as possess the recommendations to which we have already referred.

This system is open to much abuse from the intercourse necessarily permitted to the Contractor and his agents with the Convicts. These parties care little for anything but getting a great amount of work out of the men; and it is too often the case that consideration is secretly given by the Contractor to the Convict, in payment of over-work, in direct breach of the prison rules, and in detriment to the discipline. The utmost care and watchfulness is necessary on the part of the prison authorities, to prevent this abuse; and no contract should be made with any Contractor, which does not enable the Warden to secure that moral men only shall come in contact with the Convicts.

In some of the United States' Penitentiaries, a practice exists of fixing, according to the capacity of the Convict, a certain quantum of labor which he is obliged to perform, or he is punished for his failure. This plan may also lead to great abuse, but it may be necessary to adopt it under proper restrictions.

#### ADMISSION OF VISITORS.

The indiscriminate admission of visitors, for the purpose of indulging a prurient curiosity, we consider fraught with such evil, that we recommend its discontinuance. It is discordant with the intention of Penitentiary confinement, which is to separate, as far as possible, the Convict from all communication with the world without; it distracts his attention from his labor, and excites him to infringe the prison regulations, forbidding him from gazing at strangers; it is the means sometimes of bringing improper characters into the prison, and of enabling them to hold intercourse with the Convicts; and it affords opportunities of supplying surreptitiously forbidden articles, such as tobacco, to the Convicts. In the Provincial Penitentiary, about 2000 persons have been admitted annually; and one man has been kept almost constantly employed escorting them through the yard and premises. In most or all of the Penitentiaries in the United States, an admission fee is exacted, which amounts in some to fifteen hundred

to two thousand dollars annually; but no revenue can alleviate the disgust which every feeling mind must experience at the exhibition of so many fellow-beings, as in a menagerie, to the brutal or idle gaze of spectators. Such an outrage on decency, we consider as second only to the abomination which formerly existed of working the Convicts in chains on the public highways.

The only visitors whom we would permit to have the right of intercourse in any shape, or access to the prisoners, besides the officers of the prison, the Inspectors, and the official visitors, are the members of the Executive Government and of the Legislature, and the Judges of the Court of Queen's Bench. Under peculiar circumstances the Inspectors or the visitors might have the privilege of ordering the admission of strangers, but this permission ought rarely to be granted and not grow into a practice.

### BUILDINGS.

To complete the Provincial Penitentiary, the following additions require to be made:—

#### PRISON FOR FEMALES.

The portion of the North-Wing which the female Convicts now occupy, is not adapted, in any way, to carry out the Penitentiary discipline; nor does it seem even to be attempted. By day, some kind of superintendence exists, but at night, the communication is perfectly unrestrained. The partitions between the cells are made of pine boards, and as has been noticed in the former report, they serve only to breed vermin. There is no attempt at proper ventilation.

The labour department has been as inefficiently conducted as every other part of the discipline. Female labour can scarcely be expected to prove a source of pecuniary profit to a Penitentiary; but we believe that occupation might easily be found which would conduce to the maintenance of order in the prison, at the same time that it would repay, in part, the cost of supporting the prisoners.

A suitable building must, however, be erected before any reform can be attempted with success.

#### CHAPELS AND SCHOOL ROOMS.

Divine worship is at present performed to the Protestant portion of the Convicts in the dining hall, and to the Roman Catholics in a part of a large room partitioned off for the purpose. Neither of them is adapted for the service to which it is applied; and the former especially, being the room in which not only the meals are served up, but where corporal punishment is inflicted, and other daily avocations performed, is destitute altogether of those religious associations calculated to exert a beneficial influence over the minds of the Convicts. Suitable places of worship for the use of the adherents of both churches, should be constructed and properly fitted up.

A school-room properly furnished, apart from those appropriated to religious worship, will also be required.

#### WATER WORKS.

Notwithstanding the lavish expenditure on the prison buildings, there are some points which have been neglected, and to which, the attention of the Inspectors, it is conceived, should be directed. The

first is the supply of water. With so close proximity to the lake, a hydraulic engine of sufficient power might be constructed at a moderate expense, and the working of it would be a good employment for such Convicts, as it would be advisable to subject to hard labour for an hour or two in the day. Through this means, large tanks and reservoirs should be kept regularly filled; the Convicts might enjoy a benefit at present denied to them, but which is necessary to their personal cleanliness, that of frequent baths; and there would be at all times, in case of fire, an ample supply of water at hand.

#### VENTILATION.

The ventilation of the Prison buildings is also extremely defective, especially in the south wing, where there are really no means of escape for the foul air. In both of the wings now occupied, there is required, an apparatus for the introduction of fresh air. The expense, under this item, would be very small, and the object is of the highest importance; it is much to be regretted that this obvious defect has not been sooner remedied.

We have thus gone through the various questions involved in the inquiry entrusted to us by Your Excellency; and set forth the improvements in the Management and Discipline of the Penitentiary, necessary, in our opinion, for the better administration of the institution, and for the physical and moral well-being of the Convicts. In our investigations we have spared no labour to arrive at the truth on every point, and our conclusions are the result of anxious deliberation. The time occupied has far exceeded our expectations; but, from the difficulties in our way, we feel that justice could not have been done to all parties, and the subject satisfactorily treated, by a shorter process. And if the result of our labours shall be, to replace the loose morality and the open mal-practices which have heretofore prevailed in the Penitentiary, by a high tone of moral feeling; if a system of discipline, harsh, cruel, and degrading, can be made to give way to one, firm, equitable, mild and humanizing; if some success shall be here-

after attained in the work of reformation; the time we have devoted to the inquiry will not have been spent in vain. We are well satisfied that if the spirit of our recommendations is promptly carried out, all of these desirable results will be attained, and a large pecuniary saving, annually effected.

In all our proceedings and recommendations, we have endeavoured to keep steadily before us, that the great object of all penal Institutions, is the prevention of crime; and it has ever appeared to us that there are four great aims which a sound penal system should ever keep in view, viz.—to rescue the child of ignorance and vice from the almost certain destruction to which he hastens; to guard from contamination the venial offender, committed, before or after conviction, for a brief space to the common Gaol; to implant religious and moral principles and industrious habits on the inmate of the Penitentiary; and to strengthen and encourage him in his struggles with the world when he is discharged from confinement.

The result of all our researches has been, to impress us with the wisdom and truthfulness of the declaration so early made in that British Act of Parliament, which stands as an unperishable monument to the philanthropic labours of Howard, that the true principles of a prison system ought to be:—“To seclude the prisoners from their former associates; to separate those of whom hopes might be entertained from those who are desperate; to teach them useful trades; to give them religious instruction; and to provide them with a recommendation to the world and the means of obtaining an honest livelihood, after the expiration of their term of punishment.”

All which is respectfully submitted.

ADAM FERGUSSON,  
N. AMIOT,  
E. CARTWRIGHT THOMAS,  
W. BRISTOW,  
GEO. BROWN,  
Commissioners.

Montreal, 16th April, 1849.

[Translation.]

To His Excellency the Right Honorable JAMES, Earl of ELGIN and KINCARDINE, Knight of the Most Ancient and Most Noble Order of the Thistle, Governor General of British North America, and Captain General and Governor in Chief in and over the Provinces of Canada, Nova Scotia, New Brunswick, and the Island of Prince Edward, &c. &c. &c.

The undersigned, one of the Commissioners appointed by Your Excellency to inquire into the Government, Economy, Management, and Discipline of the Provincial Penitentiary at Kingston, has the honor to report to Your Excellency, that he cordially concurs in the views of his colleagues with respect to the alterations and improvements which it is necessary to make in the system of management and discipline of the Penitentiary at Kingston, as recommended in the Second Report made by the Commission to Your Excellency, with the exception of one point on which the undersigned cannot entertain the same opinions as the other members of the Commission. This point is one of great, vital, and paramount importance; and the undersigned feels it his duty respectfully to submit to Your Excellency the reasons and motives which force him to differ from his colleagues on a subject essentially concerning the interests of the prisoner, both in this world and in the life to come. This important subject is liberty of conscience.

Under the law which now governs the Provincial Penitentiary, (9 Vic. ch. 4,) the Inspectors are authorized to make such regulations as they may deem proper for the good management of the Penitentiary, subject, nevertheless, to Your Excellency's approval. Under this law the Inspectors passed a Resolution, which is still in force, and by which a prisoner who should wish to change his religion whether Catholic or Protestant, and become a convert to another, cannot do so without the consent and approbation of the Board of Inspectors. The principal object of this regulation was, to give the Inspectors an opportunity of satisfying themselves of the sincerity and firm conviction of any prisoner who should request such permission.

This regulation, wisely carried out, appeared sufficient, in the first place to prevent the possibility of a prisoner's obtaining permission to change his religion on any frivolous pretext; and secondly, to allow to a prisoner, influenced by sincere and conscientious motives, the right of satisfying the imperative dictates of his conscience.

But in the Second Report of the Commission to Your Excellency, it is recommended "that no change of religion be allowed in any case whatsoever."

The undersigned may perhaps be permitted to express his surprise, that in the age in which we live, when principles of religious toleration, freedom of worship, and liberty of conscience are recognized and recommended by the most eminent statesmen, the most celebrated political writers, and by all the distinguished men, who, under the inspiration of a philanthropic and Christian philosophy, dedicate themselves to the improvement and welfare of their fellow-creatures, it should be necessary to point out the propriety, the justice, and the necessity of allowing, even to a prisoner, full and entire liberty of conscience.

The undersigned, while he concurs in the opinion of his colleagues with respect to the propriety of al-

lowing any religious proselytism in the Penitentiary, on the part of any person whomsoever, considers the matter as wearing a very different aspect when it is the prisoner himself who applies to the chief authority of the Institution for permission and liberty to satisfy the desires, the dictates, and the aspirations of his conscience.

If society has the right of depriving a man of his liberty when he has violated the laws made for its protection; if it has the right of binding his body with chains, and keeping it within the walls of a prison, it cannot reasonably claim the right of fettering his soul and restraining its aspirations towards its Creator, and of depriving him of the enjoyment of the noblest part of his being, which the providential goodness of his Divine Master has given him.

But should not this question be considered in a higher, a more imposing, and more sublime point of view? Every one whose principles are orthodox will agree that conversion is an act of grace; it is the act of the Divinity itself; for though society cannot heal a wounded conscience, religion can, and this is its noblest attribute. Has society then a right to oppose the Divine inspirations which it may please God, in his heavenly mercy, to impart to man? Shall it have the right of forbidding the salutary communication which the Creator, in his paternal benevolence, deigns to hold with his creature? Ah! if tyranny, even applied to temporal and material objects, is so repugnant to the heart of man, how revolting and intolerable does it not become when applied to the faculties of the soul? These reasons become much more impressive and convincing when we consider that the Provincial Penitentiary contains a great number of prisoners condemned to prison for a long period, or for life. Is not the fate of these unfortunate beings already sufficiently hard and painful, without adding the sufferings and agonies of an agitated and unsatisfied conscience? Why deprive them of the only advantages which they can enjoy inoffensively, and without endangering the interests of society?

The undersigned thinks that the reasons alleged in the Second Report of the Commission to Your Excellency against any conversion or change of religion, are only casual and hypothetical, can only apply to exceptional cases, and cannot in any manner outweigh the great and powerful reasons in favour of allowing liberty of conscience to man whether he be at large or a prisoner.

In support of the great principle of liberty of conscience, Your Excellency will deign to permit me to point out the following fact. A considerable number of Convicts on their arrival at the Penitentiary, and on being asked to what religion they belong, often declare that they belong to none—that they have been brought up in no religious creed.—In such a case, would it not be just and reasonable to ask them what religion they prefer to adopt, whether Catholic or Protestant, and to allow them the religion of their choice? Yet they have, on the contrary, in such cases, without being consulted, been invariably sent to worship with the Protestants. This, the undersigned considers as a serious abuse, which he respectfully submits to the consideration and attention of Your Excellency.

The whole humbly submitted.

N. AMIOT,  
Commissioner, P. P.

Montreal, 19th April, 1849.

## APPENDIX A.

DEPOSITIONS taken in the matter of Dr. Sampson's complaint against Kitchen-keeper F. W. Smith, by the Board of Inspectors, Provincial Penitentiary October, 1847.

Eustach Coté—(a discharged Convict)—sworn:—

Has seen F. W. Smith shoot arrows at Convicts from a bow. Has been struck himself with the arrows; has also seen Smith strike a great many with arrows. Has seen him strike Convict Abraham with an arrow. Deponent was very familiar with Keeper Smith; used often to play with him. Keeper Smith threw witness down once, and kicked him on the knee; this was done in rough play. Has seen him strike Convict Wilson; he pushed him (Wilson) and knocked him about. Has seen Smith throw water on Convicts from a small tin spout, also from the engine; Smith was in the habit of doing so, and wetting them. Witness was struck in the eye with the cats by Keeper Smith. Has seen pins in the ends of Smith's arrows; has put them in by desire of F. Smith. Keeper Smith often went behind the Convicts when at dinner, and stuck pins into them. Has seen him prick them with pins in the yards and shops; this was done in sport. He blackened old Paschal Masson's face for sport; Masson was a Frenchman. Has several times got tobacco from F. Smith. Smith has thrown water on the Convicts through the air holes in the top of the punishment box, when they were in it; has been so wet himself several times. Smith bid witness open his mouth one day, and put tobacco in it.

Witness has been sent up stairs by Smith to throw water on Convict Wilson, by which he was wet. Witness has been in the habit of collecting arrows for Smith; has gone on top of the house and through the yard to collect them. Witness has taken, by Smith's orders, butcher's meat from a cart to increase the rations of the Convicts before the meat was weighed—Smith told witness to throw it in the cellar, where the rest of the meat was, for fear the butcher should see it—the meat was afterwards weighed, less the meat taken out.

Witness has seen Smith blow flour in Keeper Little's eyes, with a mill or machine he had, when the Convicts were marching out from dinner.

Witness has been sent for pigeons by F. Smith to the lofts &c., but does not know for whom they were intended.

Witness was reported once for talking by F. Smith, when he caught him with tobacco.—The punishment for talking was less than for having tobacco. M'Carthy and Fitzgerald were present.—The Convicts often get tobacco; they get it from carters and people about the yard; but witness declines giving their names.

Cross-examined:—These questions were never put to him before this by any one. Dr. Sampson never put them to him. Witness was at Dr. Sampson's house this morning for the first time; got his breakfast there by Dr. Sampson's orders. Has had no conversation with any one about this matter before this morning. Had conversation with Dr. Sampson about it this morning.

Witness has been twice in the box; both times for tobacco; got three days. He was reported by Keeper Smith for not opening his mouth to permit a search for tobacco. Has had no conversation with guard Fitzgerald; saw him one day in town, but had no talk about this matter.

Re-examined in chief:—Witness told the substance of this evidence to Micajah P. Guess, with whom he has been staying since he left the Penitentiary on 20th July.

By the Board:—Knew that F. Smith threw water on him when in the box, as he could see him through the air holes. Witness told F. Smith he would tell his father, and he (F. Smith) let him off a day of the box in consequence.

Witness being asked, why he first said he had talked to no one, and afterwards said he had spoken to Guess about this matter? says, he did not understand the question.

EUSTACH <sup>his</sup> ~~X~~ COTE.  
mark

Henry Wilson—(a discharged Convict)—sworn:—

Remembers seeing Dr. Sampson in town, after he got out of the Penitentiary. Remembers Dr. Sampson telling him he should probably call on him to give evidence about the eye of a Convict. Saw him (Dr. Sampson) also at the cattle show at Waterloo: Dr. Sampson spoke to him about it then, and told him he should subpoena him. Witness has seen arrows shot at Convicts by Mr. Frank Smith; has frequently seen him shoot at them; has been struck by an arrow once himself; was walking with his back to F. Smith, who struck him with one on the wrist. Was also struck on the collar bone; it hurt him much at the time, and thinks it caused a swelling or gathering in his neck. Has seen him (Smith) shoot at Convict Abraham, an Indian. Abraham was at work, before breakfast, at the south wing making splints for baskets; Mr. Frank came out with a bow and arrow—witness was in at the board pile making water, and Smith did not see him—Smith drew the bow and arrow, as witness thinks, intending to shoot Abraham's cap off, who was stooping, just as he fired Abraham raised his head, the arrow struck him in the eye. Smith went up to Abraham who had his hand on his eye, said, "I did not mean to strike you on the eye, merely to shoot your cap off. Abraham came in and witness came in after, and asked him what ailed him? Abraham said, he was making splints and some of them went in his eye. Witness asked him the question because he wished to see if he would tell him how it happened. Neither Abraham nor Smith saw witness, he thinks as he was in the pile. He heard no after conversation between Abraham and Smith. Mr. Frank Smith went out of south wing. Abraham remained.

Witness has seen F. W. Smith throw water on the Convicts with the engine. Has seen him throw water twice on people confined in the box. Has seen him shake the box, and put a stick and poke them from the bottom. He threw the water over-

head. F. W. Smith ordered witness to shake the box. He did it; no one helped him; but immediately after Smith ordered another man to do it, and he did it accordingly. The man was Heenan, a Convict now out. Mr. Frank talked short, and witness was rather frightened, so he shook the box according to his orders. Smith gave him a chew of tobacco for doing it.

Witness has seen Convicts plunged in water. They were taken by four, sometimes by five men, and plunged headforemost into a barrel of water in the wash-house. Did not hear F. W. Smith order this to be done, but he (Smith) was present, and saw it. Witness was so used himself by the wash-house men—Mr. F. W. Smith was present—witness went in for a bucket of water, when he was plunged in; Smith said nothing, but “kind of laughed,” and told witness to change his shirt. Witness has seen Conkright and Daniel Lewis so used. Believes Conkright is here, but Lewis is out.

Has never seen Convicts employed by Smith in throwing water. Has seen Keeper Smith stick pins in Convicts; he has stuck them in witness; does not know why he did it; Smith said nothing, just laughed and passed on. Sometimes he stuck them in the thigh, sometimes in the arm; just where he could get a chance. Has seen two Convicts with faces discoloured; one had his face blackened, the other whitened. One was Kelly, who is in the Shoe Shop. The other, whose face was whitened, was Daniel Lewis. F. Smith did it with something in a paper which he had in his hand. Saw him on one occasion search Lewis for tobacco, &c.

Witness, when he saw Frank Smith shoot his arrows, would go for them. He was not desired to do so by Smith; did it of his own accord. He was one of the sweepers in the Wing, and not particularly employed all the time.

Witness was employed for the best part of two months, off and on, winding thread for F. Smith. Did not know at first what the thread was for; Smith did not just tell him what it was for, but witness saw him making nets with it. Smith did not call witness from his work for the purpose; was not constantly employed, but was directed by Smith to do this when not otherwise engaged. Wound a great quantity.

At the corner of blacksmith's shop heard Convict Ilett tell the Warden that Keeper Smith threw water on him. He complained of it. The Warden made answer to Ilett, that he should take a brickbat and knock him down. Ilett said that he would not do it, it would be contrary to the rules of the Prison. Ilett went and changed his shirt; he went into the East Wing. Has seen a Convict called Pulchard and Smith netting together; they were in the little room of the Dining Hall, Mr. Costen's room.

Cross-examined:—Was standing on the pile of boards when he saw Smith strike the Indian. Abraham's shanty was behind the South Wing, on the east side of the South Wing. Shavings, where he worked, witness believes are there still.

By Board:—When in the box he could see a person outside; in the big round one; he could see them through a crack; could see to read; it was quite light. One of the Convicts on whom Smith threw water was old Hall, also a little boy who works in the blacksmith's shop; thinks his name is Bernard; but is not sure. He was crying in the box; Smith told him to hush, and as he did not cease threw water

on him. Knows not whether in other cases Convicts were making a noise, or if it was done in sport. Neither Hall nor he were making a noise. Supposes it is usual to search men for tobacco; has been himself searched for it by F. W. Smith. When in Prison shewed the Doctor the lump made by the arrow on his neck, and he lanced it. Did not tell the Doctor how he got it. Does not suppose F. Smith shot at him to injure him, but supposes he did it in sport; but it hurt him.

HENRY <sup>his</sup> WILSON.  
mark.

Francis Little—(one of the Keepers now employed in the Penitentiary)—Sworn:—

Cannot say that he ever saw F. W. Smith throw water on his gang; there never was water thrown on his men to his knowledge. Witness never told any one that water was thrown on his men. Never had flour thrown by F. W. Smith in his face; never had any flour thrown or puffed in his face.

By Board:—Wilson never was in his gang. Côté was, but not latterly; he was so probably four months before he went out, but is not certain how long. Never saw or heard of Mr. Frank Smith throwing water on men in the box; no such thing was done in the place since witness came to it, that he knows of. Cannot say that he ever heard of F. W. Smith shooting at a Convict or injuring his eye. He oversees one of the gangs of masons.

(Signed,) F. LITTLE.

Francis Bernard—(aged 13 years—does not know the nature of an oath)—not sworn:—

Has been in the box. Côté threw some water on him on one occasion. Did not cry. Has been more than once in the box. Mr. Frank never threw water on him. He was not there.

By Board:—No one spoke to him about what he was to say, nor did he know why he was sent for to the Board. No one spoke to him since he left the blacksmith's shop.

FRANCIS <sup>his</sup> BERNARD.  
mark.

Isaac Hall—(a Convict—knows the nature of an oath)—Sworn:—

Has been four or five times in the box. Has had water sometimes thrown on him from the wall as he was passing beneath. Is positive no water was thrown on him in the box. Does not know who threw water from the wall; it was not Mr. Frank Smith, who was in the dining-room at the time.

By Board:—Never heard that this trial was going on; never heard it spoken of; Mr. Costen told him to put on his coat, and brought him in. Heard Abraham lost his eye. Abraham said it was by a chip which flew in his eye when he was chopping. This was about a month before he went out. Witness works constantly at the pump all the time. Never saw any one plunged into the barrel in the wash-house; but seldom goes there.

ISAAC <sup>his</sup> HALL.  
mark.

Simon Conkright—(Convict)—Sworn:—

Is a Dutchman. Works in the sawing-house; never has been in the wash-house above once or twice; was plunged in the tub himself; a parcel of the Convicts seized him and plunged him in the tub; supposes it

was for sport or madness; never spoke to them; his Keeper, Mr. Swift, had sent him for water for the grindstone. Mr. F. Smith was there; he saw the Convicts duck witness; he (Smith) came up to the tub and said something, does not know what; it was done just as he (Smith) was going in; does not know but that they would have killed him had Smith not been there; thinks he (Smith) saved him; it was in the winter time; he was just ducked in, and got out again as quick as he could; perhaps they would have drowned him had Smith not been there; had had no disagreement with the people who did it. Complained to Swift of having been dipped; Swift made little answer. Has had water thrown on him in the new Wing below blacksmith's shop; Smith was not there; Convicts did it; never saw water thrown on others.

Never was in the box. Smith has stuck pins or something in witness; does not know why; supposes it was for sport, as deponent never did anything to deserve it; Smith did not speak to him when he did it; just pricked him and went along. Was not talking. It was done once or twice; twice, he thinks. The pin was in his hand; it was done on purpose; it was a sharp stick or pin, does not know which. Never saw him knock two Convicts' heads together at table that he remembers.

SIMON <sup>his</sup> ~~X~~ CONKRIGHT.  
mark.

John Kelly—(Convict—aged fifteen)—Sworn:—

Knows the nature of an oath. Never had his face blackened or painted in prison. Never saw any one's face blackened or painted in prison.

JOHN <sup>his</sup> ~~X~~ KELLY.  
mark.

Christopher Julian—Sworn:—

Was lately Hospital-keeper in the Penitentiary. Has frequently seen F. Smith shooting arrows from a bow in the Penitentiary. Has seen him shoot at Convicts. For several months before Deponent left, F. Smith was in the habit of shooting; sometimes at marks, sometimes at pigeons, more frequently at Convicts. The mark was put up in the passage between the Wings, and in the South Wing; the mark was sometimes a hat, sometimes a board. It was generally in the afternoon. Sometimes it was in the fourth gallery at the tailors' place. At the time of giving out supper, witness has frequently been obliged to dodge or keep out of the way of arrows. Has spoken to Keeper Hooper on the subject. Has often seen Convicts picking up arrows for Mr. F. Smith, generally two were so employed, sometimes three or four. Saw him shoot at the tailors at work in the fourth gallery. Has frequently spoken to Mr. Hooper on the subject, and asked him why he allowed it? Hooper said he was sorry for it, but could not help it. Was sorry to see the discipline of the prison reduced to that state, but that it was not in his power to do anything.

Witness has often seen water thrown on people by F. Smith. There is a small engine with a hose and pipe, with which he throw it on the Convicts passing. Saw this very often. Some were drenched, some sprinkled, some more or less wet, as it fell on them. Frequently arrows struck the upper porch of the hospital entrance room and made a great noise; it was a great annoyance to the sick and dying. This happened while several patients were in the hospital, two of whom were in a dying state, and died afterwards. The hollow boards made a great noise, when that sometimes the arrows came

in at the open windows, and struck the door of the large room leading to the hospital.

Remembers case of the Indian Abraham. The first time he came he shewed his eye to Deponent. Deponent thought it a severe contusion. The eye and eye-lid were much swollen at the time. Dr. Sampson, when he saw it, asked what happened it? but Dr. Sampson did not see it for perhaps ten days or a fortnight before he (Abraham) was put on the sick list. Deponent treated the eye himself till the inflammation had subsided. After the inflammation had subsided, but not till then, saw a deep seated injury in the eye, and told him (Abraham) he should go to Surgeon and put himself on sick list. Asked him how it happened? He said, a splint struck him in the eye, either when he was making a broom or shaving a stick, deponent forgets which. Could not say if Abraham said he was making a basket or shaving a stick. Does not know where Abraham now is. Dr. Sampson said to Abraham when he saw it: "you got some severe hurt or injury in the eye?" Abraham laughed, and said, "Oh no." He lost the sight of his eye; he was taken into the hospital for it. Dr. Sampson always said, "there was some mystery about this. There is some severe injury here." He made this remark very often. Witness does not know the cause of the hurt, and only heard a rumour of it by report, after a long time. When Abraham said it was caused by a splinter, Deponent could not believe it, as it seemed a severe injury. In cases of inflammation of this kind, it was usual for him to treat them, but after inflammation subsided, and he saw the injury, he put Abraham on the sick list. When the eye was opened, the sight or centre of the pupil or cornea, seemed injured; there was a white or grey round spot on it.

It was, a long time afterwards, talked of in the prison, that it was shot out by an arrow. Has heard several of the Convicts say so. Has heard the colored man Wilson say it (Henry Wilson the witness). He (Wilson) said it was shot out by an arrow. He appeared not to like to tell Deponent. Deponent asked him how he knew it? He said, he guessed it was done by an arrow. He said he knew how it was done. He appeared to tell it unwillingly, but did not say who did it. Deponent cannot say farther than it was a general rumour that it was shot out.

Witness has seen Convicts' faces blackened or discoloured; black and white streaked; did not know who did it. Has seen two in that state wrestling as they came out of the supper-room: Mr. Watt was present on that occasion; on another occasion Mr. F. Smith was present. Deponent asked Watt, what it was? he said, it was old Masson and Primeau.

On the other occasion when they were wrestling or dancing, and gesticulating with their faces blackened, Mr. F. Smith was present. He seemed to smile and laugh at them.

Witness was nearly ten years Keeper of the hospital. A Convict of the name of Richard M'Canna was in the box, making a great outcry, and using most unmeasured language, as he (witness) was going up the gallery. Mr. F. Smith was at the side of the box. The Convict spoke very unmeasured language against F. Smith, and the Warden. M'Canna said F. Smith had shook the box, but witness did not see it. M'Canna wanted a drink, and said he was dying of thirst. Witness asked if he would give him water? F. Smith said, "no, let him die." Witness afterwards ordered him drink. M'Canna said, F. Smith shook the Box, but witness was there

a long time, and did not see it or water thrown on him while witness was present. M'Canna was on the sick list in a day or two after he was let out; and witness thinks he was blistered. He said he was injured by the rolling of the box. Witness told Guard of wing to give him a drink of water. Guard's name was Fitzgerald.

Cross-examined:—Never heard of this examination till Wednesday evening last: met a gentleman then on the street, who said, "There is a blow up in the Penitentiary." Gentleman said, he did not know what it was, but it was between Dr. Sampson and F. Smith. It was the Chaplain, Mr. Rogers, who told him. Met also another gentleman, (Mr. Kirkpatrick,) who told him, something was going on at the Penitentiary, and that witness would probably be called on; this was on Wednesday evening last.

By Board:—The reason why he did not complain to the Warden about being retarded in his duty by the shooting of arrows was, that he made a rule when he came to the Prison, never to mention anything he heard. He never told Dr. Sampson about F. Smith being in the habit of shooting the arrows till after he left, but told Dr. Sampson he heard that Abraham's eye was injured by an arrow, but did not say by whom it was injured, as he did not know himself.

Had a conversation about this examination last night at Dr. Sampson's own door. Fitzgerald came in while they were together. He left Fitzgerald there. Witness came to ask Dr. Sampson what charges were to be made against F. Smith. Did not know, till then, what he was to be examined about.

Does not know how long Abraham was under Surgeon's hands, but the books will show. (Witness was shewn the book.) Find that Abraham was taken into Hospital, 15th April; and on 21st April discharged from Hospital, and got the range, but was not out of list. Was convalescent, 22d, 23d, 24th, 25th; and on 26th he was discharged. It was because he was past cure; his eye being out. May 7th, he again put himself on sick list, but was not admitted. Had he been re-admitted, witness does not think it would have saved his eye, as the sight was already lost. Dr. Sampson found no fault with witness for not putting him sooner in the Hospital. He treated him till the inflammation was down, then when he perceived the injury, he put him on the list. This is the usual course in slight accidents, as every day many came with slight injuries who do not require to be put on the list.

Does not think the Surgeon saw Abraham every Sunday while he was on the range. Those men with whom there is little the matter, continue their medicine on Sundays. When witness reports serious sickness, Surgeon goes to the cells. Convicts seldom report themselves sick upon Sundays. Witness never said to any one that the Surgeon did not stop long enough to do justice to the sick, that he recollects of. If he had said so, he would not have been doing the Surgeon justice. Never told the Messenger or his wife, that it only took Dr. Sampson five minutes to go over twenty-five or twenty-six patients. Remembers saying, on a question put, that it did not take the Doctor long to do his work to-day, although he had about twenty or more patients, because none of them were bad cases.

When Abraham came first, it appeared his eye had received a severe contusion. Gave him a lotion; thinks he gave him no medicine; is sure he did

not give him any. A Convict sometimes mixed medicine under his directions and superintendence. Henry Sinclair did so, and was capable of doing so, being Hospital Orderly. He is now out.

(Signed,) CHS. JULIEN.

Thomas Fitzgerald—(late Guard)—Sworn:—

Witness has frequently seen F. Smith shoot arrows at Convicts. Has seen him strike them. In the South wing, for instance, Mr. F. Smith used to fire at the Tailors when the Tailors were working. On one occasion he struck a Convict (named Jones witness thinks) on the eyebrow; and another time he struck a Convict named Davis, also in the South wing, on the arm; and at another time he struck a Convict named Sheenan on the ankle, which swelled in consequence. Has frequently seen him send Convicts to gather his arrows.

Has seen Convicts take another Convict and dip him in the water in the wash-house while F. Smith was standing by. On one occasion Convict M'Millan told him he was so put in, but witness did not see him. The man witness saw put in was a white man. Does not remember his name. Does not think he saw it oftener than once; but his men frequently complained. Wilson and Sheenan so complained. Did not say anything to them when they complained, did not think it his affair. Mr. F. Smith had the charge of the kitchen and wash-house, it was between him and Mr. Watts. When the man witness saw was dipped, F. Smith was standing by, laughing.

Has seen F. Smith frequently take the fire engine into the South wing; has seen him more than once throw water on tailors, sometimes on shoemakers, as they passed from the shops. Hooper has the charge of the tailors. M'Garvey has the charge of the shoe-shop. Has seen Convicts employed to wind thread for Mr. F. Smith, who told witness he bought it in town for his own use. Has seen F. Smith throw potatoes at Convicts; has seen him also throw stones on more than one occasion. He would stand at the door of the South wing, and throw sometimes potatoes sometimes stones, from his pockets, at the Convicts going to their buckets, and when sitting on them.

Smith had a machine with a turning tube, with a stop, which had flour in it: made witness blow in it once, and the flour came into witness's eyes; supposes it was done in a joke. Saw him do this to Keeper Little, who got the flour in his eyes. Cannot recollect that ever he saw F. Smith do so to Convicts. Has not seen F. Smith throw water on Delile's gang. Has seen F. Smith use a small tin squirt; he frequently fired at Convicts as they passed by, and wet them. Has seen Convicts Abraham and Sichens making arrows for F. Smith. Has seen him make Convicts open their mouths to see if there was any tobacco in them. On some occasions has seen him put salt in their mouths when they so opened them.

Witness being asked, why he did not complain? says, he was afraid to do so, for fear of losing his situation. If he insulted any of Mr. Smith's family, his place, he thought, would not be secure. Means, if he complained to Warden, would lose his situation.

Coté was under witness's care, as cleaner in the wing; he was often taken away by Mr. F. Smith; cannot tell what he wanted with him, but he sometimes sent him over the roofs to look for arrows. Has bought provisions in the Penitentiary from Mr. F. Smith; purchased potatoes and turnips; never

purchased anything else; as far as witness recollects, paid one pound four shillings and twopence for them to Mr. F. Smith, and he still owes from four shillings and eightpence to a dollar of a balance on them. Mr. F. Smith told him that he (Mr. Smith) was to make a return of the potatoes and turnips he got, and that it was to be deducted from his pay. Has never been asked for the four shillings.

Cross-examined:—Had a conversation some time ago with Dr. Sampson about these charges in his own house; had not seen or read the charges before last night; has been three or four times at Dr. Sampson's since he left the Penitentiary; met Mr. Julien there on one occasion; has also met Robinson the Guard, and Sinclair; does not remember seeing any others belonging to the Penitentiary but these. Never met Mr. Manahan there. Never told Manuel, to his recollection, that there was to be a meeting at Dr. Sampson's to get up these charges against F. Smith; never told Manuel that all he wanted was to get Coté and Wilson; has no recollection of anything of the sort; has not seen Wilson since he left the prison, until to-day. Was at Dr. Sampson's this morning; they were talking about this matter. It was customary, in Mr. Costen's time, for the officers of the Institution to go to the parties furnishing provisions to the prison, to get what they wanted, and pay for them; never remembers paying Kitchen-keeper in Mr. Costen's time, only paid the man from whom he received them. Does not exactly remember how long it is since he left Penitentiary; was never told why he was dismissed; Mr. Costen merely told him his services were no longer required. Witness being asked, if it was for drunkenness? says no; and that Mr. Costen said, he did not know what it was for.

(Signed,) THOMAS FITZGERALD.

The Board adjourned until 6 o'clock, P.M.

Board met, and resumed.

John Hooper—(Keeper, Penitentiary)—sworn:—

Has never seen F. Smith shoot arrows up towards tailor's shop; has seen him outside shoot at pigeons; never saw him shoot at Convicts; he never shot at witness; never saw him break a window with an arrow; never heard of him shooting a man named Jones in his (witness's) shop; cannot say what he might have done in his (witness's) absence, but he never heard of it; has seen him shoot one or two arrows in the yard. Has seen him throw water from the engine outside the building; never saw him throw water on Convicts.

Cross-examined:—Never knew F. Smith bring fire-engine into south wing, and have it pumped on the men; never saw F. Smith throw water on the men in the box. Has seen Fitzgerald throw water on a boy passing by in the wing; does not know what it was about; it was one of the black or dumb boys; it was not a great quantity; it was five or six months ago. Never saw F. Smith throw stones or potatoes at the men on buckets; had no opportunity of seeing such things. Never heard anything about Smith's throwing water or shooting arrows at the men, nor heard complaints of it by any of his gang. Julien never spoke to him about the shooting of arrows, as far as he recollects.

(Signed,) JOHN HOOPER.

Julia Cox—(late Matron)—sworn:—

Has seen F. Smith take liberty with Convicts; once, when several women were coming down to

dinner or breakfast—does not remember which—he put his finger to the face of one of the women at the foot of the stairs, and chattered to her; witness was behind, and said to him, how very improper it was.

Cross-examined:—Cannot say which Convict it was, as they were all coming down stairs; thinks it might have been Gibson or Quin; the woman said, "Did you see that—I would have scratched his face." They were coming down the outer staircase to go to meals; there were two or three Keepers with Smith; does not remember which; they were putting a woman in the blackhole. Thinks Smith was twice there, (in female prison,) putting women in the blackhole; he very seldom comes there.

(Signed,) JULIA COX.

James Mills—(Guard)—sworn:—

Is generally stationed on the wall; has not seen Convicts fishing, but has seen F. Smith fishing, and a Convict with him. Convicts were working outside; it was one of those who were working outside; he (the Convict) was doing nothing; he was looking on at Smith fishing. Witness has bought provisions in the Penitentiary; has bought both from Costen and Smith—bought potatoes and turnips—both potatoes and turnips from Costen, and potatoes only from Smith; paid Smith for the potatoes; paid Costen once or twice; other times Costen charged it to him in the office. Three shillings a bushel he paid Smith; he paid for two half-bushels and a bushel—two bushels in all—at three different times; took them out in a bag; had no pass; no order is required for such things. Smith told him he used to buy from contractors. One day witness was going to buy half a bushel at the wharf, but afterwards changed his mind, and bought from Mr. Smith; took them from a waggon; does not know where the rest were taken from; they were sent by F. Smith to the lodge near witness's post; he paid Smith for them.

(Signed,) JAMES MILLS.

Edward Bannister—(Guard)—sworn:—

Has bought provisions at the north lodge from a farmer. Bought some out of the store; did not get them from F. Smith personally; paid Smith for a bushel potatoes; cannot recollect whether did or did not pay him for more; never, that he recollects, bought or paid for anything else; never bought any provisions in the Penitentiary, but potatoes; what he bought came out of the cellar. Mr. Frank kept potatoes to supply the men when they could not get them anywhere else, as they were close shut up; they have not time to go about them. Saw them (potatoes) measured; they were taken from a small heap in the cellar; believes he did not pay them at the time, but is sure he paid them afterwards; supposed they were F. Smith's potatoes; understood that he (Smith) got a load of some.

Cross-examined:—Notorious that Guards and Keepers always got potatoes from Kitchen-keeper; they frequently lay at the lodge, and were not taken away for a time. F. Smith often asked, "Whose bag is this?"

(Signed,) E. BANNISTER.

James Gleeson—sworn:—

Has paid for two small loaves of bread here. Witness came one morning, after being on guard all night, and when he was short of provisions, and asked F.

Smith to keep a small loaf for him from the baker, which he did. Paid Mr. F. Smith for it. Another time witness sent a messenger in when he saw the baker's cart go in, and requested Mr. Smith to get him a loaf; thinks he sent the money at the time, at all events paid for it afterwards. The first loaf mentioned, was given to him by Mr. Smith from the loaf-bin in the dining-hall. Told Smith that he had no change, but that he would pay him afterwards, and so he did. Won't be positive, but thinks it was either on or in the bin it was. The other time he saw the baker's cart go in, and sent a messenger who brought a loaf out. Paid for both.

Has seen arrows shot in the yard, by different of the Guards and Keepers, at the leisure hours of breakfast and dinner, also by F. Smith; and witness has fired some himself. Believes he has once, or twice, or three times seen arrows shot at Convicts. At the vacant hour, before opening of the hall, has seen them fired by the officers at each other, and at marks. Can't be positive who fired at Convicts. Mr. Smith may have fired at various persons of the officers, cannot be positive that he particularly saw him fire at Convicts. Never saw any other Keeper or Guard fire at Convicts. Cannot state distinctly that F. Smith fired at Convicts, he fired at Keepers and Guards, he fired at himself (witness) for instance. Cannot in safety mention any one Convict fired at in his presence, but believes he saw them fired at. As far as he recollects of arrows being fired at Convicts it was by F. Smith, but cannot positively say that he did so. Never that he recollects of, had any conversation about these charges, except within these two days, except that he and Waldron in going home spoke of there being something of the kind. It was as they went home of an evening. Had no conversation with Dr. Sampson on the subject.

(Signed,) JAMES GLEESON.

William Crawford—(Guard)—sworn :—

Has bought provisions in the Penitentiary. Has bought some potatoes, has also bought oatmeal. Bought also a peck of peas; bought no other eatables. Bought three bushels of potatoes; paid for them to Mr. Frank Smith. Saw the potatoes measured; they were taken from the cellar; could not say if from the general stock; it was from the heap of potatoes in the cellar; the heap was not very large; there was several heaps; he paid 2s. 6d. a bushel for them. Does not recollect what he paid for the meal, but did pay for it; it was taken from the Prison meal-chest; it was a peck of meal. Was not told what the peas were to cost; thought Smith would not ask pay for so few. Asked Smith's leave to let him have a peck of peas, and took them himself; having got it, asked how much he was to pay for the meal? but did not expect to pay for the peas; thought they were a present.

Cross-examined :—Has never got potatoes or other provisions from any one else but Mr. Smith in the prison. Paid 2s. 6d. a bushel for the potatoes; paid this some time in winter; could not specify the particular time. Is positive he paid F. Smith for three bushels of potatoes.

(Signed,) WILLIAM CRAWFORD.

James Kearns—(Guard)—sworn :—

Has bought provisions in the Prison; potatoes and oatmeal; nothing else: bought them from Mr. Frank Smith, and from Mr. Costen before Mr. Frank came. Bought potatoes and oatmeal from Mr. F. Smith; paid Mr. F. Smith for them:

supposed they were Penitentiary property: was never told that they were not. Bought potatoes frequently; does not recollect how many bushels. Could not say how much oatmeal he bought; bought it several times; two or three times: not over twenty-five pounds at once. Thought the money would come to the Bank—would be credited to the prison—but was never told so.

Has seen bows and arrows shot in prison; has seen F. Smith shoot them; has seen him shoot at pigeons and other things; never saw him shoot at Convicts: at marks, perhaps. Has seen the small engine at work: some water might fall on Convicts, but never saw it played at them.

Cross-examined :—Had no trouble getting potatoes out of the lodge: it is a common thing to buy such things from F. Smith: well known that it is a custom for the officers to buy: F. Smith never desired him to keep it secret.

(Signed,) JAMES KEARNS.

Robert Bowers—(Guard)—sworn :—

Has got a bushel of potatoes once in the prison: never got any thing else: paid for them to Smith: did not see them measured or taken from the cellar. One of the men in the hall left them at the Kitchen for him.

Has seen arrows shot here, and has shot them himself: cannot recollect seeing them shot at Convicts; they might or might not be so shot; thinks it would strike him as strange if he saw arrows shot at Convicts: they might have been so shot, but witness cannot recollect seeing them. Cannot, at present, say if F. Smith shot at a Convict; can't say he never saw F. Smith shoot at them. Cannot recollect that ever he saw arrows shot at any other time except during the leisure hours. Has never conversed with any one but his comrade, William Crawford, about this investigation.

(Signed,) R. BOWERS.

Richard Nursey—(Guard)—Sworn :—

Has seen arrows fired in the Prison. Has seen F. Smith fire at pigeons. Has seen him fire at the window of the porch of the Hospital, when the window was open; the arrows made a rattling sometimes; this was near the Hospital; does not think it was an annoyance. Arrows very seldom came in; does not recollect of any coming in. Never saw F. Smith fire at Convicts. Never saw water thrown on them. Never told Julien that it was a shame to annoy the sick. Never saw Convicts throw potatoes at each other; had no opportunity. Never bought provisions in the Prison; had no occasion. Does not know about other men's affairs, or if Crawford bought any, he never told witness.

(Signed,) RICHARD NURSEY.

Lawrence O'Neill—(Guard)—Sworn :—

Has bought provisions in the Prison. Bought them from Mr. F. Smith. Bought potatoes and peas. Can't recollect exactly the quantity of potatoes, thinks three bushels; did not see them measured or taken out of any place. They were sent down for him to North lodge. Does not know who took them there. Found them there and carried them home himself. Paid Mr. F. Smith for them. Does not recollect how much he paid, but there is some due yet, which he has not paid. Considered that Mr.

Frank Smith bought them from the man who brought in the potatoes. Has never seen Convicts out fishing with F. Smith. Never saw water thrown on Convicts, or arrows shot at them.

Cross-examined:—It is a common thing for the Guards and Keepers, when they want provisions, to come to F. Smith for them.

(Signed,) LAWRENCE O'NEILL.

Joseph Baldwin—(Guard)—Sworn:—

Never saw F. Smith take liberties with Convicts. Only when they were asleep at table he would wake them up. Never saw Convicts making nets in their cells on Sunday. Never said he saw them. Cannot properly say he saw arrows fired at Convicts. Has seen them fired in the yards "at pigeons and the like of that," but can't say at Convicts.

(Signed,) J. BALDWIN.

Richard Tyner—(Guard)—Sworn:—

Has seen Convicts, with fishing-rods, at wharf. There are fishing-rods there: they took them up. Has seen F. Smith often fishing there. Does not think he ever saw Convicts fishing with F. Smith, but has seen them fishing. Thinks Smith was not there at the time. Does not recollect of seeing a Convict going through the gate, with F. Smith, with worms. They often went through the gate and might have had worms with them, but he did not see them. Witness very often bought provisions. Bought them of Stewards from year to year. Bought potatoes; cannot say if from F. Smith, but paid him for them. Witness took them from the carts himself. He asked F. Smith for them. Never bought or paid for any other provisions but potatoes in the Prison.

Cross-examined:—It is a common thing for Guards and Keepers to go to the Steward for provisions; has always done so. Has been over twelve years in the Penitentiary.

(Signed,) RICHARD TYNER.

John Thorpe—(Guard)—Sworn:—

Never saw F. Smith call Convicts to go fishing. Never saw them fishing. Never bought provisions here.

(Signed,) J. THORPE.

Richard Robinson—(Guard)—Sworn:—

Has seen F. Smith shoot arrows at Convicts: has seen him hit Convicts occasionally with the arrows. Has seen him throw potatoes at Convicts when they assembled to take their buckets to go to their cells in the evening; at least they appeared to be potatoes. Has seen F. Smith knock Convicts' heads together when sitting down after their meals. Can't say why he did so: could form no idea why. Has seen him throw water on them when drowsy; has seen him go with a tin of water, and pour it on Convicts' heads: it was when they were going asleep at the meal-table: can't say why he did it: did not appear to be angry. Has seen Convicts fishing with a rod in the afternoon; Mr. F. Smith was with them; saw him frequently fishing in company with them in the afternoons. Has seen F. Smith give Convicts a tip across the face; cannot say if in sport or to hurt them.

Has bought provisions in the Prison. Bought from Mr. Costen and Mr. F. Smith. Bought po-

tatoes and turnips from F. Smith; nothing else. Paid for part of them, and has part still to pay. Paid what he did to F. Smith. Did not see them measured; they came from the cellar where the potatoes are kept. Was asked once for the money: Mr. F. Smith told him that half of his pay was stopped for potatoes the officers had received, and that he must have pay for them. Witness thought from this that he had to account for them to the office.

Cross-examined:—It is a common thing for the other Guards to purchase from Smith. Has conversed with Dr. Sampson in his house, one night last week about this matter. His wife told him the Doctor wished to see him respecting a statement he had to give. Fitzgerald was there at the time. Cannot say if there was any one else. Did not know them if there were.

(Signed,) R. ROBINSON.

Henry Smith—(Warden)—sworn:—

Does not remember saying provisions must have been stolen when Dr. Sampson told him that F. Smith had been selling provisions to the Keepers. Understood the Doctor to say that he had heard that F. Smith had sold provisions belonging to the Penitentiary, and it was in reference to that, witness said, they must have been stolen. Did not know of any Penitentiary provisions being sold. Has no objections to the Guards and Keepers buying from the waggons so that what they buy never went into the Prison stores; does not approve of anything going from the stores; thinks it very wrong if such is done. Undoubtedly, when meal is put in the meal-chest, it is the property of the Penitentiary.

Would have considered such selling of provisions as warranting his reporting any Keeper; did so accordingly in Smith's case within an hour, by letter to the President. Would consider, if he were convicted of it, that he was highly culpable. Witness being asked if he ever found fault with F. Smith's taking liberties with Convicts? says, he never heard of it till this evening.

(Signed,) H. SMITH.

Thomas Cavanagh—(Convict)—sworn:—

No one has told him what to say; does not know why he is brought here. Has seen F. Smith sometimes strike Convicts with keys or a cane for amusement: does not know if he ever struck them to hurt them. He sometimes shot arrows at Convicts; only saw him hit one with an arrow, and it did not hurt; it was a boy named Jones: he hit him on the side of the head.

F. Smith once came to the tailor's shop, and said, in reference to Turney who was hanged, that he expected he was making a suit of clothes for the devil in hell. Smith once made him open his mouth, but without necessity; Smith spat in his mouth: he asked Mr. Costen for leave to go from dining-hall in consequence, but did not tell Mr. Costen why; it was because it made him sick; it was tobacco spit to which he was not used. He got two meals of bread and water on 28th May, on a Friday; asked F. Smith why? Smith looked the book and saw nothing there. Witness conceived he had no right to be punished; did not know why he got the two meals bread and water; did not know if F. Smith was angry. Smith told witness, once in the south wing, he had him in his black books, and would be damned but he would keep him there. Remembers perfectly well it was 28th May he got the two meals;

it was the day before green branches were put in the dining-room; took sharp notice of it because F. Smith looked in the book and gave him no satisfaction, but told him to go to his seat. Knows no reason why F. Smith should have wished to punish him wrongfully; F. Smith seemed to have a dislike to him but he does not know why. Never was punished except for talking. F. Smith has stuck pins in witness, and struck him with a key on the elbow and back as he was going up stairs at night. Has seen F. Smith throw water on punishment box when Convicts were confined in it, but does not know what Convicts. He had the water in a piggin.

Cross-examined:—Has had a sore knee, and has been in the hospital for it; has had some conversation with Dr. Sampson before he left the hospital; told Dr. Sampson he had been badly treated, and had got cold from F. Smith throwing water on him.

(Signed,) THOMAS CAVANAGH.

(The Punishment Book was here produced, when it appeared the last witness was not punished at all in May, but got three meals bread and water on 28th April.)

Henry Smith—(Warden)—re-examined:—

Refers to Punishment Book; recollects the boy Cavanagh; is a boy of good character for a Convict. He came in 1844; has been punished twenty-four times in three years; does not count this bad for a Convict. Has got the raw-hide, but never the cats. Was once confined to his cell twenty-four hours, which must have been for something more serious than talking.

(Signed,) H. SMITH.

Dr. Sampson intimated that he had no farther evidence to produce for the prosecution. The Board adjourned until 3 o'clock, P.M., on Monday next.

Monday, 18th October, 3 o'clock, P.M.

Board all present, and the parties. Mr. F. W. Smith spoke in his own defence, and thereafter called the following witnesses:—

Julia Cox—(late Matron)—sworn:—

Did not know the name of the Convict with whom F. Smith took liberties; has found out since. Does not know the names of the Guards and Keepers who were present at the time; remembers now that Mr. Costen was present. Believes it was her duty to report improper conduct, which she witnessed, to Warden; did not do so, but was never told it was a part of her duty; does not remember if she spoke of it to Mr. Rogers, (the Chaplain,) or to any one but Dr. Sampson. F. Smith has been once or twice, she thinks, in the female prison. It may be six or seven months ago when the circumstance above stated occurred. Witness distinctly says, he (F. Smith) cherupped, and also said to a black woman, (M'Naught), "There goes beauty." The Surgeon is in the habit of visiting the sick female Convicts every day; it may be he has not come every day, but has sent some one else; cannot say if Dr. Sampson always prescribes himself every day for the sick female Convicts. Witness expressed an opinion as to the medical treatment of a female Convict who died in 1846. The Surgeon did not see her every day till she died; thinks the Surgeon was not at the Penitentiary on the day of her death; cannot say if her death was hastened by the want of administering of medicine; thought she would have been the better of more nourishing things; that was her opinion. The Surgeon does not always attend the sick female

Convicts on Sunday; when he is wanted, word is left for him outside.

Cross-examined:—The reason why she did not report the cherupping of F. Smith to the Warden, was that it did not occur to her to do so at the time. Does not think she would have reported such conduct on the part of any other Keeper; not the Warden's son, because it never occurred to her to do so.

(Signed,) J. COX.

John Dyas—(Convict)—sworn:—

The Indian Abraham's shanty was at the back of the Warden's Kitchen. The Indian Abraham told witness he had hurt his eye with a piece of wood. Has seen F. Smith last winter pay for meal; it was just before the Convict Pritchard was put in solitary confinement. Has seen F. Smith purchase peas sometime in winter; saw the peas come in, they were put in one part of the pea-chest by themselves—witness is cook—F. Smith's peas were put in the same chest with those for the men; there were only a very few peas belonging to the prison in it at the time; there might be a little better than a peck in it at the time: F. Smith bought two bags—two bushels in each bag—a farmer brought them. There were two bags of meal—oatmeal—cannot say the size of the bags. Witness and Assistant-cook Primeau only, were present at the time the peas were put in.

(Signed,) JOHN <sup>his</sup> X DYAS.  
mark

Gabriel Wright—(Convict)—sworn:—

Knows that the Indian Abraham's shanty has been since January last at the back of the Warden's Kitchen. Remembers the Indian having a bad eye; does not remember the month, but it was last spring; the Indian told him how it got hurt; he said it was splitting splints for baskets.

Has seen F. Smith purchase one load of twelve or fifteen bushels of potatoes; they were put in the west side of the cellar in the middle bin; witness helped to carry them down; does not remember the time; it was potatoes of the present season; there was no prison potatoes in the bin when they were put there.

Cross-examined:—Never heard it talked of or repeated in the prison, that the Indian lost his eye by the blow of an arrow. Saw the eye after it was hurt; does not know how long after: does not remember any pile of boards near Abraham's shanty when he was hurt.

(Signed,) GABRIEL <sup>his</sup> X WRIGHT.  
mark

Frederick Brennan—(Convict)—sworn:—

The Indian Abraham's shanty, last year, was under the Warden's Kitchen; the same shanty is there still. Abraham told him when making broom splints struck his eye.

Has known F. Smith buy meal at the Prison Kitchen door; it was one sack; it was put beside the Kitchen in the Prison bin with the other meal.

Never saw F. Smith throw water on prisoners in the box; has seen Fitzgerald do so; after he (Fitzgerald) threw the water in, he shook the box to and fro. Has seen the prison socks on Fitzgerald's feet; the mark was on them. F. Smith bought the oatmeal from a waggon.

(Signed,) FREDERICK BRENNAN.

Patrick Kelly—(Convict)—sworn :—

Knows the Indian Abraham; knew him to have a sore eye; Abraham told him he was making brooms and the dust flew into it; the dust of the brooms or a chip—a splint flew up when cutting a stick.

Witness has not often been on the sick list, but was a long time on it lately. Had a fall from a scaffold, and was sent to hospital; the Surgeon sent him off to his cell; the Surgeon said it was only a bruise; is still lame through the fall.

(Signed,) PATRICK <sup>his</sup> X KELLY.  
mark.

Martin Healy—(Convict)—sworn :—

Abraham's shanty is at the back of the Warden's Kitchen. Remembers Abraham having a bad eye; Abraham told witness he was cutting a piece of wood and got it hurt with a splint; did not see the eye till three or four weeks after it was hurt. Witness went on sick list with a sore leg; was not cured when discharged; it is still bad; has been on the list several times, but was always made to work. Keeper Matthewson has seen it, and knows it is sore.

(Signed,) MARTIN <sup>his</sup> X HEALY.  
mark.

Thomas M'Cormick—(Convict)—sworn :—

Has been frequently on the sick list: his complaint was chronic rheumatism: was sometimes not well, when discharged: did not get the treatment he was used to when sick; windows were open, and he got cold: witness complained to the Surgeon, who said, he was not a fit subject for hospital. Witness asked to be blistered for that complaint, and thought he should have been in a warm place.

(Signed,) T. M'CORMICK.

Patrick Carl—(Convict)—sworn :—

Asked Abraham, in latter end of May, how he got his eye hurt? He said, a piece of wood of a broom got into his eye. His shanty was along side of the wood pile at that time.

Witness has been on the sick list; had a cold; his head swelled: was discharged, but was barely fit to be so, at the time; was sick at the time he was discharged. Abraham's shanty was where the shops were burnt down; there was a pile of boards at the back of it; a person at the back of the boards could see where Abraham was working. He worked also a while in a shanty back of the Warden's Kitchen; he first worked sometimes at the one shanty, sometimes at the other: since his eye was hurt he worked at the one back of the Warden's Kitchen. Witness had no reason to think his eye was hurt any other way than before stated. Witness heard Mr. Costen tell Mr. Rogers it was hurt by a splint.

(Signed,) PATRICK <sup>his</sup> X CARL.  
mark.

Matthew Udell—(Convict)—Sworn :—

Has been on sick list several times: was worse when discharged than when put on it. Was treated bad himself, and saw others bad treated. Told the Doctor he had a pain in his stomach, and got a vomit: took four vomits in four days. The Doctor told him he was scheming or feigning sickness. Was sick after, and is still sick. Did not go to the Doctor because the Doctor would do nothing for him, but told him he was feigning.

(Signed,) MATTHEW UDELL.

Abraham Lero—(an Indian Convict)—Sworn :—

The Indian Abraham never told him how he got his eye hurt (witness did not seem to have understood the question); knew he had a sore eye. He told him it was hurt by shavings when making a basket.

Cross-examined:—Went to school with Abraham here; never heard his eye was hurt by an arrow; does not know where his shanty was.

(Signed,) ABRAHAM <sup>his</sup> X LERO.  
mark.

George Morton—(a negro Convict)—Sworn :—

Abraham had a sore eye; he said it was done by splints making baskets; it had been sore some days when witness saw it; it was not much swelled; it was running water. His shanty was down over the Warden's fence, near the kitchen; he was working there when his eye was sore; it was about March or April, thinks, but is not certain. Abraham had been part of the winter at a shanty near the wood pile. When his eye was sore, witness never saw him work anywhere but at back of Warden's kitchen; it was only a few days after it was hurt; he had a cloth on his eye just before, and was then at shanty, back of kitchen. He said he could see: that it was not out.

There was one or two men ducked in the wash-house. Conkright came every morning and stood about an hour, and the men told him, if he did not go they would duck him. F. Smith was not present when they ducked him; some one said he was coming, and they all quit and went to work: F. Smith was the Keeper in charge at the time. They ducked also Sampson, a black man, because they missed socks, and they were blamed, and they ducked him to keep him away. No Keeper was present. F. Smith was in the kitchen: F. Smith did not know they had ducked Sampson. They never ducked Henry Wilson, a coloured man.

(Signed,) GEORGE <sup>his</sup> X MORTON.  
mark.

John Kerney—(Convict)—Sworn :—

Works in the wash-house; remembers Abraham; told witness once he wanted water to bathe his eye. Abraham said he did not wish to go to the hospital for fear of making his eye worse; he told him next day he hurt it making a basket, and the "skivers" of basket when ramming them up touched his eye; his shanty was at this time near the Warden's window; thinks this happened in April. They were not in the habit of ducking Convicts, but did duck one or two men—Sampson and Conkright—F. Smith was not there. Never ducked Henry Wilson, a coloured man; ducked the two men because they came every day for water, and the wash-house men thought they came to idle their time. Has been in the wash house ten months.

(Signed,) JOHN <sup>his</sup> X KERNEY.  
mark.

John Swift—(Keeper)—Sworn :—

Received the letter which is produced (the letter is dated 13th October, 1847, and is from Mr. Manahan); cannot say how he got it; he got it in his house; it came there by his wife's father, Mr. M'Nalty. M'Nalty told him he got it from Dr. Sampson. (The letter was read and filed.) Never had any conversation with Dr. Sampson or Mr. Manahan about this matter; never heard of any other Keeper receiving a similar letter; witness paid no attention to the letter when he received it; witness gave the letter to Mr. Costen, and wished to get it

back again; Mr. Costen said he had given it to Warden. Witness showed it to Mr. Costen to ascertain the nature of the thing, as he had heard nothing of it.

Cross-examined:—Believes his father-in-law left it (letter) in the house; he did not give it to witness; does not suppose he gave it in any secret manner at all; it was not sealed; there was no cover (envelope) on it.

(Signed,) JOHN SWIFT.

Mary Pollard—(Assistant Matron)—Sworn:—

Never saw F. Smith in female prison; never heard of any improper conduct on his part towards female prisoners; never heard any of the women say he had put his fingers to them and cherupped; witness asked them the question this morning: believes the Matron spoke to them on the subject this morning: is not aware that Mrs. Cox tried to persuade any of them that F. Smith had been guilty of improper conduct; never heard of the cherupping till yesterday; has been in the Prison six months.

The Surgeon is very attentive to female prisoners. Attends prisoners every day, either he or some one in his place. He orders diet for the Hospital. He sometimes visits female Prison on Sunday.

Cross-examined:—Never sent for Dr. Sampson that she did not get him. Refers only to female Prison. When there is a case of sickness on Sunday, word is left for the Doctor to call; he always calls when word is left for him.

(Signed,) MARY POLLARD.

Frances Bickerton—(Clerk of Penitentiary)—Sworn:—

F. Smith was appointed Keeper in November, 1846. Remembers F. Smith coming to the office saying, Fitzgerald owed him 5s., and that he doubted if he would receive it, as he (Fitzgerald) had been discharged. Witness told him to get from Fitzgerald an order for it on the office, and witness would stop it from his pay when he settled with him. Has frequently advanced F. Smith money on account of his pay. Cannot remember at what hours. Witness leaves the Prison between five and six. Sometimes F. Smith appeared in a hurry, as if he wanted money immediately. The money was due to F. Smith at the time: he got small sums very frequently.

Cross-examined:—F. Smith applied about Fitzgerald's money after he was dismissed, about a month ago. There is an order in the book against articles going out of the Penitentiary without a pass: the order never was rescinded, but confirmed by the last rules and regulations. (Rules and regulations of 1846 and also 1847 read.) Was not aware that Mr. F. Smith was in the habit of buying provisions. Witness could not know of any deficiency in the provision department till the end of the year. Witness could then have ascertained it.

Cross-examined by Board:—Had not the means of knowing if any provisions which had been receipted for had been misused; but at the end of the year, when the provisions were proportioned to the number of men, he would know if there was a deficiency, or if any surplus had been received. Gets the account of the delivery of the provisions from the Kitchen-keeper. Oatmeal might be taken from the meal-chest without witness having the means of knowing it, but they would know how much oat-

meal should have been used to supply Convicts. Has no means of ascertaining if all the provisions which come in are used for the Convicts, except what he has before stated. Has been in the Penitentiary since it was opened. The Kitchen-keeper delivers a certain quantity daily, and at the end of the year would know if there was an overplus or deficiency.

Cross-examined by Dr. Sampson:—When men are put on bread and water, and on hospital fare, there is a saving of other provisions; there is frequently a great surplus from this cause. Has no reason to suppose F. Smith has used Prison provisions. Does not recollect F. Smith, when asking money, saying, he wanted it to buy provisions. The surplus rations saved by punishments of bread and water and persons in hospital, might be taken without witness having the means of knowing it.

(Signed,) F. BICKERTON.

John Hooper—(Keeper)—sworn:—

Convict Abraham told him he had his eye hurt with shavings of baskets or brooms. He (Abraham) never said to witness it was hurt by an arrow. Has seen F. Smith's bow and arrows (bow produced); it is like the bow. The sight of the eye was injured; there was no other mark.

At the hour of muster, when the men muster to their buckets, the Keepers are all there. Never, to his knowledge, saw F. Smith at that time throw either stones or potatoes at Convicts. None of his men ever told him F. Smith hurt them. Has heard the men say, that the rations are better than they used to be formerly; that is, since F. Smith's appointment. The Dining-hall and Prison generally are kept cleaner than they were before Mr. Smith's appointment. Does not know how long Abraham's eye had been hurt.

(Signed,) JOHN HOOPER.

Mark Hermiston—(Keeper)—sworn:—

Is present at night when Prisoners meet for buckets. Never saw F. Smith throw potatoes or stones at Convicts. The men never complained of F. Smith's ill-treatment of them. They have sometimes complained of the ill-treatment of the Surgeon; they were sometimes not able to work when they came from hospital, and when witness told them to go back, they frequently said, they would rather have their heads chopped off than go there again. Prisoners have frequently told witness that they have got better rations since Mr. F. Smith came than before. The Dining-hall and other parts of the Prison, under F. Smith's control, are kept cleaner than before.

Cross-examined:—Convicts frequently said, they would rather have their heads chopped off than go back to the Hospital; that was the only alternative they mentioned.

(Signed,) MARK HERMISTON.

John Matthews—(Keeper)—sworn:—

Men never complained of the ill-treatment of F. Smith; they said their rations were larger and better since his appointment. Never saw him throw stones or potatoes at men at the evening muster, or at any time. The Dining-hall and East Wing are kept cleaner than they used to be before F. Smith's appointment.

(Signed,) JOHN MATTHEWS.

Thomas Costen—(Head-keeper)—Sworn:—

Asked Abraham, the Indian, what ailed his eye? He (Abraham) told witness, a splinter from the basket stuff flew into his eye; it felt like a needle; he felt a continual pricking from it. Witness never heard a whisper of its being done by a bow and arrow; thinks if such had occurred, he would have heard of it. Has seen F. Smith have a bow and arrows, (bow produced); it is the bow; it would require a very strong arm to bend it; a blow from it would have broken his eye in his head. Witness attends always when female Convicts are punished: Mr. F. Smith assisted on two such occasions; observed no improper conduct on his part, to female prisoners, on either of these occasions: from his general knowledge of F. Smith's conduct, as an officer of the Institution, witness does not think he would have been guilty of such a thing. The boy Matthews was, as he (witness) understands, removed from tailor's shop to kitchen on account of ill-health; has seen him at water-side with F. Smith; he was fishing with him; witness made no objections, he saw no impropriety in it at the time. F. Smith said he took him to the water-side as he thought it would improve his health, and giving him a little fish would be a change of diet—the boy was very delicate. Never saw F. Smith take improper liberties with Convicts, and witness sees him every hour almost. The Convict Henry Wilson told witness he was going to live with Dr. Sampson when he got out, to get his jaw or neck cured; does not remember if he (Wilson) said, who told him to go there.

Never saw F. Smith throw stones or potatoes at the men at muster. Witness is always present and never saw or heard of anything of the kind. Witness heard Convict Pritchard express a wish to make nets, as it would be a means of support when discharged from the army. Witness knows F. Smith taught him. Smith never employed him when he had other work to do: generally in the evening, immediately before supper. When the Warden desired him to stop having such work done, he complied. Witness went into round punishment box, to try it; could see directly up through the air holes, but could see no one coming at the side.

When witness was Kitchen-keeper he always drew and cooked the same rations as if the whole Convicts were well, which made the rations for those who were well, so much the better. The Convicts get good wholesome food, and a sufficiency of it. The East and South Wing, and Kitchen and Dining-room, are much cleaner, and the comfort of the Convicts generally increased, since F. Smith had them in charge.

Cross-examined:—Is positive F. Smith could not possibly, when in the female prison, have put his hand under a woman's chin without witness seeing it, as he was there all the time.

(Signed,) THOMAS COSTEN.

The Board adjourned till half-past three o'clock.

Board met.

Thomas Costen—(Head-keeper, recalled)—Sworn:

Knows where the Guard Robinson's post is; he (Robinson) could not, from it, see F. Smith throw stones and potatoes at the Convicts at muster. This post is on the north-west corner of the yard.

Cross-examined:—Guard Robinson was occasionally on the South Wing; he could not see F. Smith

from his post, at the time of muster. Might have seen such conduct from the South Wing, if it had occurred.

(Signed,) THOMAS COSTEN.

Daniel M'Nalty—(Called by Board)—Sworn:—

(Shewn Mr. Manahan's letter. See Swift's evidence.) Witness got it from Dr. Sampson, and gave it to Swift. (Dr. Sampson here came forward and admitted he gave him the letter.)

Terence M'Garvey—(Keeper)—Sworn:—

Did not receive a letter from Mr. Manahan. A note was left at his place by Dr. Sampson, as he was told—he read it—he destroyed the letter. His reason for destroying it, was, because the names of the Warden and Mr. F. Smith, were mentioned in it, and he considered it would implicate him. His wife told him Dr. Sampson delivered it. The letter simply stated that an investigation would take place, and that he would likely be called upon. Witness consulted his father about it, and considered it was better for him to have nothing to do with the matter, in consequence of the situation he held. It was stated in the letter, for witness not to be afraid to come forward. (Letter to Swift read.) "There was nothing of that kind binding in his letter;" it was simply to come without fear; did not hear of any other letter; did not know if Keely got one. (Dr. Sampson here admitted that he did.) Cross-examined:—Witness was afraid, from his situation, to have anything to do with it, for fear he should get into trouble. That was the reason why he destroyed it.

Considered that if he was brought forward in the matter, he might, one way or other, get into trouble; he could not exactly see how, at the time. Has reason to believe that if he had come forward voluntarily in a case involving the character of Mr. F. Smith, it would have endangered his situation. His reasons are, that he is in a shop having many windows, and if he were brought forward to explain what he might have seen, he would gain ill-will. If he told all he saw, it would be very disagreeable to him, as he might be tormented in his situation, so as he would sooner leave it than be so tormented. It is principally to what he has seen of irregularities on the part of Mr. F. Smith, that he has reference, such as shooting bows and arrows often times at Convicts; has seen him in the yard sometimes firing at the men; has seen him fire into his shop, (shoemaker's,) and the tailor's (Hooper's); does not remember the name of any Convict he has struck, but he has frequently struck some of them. Has seen him, on one occasion, fire at Mr. Hooper; considers that the arrow was aimed at him; Mr. Hooper was at the time in charge of his gang; has seen him some few times fire at tailor's shop; did not count exactly; it might have been half a dozen or four or five times; considered the shooting would not endanger their bodies much in consequence of their clothes, but their eyes would be in danger if the arrow hit them. There has been a Convict tailor in the tailor's shop; never remembers of him getting a shot in his eye. Has seen Keeper Hooper on one occasion shoot at F. Smith; F. Smith and he fired a good many shots at each other—there were Convicts in the shop, and on the floor below; Mr. Hooper was on duty at the time. Has seen what he thought were potatoes, might have been stones, thrown in the yard; has seen Keeper F. Smith throw them; they went amongst Convicts.

These were the principal irregularities to which he alluded. Never spoke to Dr. Sampson on the subject; never was taught by any one. Has seen Hooper shoot at F. Smith: (his) Hooper's shop is over witness's head: was out on the gallery at the time he saw him; it was not leaving his men to do this (go on the gallery) as he was very often advised to see if they would be talking. He considered that if he wished to catch them talking the best way was to go in front of the cells on the lower side of the shops.

(Signed,) T. M'GARVEY.

William Moore Connell—(Convict)—sworn:—

Is one of the Hospital-waiters or orderlies; Mr. Julien gave the Indian, Abraham, a lotion to put to his eye, previous to the Doctor seeing him. Always thought it Mr. Julien's duty to attend to the sick at night time; gave medicine at night according as the Doctor prescribed. Saw him (Julien) one night in a great state of intoxication; he was accompanied by Fitzgerald, the guard. Fitzgerald called Sinclair to strip Mr. Julien and put him to bed. Fitzgerald said to witness, "I hope you will keep this quiet and say nothing of it; Mr. Julien is rather top-heavy to-night." Fitzgerald was not sober, but was not nearly so far gone as Mr. Julien; he understood perfectly well what he was doing, still he was in a state of intoxication. Does not consider, that on that occasion, Julien was in a fit state to give medicine to sick Convicts.

Cross-examined:—Never heard that there was a new Surgeon to be appointed here.

(Signed,) WILLIAM M. CONNELL.

Thomas Smith—(Messenger to Penitentiary)—sworn:—

Has often seen Julien, the late Hospital-keeper, come to the prison at night drunk; not fit to give medicine to the sick. Has brought the Doctor (Sampson) out on one occasion at night, when Warden sent a note that a man was sick or dying. Dr. Sampson was twice or three times the worse of liquor when he came out.

Cross-examined:—Is not the worse of liquor now, nor never was since he was in the Penitentiary.

(Signed,) THOMAS SMITH.

John Watts—(Guard)—sworn:—

He puts the Convicts in the box: when a Convict is confined in the box he is kept there until his sentence expires, unless he is necessitated to go out, when he is let out for a short time under a Guard. Witness gives him his victuals in the box. Has an opportunity of seeing the Punishment Book every day, and does so see it. Remembers Convict Coté being put in the box. (Refers to Punishment Book.) On 3d April, finds Coté confined to box for chewing tobacco—three meals bread and water; finds also, 1st April, refusing to open his mouth when challenged for chewing tobacco—box, and three meals bread and water; on March 12, for having two suppers and tobacco in his cell—six meals bread and water. F. Smith reported him on these three occasions.

Witness receives and weighs the meat coming from the contractor every day. The butcher never

complained of short weight. Never saw Coté steal meat from butcher's cart and throw it into the cellar. Does not give out more meat to the Convicts than the law allows. Is aware that F. Smith has bought potatoes, turnips, and meal: has seen him pay for them: knows that he purchased them at the request of Keepers and Guards, and for the purpose of supplying them.

Never saw him sell anything belonging to the Penitentiary, and does not believe he did so. Never saw two Convicts, with blackened faces, wrestling in front of the Kitchen. F. Smith told witness he would not trust Robinson or Fitzgerald any more: he gave, as his reason, that they had not paid him, and he was out of pocket by them. No provisions or stores, belonging to the Penitentiary, could have been taken away without his knowledge. The potatoes Smith purchased were not mixed with the prison stock; they were put in the centre bin, on the west side of the cellar: the peas were put in an empty bin, in the west end of the bin, where the peas lay—the end next the cellar door: the meal was put with the prison meal: the quantity F. Smith got was known, and an account kept. Never saw F. Smith throw stones or potatoes at the Convicts. Never saw him shoot arrows at prisoners; has seen him shoot at pigeons with Keepers and Guards, in the centre of the building, at meal time. Never saw him take improper liberties with Convicts. Has seen him two or three times purchase white bread; he bought it for some of the Guards and Keepers who wanted it, as they were not going home. Has been better than ten years an officer of the Penitentiary.

Has been to the boxes; a person confined in the round-box could not see any one in the gallery over him; witness has tried it himself; witness attends to the laying out of the bread and water for the punishments; there never was more bread and water set than was ordered in the Punishment Book; the full amount of provisions is served out every day without deduction for those who are punished and on the sick list; often gives out extra rations of meal for gruel for each, both at dinner and at night; Convicts say themselves they are better fed than they used to be. The present state of the prison is very clean, cleaner than formerly. Knows Convict Coté; was not at all a good character; was in the habit of carrying tales and stories about.

By Board:—Is in wash-house occasionally, back and forwards; never saw Convicts ducked there; never, to his knowledge, heard of any being ducked; never heard of colored men named Wilson or Lewis ducked; has seen Lewis go in himself to wash after sweeping chimneys: never heard of Conkright being ducked; is not aware why the present accusations are made against Mr. F. Smith.

(Signed,) JOHN WATT.

George Sexton—(Guard)—sworn:—

Never saw F. Smith throw stones or potatoes at Convicts; cannot say he has ever seen him take any improper liberties with them; never saw him throw water on prisoners confined in the box: has seen Fitzgerald do it; told him (Fitzgerald) he ought to be ashamed of himself; if witness saw it again, he would report it to the Warden; does not recollect seeing him do it more than once. Saw him (Fitzgerald) once with a can of water above the box, but cannot say if he threw it in. Richard M'Canina, a colored man, was in the box when he (Fitzgerald)

threw in the water. Knows Guard Robinson; is addicted to telling untruths; should say he has repeatedly told lies; would not believe him on his oath.

Cross-examined:—His reason for saying so is, that witness himself found him out in telling some things which he found to be falsehoods.

In chief:—Has heard the Convicts say they are much better satisfied with their provisions and rations since F. Smith was in charge. Is aware that the kitchen and wings are cleaner than before; so is the department in which witness's duty lies.

(Signed,) GEORGE SEXTON.

William Martin—(Guard)—Sworn:—

Has seen F. Smith purchase potatoes, peas, and meal; is a good deal in the kitchen, and has an opportunity of seeing; cannot say the quantity; has seen him get small quantities at different times. The potatoes were put in the spare bin in the centre of the cellar; the peas were put also in a spare bin; the turnips were put in bin with potatoes at one side; meal was put in one part of the bin where prison meal was. F. Smith bought them to accommodate the officers of the Institution, as far as witness knows. As long as witness has been about the place, it was always the custom for Kitchen-keepers to do so. Remembers a quantity of turnips sent in by Dr. Sampson to the Penitentiary; "there was difficulty in receiving them because there was cheatry in the measurement." Dr. Sampson's men were standing by, and when the Convicts were measuring them they always left a quantity in the bottom; the Convicts and Dr. Sampson's men did this; Dr. Sampson's men saw Convicts do it. Remembers another load of turnips sent in to Penitentiary by Dr. Sampson, which were rejected; the reason was, they were not very good. Remembers asking F. Smith to sell him some peas; F. Smith told him he had none of his own, none but the prison stores, therefore could not let him have any. From his knowledge of F. Smith, does not think he would take the prison stores and sell them. Has several times seen F. Smith purchase white bread. Has heard Convicts say they were better fed than heretofore. The general state of the Prison since F. Smith's appointment is in a great deal better order; many conveniences have been made. Never saw F. Smith shoot arrows at Convicts, or throw water on them. As far as witness has seen, F. Smith uses the Convicts very well. Witness has been off and on about the place ten years.

(Signed,) WILLIAM MARTIN.

Hugh Manuel—(Keeper)—Sworn:—

First heard about these charges a month ago last Wednesday night; Fitzgerald, the late Guard, told him this; it was after he was discharged. The first time he was in Fitzgerald's place he told witness he was going to law with the Warden for extra pay on night duty, and had been in to see Mr. McKenzie, the Lawyer, two or three times about it. Said another time another thing was going on; that he had been to Dr. Sampson's house with another from the Bay; that affidavits were taken, to go to Government. Witness said he supposed Dr. Sampson could not take affidavits, as he was not a Magistrate? Fitzgerald said, Mr. Manahan was there and could do so, also Dr. Robinson was there in the other room: he said Julien and Reid and another from the Bay were there; said they were going to bring charges against

F. Smith and he believes against Warden; mentioned about putting an Indian's eye out; did not say F. Smith did it, but that such a thing had been done. Mentioned also about taking Convicts out to fish, and about selling provisions belonging to the Institution; also about sticking pins in Convicts. Never saw F. Smith do any of these things. Fitzgerald asked, where he could find Coté? he said Dr. Sampson wanted to see him; said he could get something out of him; he was about the kitchen often, or something to that effect.

Never saw F. Smith throw stones or potatoes at Convicts at muster. Heard men under his charge say they would wish F. Smith to stop in the kitchen as long as they would be there, (in the Prison,) as they got better usage than before he came there; they got better rations and more of it. Knows Fitzgerald well; is a fellow that would drink. As Fitzgerald has of late expressed himself to witness no later than last Sunday night towards Warden and his family, witness could not give him credit on his oath on this occasion.

Cross-examined:—Never said he was drunk when he said there was a meeting at Dr. Sampson's house; never told Mr. Pollard so. Witness was not drunk when he said there was a meeting; does not remember telling Mr. Pollard there was a meeting at Dr. Sampson's house; never did tell him so to the best of his knowledge; told Mr. F. Smith about it, about a month ago; he laughed, and did not seem to believe it. Believes these charges would never have been brought at this time, only for the Petition that F. Smith wrote for the Keepers to sign. The Guards and Keepers were always grumbling about being kept till the sick were let out; this might come to F. Smith's ears, and he might make out a petition he thinks, and every one signed it; this is all witness knows about it. Witness signed the petition; it was praying the Board to get the Doctor to attend at some time without interfering with their dinner hour.

(Signed,) HUGH MANUEL.

Samuel Pollard—(Keeper)—Sworn:—

Has bought potatoes from Mr. F. Smith, and paid for them; thought he had a right to sell them; did not consider them as prison stock: it was notorious that the officers of the Institution were getting things of him; there was no concealment; it was generally known. The men never complained of being hit or hurt by Smith; on the contrary, he always heard them speak highly of him as an officer of the Institution. From his knowledge of F. Smith, witness undoubtedly does not think he would be guilty of selling prison stores. Witness met Dr. Sampson one evening shortly after the petition had been made to the Board respecting the irregularity of his attendance—it was near Dr. Sampson's door—the Doctor asked him how the petition came about? Witness said, the men wanted him (the Doctor) to come earlier, that they might not lose their dinners. The Doctor asked, if witness had signed it? Witness said he had. The Doctor damned him; called him a pretty fellow to do such a thing; and told him it would do him no good: that he (the Doctor) did not care for him or any one in the place. Witness assured him it was from no ill-feeling to him, but merely that he might come earlier, so that they might not lose their dinners. The Doctor swore at him; said there was not one in the Institution who was not over head and ears in his debt, or words to that effect. The Doctor was talking very violently; witness begged him not to talk so loud: the Doctor said, he did not care a damn for him; it would do him no good. He went

into his house, and slammed the door in witness's face. Does not think these charges would have been made had this Petition not been got up.

Knows Guard Fitzgerald, lately dismissed; from his general conduct, and from what witness saw, he would say, he was a very bad undeserving officer.

Has seen him, Fitzgerald, scuffling with discharged Convict Wilson, many a time. Has several times seen him shake the box when Convicts were confined in it. Has seen him chase Wilson with a stick in his hand fifty times up the Wing, when Mr. Costen's back was turned, they would be fighting together. Has often seen him throw water on Convicts confined in the box. Witness would not, on any consideration, believe Fitzgerald on his oath. Knows Guard Robinson: witness would have great doubts of taking his word, from his general conduct here. One afternoon, witness saw one of the Convicts taking some food away from the kitchen; witness called to stop him, and as the Convict was in the act of running away; the Guard Robinson came and asked witness what was his business to interfere, as he Robinson, was on duty, and would do as he liked? Witness said, he might be on duty and not see Convict stealing. Robinson told him to go about his business, he was on duty. The Convict then ran into a cell with the provision, and witness not wishing to create a confusion, walked away. Next day witness looked and found Robinson had not reported the Convict. Went for two mornings afterwards, and found the Convict was never reported for stealing, or any notice taken of it.

Never saw Mr. F. Smith throw stones or potatoes at men at muster; would not take Robinson's oath, from what he knows of him; never saw F. Smith take improper liberties with Convicts.

(Signed,) SAMUEL POLLARD.

Thomas Costen—recalled by Board:—

Told Fitzgerald his services were no longer required, but witness did not tell him the reason. Witness has no doubt he knew perfectly well the reason, as he was making excuses about his face. His face had been hurt fighting; and he was away three days without leave.

(Signed,) THOMAS COSTEN.

Henry Smith—(Warden)—sworn:—

When Dr. Sampson first spoke of these charges, he asked,—“Did not Frank get up a petition against me?” Witness said, “I believe he wrote it, but no harm was done, as it was suppressed.” The Doctor asked, what right witness had to suppress it? Witness told him he merely obeyed the orders of the Board in doing so, it was their desire. The Doctor then said, “Now, I have a charge to bring against Mr. Frank;” and asked, if witness was aware that Frank shot at Convict Abraham, and shot out his eye, or caused him to lose his sight? Witness said, he was not aware of it. The Doctor then asked, if witness was aware that he had been selling the provisions of the Penitentiary, and receiving the money for them? Witness said, he did not know; and if any one had done so, he must have stolen them. The Doctor said, “there is an affidavit to that effect.” Witness said, he had better prefer his charges in writing, as of course witness could not conceal it. The Doctor said, he would not do so; and that wit-

ness did not give Reid the charges against him in writing.

Witness then wrote to the President of the Board, stating the substance of what had passed between Dr. Sampson and self. Frank Smith was then sent for immediately to come to the Penitentiary (he had gone to dinner); he came up, and witness told him what Dr. Sampson had said; and asked, if there was any truth in the charges? F. Smith said no; and that he was anxious an immediate investigation should take place into these charges. Witness could not but think, that in making these charges, Dr. Sampson was actuated by malice and revenge, particularly as he first mentioned about the petition. The Doctor told witness that Frank had given the Indian something to conceal his hurting his eye; witness took it to mean a bribe. Is positive that Dr. Sampson said, there was an affidavit to the effect, that F. Smith had sold and received money for the Provisions of the Penitentiary. Witness considers F. Smith's conduct, as an Officer of the Institution, as generally good; very good, in regard to cleanliness. The Convicts have also said, that they get better rations since his appointment. Has never known F. Smith guilty of stealing, if he had, witness would not have procured his appointment to the Penitentiary. Witness paid particular attention to the evidence of discharged Convict Henry Wilson; took it down. Witness never said to Convict Ilett “Take a brick-bat, and knock him (meaning F. Smith) down.” Even if witness had said so, Wilson was too far off to have heard it. As to the characters of defendant's Convict-witnesses:—The conduct of Dyas is good; Udell's very good; Carl's excellent; Connell's very good indeed, he stands in the book with one punishment; Martin's generally good, he has been sometimes punished, but not for very heavy offences; M'Cormick's character, as a Convict, is between good and middling, “fair;” Patrick Kelly's good, very seldom punished, a very quiet orderly man; Gabriel Wright's generally good; Brennan's indifferent—the worst of any yet mentioned—he has been too often punished, though not for heavy offences; Watt, the Guard, is an excellent faithful man, seldom or never absent from his post, except on his pension days, when he gets half a day's leave to go to town; Martin, the Guard's character is very good; Hermiston, the Keeper, is a very good steady man. Witness would take the oaths of all the Guards and Keepers brought up by F. Smith in his defence; they are men to be relied on. The character of Costen, the Head-keeper, is very good; he carries out the witness's orders faithfully.

The small fire-engine, being in the east wing, is under F. Smith's control as the east wing is. Witness considers it F. Smith's business to keep it in proper order; would call him to account if it were not so kept.

Dr. Sampson came in one day and said he heard Mrs. Cox had been making observations as to his treatment of a woman who died.

The Convict Cavanagh was several times punished, both for stealing and fighting, besides talking.

The day before Convicts go out, witness takes their answers to a series of questions, and desires them to speak freely.

Witness thinks the Convict Abraham said his treatment was as good as he could expect in such a place, or some such words; that men were not punished unless they deserved it.

Several, indeed most Convicts going out, say their provisions have been good and sufficient, particularly since Mr. Frank has been Steward; they have more of them and better. This latterly has been a general reply.

Never, until he was before the Board as a witness, heard of Convict Cavanagh being unjustly punished. Convicts have the privilege of coming to witness to state their grievances; witness, any way, has applications from them, some about grievances, some asking witness to write letters for them, or to inquire about answers. Witness thinks Cavanagh once came about getting good provisions; it was after dinner: witness found both the Head and Kitchen-keeper had examined his returns, and pronounced them good; thought the complaint was frivolous, as there was no complaint from any other Convict that day about the quantity or quality of the provisions.

(Signed,) H. SMITH.

(Keeper Smith stated that he had no further evidence to produce in his defence. Dr. Sampson said he wished to bring evidence to rebut statements made by defendant's witnesses; he was informed that he would be allowed to do so. Board adjourned till four o'clock.)

(Four o'clock, P.M., Board again met. Dr. Sampson proceeded to call the following persons to rebut Defendant's evidence.)

Richard Robinson—(Guard)—sworn :—

Abraham was under witness's charge for a considerable time in the South Wing, both previous and subsequent to getting his eye hurt: when his eye was hurt his usual place of work was a shanty outside the South Wing: if the day was wet he worked inside the shanty; if fine, outside. When witness saw potatoes thrown at the Convicts he was in the South Wing. It was reported by several of the Convicts that Abraham lost his eye by the stroke of an arrow. The person he saw fishing with F. Smith was a large Convict; witness would call him a man Convict.

(Signed,) R. ROBINSON.

Martin Keely—(Keeper)—sworn :—

Is a Carpenter-Keeper; has been in that situation between ten and eleven years. Knows late Guard Fitzgerald and present Guard Robinson, since they came to the Penitentiary: never saw anything wrong with the men more than with any others. Should consider them good characters; certainly considers their oaths would be worthy of belief, "as much so as those of any other men of that capacity." Thinks Keeper Pollard has been some where about six months Keeper.

Witness had a conversation with Manuel respecting a conversation he (Manuel) had had with Fitzgerald, regarding something which Manuel had told to Pollard. Manuel said nothing of a meeting at Dr. Sampson's house; but told him that he (Manuel) had been to Fitzgerald's house a few mornings before, and Fitzgerald told him a few words, and he told them to Pollard when he was a little the worse of liquor, and Pollard told them to the Warden.

Cross-examined :—Manuel did not tell witness what he said to Pollard. The conversation which Manuel and witness, and the other Guards were engaged in at the time this occurred, was with reference to these charges.

(Signed,) MARTIN KEELY.

James M'Carthy—(Keeper)—sworn :—

Is Blacksmith-Keeper in the prison; has been so since the opening of the prison: he lighted the first fire. Has known Fitzgerald and Robinson since they came here: knows nothing wrong of Guard Robinson: has heard that Fitzgerald used to drink sometimes. Should think they ought to be believed on oath; does not see why they should not.

(Signed,) J. M'CARTHY.

John Swift—(Keeper)—sworn :—

Has been Keeper for about five years, or thereabouts. Has known Robinson and Fitzgerald since they were in the prison; has no reason to suppose they are not men of good character. Considers them men to be believed on oath, if not, they should not be entrusted with the situations they held. Witness does consider them men to be believed on oath.

(Signed,) J. SWIFT.

John Richardson—(Carpenter-Keeper)—Sworn :—

Has been Carpenter-Keeper nearly ten years. Knows Robinson and Fitzgerald; has no reason to suppose they are not to be believed on oath. Knows nothing to the contrary; knows nothing against them.

(Signed,) JOHN RICHARDSON.

Terence M'Garvey—(Keeper)—Sworn :—

Has been Shoemaker-Keeper between six and seven years. Has known Robinson and Fitzgerald a considerable time; knows nothing touching Robinson's character; knows nothing against him; never saw anything bad. Considers Fitzgerald's character pretty good, from what he knows. Has heard it reported about the Prison that a Convict had lost his eye; does not recollect the time—it was some months ago; heard some people say it was from a bow and arrow, others said it was a sore or inflammation. Anything witness heard of it was, that Mr. F. Smith was the cause of it, but it was a flying rumour only.

(Signed,) T. M'GARVEY.

Thomas Fitzgerald—(late Guard)—Sworn :—

Abraham, on wet days, was generally supposed to be inside South Wing in the Avenue; in fine days on the outside, on the east side of the South Wing, convenient to the wood-pile. Cannot say where he was when his eye was hurt.

When witness saw potatoes thrown at Convicts, he was in the South Wing, that was witness's post every night, except when Robinson was on duty, and then witness was on the wall; was in a position fully to see potatoes thrown, as he was along with Mr. Frank; could not miss it. It was a Convict man he saw in company with Mr. F. Smith when he was fishing; the Convict had no fishing-rod in his hand, that witness saw. Witness did not know why he was dismissed? Mr. Costen did not tell him. Witness had had his face hurt, and sent word to Mr. Costen saying so; and that he could not come to his duty till his face was well. When he returned, Mr. Costen told him his services were no longer required. Asked Mr. Costen, why? Costen said, he did not know. Witness said he had done his duty, and turned on his heel and walked away. Said nothing to Mr. Costen at that time, about his face being hurt, as far as he recollects. Sent word he could not come immediately after he was hurt, that was next morning. Sent the word by Guard Shortless.

(Signed,) THOS. FITZGERALD.

Thomas Costen—(Head-Keeper, recalled)—Sworn:

The Indian, Abraham, when his eye was hurt, worked on the west side of the North Wing; his shanty is still there, back of Warden's kitchen. The Kitchen-keeper always had charge of him, he belonged to the kitchen gang.

(Signed,) THOMAS COSTEN.

Dr. Sampson wished it to be Minuted that he was not allowed to be heard in evidence in support of charges. The Doctor was informed that the Board were now ready to hear him on oath (the Defendant F. Smith expressing his willingness); the Doctor, however, now declined doing so; saying, he had nothing to say.

Both parties agreed to hold the evidence as closed.

The Board adjourned.

I, James Hopkirk, one of the Inspectors of the Provincial Penitentiary, do hereby declare that the foregoing is a just and true copy of the Minutes of Evidence taken by me at the request of the Board, on the investigation of the charges made by the Surgeon of the Institution against the Kitchen-keeper F. W. Smith, and that the said minutes were taken at the time as fully and correctly as I could take them; and do, to the best of my knowledge and belief, contain a just and true statement of all which was testified to by the respective witnesses, pertinent to the matter at issue, and that the evidence of each witness was read over to and signed by him in presence of the Board, and of the Surgeon and Kitchen-keeper, neither of whom objected to its credence.

JAMES HOPKIRK.

Kingston, 29th Nov. 1847.

APPENDIX B.

Copy.—Documents relating to the Cases of Insane Convicts James Brown and E. C. Reveille.

No. 1.

Copy—Letter, Warden to Surgeon.

PROVINCIAL PENITENTIARY,  
17th January, 1848.

SIR,

I am directed by the Board of Inspectors to inform you, that they have observed in the Punishment Book a remark made by you against the name of the Convict James Brown, who was ordered to receive 36 lashes with the cats for outrageous and insubordinate conduct, viz.: that he was "fit as to bodily health;" and that they have been informed that the punishment has not been carried into effect, in consequence of the peculiar wording of such remark, and of a verbal statement made by you to two of the Inspectors, that you had doubts as to the sanity of the Convict.

I am now directed by the Board to request you will inform me, for their information, with a full and explicit report as to the health, both mental and bodily, of the said Convict.

I am, Sir,  
Your most obedient Servant,

(Signed,) H. SMITH,  
Warden.

JAMES SAMPSON, Esquire,  
M. D.

No. 2.

Copy—Letter, Surgeon to Warden.

KINGSTON, 18th January, 1848.

SIR,

In reply to your letter of yesterday, conveying the directions of the Board of Inspectors, that I should furnish you, for their information, with a full and explicit report, as to the health, both mentally and bodily of the Convict James Brown:—I have to state, that this man having been recently presented to me, to report on his fitness to receive 36 lashes with the cats; I remembered, that not long since, I had witnessed the infliction of a similar punishment on him; and I also recollected that I had heard verbally, from yourself and others, of many and repeated acts of unprovoked violence which he had committed from time to time, and for which he was repeatedly punished; under these circumstances, the moral question naturally arose, "whether there was not some mental deficit in a person who could not only commit such numerous acts of outrages, but who seemed reckless of the certain consequences to himself of so doing?" and, therefore, on inspecting him, I reported him "fit, as to bodily health," not doubt-

ing that your more intimate acquaintance with the man's case would explain to you the import of this "peculiar wording."

Before coming to any final decision on this case, it would be necessary that I should have access to the records of all the various acts of violence which this Convict has committed in the Prison, as well as the means of making personal inquiry of such Officers or persons as have witnessed them.

I am, Sir, &c.

(Signed,) JAS. SAMPSON,  
Surgeon.

H. SMITH, Esq.,  
Warden.

No. 3.

Copy—Letter, Warden to Surgeon.

PROVINCIAL PENITENTIARY,  
21st January, 1848.

SIR,

I beg to acknowledge the receipt of your letter of the 18th inst., respecting the case of the Convict James Brown; and in order to render you every facility to enable you to come to a decision regarding it; I have enclosed a return of the acts of violence committed by the Convict in question during his confinement in this institution; I beg leave further to state that all the Keepers and Guards of the establishment are cognizant of the several acts of violence recorded.

In acknowledging the receipt of your letter of the 19th inst., I have to request you will be pleased to inform me, whether in either of the cases of frost-bites in the morning of the 11th inst., the patient was in irons, in order that I may report the same to the Board.

I am, Sir,  
Your most obedient Servant,

(Signed,) H. SMITH,  
Warden.

JAMES SAMPSON, Esq.,  
M. D.

(Copy.)

Return of the several Acts of Violence committed by the Convict James Brown, as recorded in the Punishment Books of the Provincial Penitentiary:—

1846.

- Nov. 12.—Disorderly conduct in his cell; cursing and swearing, talking aloud, disturbing the prisoners.
- Nov. 16.—For very outrageous and disorderly conduct when at work in the Morter Shed; cursing and swearing, and being otherwise turbulent when ordered to his cell.
- Dec. 26.—Using indecent language.

1847.  
 May 17.—Threatening to take the lives of Keeper M'Garvy and Guard Funstan, and to raise a mutiny in the Prison; cursing and swearing in a violent way continually day and night.  
 July 8.—Talking at work.  
 Aug. 7.—Making a great noise in his cell; disturbing the prisoners; cursing and swearing, and threatening to take the life of the Keeper.  
 " 19.—Quarrelling in the wash-house; biting Convict Hall on the cheek, and striking him on the head.  
 Oct. 26.—For very outrageous and violent conduct in his cell; singing songs, cursing and swearing, and making a very great noise during the night, disturbing the Prison, and continued the same conduct when put in his dark cell.  
 Dec. 30.—Attempting to throw stones at civilian teamsters; cursing and swearing, threatening to knock anybody down who came near him.

1848.  
 Jan. 3.—Making use of very obscene language; cursing and swearing, and disturbing the whole Prison.

Penitentiary, 21st January, 1848.

I certify that this is a true copy of the return made to the Surgeon of the Penitentiary of the 21st January, 1848.

(Signed,) F. BICKERTON,  
 Clerk.

No. 4.

Copy—Letter, Surgeon to Warden.

KINGSTON, 24th January, 1848.

Sir,

In order to enable me to form a more correct opinion with respect to the mental state of Convict James Brown, it would be requisite that I should be acquainted with the several amounts and descriptions of punishments inflicted for the offences committed by him since his admission to the Prison: and I beg to submit, that instead of calling on all the Keepers and Guards to answer such questions as I might put to them touching this case, it would be more convenient if I were furnished with the names of the Officers who reported the Convict on the various occasions of violence for which he was punished.

(Signed,) JAMES SAMPSON.

To H. SMITH, Esquire,  
 Warden, P. P.

No. 5.

Copy—Extract from the Minutes of the Board of Inspectors of the Provincial Penitentiary, 3rd February, 1848:—

The Warden submitted to the Board two letters from the Surgeon respecting the case of the Convict

James Brown, on whose mental and bodily state he was requested to report, agreeable to the Minute of the 15th ult., and it appearing from his letter of the 24th ult. that he is unable to make his report in this case, unless he is made acquainted with the several amounts and descriptions of punishments inflicted upon the Convict. The Warden is directed to furnish the statement required.

The Warden is directed to request the Surgeon will furnish a return of the several cases of sickness, under which the Convict James Brown, has suffered from the month of August, 1843, to the present time, stating their character and the respective dates when they occurred.

A true extract.

(Signed,) F. BICKERTON,  
 Clerk.

No. 6.

Copy—Letter, Warden to Surgeon.

PROVINCIAL PENITENTIARY,

3rd February, 1848.

Sir,

I have to inform you, that your letters of the 18th and 24th ult., respecting the case of the Convict James Brown, have been laid before the Board; and I am to say, they have directed me to lay the statement of punishments inflicted upon that Convict before you as soon as it can be prepared; although the Board are at a loss to conceive what assistance it will afford you in coming to a conclusion as to the present state of prisoner's mind, as in neither of the cases of John Donovan and Michael Sheehan, both of whom, previous to their being reported by you as insane, had been frequently punished for acts of violence, was it deemed necessary by you to be put in possession of a similar statement, to enable you to come to a conclusion on their respective cases.

I am further directed by the Board to state to you, that observing your statement, that you had formerly heard from the Warden and others, verbally, of many and repeated acts of unprovoked violence which the Convict had committed from time to time, and for which he was frequently punished, they regret that, notwithstanding the Minute of the late Board of the 18th February, 1846, expressly directing you to report all such cases, you should not sooner have made the Board aware of your doubts as to James Brown's sanity, which might possibly have induced them to countermand the only two corporal punishments inflicted on him under the immediate sanction of the present Board, after receiving your report of his fitness to undergo them.

I am, Sir,

Your most obedient Servant,

(Signed,) H. SMITH,  
 Warden.

JAMES SAMPSON, Esquire,  
 &c. &c. &c.

STATEMENT of PUNISHMENTS Inflicted on the Convict JAMES BROWN, for Violent Conduct.

DATE.	OFFENCES.	PUNISHMENT.	BY WHOM REPORTED.	BY WHOM PUNISHED.
August 8, 1843...	Leaving his work, and concealing himself in the stone shed; throwing stones at the privy when another Convict was in it.....	6 lashes with the cat.....	Thos. Costen.....	
December 11, do .....	Striking another Convict.....	6 lashes raw-hide; 1 meal bread and water.....		
January 4, 1844...	Disobeying his Keeper, and using violence to the Officer in charge of him.....	48 hours in dark cell, on bread and water and put in irons.....	Do.....	
do 5, do .....	Violent conduct in the dark cell, and running away from the Guard who was taking him to be ironed.....	48 lashes with the cat; 1 meal bread and water.....	John Richardson.....	
do 9, do .....	Insubordinate conduct, and daring the Guard to fire at him.....	24 lashes with the cat; 48 hours in dark cell on bread and water.....	W. Smith.....	
February 19, do .....	Violent conduct in the quarry, and attempting to strike his Keeper.....	36 lashes with cat; 40 hours in dark cell.....	John Richardson.....	
April 17, do .....	Using threatening language to one of the Officers, and throwing a stone, with the intention of doing the said Officer bodily harm.....	36 lashes with cat; 1 meal bread and water.....	W. Smith.....	
July 16, do .....	Violent conduct, and striking another Convict.....	12 lashes with cat; 1 meal bread and water, and to be ironed.....	John Richardson.....	
October 23, do .....	Attempting to make his escape from the Penitentiary, armed with a hammer, and threatening to kill those who went in pursuit of him.....	60 lashes with cats; to be ironed; 3 meals bread and water.....	W. Smith.....	
December 7, do .....	Outrageous conduct during a mutiny in the quarry; saying he would clear out, and have the life of the Keeper before he would go out.....	4 doz. with cats; 1 meal bread and water.....	W. Smith.....	
January 23, 1845...	Outrageous conduct in the quarry; damning the soul of his Keeper to hell; would not work only as he thought fit himself; went off from his work without leave.....	2 doz. lashes with cats; 2 meals bread and water.....	John Hooper.....	
April 18, do .....	Drawing a knife upon the Guard when checked by him for talking at the dinner table; taking a poker and threatening the man who escorted him to his cell.....	24 lashes with cats; 1 meal bread and water, to be ironed.....	W. Smith.....	
June 6, do .....	For talking in his cell three hours during the night; cursing and swearing and expressing himself in the most obscene manner, and causing laughter with other Convicts.....	12 lashes with cats; 1 meal bread and water.....	John Hooper.....	
July 18, do .....	Outrageous conduct in his cell; cursing and making use of filthy expressions, and repeating the same when removed to the dark cell.....	36 lashes with cats; 1 meal bread and water.....	Terence M'Garvy.....	
September 16, do .....	Refusing to work; and walked away swearing he would not work while he was in irons, and that he would knock out the brains of the first man that spoke a word to him.....	2 doz. lashes with cats; confined to his cell 72 hours on bread and water.....	John Cooper.....	
October 8, do .....	Cursing and swearing in his cell; using violent language, and threatening to be the death of some of the Officers.....	2 doz. lashes with cats; 48 hours in dark cell.....	John Richardson.....	
February 17, 1846...	Talking in his cell more than half an hour, although repeatedly requested to be silent; saying he was aware that irons would be placed upon him; also using very indecent language, and saying he did not care about being punished.....	1 doz. lashes with cats; 2 meals bread and water.....	C. Reid.....	
do 24, do .....	Talking, quarrelling, and fighting with another Convict in the quarry.....	12 lashes with cats; 1 meal bread and water.....	C. Reid.....	
March 23, do .....	Talking and making a noise in his cell at 2 o'clock in the morning; saying the most filthy and abominable language; disturbing the Prison, and preventing the Convicts from taking their rest.....	1 doz. lashes with cats; 1 meal on bread and water.....	F. Little.....	
May 13, do .....	Cursing, swearing, and making a noise in his cell, and disturbing the Prison.....	2 dozen lashes with cats; 48 hours in dark cell.....	C. Reid. F. Gleeson.....	

STATEMENT of PUNISHMENTS Inflicted on the Convict JAMES BROWN, for Violent Conduct.—(Continued.)

DATE.	OFFENCES.	PUNISHMENT.	BY WHOM REPORTED.	BY WHOM FINISHED.
June 9, 1846 ..	Outrageous conduct; threatening the life of Guard Crawford, and throwing a shovel at him, when ordered to his cell; threatening the life of Guard Martin, and throwing a stone at him.....	36 lashes with cats; 48 hours in dark cell, to be ironed.....	W. Martin.....	J. Richardson.
do 16, do ...	Using threatening language to Guard Martin, when giving him his breakfast in his cell, and swearing he would take his life the first chance he got.....	1 doz. lashes with cats; 48 hours in dark cell.....	Assistant Warden.....	A. Ballantine.
do 19, do ...	Outrageous conduct in his cell; making a very great noise; cursing and swearing, and using threatening language.....	24 lashes with cats; 48 hours in dark cell.....	Richard Tynner.....	do
do 23, do ...	Attempting, when going to the Blacksmith's shop to be ironed, to escape up the scaffold, and over the wall; and when Keeper Manuel prevented him, attempted to throw him off the scaffold, and threw a large stone at him.....	24 lashes with cats; 48 hours in dark cell, to be ironed.....	H. Manuel.....	A. Ballantine.
July do 24, do ...	Cursing and swearing in his cell on Sunday morning.....	24 lashes with cats; 48 hours in dark cell.....	John Hooper.....	do
do 27, do ...	Talking and cursing in his cell.....	1 doz. lashes with cats; 2 meals bread and water.....	F. Little.....	do
August 11, do ...	Cursing and swearing, and being very outrageous in his cell, disturbing the Prison during the night.....	2 doz. lashes with cats; 1 meal bread and water.....	H. Manuel.....	do
October 31, do ...	Violent and outrageous conduct; cursing and swearing; using obscene language; threatening to take the life of some one when at work in the mortar shed.....	Confined in the dark cell 24 hours, to be ironed.....	George Sexton.....	Thomas Costen.
November 12, do ...	Disorderly conduct in his cell; cursing and swearing, and talking aloud, disturbing the Prison.....	48 hours in dark cell on bread and water.....	R. Robinson.....	do
do 16, do ...	Outrageous and disorderly conduct when at work in the mortar shed; cursing and swearing, and being otherwise turbulent when ordered to his cell.....	48 hours in dark cell on bread and water.....	George Sexton.....	do
May 17, 1847...	Threatening to take the lives of Keeper M'Garvey and G. Funstun, and to raise a mutiny in the Prison; cursing and swearing in a violent way, continually day and night.....	36 lashes with cats; 1 meal bread and water, to be kept in irons until further orders.....	Terence M'Garvey.....	John Richardson.
June 9, do ...	Fighting with another Convict when at work.....	Confined twice to the box, on bread and water.....	A. Ballantine.....	F. W. Smith.
August 7, do ...	Making a great noise in his cell; disturbing the Prison; cursing and swearing, and threatening to take the life of the Keeper.....	36 lashes with cats; 1 meal bread and water.....	Terence M'Garvey.....	Hugh Manuel.
do 19, do ...	Quarrelling in the wash-house; striking Convict Hill on the head, and biting his cheek.....	Confined to box twice; 6 meals bread and water.....	F. W. Smith.....	F. W. Smith.
October 26, do ...	Very outrageous and violent conduct in his cell; singing songs; cursing, swearing, and making a very great noise during the night; disturbing the Prison, and continued the same conduct when put in the dark cell.....	Confined twice in the box; 6 meals on bread and water.....	M. Kelly.....	F. W. Smith.
December 30, do ...	Attempting to throw stones at a civilian teamster; cursing, swearing, and threatening to knock anybody down who came near him.....			
January 8, 1848...	Making use of very obscene language; cursing, swearing, and disturbing the whole Prison.....			

No. 8.

Copy—Letter, Warden to Surgeon.

Provincial Penitentiary,

3d February, 1848.

Sir,

I am directed by the Board of Inspectors to request you will be pleased to furnish me, at your earliest convenience, with a Return of the several cases of sickness under which the Convict James Brown has suffered, from the month of August, 1843, to the present time, stating their character, and the respective date when they occurred.

I am, Sir,  
Your most obedient Servant,

(Signed,) H. SMITH,  
Warden.

JAMES SAMPSON, Esquire,  
&c. &c. &c.

No. 9.

(Copy.)

Return of cases of illness under which James Brown suffered :—

Admitted.	Disease.	Discharged.
1844.		1844.
July 29.....	Toothache—extracted.....	Sept. 24.....
Sept. 23.....	Pain in side.....	1846.
1846.		1846.
July 20.....	Abcess Axilla.....	July 22.....
Aug. 8.....	Diarrhoea.....	Aug. 10.....
1847.		1847.
April 13.....	Griping.....	April 15.....
Oct. 22.....	Pain in the Iliac region.....	Oct. 24.....
Nov. 15.....	Rheumatism.....	Nov. 20.....

No. 10.

Copy—Letter, Surgeon to Warden.

Kingston, 7th February, 1848.

Sir,

With reference to the Convict James Brown, about the sanity of whose mind I have already expressed doubts, I have to state, that as far as I can understand the case, it is one of occasional paroxysms of insanity; but as I have never witnessed his conduct on such occasions; before coming to a final conclusion as to his actual state, and deciding on the cause of his malicious propensities; it is necessary that I should have an opportunity of hearing from those Guards and Keepers who have seen him committing the acts of outrage for which he was punished, or from any others who have had personal cognizance of his extravagancies, their account of the manner and bearing of the Convict immediately before, and while committing said acts; and I, therefore, have to request that you will be pleased to allow me the means of questioning such persons.

I am, &c. &c.

(Signed) JAMES SAMPSON.

To H. SMITH, Esq.,  
Warden, P.P.

No. 11.

Copy—Letter, Warden to Surgeon.

Provincial Penitentiary,

7th February, 1848.

Sir,

I beg to acknowledge the receipt of your letter of this day's date, and in compliance with your request, I have directed the Head-keeper to assemble the several Keepers and Guards required for your examination into the case of the Convict James Brown, at 11 o'clock to-morrow morning.

I am, Sir,  
Your most obdt. Servant,

(Signed,) H. SMITH,  
Warden.

JAMES SAMPSON, Esq.  
&c. &c. &c.

No. 12.

Copy—Letter, Surgeon to Warden.

Kingston, 16th February, 1848.

Sir,

In compliance with the directions of the Board of Inspectors, conveyed in your letter of the 17th ultimo, that I should report to them on the mental and bodily state of the Convict James Brown, I have now to state for their information, that having maturely considered his case, I am opinion that this Convict is a person of unsound mind.

With respect to his bodily health, I consider this good.

I am, Sir, &c. &c.

(Signed,) JAMES SAMPSON,  
Surgeon.

H. SMITH, Esq.,  
Warden.

No. 13.

Copy—Letter, Surgeon to Warden.

Kingston, 23rd March, 1848.

Sir,

Observing that the Convict James Brown, whom I reported to the Board of Inspectors on 16th February last, as of insane mind, still carries heavy iron chains on his legs; and as these are a source of great bodily annoyance and mental disturbance to him, particularly during the night when in his bed, I recommend that they be removed.

I am, Sir, &c. &c.

(Signed,) JAMES SAMPSON,  
S. P. P.

H. SMITH, Esq.,  
Warden.

CASE OF  
E. C. REVEILLE.

No. 1.

Copy—Extract from the Minutes of the Board of Inspectors of the Provincial Penitentiary, 15th January, 1848:—

The attention of the Board having been called to the case of the Convict Charlotte Reveille, who, since her first reception into the Penitentiary, has manifested a most violent and insubordinate temper, destroying her bedding and clothing, and breaking every article within her reach, and latterly attempting to commit suicide by hanging herself; the Warden is directed to call upon the Surgeon for a certificate as to the state of her mental condition, with the view of application being made to the Government for her removal to a Lunatic Asylum, should her case require it.

A true extract.

(Signed,) F. BICKERTON,  
Clerk.

No. 2.

Copy—Letter, Warden to Surgeon.

Provincial Penitentiary,  
17th January, 1848.

Sir,

I am directed by the Board of Inspectors to request you will be pleased to furnish me, for their information, with a report as to the state of the mental condition of Charlotte Reveille; their attention having been called to the state of this Convict in consequence of her having, since her first reception into the Penitentiary, manifested a most violent and insubordinate temper, by destroying her bedding and clothing, and breaking every article within her reach; and latterly having attempted to commit suicide by hanging herself.

I am, Sir,  
Your most obedient Servant,

(Signed,) H. SMITH,  
Warden.

JAMES SAMPSON, Esq., M.D.  
&c. &c. &c.

No. 3.

Copy—Letter, Surgeon to Warden.

Kingston, 18th January, 1848.

Sir,

In compliance with the directions of the Board of Inspectors, conveyed to me in your letter of yesterday, that I should report for their information, as to the mental condition of the Convict Charlotte Reveille; I have to state that this woman was, on the 17th October last, admitted to the female sick-room, where she has been since treated for various and complicated bodily disorders, that I have of late paid much attention to her mental state, as well by personal observation as by the evidence of others; and

that I am of opinion that she labors under that species of mental derangement, which may be termed moral insanity.

I am, Sir,  
Your most obedient Servant,

(Signed,) JAMES SAMPSON,  
Surgeon P. P.

H. SMITH, Esq.,  
Warden.

No. 4.

Copy—Extract from the Minutes of the Board of Inspectors of the Provincial Penitentiary, 3rd February, 1848:—

The Warden laid before the Board the undermentioned reports of the Surgeon, made in pursuance of the Minute of the 15th ultimo, viz. :—

“On the mental condition of Charlotte Reveille.

“On the propriety of taking off the irons from such Convicts as have been placed in them for punishment, owing to the severity of the season.”

With regard to the first of these reports, the Board direct the Warden to apply to the Surgeon for advice as to what steps should be taken respecting the Convict referred to.

A true extract.

(Signed,) F. BICKERTON,  
Clerk.

No. 5.

Copy—Letter, Warden to Surgeon.

Provincial Penitentiary,  
3rd February, 1848.

Sir,

I beg to inform you that I have laid before the Board of Inspectors your letter of the 18th ultimo; and I am directed to request you will furnish me for their information, with your opinion whether it should be advisable that the Convict Charlotte Reveille, should be removed to a Lunatic Asylum, for the purpose of undergoing such treatment as may be necessary in her case of “moral insanity,” or what other course you would recommend the Board to pursue under all the circumstances of her case.

I am, Sir,  
Your most obdt. Servant,

(Signed,) H. SMITH,  
Warden.

JAMES SAMPSON, Esq.  
&c. &c. &c.

No. 6.

Copy—Letter, Surgeon to Warden.

Kingston, 5th February, 1848.

Sir,

In reply to your letter of the 3rd instant, respecting the Convict Charlotte Reveille, I have to state

for the information of the Board of Inspectors, that I consider her a proper subject for a Lunatic Asylum; and would therefore recommend her removal to one so soon as might be practicable; but at present her state of bodily health is such as to unfit her for a land journey.

I am, &c. &c.

(Signed,) JAMES SAMPSON,  
Surgeon P.P.

H. SMITH, Esq.,  
Warden P.P.

No. 7.

Copy—Extracts from the Minutes of the Board of Inspectors of the Provincial Penitentiary, 15th March, 1848:—

The attention of the Board having been called to a Report of the Surgeon of the Institution in the Hospital Register, in the case of Elizabeth C. Reveille, under date the 9th instant, in which that officer states, "I may remark, in this place, no credence is to be given to anything said, when animosity and deceit seems to govern the actions of persons in office. I reported this Convict as insane to the Board of Inspectors on the \_\_\_\_\_ last, and I feel convinced that no improvement can take place mentally, while in this Prison."

The Board consider it essential to the well-being of the Institution, with the management of which they are intrusted, to ascertain from the Surgeon to whom he alludes in the paragraph in question; and to investigate the circumstances which have led to so serious a charge against some person or persons in the Penitentiary. They therefore resolve to meet on Saturday, the 18th instant, at 3 o'clock, p.m., for the purpose of enquiring into the matter, when, as the Surgeon's evidence on oath may be necessary, his attendance is required. The Warden will accordingly furnish the Surgeon with a copy of this Minute, and notify him to attend for the above purpose, and also for the purpose of enabling the Board to hear his opinion as to the measures which he would recommend should be pursued in the case of the Convict Reveille.

A true extract.

(Signed,) F. BICKERTON,  
Clerk.

No. 8.

Copy—Letter, Warden to Surgeon.

Penitentiary, 16th March, 1848.

Sir,

Agreeable to the directions of the Board of Inspectors, I beg leave to forward to you a copy of a Minute made at their meeting yesterday; and in pursuance of their desire, I have now to request you will be pleased to appear before the Board at 3 o'clock, p.m., on Saturday next, the 18th instant, for the purpose therein mentioned.

I am, Sir,  
Your most obdt. Servant,

(Signed,) H. SMITH,  
Warden.

JAMES SAMPSON Esq.  
&c. &c. &c.

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No. 9.

Copy—Letter, Surgeon to Board of Inspectors of Provincial Penitentiary.

Kingston, 17th March, 1848.

Gentlemen,

I have received the communication of the 15th instant, addressed to me by the Warden, by your direction.

Under the peculiar circumstances in which I am placed, with respect to your Board, it is my wish that every thing passing between us be in writing, and not by personal communication.

I beg leave to bring under your notice, that the Minute of your Board of the 15th instant enclosed in the Warden's letter, contains a very imperfect and erroneous view of the report as set forth in my Register, on the 9th instant, respecting the insane Convict Reveille, and therefore I have subjoined the whole of the said report, as well as that of the preceding day.

(Copy.)

"February 8th.—The bowels were opened on the 5th, and the tumid abdomen again subsided, but the pain never leaves the left side, which is tender on very slight pressure. No uterine discharge since last report, but the bloody vomiting has returned this morning. Mentally there has been evident improvement of late, which I attribute to a conciliatory and soothing mode of treatment. February 9th.—The uterine hemorrhage returned last night, and is rather copious to-day. The Matron reports, that this Convict was detected with the earthen vessel in which she vomits, under her, in order to procure blood, mix it with gravel and shew it to me as having come from her stomach. It is difficult to suppose that this trick could have been practiced when no uterine discharge existed, besides the liquid said to be vomited, contained very dark blood, while uterine discharge was of a pale scarlet color. I may remark, in this place, no credence is to be given to anything said, when animosity and deceit seem to govern the actions of persons in office. I reported this Convict as insane to the Board of Inspectors on \_\_\_\_\_, and I feel convinced that no improvement can take place mentally, while in this Prison."

I am aware that the remark made in this report, to which your attention has been drawn, involves matter of grave import, as connected with the conduct of those who have charge of the Convict in question; and further, very seriously affecting the due discharge of my professional duties towards her, but as it has been communicated to me by command of His Excellency the Governor General, that His Excellency intends to appoint a Commission of Inquiry, not only as to what personally concerns myself, but also as to the general management of this Institution, I beg leave respectfully to decline now entering further upon the subject; it being my intention to bring this case, in all its details and bearings, before this tribunal so soon as it is constituted.

I continue, as you are no doubt aware, in constant daily attendance upon this Convict, noting down occasionally whatever of importance arises in her case.

I have already reported her to you as insane, and I recommended her removal to a Lunatic Asylum so soon as her bodily health would permit.

I have now further to recommend that the Matron be directed not to attend upon this Convict in any way, or at any time, as her doing so appears to occasion great irritation in the patient, and may if continued greatly hazard her recovery; and it is my opinion that this Convict should be treated with great mildness and forbearance.

I am, Gentlemen,  
Your most obt. Servant,

(Signed,) JAMES SAMPSON,  
Surgeon, P.P.

To the Board of Inspectors,  
Provincial Penitentiary.

No. 10.

Copy—Minutes of the Board of Inspectors, on the morning of the 18th March, 1848.

Provincial Penitentiary,  
18th March, 1848.

The Board met. Present :—Thomas A. Corbett, Esquire, President; James Hopkirk, and Henry Gildersleeve, Esquires.

The Board having met this morning especially to take into consideration a letter of yesterday's date, addressed by the Surgeon of the Penitentiary to them, in which that officer states, "that as it has been communicated to him, by desire of his Excellency the Governor General, that His Excellency intends to appoint a Commission of Inquiry, not only as to what concerns himself, but also, as to the general Management of the Penitentiary; he begs leave respectfully, to decline entering further on the subject, (viz. : his remarks in the Hospital Register, that the actions of certain persons in office are governed by animosity and deceit) it being his intention to bring this case in all its details and bearings before this tribunal, so soon as it is constituted.

The Board direct that the Surgeon be immediately informed that they have as yet received no intimation of the intention of His Excellency the Governor General to appoint such Commission of Inquiry; and that even had they received such intimation, they do not conceive that their functions as Inspectors would be thereby brought to a close or suspended; nor would they then consider themselves as thereby relieved in the meantime from performing the duties of inquiry into any matter effecting the good Government of the Institution or the conduct of any of its officers, as required by the "Statute," unless they are especially excused by competent authority for so doing.

Under these circumstances, therefore, and as the Surgeon states that the entry in the Hospital Register, already referred to, contains "matter of grave import as connected with the conduct of those who have charge of the Convict (Reveille); they consider that they are peremptorily called upon to take immediate cognizance of it, in order that not a moment may be lost in removing the parties alluded to, if guilty, from situations which they would in that case, be utterly unworthy to hold, and every hour of their continuance in which, would be highly detrimental to the interests of the Penitentiary and to the welfare of its unfortunate inmates, which the Inspectors are especially bound to protect.

The Board, therefore, resolve that they will proceed, at three o'clock to-day, with the inquiry intimated in their Minute of the 15th instant, and that the attendance of the Surgeon is indispensably required thereat, and that the Warden do notify the Surgeon to attend accordingly, by furnishing him, without delay, with a copy of the resolution.

(Signed,) THOMAS A. CORBETT, Pres.  
" JAMES HOPKIRK,  
" HENRY GILDERSLEEVE.

A true Copy.

(Signed,) F. BICKERTON,  
Clerk.

No. 11.

Copy—Letter, Surgeon to Board of Inspectors,  
Provincial Penitentiary.

Provincial Penitentiary,  
18th March, 1848.

Gentlemen,

I beg leave to acknowledge the receipt of the Warden's letter, and your Minute of this day; and in reply refer you to my letter of yesterday, in which I respectfully declined, for reasons therein stated, and to which I adhere, to appear personally before your Board. Everything necessary to the welfare of the Convict Reveille, will have been attended to, if my recommendations of yesterday be acted upon.

I am, Gentlemen,  
Your most obt. Servant,

(Signed,) JAS. SAMPSON,  
Surgeon, P. P.

To the Board of Inspectors,  
Provincial Penitentiary.

No. 12.

Copy—Extracts from the Minutes of the Board of Inspectors of the Provincial Penitentiary, on the afternoon of the 18th March, 1848.

The Board met at three o'clock, when a letter was delivered to them from the Surgeon, in which that officer, notwithstanding the notification sent him this morning requiring his attendance in terms of the Statute, declined coming before them.

The Board considering the extreme difficulty, under existing circumstances, of maintaining order and discipline in the Institution, and the absolute necessity which exists for a prompt inquiry into any charge of misconduct against any of those entrusted with the charge of the Convicts; which inquiry they are prevented, in the present instance, from entering into, by the refusal of the Surgeon to come before the Board after preferring a charge; considering, also, the extreme difficulty of carrying on the management of the Institution with credit to themselves and advantage to the public without the cordial co-operation of all the officers: Resolve, that the whole of these proceedings be immediately brought under the notice of His Excellency the Governor General. With reference to the late application for a Commission of Inquiry, with the view of showing the

necessity of such commission being appointed without delay, should His Excellency deem it advisable to pursue that course, and they direct that the draft of a suitable letter to the Secretary of the Province be prepared for their approval.

The Board further took into consideration the case of the Convict Elizabeth Charlotte Reveille; with reference to the Surgeon's letter of the 17th instant, recommending, that until her bodily health will permit her removal, "the Matron be directed not to attend upon this Convict in any way or at any time, as her doing so appears to occasion great irritation in the patient, and may, if continued, greatly retard her recovery;" and stating, that in his opinion, "this Convict should be treated with great mildness and forbearance."

The Board being anxious, in all respects, to carry out the Surgeon's recommendations, and finding it impossible to avail themselves of the services of the Assistant-Matron to attend on the Convict, in consequence of her duty requiring her presence in a different part of the prison; and having also had evidence laid before them, that the freedom from all reproof, restraint, or punishment, accorded to this Convict, whatever she does or says, and the indulgences afforded to her by the Surgeon's orders, tend materially to interfere with the discipline of the other Convicts, had been considering the expediency, in order to obviate the difficulties, of placing her in a room by herself under the superintendence of a hired nurse; but as that officer has declined coming before them, though twice requested so to do, the Board were under the necessity of adopting these measures without having the benefit of a consultation with him; as, in their opinion, the best means of carrying his recommendation into effect without interfering with the discipline of the prison.

The Warden is accordingly directed to take the necessary steps to have Convict Reveille removed to a separate place of confinement, and to have a suitable nurse to attend her. He is further directed to impress on such attendant the necessity of treating the patient with the greatest mildness and forbearance, as recommended by the Surgeon, and of giving her every indulgence which he has recommended or may hereafter recommend, and generally, of attending to and following out his directions regarding her in every particular. The Warden will furnish the Surgeon with an extract of that part of this Minute relative to the arrangements to be made regarding the Convict Reveille.

A true Extract.

(Signed,) F. BICKERTON,  
Clerk.

No. 13.

Copy—Letter, President Board of Inspectors to Provincial Secretary.

KINGSTON, 20th March, 1848.

Sir,

I have the honour, by desire of the Board of Inspectors of the Provincial Penitentiary, to transmit you a copy of a correspondence which has taken place between them and the Surgeon of the Institution.

The Surgeon having in the Hospital Register, with reference to the case of the Convict Charlotte Reveille, made a remark that "no credence is to be

given to any thing said when animosity and deceit seem to govern the actions of persons in office," the Board considered it their duty at once to investigate the charge, and to ascertain who were the parties to whom it referred, with a view to their removal if guilty.

The Board accordingly required the attendance of the Surgeon that they might have his evidence and and investigate the matter, in a resolution of which a copy is herewith transmitted for His Excellency's information.

On receipt of this resolution, the Surgeon, in a letter addressed to the Board, a copy of which also accompanies this, stated, that his remarks involved matter of grave import, as connected with the conduct of those who have charge of the Convict Reveille, and with the due discharge of his professional duties towards her; but declined attending the Board, on the ground of its having been communicated to him, by command of His Excellency the Governor General, that it was His Excellency's intention to appoint a Commission of Inquiry into the general management of the Penitentiary.

The Board could hardly think it possible, that had such a communication of His Excellency's intention been made to the Surgeon by His Excellency's desire, such an oversight of official courtesy would have been committed, or such a slight put on them, as the neglect to address a similar communication to them would imply; and considering also, that even had His Excellency's intention to appoint a Commission been communicated to them, they would not thereby in the meantime be relieved from performing the duties of inquiring into any matter affecting the good government of the Institution or the conduct of any of its Officers, as required by law, unless especially excused from so doing by competent authority, resolved to proceed with the inquiry, and transmitted a copy of their resolution to that effect to the Surgeon, with a request that he would attend accordingly.

The Surgeon, however, again declined obeying their directions by letter, dated 18th instant, a copy of which also accompanies this.

It will at once be obvious to His Excellency, that if there is any one institution in which order and subordination are indispensable; and where also the slightest misconduct on the part of those in charge, should be promptly inquired into and suppressed; it is in one where about 500 Convicts are congregated together, many of them the worst of characters; and any caballings or communications among whom may be productive of the most fearful consequences.

There is, however, too much reason to believe, that improper communications are held with the Convicts, either by connivance of some of the Keepers and Guards, or by means of some of the Carters, Messengers, or others admitted within the gates, as newspapers have, on more than one occasion, been found among the prisoners.

These circumstances, added to the facts of Convicts appearing to be cognizant of statements made against the management beyond the walls, of some of them having threatened their Keepers with making declarations when released, and of others, whose term of imprisonment had expired, proceeding, as if by previous arrangement as soon as they left the walls, to one particular place, where the depositions of some of them were taken down and immediately

after appeared in the newspapers; could lead the Board to no other conclusion but that some improper communication is carried on between the Convicts and some parties beyond the walls, by concert or connivance of persons employed in or about the Institution.

The Board have given their best endeavours to the discovery of those implicated in these matters; and they have no doubt that before long their endeavours will be crowned with success, and those guilty parties punished or removed; but they regret to say, while their exertions for that purpose, and for the maintenance of discipline and order are heartily seconded by the great majority of those employed in the Prison, who faithfully perform their respective duties; they are nevertheless thwarted by an apparent want of cordial co-operation on the part of a few of the inferior officers.

Such cordial co-operation, the Board deem it their duty to enforce by the most decisive measures, and are resolved to do so accordingly; but they cannot wonder that it should be wanting on the part of some of the inferior officers, when neither their authority nor that of the Statute is respected by the Surgeon of the Institution.

Under these circumstances, and being resolved to make no distinction of persons, on account of their position in the Institution, the Board have directed me to bring the refusal of the Surgeon to attend their meetings when required, under His Excellency's notice through you; and referring to their letter of the 11th instant, requesting Commission of Inquiry, they have now respectfully to recommend, that should His Excellency be of opinion that the appointment of such Commission, is under all circumstances expedient, it may take place with as little delay as is consistent with the necessary arrangements.

Should His Excellency, on the other hand, deem it inexpedient to issue a Commission of Inquiry, they would respectfully request his early consideration of, and decision upon, the various subjects lately brought under his notice by them.

I have the honor to be,  
Sir,  
Your most obedient Servant,

(Signed,) THOS. A. CORBETT,  
President of the Board of Insp.  
Provincial Penitentiary.

The Honorable  
R. B. SULLIVAN,  
Secretary of the Province,  
Montreal.

CASES OF CONVICTS BROWN AND REVELLE.

No. 1.

(Copy.)

Extract from the Minutes of the Board of Inspectors of the Provincial Penitentiary, 24th February, 1848.

The Warden laid before the Board, the undermentioned communications received from the Surgeon:

Letter, 5th February, 1848, respecting the case of the Convict Charlotte Reveille, who is not at present in a fit state to be removed to a Lunatic Asylum.

Letter, 10th February, 1848, referring to the case of Bridget Donnelly, requiring to be furnished with a statement of the acts of violence committed by her, and the punishments inflicted therefor, which has been furnished.

Letter, 12th February, 1848, reporting on the case of Bridget Donnelly, who, in the opinion of the Surgeon, "does not labour under any form of insanity or unsoundness of mind."

Letter, 16th February, 1848, respecting the mental state of James Brown, who, the Surgeon reports, "is a person of unsound mind, but whose bodily health is good."

The Warden also laid before the Board a return of the several cases of sickness, for which the Convict James Brown, has been treated, from the month of August, 1843, to the 4th instant. With regard to the cases of James Brown and Charlotte Reveille, as the Board do not concur in the reports of the Surgeon, on their respective cases, they now resolve that a Medical Board, consisting of Doctors Telfer and Bell, be requested to examine the Convicts in question as to their mental state, and to make their report thereon to the Board as early as may be convenient. The Board, therefore, direct the Warden to make application to Dr. Telfer, to ascertain when it will be convenient to him to undertake the examination required, and to state to him that all travelling and other expenses incurred by him in his attendance thereat will be paid to him.

A true Copy.

(Signed,) F. BICKERTON,  
Clerk.

No. 2.

Copy—Letter, Surgeon to Board of Inspectors, Provincial Penitentiary.

Provincial Penitentiary,

3rd April, 1848.

Gentlemen,

I consider it my duty to request that you will be pleased to inform me, whether my report on the state of mind of the Convict Charlotte Reveille, dated 3rd February last; and that respecting the mental condition of the Convict James Brown, dated 16th of the same month, have been submitted for the consideration of the Government; and further, to ask if any, and what steps have been taken for the future disposal of these two insane Convicts.

I am, Gentlemen, &c. &c.

(Signed,) JAMES SAMPSON,  
Surgeon.

The Board of Inspectors,  
Provincial Penitentiary.

No. 3.

(Copy.)

Extracts from the Minutes of the Board of Inspectors of the Provincial Penitentiary, 8th April, 1848.

The time being now arrived when the navigation may shortly be expected to be fully opened between this and all parts of the Province; the Board consider it expedient to bring under the notice of the Governor General, the intentions expressed in their Minute of the 24th February last, relative to obtaining the advice of Doctors Telfer and Bell, in the case of the Convicts Reveille and Brown; and they, therefore, resolve that a suitable letter on the subject to His Excellency, be prepared for their approval; and a draft of said letter having been prepared, and amended, and approved, the President is requested to sign and transmit the same in the name of the Board.

The President then laid before the Board a letter from the Surgeon, inquiring whether his reports on the state of mind of the Convicts Elizabeth C. Reveille and James Brown have been submitted to the Government; and further, asking if any, and what steps have been taken for the future disposal of these two Convicts.

The Board having already done all which they consider necessary as to the cases of the Convicts in question, do not feel that they are called upon to take any action on this letter. The Warden will, therefore, simply inform the Surgeon, that the Board have taken, and will, with the approval of His Excellency the Governor General, continue to take such steps with reference to the Convicts in question, as their cases may from time to time appear to render expedient. The Warden will, therefore, for that purpose, furnish the Surgeon with an extract from this part of the Minutes.

A true Extract.

(Signed,) F. BICKERTON,  
Clerk.

No. 4.

Copy—Letter, President Board of Inspectors to Provincial Secretary, with documents accompanying said letter.

KINGSTON, 10th April, 1848.

Sir,

I have the honor, by direction of the Board of Inspectors, to request you will be pleased to bring under the notice of the Governor General the cases of the Convicts Elizabeth C. Reveille and James Brown; the former of whom the Surgeon of the Penitentiary has reported to be in a state of "moral insanity," and the latter to be of "unsound mind."

Elizabeth C. Reveille was tried in the District of Montreal, in the month of February, 1846, and convicted of Larceny, for which she was sentenced to three years imprisonment in the Penitentiary; and during the time of her confinement, has continually manifested, on all occasions, a most violent and turbulent disposition. The conduct of this woman, as the Board have been informed, was equally violent

while under confinement in the Montreal Gaol, so much so, that it became necessary to confine her with handcuffs, to prevent her from destroying her clothing.

The Convict James Brown, was received into the Penitentiary on the 21st November, 1840, from the Western District, where he was tried and sentenced to be hanged for Rape, but his sentence having been commuted to transportation for life, he was sent to the Penitentiary until a vessel should be provided for his transmission, as well as of other Convicts, to one of the Penal Settlements. On the removal of this man from Sandwich to the Penitentiary, as the Board have been given to understand, his conduct was most violent and unruly, so that it became necessary to use extraordinary means of restraint; and during the time he has been under confinement in the Penitentiary, his conduct has been an almost uninterrupted scene of violence and outrage; many times attempting to take the lives of the Officers of the establishment, and still threatening to commit murder.

As each of these Convicts has been sometime in the Penitentiary, and repeatedly under the eye of the Surgeon, without his having, until lately, made any report of his opinion as to their insanity—and as there has been no change in their conduct since they first entered this Institution, until the present time—the Board do not conceive themselves justified upon these reports, to make application to His Excellency for a free pardon to the Convicts, with a view of their removal to a Lunatic Asylum until further examination be had into their cases.

The Board are led to this conviction from a personal examination of the male Convict in question, as well as from the evidence of the Officers of the Institution, more immediately in contact with Elizabeth C. Reveille; and they can come to no other conclusion, as far as they are enabled to judge from the facts before them, as well as from the statements respecting these two Convicts, made by the Sheriff of the Western District, and the Keeper of the Montreal Gaol, copies of whose letters relative to their cases are transmitted herewith, than that they are actuated solely in their conduct by the most violent and reckless dispositions; unmoved by the certainty of punishment for the infractions of the rules of the Institution, and probably induced to expect their liberation, should they be successful in obtaining a belief of their insanity; and the Board further conceive that in these cases especially, to apply for the removal of the Convicts referred to, without further inquiry, would be virtually to cast a stigma upon the Courts before which they were tried, as it would in effect be to pronounce a want of judgment on the part of both Judges and Juries in sending insane persons to the Penitentiary.

In coming to this decision the Board have further had in view the case of a Convict recently tried in England for murder, in which a plea of "Moral Insanity" or uncontrollable impulse, was set forth in defence of the accused, but overruled by the Judge who presided on that occasion; a copy of whose opinion, as reported, the Board beg leave to forward for His Excellency's consideration.

Under these circumstances the Board feel disposed, should His Excellency see no objection to such a course, to obtain the opinion of the Medical Superintendent of the Provincial Lunatic Asylum, at Toronto, and of the Head of the Military Staff of Upper Canada, respecting these cases, as the In-

spectors do not conceive they would be faithfully performing the duty entrusted to them, were they tacitly to acquiesce in the opinion of the Surgeon of the Penitentiary, that Convicts of ungovernable tempers must be necessary insane, and thereby escape the punishment due to them, as well for their violation of the law as the infraction of the rules of the Penitentiary.

The Board would beg particularly, to bring under the notice of the Governor General that, as the law now stands, there is no power to remove a Convict from the Penitentiary to a Lunatic Asylum except by granting him a free pardon; and consequently, should it appear on his removal to such Asylum that he is not labouring under such a state of insanity as may render his confinement there absolutely necessary, he must immediately be let loose upon the world, however desperate his character or atrocious his crimes. His Excellency will, therefore, perceive how very necessary it is that the Board should exercise every possible precaution in cases of this kind, the more particularly as they have found that repeated attempts have been made by Convicts to feign madness with the view of obtaining their liberty. The Board have, further, the strongest grounds for believing that the Convict Elizabeth C. Reveille, at all events, is one actuated by such motives, in assuming the conduct which has led the Surgeon to report that she labours under "moral insanity."

The Board would further state, that in differing from the Surgeon in their opinion as to the insanity of the Convict in question, they would not be held as casting any doubts on that officer's professional skill, it being well known that nothing is so difficult as to determine the difference between an inferior grade of mental alienation and feigned insanity, and that it requires very special attention to that particular branch of the profession to enable a Physician to attain any great eminence in it.

I have the honour to be,

Sir,

Your most obt. Servant,

(Signed,) THOMAS A. CORBETT,  
President Board of Inspectors,  
Provincial Penitentiary.

The Honourable

R. B. SULLIVAN, &c., &c.

A.

Copy—Letter, Gaoler, Montreal to Warden.

Montreal Gaol,

21st Feb., 1848.

Sir,

I have just received your letter of the 18th inst., making certain inquiries respecting Elizabeth C. Reveille, who was sent up from this Gaol, on the 8th May, last year, to be confined in the Penitentiary at Kingston; I beg to state, in reply, that at the time she was in my custody I was occasionally beset with the same doubts you expressed respecting the soundness of her mind; but a very attentive consideration

of her case, founded upon close observation of her conduct, compelled me to relinquish this idea, and to regard her as the most mischievous and impracticable Convict I ever had to deal with: she was several times in my custody both under accusations and convictions, but it was during her last confinement, previous to her being sent up to you, that the most mischievous features of her character became apparent. I find, upon reference to our Punishment Register, that during the month of December, 1845, she was four times punished by solitary confinement, making one hundred and fifty-three hours in solitude during that very short space of time. Finding, as I have invariably found, that punishment produced no satisfactory results, but rather seems to produce a spirit of unyielding determination which inclined her rather to seek than to shun punishment, I tried kindness and moral suasion with her, and upon the whole I had reason to be better satisfied.

However, I was again obliged to resort to strong measures in the month of March, previous to her departure for Kingston; but this was more with the view of restraining than punishment.

She had torn her own clothes and acted very badly: I put handcuffs upon her with her hands behind her back, this is our most severe mode of punishment or restraint, and for several weeks she behaved much better; indeed, until the time she was sent up. Dr. Arnoldi, the Gaol Physician, who had daily opportunities of seeing and hearing of her, both before and after trial, refused to consider her a Lunatic; and I was fully of his opinion: and am satisfied that there was nothing in her case, either at the time of her trial or when sent up to the Penitentiary, that would justify any interference with the due course of law.

(Signed,) THOMAS M'GINN.

B.

Copy—Letter, Sheriff Foote to Warden, Provincial Penitentiary.

CHATHAM, 4th March, 1848.

Sir,

I have been absent from home for some days, which has prevented me replying to your letter of the 15th ultimo, respecting the sanity of James Brown, a Negro, who was sentenced to be hanged in this District, in 1840, and afterwards sent to the Provincial Penitentiary.

My impression at the time was, that he was not mad; that his conduct bore more the character of an untameable ruffian than anything else. I recollect well on his way to Kingston, and whilst passing on a waggon over the bridge at Chatham, that he called out that he would jump over the bridge and drown himself. The bailiff, who had him in charge, instantly pulled up, and desired him to carry his threat out; saying, at the same time, that he would get rid of a great nuisance, and the country would be saved the expense of supporting him in the Penitentiary; he, however, did not do so, and throughout the entire journey his conduct was untameable: whilst here none supposed him to be mad.

(Signed,) G. W. FOOTE.

C.

Copy—Extract from the Trial and Conviction of  
W. A. Allnut, at the Central Criminal Court,  
on the 13th December, 1847, for Murder.

## ON THE DEFENCE.

Dr. Connolly, the Physician to the Hanwell Lunatic Asylum, said, that from the evidence he had heard in this case, he was of opinion that the prisoner was of unsound mind; he would say that his brain was diseased, and he considered that as he advanced in life, his insanity would become more apparent; but he was of opinion, that he would exhibit it more by a deranged conduct than a derangement of interest.

Mr. Baron Rolf then proceeded to sum up the case to the Jury, and he said it was one of a very important character, not only as regarded the nature of the charge, and the consequences that might result to the prisoner, but also with regard to the defence that had been set up, which was one that, when it rested upon slight grounds, if Juries did not put a check to, might be attended with very disastrous results. The witnesses called for the defence had described the prisoner as acting from uncontrollable impulse; and they had made other statements, of the value of which it would be for the Jury to decide; but he must say, that it was his opinion that such evidence ought to be scanned by Juries with very great jealousy and suspicion, because it might tend to the perfect justification of every crime that was committed. What was the meaning of not being able to resist moral influence? Every crime was committed under an influence of such a description, and the object of the law was to compel persons to control these influences, and if it was made an excuse for a person who had committed a crime, that he had been goaded to it by some impulse which medical men might choose to say he could not control, he must observe that such a doctrine would be fraught with very great danger to the interest of society.

No. 5.

Copy—Letter, Provincial Secretary to President  
Board of Inspectors, Provincial Penitentiary.

Secretary's Office,

25th April, 1848.

Sir,

I have the honor to acknowledge the receipt of your letter of the 10th April, instant, requesting me to bring under the notice of His Excellency the Governor General, the cases of the Convicts Elizabeth C. Reveille and James Brown; the former of whom you state that the Surgeon of the Institution has reported to be in a state of moral insanity, and the latter to be of unsound mind.

You report Elizabeth C. Reveille to have been tried in the District of Montreal, and convicted of Larceny, and sentenced to three years imprisonment in the Penitentiary, in the month of February, 1846; that she has continually manifested, on all occasions, the most violent and turbulent disposition. You say that, as the Board of Inspectors are informed, her conduct was equally violent while under confine-

ment in the Montreal Gaol, so much so, that it became necessary to confine her with handcuffs, to prevent her from destroying her clothing.

You report the Convict James Brown to have been received into the Penitentiary, on the 21st November, 1840, from the Western District, where he was tried and sentenced to be hanged for Rape; that in consequence of the commutation of his sentence, he was received in the Penitentiary; that, as the Board have been given to understand, his conduct was most violent and unruly, so that it became necessary to use extraordinary means of restraint; and that during the time he has been under confinement in the Penitentiary, his conduct has been an almost uniformly uninterrupted scene of violence and outrage; he many times attempting the lives of the officers of the establishment, and threatening to commit murder: and you state, on behalf of the Board, that as each of these Convicts have been for some time in the Penitentiary, and repeatedly under the eye of the Surgeon, without his having, until lately, made any report of his opinion as to their insanity, and as there has been no change in their conduct since they first entered the Institution till the present time, the Board do not conceive themselves justified, on these reports, to make application to His Excellency for a free pardon to the Convicts, with a view to their removal to the Lunatic Asylum, until further examination be had into their cases.

You further state that the Board, from a personal examination of the male Convict in question, as well as from the evidence of the officers of the Institution immediately in contact with Elizabeth C. Reveille, can come to no other conclusion, so far as they are enabled to judge from the facts before them, as well as from the statements respecting these two Convicts made by the Sheriff of the Western District and the Keeper of the Montreal Gaol, than that they are actuated solely in their conduct by the most violent and reckless dispositions, unmoved by the certainty of punishment for infractions of the rules of the Institution, and probably induced to expect their liberation, should they be successful in obtaining a belief of their insanity.

Accompanying your Report, is a letter from the Montreal Gaoler regarding the female Convict; you having thought fit to make inquiries of that officer respecting her.

The Gaoler represents her conduct, while in his custody, to have been outrageous and violent; that occasionally he was beset with doubts as to her sanity, but upon observation of her conduct, relinquished the idea; and that Dr. Arnoldi, the Gaol Physician, refused to consider her as a lunatic.

You also send with your letter a copy of one from the Sheriff of the Western District, in which that Officer relates the outrageous conduct of the Convict Brown, in the year 1840, and his opinion that Brown was not then insane; though whether he was so or not appears to have been even then thought of as a question.

I lost no time in submitting these documents, and others, rather relating to the conduct of the Prison and its Officers than to the direct matter in question, to His Excellency the Governor General, and His Excellency commands me to make the following reply:—

First, with regard to the transference of prisoners unquestionably lunatic, to the Provincial Lunatic

Asylum from the Penitentiary: His Excellency is of opinion, that however such a course may be deemed advisable in clear cases of harmless lunacy or imbecility of mind considered hopeless and incurable, it is a most objectionable proceeding where the conduct of the prisoner is outrageous and violent, and when there are hopes of restoration of mind under judicious treatment in the prison.

In England, even in cases of acquittal for crimes charged, when the acquittal is on the ground of lunacy or unsoundness of mind in the person accused, there are means of confining the party found lunatic, so as to prevent the possibility of any injury to society from the exhibition of like violence in future; while by a removal of a violent lunatic Convict to the Asylum in this country, involving a free pardon for the offence, the community would be exposed, on the recovery of the lunatic, to his being set at large on his recovery, however properly convicted and however unworthy of clemency his crime or character may have made him.

His Excellency does not consider the arrangements in the Provincial Penitentiary by any means complete or judicious, unless Convicts who may happen to become lunatic, can be treated within the walls for insanity as well as for any other disease to which they may be subject. If so treated, they can, on recovery, be again subjected to penal imprisonment, according to their sentences; or finally relieved when it can be done with safety; or, in case of hopeless insanity, removed to a lunatic hospital on the expiration of the term of penal imprisonment.

In the cases of the two Convicts above-named, His Excellency does not see fit to direct or permit their removal to the Lunatic Asylum.

But as regards another question which the papers before the Governor General forces upon His Excellency's consideration, namely, whether persons reported by the Physician in charge at the Penitentiary to be insane, are, upon the responsibility of authorities not professional, to be treated as moral agents and fit subjects for punishment while they are so reported?—I am commanded to convey to you His Excellency's pleasure: The Surgeon of the Penitentiary, so long as he holds Her Majesty's Commission in that office, must be considered competent to express an opinion in all matters regarding the health of the prisoners under his medical charge. He must also, in the discharge of his duty, not be considered liable to be actuated by improper motives. It is a sufficient relief from responsibility of others concerned to produce his report, which is their justification, even if they should not concur with him in opinion; while, on the other hand, His Excellency knows of no justification for others, if they should happen mistakenly to overrule the professional opinion of the Surgeon, and to treat as criminal, acts proceeding from insanity.

It is His Excellency's opinion, that so long as Dr. Sampson continues to report the two Convicts above-named insane, means should be found within the Prison of treating them as lunatic patients, under his directions; exposed to no punishment, and subject only to the necessary restraints used in cases of persons of unsound mind.

His Excellency commands me to say, that he does not see fit, at present, to direct investigation by other medical men: for he does not see anything very extraordinary in the fact, that a woman who nearly three years ago was outrageous and violent in her

conduct, and reckless of continued punishment, and moreover suffering under disease, should have become insane, or in a state not any longer to be considered a moral agent. And he cannot see the probability of the suggestion, that the outrageous and violent conduct of the prisoner has been the result of a mere scheme to procure a pardon, when the term of imprisonment is to expire in next February, and the plan of feigning madness, if it existed at all, must have been in existence from the time the prisoner was in custody in Montreal up to the present period.

Neither in the case of the Convict James Brown, does His Excellency consider it any conclusive proof of the soundness of the Convict's mind, that for the space of eight years he has exposed himself to the severities consequent upon a perpetual breach of the prison rules, even in a remote hope that he might receive a pardon as an insane person; under these circumstances which His Excellency has had painfully to consider, as laid before him in the voluminous documents respecting the Penitentiary. The difficulty attending a conclusive opinion on the sanity or unsoundness of mind of these Convicts, to be pronounced by strangers, on contradictory evidence, would be very great; while the ends of criminal justice can suffer little by the treatment of the Convicts as lunatics, while the Surgeon is of opinion that they really are so.

With respect to the charges and recriminations contained in the papers relating to the two Convicts, Reveille and Brown, as well as in the other reports and papers before His Excellency, I am commanded to inform you that it has been for some time in contemplation to issue a Commission of Inquiry into the system, arrangement, conduct, and management of the Penitentiary, when all the matters before the Government relating to the Prison will be proper subjects of investigation. His Excellency only waits to make the necessary arrangements for the appointment of gentlemen who will undertake the Commission of Investigation, one of the objects of which will be the inquiry into the charges respecting individuals holding office in the Prison; and another, and much higher aim on the part of His Excellency, will be to ascertain if any improvements can be made in the Establishment, which may make it more efficient than it appears to be at present for the important purposes for which it was intended by the Legislature.

I have, &c.,

(Signed,) R. B. SULLIVAN.

THOMAS A. CORBETT, Esquire,  
President Board Inspectors,  
Provincial Penitentiary.

No. 6.

Copy—Letter, President Board of Inspectors to Provincial Secretary.

KINGSTON, 29th April, 1848.

Sir,

I have the honour to acknowledge the receipt of your letter of the 25th instant, relative to the cases of the Convicts Brown and Reveille, which I have laid before the Board of Inspectors of the Provincial Penitentiary.

The Board, in their letter of the 10th instant, expressed their opinion of the inexpediency of, in all cases, applying for the pardon of every Convict reported to be insane, with the view of his removal to the Provincial Lunatic Asylum; whereby, should it turn out that he was not labouring under such a state of mental insanity as would render his confinement there absolutely necessary, he must be let loose on the world, however desperate his character or atrocious his crime; and they are much gratified to learn by your letter that His Excellency the Governor General fully coincides with them in these views, and duly estimating the disadvantages to which, under such circumstances, the community would be exposed, on the recovery of the lunatic, to his being set at large, however properly convicted and however unworthy of clemency his crime or character may have made him; it therefore affords the Board much pleasure to know that His Excellency does not see fit to direct or permit the removal of the Convicts in question to the Lunatic Asylum.

It was in consequence of entertaining the same views of the subject taken by His Excellency, that the present Board departed from the practice pursued by their predecessors, of in every case, when a Convict was reported by the Surgeon to be of unsound mind, applying to the Head of the Government for a free pardon, with the view of his removal to an Asylum; and they are much gratified to learn that in this, the only instance in which they have taken it upon themselves to deviate from the advice tendered to them by the Surgeon as to the course which they ought to pursue with regard to Convicts whom he reported insane, their having done so has been so fully approved by His Excellency.

With regard to the question, "Whether persons reported by the Physician in charge of the Penitentiary to be insane, are, upon the responsibility of authorities not professional, to be treated as moral agents, and fit subjects for punishment while so reported?" the Board were also gratified to learn, that the signification of His Excellency's pleasure is in strict accordance with their uniform practice, namely, "that the Surgeon must be conceived competent to express an opinion in all matters regarding the health of the prisoners under his charge; and that it is a sufficient relief from responsibility of others concerned to produce his report, even should they not concur with him in opinion;" and it is for these reasons that in every case where even doubts have been expressed by the Surgeon as to the sanity of a prisoner, they have at once forbidden any punishment to be inflicted on such Convict. Nor have they ever, in any one instance, overruled the professional opinion of the Surgeon, or treated as criminal, acts which he considered proceeded from insanity; on the contrary, they have, on all occasions, directed that such Convicts should be treated in strict accordance with the Surgeon's directions; and the same course has always been followed regarding Convicts on the sick list, who are never, even although of sound mind, subjected to punishment, or treated otherwise than as he directs.

In the case of the Convict Brown, the instant the Surgeon hinted his doubts of his sanity—for that Officer did not at first express a decided opinion on the subject nor report fully on his case, although especially called upon by the Board to do so—they at once directed all punishment to be suspended, and that the Convict should be placed on the sick list, under the immediate superintendence of the Surgeon, and treated as he should direct; and he has never once been subjected to anything beyond necessary

restraint during his ebullitions of passion and attempts at violence. The Surgeon's directions have at all times been fully carried out regarding him, and he has lately, by order of that Officer, resumed hard labour with the other Convicts.

The other Convict, Charlotte Reveille, has in like manner, since the Surgeon reported that he considered her to be morally insane, been treated in every way in accordance with his desire; been subject to no punishment, and received every indulgence and luxury which he deemed she might have: and latterly, when the Surgeon became urgent on the Board to apply to His Excellency for her removal, while, as before stated, they did not feel themselves justified in applying for her pardon for that purpose; they, by their Minute of 18th March, expressed their anxiety in all respects to carry out the Surgeon's recommendations; and finding it impossible to avail themselves of the services of the Assistant-Matron to attend on the Convict, in consequence of her duty requiring her presence in a different part of the Prison, and having also had evidence laid before them, shewing that the freedom from all reproof, restraint, or punishment accorded to this Convict, whatever she does or says, and the indulgences afforded to her by the Surgeon's orders, tend materially to interfere with the discipline of the Convicts, had been considering of the expediency, in order to obviate these difficulties, of placing her in a room by herself, under the superintendence of a hired nurse, should the Surgeon on meeting them to-day see no objection to such a course: but as that Officer has declined coming before them, though twice requested to do so, the Board are under the necessity of adopting these measures without having the benefit of a consultation with him, as in their opinion the best means of carrying his recommendation into effect without interfering with the discipline of the Prison.

The Warden is, accordingly, directed to take the necessary steps to have the Convict Reveille removed to a separate place of confinement and to have a suitable nurse to attend her. He is further directed to impress on such attendant the necessity of treating the patient with the greatest mildness and forbearance, as recommended by the Surgeon; and of giving her every indulgence which he has recommended or may hereafter recommend; and generally of attending to and following out his directions regarding her in every particular. The Warden will furnish the Surgeon with part of the Minute relative to the arrangements to be made regarding the Convict Reveille.

Your Excellency will perceive the anxious desire of the Board to comply in every way with the Surgeon's recommendations regarding the Convict, which they have no doubt have been properly carried out, as no complaint has been made by the Surgeon to the Board that they have not been so.

While His Excellency will thus perceive that the Board entirely agree with him; that while the Surgeon of the Institution holds Her Majesty's Commission as such, his directions in regard to the medical treatment of Convicts shall be strictly followed out; they trust that His Excellency will also concur with them in thinking, that while they hold their Commissions as Inspectors, their authority should be respected by the Officers of the Institution.

As to the appointment of a Commission to inquire into the mental state of the Convicts, the Board sug-

gested that course, in consequence of the urgency of the Surgeon for their removal, as expressed in his letters to them, and their disinclination to take upon themselves decidedly to go contra to his recommendations, while, at the same time, they did not feel that they would be justified in applying for their pardon and removal as he desired. The Board were, however, not insensible to the difficulties pointed out by you "attending a conclusive opinion on the sanity or unsoundness of mind of these Convicts, to be pronounced by strangers on contradictory evidence;" difficulties to which every inquest *delunatico inquerendo* is necessarily subjected.

You will perceive, in taking these steps—which they have done in regard to the Convicts Reveille and Brown—the Board have anticipated His Excellency's desire, that "means should be found within the Prison for treating them as Lunatic Patients, under the Surgeon's directions, exposed to no punishment, and subject only to the necessary restraints used in cases of persons of unsound mind;" they, however, beg to point out that the whole of the medical arrangements of the Institution, as well as the plans of the Hospital, and the accommodations for the sick, have been prepared or approved of by the Surgeon himself; and that no provision has in them been made for the management of insane patients, whose permanent treatment in the Institution the Surgeon has never contemplated, and whose immediate removal he has at all times urged.

Indeed, the Surgeon has always contended, that the Penitentiary being a Prison for those subject to punishment, insane patients ought not to be kept there, and he accordingly did not attend them, unless when labouring under bodily sickness, until the present Board especially directed him to do so; and desired that the names of all Convicts reported to be insane should be kept on the sick list, with a view of their receiving his continued attention, and to his having an opportunity of at once directing any alteration in their treatment which any change in their state ——— mental ——— might in his opinion render expedient.

The Governor General will thus perceive, that while the Board coincide with His Excellency's opinion, that the arrangements in the Penitentiary are incomplete, unless Convicts who may happen to become lunatics, can be treated within the walls for insanity, as well as any other disease to which they may be subject—such has not formerly been the case, nor does it seem to have been contemplated either by the former Boards, by the Surgeon, or indeed by the Law itself—and that while the present Board have done all which is in their power in anticipating His Excellency's desires, an alteration in the Law will be requisite to carry those desires into operation to the full extent which would be expedient.

It is, therefore, to be hoped that the Commissioners of Inquiry may be enabled to suggest such an

alteration in the law as may enable Lunatic Convicts to be treated within the walls as advantageously as in institutions for the care of the insane, unless it should be deemed more expedient to alter the law in such a manner as to grant the power of temporarily removing them to the Provincial Lunatic Asylum, without the necessity of granting them pardons, and subject to their re-transmission to the Penitentiary, in case of their being cured before the expiring of their sentences.

The Board have further to state, in reference to your remark, as to their having thought fit to make application to the Keeper of the Montreal Gaol, regarding the former conduct of Convict Reveille, that this was in accordance with the practice of the Institution in all cases where imposition is imputed, and that it has led to most beneficial results in assisting in its detection; of which the Board may state a very recent instance in the case of a Convict who feigned to be deaf and dumb, and to be afflicted with epilepsy, in consequence of which he was, by desire of the Surgeon, confined to his cell, and afterwards kept in the hospital for upwards of twelve months, thereby escaping from that part of his sentence, imposing hard labour, and creating doubts of his sanity in the minds of the Board; but who, through information received from the authorities of the Gore District, and the vigilance of the Hospital-keeper, was at last detected, confessed his deception, and is now, and has been for the last six months, at hard labour like the other prisoners.

The Board have only, in conclusion, to state their unqualified satisfaction, at learning that their reiterated wishes are about to be complied with, in the appointment, by His Excellency, of Commission of Inquiry into the affairs of the Institution; when they have no doubt that all matters relating to it, now before Government, will receive a strict and impartial investigation; and when every opportunity will be afforded to all persons having or pretending to have charges respecting individuals holding office in the Prison, of substantiating them; and when it is also to be hoped that those charged with the inquiry may be enabled to suggest further improvements, tending to make the establishment still more efficient than it now is, either by the framing of new regulations under the existing law, or by the improvement of the law itself; in the furtherance of which desirable object His Excellency may rest assured of the cordial assistance and co-operation of the Board, both collectively and individually.

I have the honor to be,  
Sir,  
Your most obedient Servant,

(Signed,) THOMAS A. CORBETT,  
President of the Board of Inspectors,  
Provincial Penitentiary.

APPENDIX C.

Correspondence between the Warden and the Commander of the Forces for Canada West, as to the Treatment of Soldiers committed to the Provincial Penitentiary.

No. 1.

Copy—Letter, Warden to Sir Richard Armstrong.  
Provincial Penitentiary,  
16th September, 1848.

Sir,

I have the honor to request you will be pleased to inform me whether, during the time you held the Military Command of Canada West, any complaint of cruelty, oppression, or starvation, on my part, towards any of the Soldiers who have been sent to the Penitentiary, has been made to you, or if, on the contrary, so far as you have made inquiry into the same, they have, while under my charge, been treated with humanity and every kindness consistent with their position as prisoners.

I have the honor to be,

Sir,

Your most obedient Servant,

(Signed,) H. SMITH,  
Warden.

Major General  
Sir R. ARMSTRONG,  
&c. &c. &c.

No. 2.

Copy—Letter, Sir Richard Armstrong to Warden.

“ Kingston, 17th September, 1848.

“ Sir,

“ I have to acknowledge your letter of the 16th instant, and as it will save me the necessity of recapitulating a portion of its contents, I have much pleasure in replying hereon; that during upwards of six years, which I have held the Command of Canada West, no complaint of cruelty, oppression, or starvation, has ever reached me from any of the Military who have ever been confined in the Provincial Penitentiary, and they to a certainty would have complained, had there been occasion. The men, at the expiration of their periods of confinement, came out in good condition, affording a satisfactory proof they have been well fed. I must add, that I have, from time to time, seen the food prepared for the prisoners, and that it appeared to me to have been of wholesome good quality and abundant.

“ The only complaints that have reached me during my command, have been, in two or three instances from soldiers, stating they had not been released until after twelve o'clock (while they should have been before), in consequence of Military escorts not having been sent for them in time; but for this I cannot consider you to have been responsible.

“ I have the honor to be,

“ Sir,

“ Your most obedient Servant,

(Signed,) “ R. ARMSTRONG,  
“ Major General.

“ To HENRY SMITH, Esquire,  
“ Warden of the  
“ Provincial Penitentiary,  
“ Kingston.”

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ROLLO CAMPBELL, PRINTER—PLACE D'ARMES HILL—MONTREAL.

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